

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2312 OF 2013

ORDER:

The revision petitioner is the accused in C.C.No.650 of 2012 (old C.C.No.490 of 2011) on the file of the XIV Special Magistrate, Hyderabad. It was outcome of Cr.No.404 of 2010 of Sultan Bazar Police Station, Hyderabad. The First Information Report registered for the offence under Section 304-A IPC, for the rash and negligent driving of the petitioner/ accused of the bus bearing No.AP23 W 9667 in causing death of a minor namely Sai Sng aged about 13 years, pillion rider of the motor cycle bearing No.AP12 J 6458 at Sultan Bazar near Canara Bank, the police, after investigation filed final report before the learned Magistrate who took cognizance for the offence supra against the accused and after supply of copies and from cognizance from denial of the accusation, the accused was put to trial and in the course of trial, the evidence of P.Ws. 1 to 6 and Exs.P.1 to P.7 viz. P.Ws.1's report, statement of P.W.3, MMI report, FIR, Scene of observation panchanama, inquest report and Post Mortem report, with no independent evidence but for tested the prosecution witnesses by cross-examination and of whom P.W.3 did not even support the prosecution evidence fully, the trial Court by judgment dated 20.05.2013 convicted the accused and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1000/- with default sentence of three months Simple Imprisonment saying not a fit case to apply the P.O. Act.

2.The accused preferred the appeal after payment of the fine amount vide CrI.A.No.481 of 2013 impugning the legality and

correctness of the trial Court's conviction judgment and the appellate Court dismissed the appeal confirming the trial Court's conviction judgment, however by modifying the sentence of one year Rigorous Imprisonment to three months by confirming the fine amount and it is impugning the lower appellate Court's modified conviction judgment, dated 10.10.2013, the accused maintained present revision.

3. The contention in the grounds of revision are that the conviction judgment of the Court below is contrary to law and unsustainable, the place of accident was a busy locality and the question of rash and negligent driving there does not arise even it was at 7.00 P.M. and the FIR no way discloses any rash or negligent driving of the petitioner/accused and the prosecution witnesses evidence is with contradictions and material omissions as to place and manner of accident and P.Ws. 3 and 4 not even supported the prosecution version and the Courts below did not properly appreciate the same in convicting the accused basing on surmises and no tripsheet is filed to fix who was the driver at the time of accident and the prosecution has to win or lose its case on its own strength and cannot rely on weakness of the defence and thereby sought for setting aside the modified judgment of the lower appellate Court by allowing the revision by acquitting the accused/revision petitioner. The learned counsel for the revision petitioner reiterated the same during the course of hearing.

4. The learned Public Prosecutor supported the conviction judgments of the Courts below and further stated that but for no independent revision, what the modified reduced sentence of lower appellate Court is unsustainable and requires to enhance to uphold the

trial Court's sentence of imprisonment and thereby the revision is liable to be set aside.

5. Heard the respective contentions of both sides with reference to the material on record and perused the entire material on record.

6. P.W.1 is the eye witness to the accident. He was rider of the motor cycle and even answers given by the accused during the hearing of charges/accusation and even by bringing to the notice of accused the entire prosecution evidence to enable him to offer his explanations u/sec.317 CrPC, are relevant of such admissions if not are binding to corroborate the other prosecution evidence. In fact it is observed by the Courts below that the accused in his Section 313 CrPC examination given his answer to a question saying he was driver of the bus in question involved in the accident that was observed rightly of same corroborates the prosecution evidence of accused was the driver of the bus that was deposed by P.W.1 of it is due to rash and negligent driving of the accused as bus driver that dashed the motor cycle driven by him to which the deceased was the pillion rider, though P.W.2 is not an eye witness and P.Ws.3 and 4 alleged other eye witnesses did not support the prosecution. The evidence of P.W.5-M.V.I. shows the accident was not due to any mechanical defects of the bus. P.W.6 is the investigating officer who deposed with regard to not only receiving of report, registering the FIR, preparing scene observation panchanama and Ex.P.6 inquest present at the time of Ex.P.7 P.M. report and P.M. report also shows the death due to the accidental injuries. Thus when the Courts below concurrently held that the accused was guilty for the offence supra, this Court while sitting in the revision, there is nothing

found illegality or impropriety and nothing could be pointed out of how the conviction judgment requires interference much less to reverse or to acquit the accused.

7. Coming to the sentence of imprisonment imposed by the trial Court of one year of Rigorous Imprisonment reduced by the lower appellate Court to three months for no independent revision filed by the State though this Court got the suo-moto revision power in exercising the same, there is nothing to interfere and nothing even to reduce for the lower appellate Court sentence itself is highly lenient.

8. Accordingly and in the result, the revision is dismissed. The accused shall surrender before the trial Court and undergo the remaining sentence of imprisonment after giving set off of the period which undergone if any, within month from the date of receipt of the revision judgment. Failing which the trial Court shall issue conviction warrant to secure the accused and to undergo the remaining period of imprisonment sentence as the fine amount paid.

Miscellaneous petitions if any pending in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.06.2017
Vvr.