

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2451 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed aggrieved by the Judgment, dated 07.09.2017, passed in Criminal Appeal No.78 of 2015 by V Additional Sessions Judge, Tirupati, whereby the learned Sessions Judge confirmed the Judgment, dated 11.03.2015, passed in Calendar Case No.36 of 2011, by the VI Additional Junior Civil Judge-cum-Special Magistrate, Tirupati.

2. For the sake of convenience, the parties will be referred to as they arrayed before the trial Court.

3. The case of the prosecution, in nutshell, is that on 10.12.2009 at about 4:00 PM near Pichinaidu Palli cross road in Tirupati-Chittoor 150 feet bye-pass road, the accused being the driver of Tavera Car bearing registration No.TN-01-AH-2235 drove the vehicle in rash and negligent manner from Chittoor side and proceeding towards Tirupati, dashed against the TVS Suzuki motor cycle bearing No.AP-03-T-2854, as a result of which the rider Seenaiah and the pillion rider Munaiah fell down and sustained injuries. Both the injured were admitted in SVRR hospital, Tirupati. Basing on the report, police registered a case in Crime No.193 of 2009 for the offences punishable under Sections 338 and 279 IPC on 11.12.2009 and investigated into the matter. On 14.12.2009 the injured Seenaiah succumbed to injuries while undergoing treatment at SVRR Hospital, Tirupati. The police conducted inquest over the dead body of the deceased in the

presence of mediators. P.W.19 is the medical officer, who conducted autopsy over the dead body of the deceased Seenaiah and opined that Seenaiah died due to Septicemia as a result of injury No.4. Basing on the death intimation, the police filed Memo adding Section 304-A IPC. On 26.12.2009, the owner of the crime vehicle produced the accused and the crime vehicle before the investigating officer. The investigating officer arrested the accused and sent him to judicial custody. On 26.01.2010 another injured person by name Munaiah succumbed to injuries while undergoing treatment at SVRR hospital, Tirupati. The doctors, who conducted post-mortem examination over the dead body of the deceased Munnaiah opined that Munnaiah died due to poly trauma. The motor vehicle inspector, Tirupati, inspected the crime vehicle and opined that the accident was not occurred due to any mechanical defects and issued report. After completion of investigation, police filed charge sheet for the offence punishable under Sections 304-A and 279 IPC and Section 134 (a) and (b) read with 187 of the Motor Vehicles Act.

4. The case was taken on file against the accused for the offences punishable under Sections 304-A and 279 IPC and Section 134 (a) and (b) read with 187 of the Motor Vehicles Act by the III Additional Judicial Magistrate of First Class, Tirupati and issued summons to the accused.

5. On appearance of the accused, copies of documents were supplied to him. He was examined under Section 251 Cr.P.C., he denied the same, pleaded not guilty and claimed to be tried.

6. During trial, P.Ws.1 to 13 were examined and Exs.P.1 to P.8 were marked.

7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. He denied the evidence of prosecution witnesses and stated that he has not committed any offence and he has no witnesses to examine on his behalf.

8. Upon hearing argument of both counsel, the trial Court found the accused guilty of the offences referred supra and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 304-A IPC; sentenced to pay fine of Rs.1,000/- for the offence punishable under Section 279 IPC, in default to suffer simple imprisonment for six months; and further sentenced to pay fine of Rs.500/- for the offence punishable under Section 134 (a) and (b) read with 187 of the Motor Vehicles Act, in default to suffer simple imprisonment for three months. Aggrieved by the said conviction and sentence, the accused filed appeal in Criminal Appeal No.78 of 2015 before V Additional Sessions Judge, Tirupati and the same was dismissed confirming the Judgment, dated 11.03.2015, passed in Calendar Case No.36 of 2011. Aggrieved by the said judgment, the present revision case is filed.

9. At the time of admission of revision case, learned counsel for the petitioner submitted that both the deceased were in drunken state at the time of accident and drove the vehicle in rash and negligent manner and dashed against Tavera Vehicle from its rear

side, as a result of which, both of them fell down and sustained injuries and later died; that the accused did not hit the motor cycle of the deceased and he was falsely implicated in this case and hence, he prays to set aside the impugned judgment.

10. In view of specific contention of learned counsel for the petitioner, it is appropriate to refer to the evidence of motor vehicle inspector, who was examined as P.W.2. He inspected the vehicle in the police station and issued Ex.P.2-report and found the following damages:

- “1) Front bumper broken
- 2) Bonnet bend
- 3) Radiator bend
- 4) Both head lights broken
- 5) Front wind shield broken and condition of the breaking System is good.”

11. Ex.P.2- report was not disputed and it is not the case of defence that damage to Tavera vehicle was caused in a different accident or caused by any other person. In the absence of any suggestion that damage to the vehicle was caused in a different accident or by some other person, it can be safely said that it hit the TVS motorcycle, on which Seenaiiah and Munaiah were travelling. Normally, the Tavera vehicle would not sustain such damages in ordinary course, unless it hit against a hard surface. Therefore, sustaining such damages to the Tavera vehicle is sufficient to establish that it hit some hard surface. Here, in this case, it is consistent evidence on record that when both the Seenaiiah and Munaiah were proceeding on TVS motorcycle on the bye-pass road on the left side of the road, the Tavera vehicle bearing No.TN-01-AH-2235, was being driven by the accused hit against the TVS Suzuki from its rear side, due to which both

Seenaiah and Munaiah fell down and sustained severe injuries. When Seenaiah and Munaiah were proceeding ahead in a specific direction on TVS motorcycle, the driver of Tavera vehicle, which was coming on its behind, is bound to take necessary care and caution and the rider of the TVS motorcycle could not be in a position to observe that what is coming behind him except noticing the vehicle with the help of side mirror. But here, the accused being driver of Tavera vehicle failed to take minimum care and caution as a prudent driver and hit the motorcycle of the deceased Seenaiah and Munaiah, which is sufficient to conclude that the accused is guilty of negligence. Had he taken minimum care and caution, he would have averted such accident i.e., hitting of TVS motorcyclist, who is proceeding ahead to the Tavera Vehicle. The said fact was supported by one M.Amaranadha Reddy (P.W.5), who is an eyewitness to the incident. According to him, on 10.12.2009 at about 04.00 pm., on the highway road of Pichinaidu palli-Chandragiri, while he was proceeding on the road along with one Surendra (P.W.6) and L.W.5, he saw both Seenaiah and Munaiah were proceeding on a motorcycle bearing No.TN-01-2235, at that time one Tavera vehicle bearing No.TN-01-AH-2235, driven by its driver came at high speed in a rash and negligent and hit the TVS motorcycle from its behind, due to which the deceased fell down and sustained bleeding injuries. Therefore, his evidence inspires confidence to conclude that the accident was occurred due to rash and negligent driving of driver of Tavera vehicle. Apart from that when P.W.5 is unrelated either to the deceased or to the accused, the question of P.W.5 implicating the accused in this case does not arise in the normal course of events. P.Ws.6 and 7 also supported

the case of the prosecution, who allegedly witnessed the occurrence of accident. The oral evidence of P.Ws.5 to 7 coupled with evidence of P.W.2, who is Motor Vehicle Inspector and Ex.P.2-report, substantiated the contention of prosecution that Tavera vehicle hit the motorcycle of the deceased. Therefore, the trial Court and appellate Court rightly held that the accident occurred due to rash and negligent act of driver of Tavera vehicle.

12. It is the case of the accused that he was not the driver of the Tavera vehicle at the relevant point of time and he was falsely implicated in this case. No doubt, the accused is a resident of Madhavaram Tattankulam Road, Chennai. But there was no enmity between the deceased or any of the witnesses to implicate him falsely in this case. Apart from that the owner of Tavera vehicle produced the accused and the vehicle before the Investigating Officer. The evidence of P.W.12, who is owner of Tavera vehicle, would go to show that he himself produced the accused and the vehicle before police by admitting the accident. It is a strong circumstance to believe that the accused was driver at the time of accident. P.W.12 further testified that he is running a travel business and owned Tavera car bearing No.TN-01-AH-2235 and accused was driver of the car. On 25.12.2009, the accused informed him that an accident was occurred on Chittoor-Tirupati road and the Tavera vehicle hit the TVS Suzuki motorcycle and that the motorcycle sustained damage. Therefore, the production of accused before the police station by his owner is suffice to conclude that the accused was driver of Tavera vehicle at the time of accident, otherwise there is no need for him to produce before police in connection with above crime.

13. Taking into consideration all these circumstances, the trial Court and the appellate Court found that the accident was occurred due to rash and negligent driving of driver of Taver vehicle, resulted in death of two persons. Therefore, I find no error in the findings recorded by both the Courts below warranting interference of this Court while exercising the power under Sections 397 and 401 Cr.P.C.

14. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

SEPTEMBER 14, 2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 14.09.2017

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