

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CRIMINAL REVISION CASE No.191 of 2005****ORDER:**

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed by the accused challenging the conviction and sentence in C.C.No.254 of 2001 passed by II Metropolitan Magistrate, Vijayawada, finding the accused guilty for the offence under Section 304-A IPC and sentenced to undergo RI for a period of 9 months, giving set off of the remand period, while finding the accused not guilty and acquitted for the offence under Section 134(a) (b) r/w 187 of MV Act.

The case of the prosecution in brief is that the accused is the driver of the lorry bearing No.AP 7 V 4343. On 11.09.2000 at about 20.00 hours on NH.9 road between Sri Lakshmi Stone Crusher and Sri Sai Ramana Stone Crusher near Kilesapuram, the accused, while proceeding towards Mulapadu side from I. B. Patnam along with fish load and six gas cylinders, drove the vehicle in rash and negligent manner and on noticing two lorries overtaking ahead to his lorry, he applied sudden breaks to his lorry and swerved towards left side and failed to control the lorry, as a result of which, the vehicle fell into a road side ditch. One Ramiseti Balaji, who was in the lorry died on the spot. The accused and another person, who were traveling in the lorry, sustained injuries in the said accident. The injured were shifted to Charitasri Hospital for treatment. On receipt of the information about the accident, the Assistant Sub Inspector of Police rushed to scene of offence and recorded the statement of Lw.1-Addala Nani, and on the strength of the statement of LW.1, he registered a case in Cr.No.251 of 2000 for the offences under Sections 337 and 304-A IPC. On 12.09.2000 the ASI inspected the scene of offence in the presence

of mediators and prepared the observation report, rough sketch, held inquest over the dead body of the deceased in the presence of mediators and sent the dead body of the deceased to UGH for post mortem examination. Thereafter, the SI of police, after verifying the investigation conducted by ASI, sent a requisition to MVI, Vijayawada, for inspection of the vehicle, the MVI inspected the vehicle and found that the accident was not occurred due to any mechanical defect of lorry and issued Report.

The medical officer, who conducted autopsy over the dead body of the deceased, issued PM certificate, opining that the cause of death is due to shock. The Doctor, who treated the injured Srinu and the accused, issued wound certificates, opining that Srinu sustained grievous injuries while the accused sustained simple injuries. After completion of investigation, the SI of police filed charge sheet before the Magistrate, who in turn took the case on file.

On securing the presence of the accused, the accused was examined under Section 251 Cr.P.C. explaining the gist of acquisition in Telugu, he pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws. 1 to 8 were examined and Exs. P.1 to 9 were marked.

After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against him in the testimony of prosecution witnesses, he denied the same and reported no defence.

Upon hearing both the counsel, the trial Court found the accused guilty for the offence under Section 304-A IPC and sentenced him to undergo RI for a period of 9 months, giving set off under

Section 428 Cr.P.C., to the remand period, while finding the accused not guilty for the offence under Section 134(a) (b) r/w 187 of MV Act.

Aggrieved by the conviction and sentenced passed by the trial Court, the accused preferred an appeal in CrI.A.No.55 of 2003 before Metropolitan Sessions Judge, Vijayawada, which ended in dismissal by Calendar and Judgment dt. 04.02.2005, confirming the conviction while reducing the sentence of imprisonment to four months from 9 months.

Aggrieved by the conviction and sentence passed by the Appellate Court, the present revision is filed mainly on the ground that the trial Court ought to have acquitted the accused for the offence punishable under Section 304-A IPC since the cleaner and other injured person did not support the prosecution case, but the courts below convicted the accused believing the evidence of Pws. 1,3 and 5, without any independent corroboration. The evidence on record did not establish that the accident was occurred due to rash and negligent act of the petitioner, but the courts below committed an error in finding the accused guilty and the medical officer, who conducted autopsy over the dead body of the deceased, was not examined by the prosecution as a witness before the Court and it is fatal.

Sri P. Nagendra Reddy, learned counsel, who filed vakalat on behalf of petitioner/accused, did not appear and represent the matter. But, this Court cannot dismiss the Criminal Revision for default, the Court can decide the revision after verifying the material available on record as per the Judgment reported *Misha Sharma v. Vinod Kumar Sharma*¹, wherein it is made clear that a revision petition cannot be dismissed for default and even if the petitioner or his advocate does

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

not appear, the court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to proceed with the matter, verifying the material available on record.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C confers a kind of paternal and supervisory jurisdiction on the high Court, over all other criminal Courts established in the state in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on the other hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this Section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower Court suffer from irregularity or impropriety as held by Apex Court in *State of West Bengal v. Tulsidas*². The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice, as held in *Prahlad v. Emporer*³. Further, the High Court can, in exercise of its revisional powers, either *suo motu* on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the

² (1964) 1 Cr.L.J.443 (SC)

³ 48, Cr.L.J.173,174(pat)

powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the Courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised as held by the Apex Court in *S.P.S. Jayam and Company V. Nehrusadan*⁴.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *Bansilal v. Laxman*⁵.

Admittedly, on 11.09.2000 the petitioner being the driver of the lorry bearing No. AP 7 V 4343 was proceeding to Warangal from Kaikaluru with a fish load and gas cylinders permitting two persons in the said lorry to travel besides the cleaner of the lorry, who was examined as Pw.2. The total case of the prosecution is based on the

⁴ 1977 SC 1621

⁵ (1986) 3 SCC 445

evidence of Pw.1, who is an independent witness to the occurrence on the date and time of the accident. PW.1 testified that when he was checking his lorry near Kilesapuram, a lorry being driven by the accused while overtaking two lorries lost control over it and fell into near by ditch. He further deposed that his nephew, who was in the lorry, died on the spot and the other persons, who are travelling in the lorry, also sustained injuries in the said accident. Pw.2 is the cleaner, who testified about his employment and sustaining of injuries while proceeding in the lorry as cleaner along with fish load and cylinders, but he did not support the case of the prosecution about the death of nephew of Pw.1 in the accident, while admitting sustaining of injuries by him and the driver of the vehicle including the death of another person. Ex.P.2 is the statement of Pw.2 recorded by the ASI, which contained the signature of Pw.2. But he denied the same. Even though he turned hostile and did not support the case of the prosecution relying on Ex.P.1, still his evidence is consistent about the occurrence of accident, death of one person and sustaining of injuries including the driver in the same accident. The MVI Inspector, who inspected the vehicle, was examined as PW.3 and he found damages to lorry right side head light, signal light broken, wind soreem glass broken, left side cabin quarter glass broken, streeing column bent, chasis frame both longitudinal members front side bend, radiator damaged, and jammed with water pump fan, front cabin grill damaged, cabin left side door and left side portion of cabin damaged, left side portion of the damaged. He further deposed that the breaks are found in tact and the accident was not occurred due to any mechanical defect. Therefore, the evidence of Pws.1,2 and 3 is consistent about the occurrence, sustaining damages by the lorry in the said accident and death of one person besides sustaining injuries by Pw.2 and driver of the vehicle, the petitioner herein.

PW.4, who travelled in the lorry, also testified about the accident, but he stated that he became unconscious immediately after the lorry turned turtle and therefore, he did not support the case of the prosecution about the death of the person and sustaining of injuries including the consequences of the accident.

Pw.5 is the person, who prepared observation report vide Ex.P.5 and held inquest over the dead body in the presence of mediators. Ex.P.6 is the Inquest Report. But, PW.5 did not support the prosecution case and turned hostile. However, the evidence of Pws.3,6 and 7 and 8 is consistent about the occurrence of the accident and death of one person including sustaining of injuries by Pws.2,4 and the petitioner/driver of the lorry. Even otherwise, the evidence on record including documentary evidence i.e, Ex. P.3, P.5, P.7, P.8 and P.9, are sufficient to conclude that the accident was occurred due to rash and negligent driving of the vehicle by the driver and when the petitioner failed to take care and caution as a prudent driver while driving the vehicle unable to control the same, would clinchingly establish rash and negligent act. Therefore, causing death of a person due to rash and negligent act by the petitioner is sufficient to convict him for the offence under Section 304-A IPC as the evidence of Pws. 1,2 and 5 is also sufficient to establish the occurrence.

Because of non examination of the Doctor, who conducted autopsy over the dead body of the deceased, the prosecution case cannot be thrown overhead as death of nephew of PW.1 is an admitted fact and the death of a person need not be established by examining the Doctor. Therefore, there is clinching evidence to establish that the accident occurred due to rash and negligent act of the petitioner, which resulted in the death of nephew of Pw.1. consequently, the contention raised by the counsel for the petitioner that the doctor who

conducted autopsy was not examined, would not stand to legal scrutiny and apart from that the grounds urged are mostly with regard to appreciation of evidence, which is impermissible, in view of the limited jurisdiction of this Court while exercising power under Sections 397 and 401 Cr.P.C. Therefore, I find no ground to interfere with the concurrent fact findings recorded by the trial Court and the Appellate Court to reverse or set aside the conviction and sentence passed by the trial Court, confirmed by the appellate Court reducing substantive sentence from Nine months to four months and consequently, the Criminal Revision Case is liable to be dismissed.

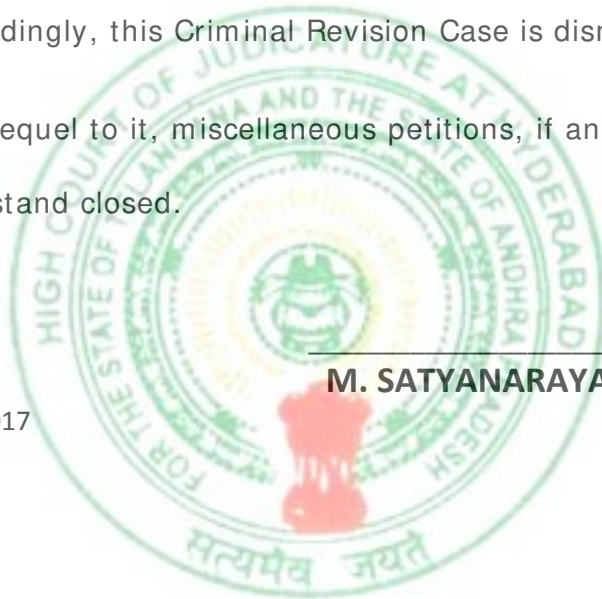
Accordingly, this Criminal Revision Case is dismissed.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 06.10.2017

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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt.06.10.2017

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