

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.R.C.No.923 of 2009

ORDER:

This Criminal Revision Case is directed at the instance of accused, aggrieved by the judgment dated 09.04.2009 in Crl.A.No.33 of 2005 passed by VIII Additional District and Sessions Judge (FTC) Chittoor, dismissing the appeal by confirming the judgment passed by V Additional Judicial Magistrate of First Class, Chittoor in C.C.No.118 of 2004, convicting the accused for the offence under Section 304A IPC and sentencing him to undergo RI for six months and to pay fine of Rs.500/- in default to suffer SI for one month and also convicting the accused for the offence under Section 134(b) r/w 187 of Motor Vehicles Act and sentencing him to pay fine of Rs.250/- in default to suffer SI for one month.

2a) The prosecution case is that on 26.03.2004 at about 10.45 AM, on Chittoor—Vellore road, near Rajeswari STD booth, Vinayakapuram, Chittoor, the accused drove the van bearing No.AP 03 U 3579 in a rash and negligence manner and dashed against the pedestrian who was crossing the Tar road and caused him grievous injuries. Immediately the injured was shifted to Government Head Quarters Hospital, Chittoor for treatment and initially Cr.No.36 of 2004 was registered for the offence under Section 337 IPC. While undergoing treatment, the injured died on 29.03.2004 at Government Hospital, Chittoor. On receipt of death intimation from the hospital authorities, the SHO, Traffic PS, Chittoor altered the Section of law

from Section 337 IPC to Section 330A IPC and after investigation laid charge sheet against him.

b) During trial before the trial Court, PWs.1 to 6 were examined and Exs.P1 to P8 were marked.

c) PW1, who is the son of the deceased, was eye-witness and complainant; PW2 was also an eye-witness; PW3 is the doctor who conducted postmortem; PW4 is the witness for inquest held on dead body; PW5 is the Motor Vehicle Inspector who inspected the crime vehicle and issued Ex.P4—report and PW6 is the Investigating Officer.

d) The trial Court, having regard to the evidence particularly that of PWs.1 and 2 who are the eye-witnesses, observed the evidence of PWs.1 and 2 was clear to the effect that accused drove the vehicle without care and caution to avoid the accident while the deceased was crossing the road and he did not even blow horn to avoid accident. It thus held, he was guilty of rashness and negligence in driving the vehicle. On such findings, the trial Court convicted and sentenced the accused as stated supra.

d) On appeal by the accused, the appellate Court confirmed the conviction.

Hence the instant Crl.R.C.

3) Heard arguments of Sri P.V.Vidyasagar, learned counsel for petitioner and learned Additional Public Prosecutor (AP).

4a) Learned counsel for petitioner would strenuously argue that in the instant case, PWs.1 and 2 are projected as eye-witnesses by the prosecution, of which PW1 is none other than the son of the deceased. He gave Ex.P1—report basing on which, Ex.P5—FIR was registered. Learned counsel would submit in the FIR which is the earliest version of eye-witness, it was clearly mentioned that the accident was occurred while the deceased was crossing the Tar road from eastern side to western side. However, in the evidence PW1 gave a go-bye to his version and stated as if the deceased after crossing the road was hit by the offending vehicle by coming on wrong side. Learned counsel would vehemently argue that PW1 intentionally deviated from his earliest version in Ex.P1 to project that there was no fault on the part of deceased and after crossing the road only the vehicle went and hit him. PW2 who is said to be an eye-witness also stated in similar lines as if the van hit the deceased after he crossed the road. Obviously, PWs.1 and 2 have spoken against the contents in Ex.P5—FIR. Learned counsel thus argued that the version of PWs.1 and 2 is not depicting truth and on the other hand, Ex.P7—sketch shows as if the accident was occurred on the Tar road itself indicating that deceased tried to cross the road unmindful of the vehicles and to avert dashing him, the van went to extreme western side and in that process, the accident must have been occurred. Learned counsel thus argued that sans the evidence of PWs.1 and 2, there is nothing on record to show accused was guilty of rash and negligent driving. He thus prayed to allow the CrI.R.C. and set aside the conviction and in the event the

Court still opines that the accused was guilty of the offence, having regard to the fact that the incident was occurred 14 years ago and accused is around 60 years, the sentence may be modified.

5) Learned Additional Public Prosecutor opposed the CrI.R.C. while supporting the judgments of the Courts below.

6) As can be seen from Ex.P1—statement given by PW1 who is the son of the deceased basing on which, the police registered FIR, PW1 claimed himself as eye-witness to the incident. In that statement he clearly stated that on 26.03.2004 at about 10.45AM, on Chittoor—Vellore road at Vinanayakapuram, while his father was crossing the Tar road east to west, the offending van being driven by accused in a rash and negligent manner without blowing horn went and dashed him and thereby, he fell down and sustained injuries and thereafter, the accused stopped the vehicle; himself and accused took his father in an auto to Government Head Quarters Hospital, Chittoor and admitted him. Thus, as can be seen from Ex.P1 report, the accident was occurred while the deceased was crossing the Tar road and still on the road but not after he crossed the road. However, in the evidence of PW1 we will find as if his father already crossed the road from left side to right side and while proceeding to Vellore the van went and hit him. Thus, as rightly argued by learned counsel for petitioner, there was a deviation in the evidence of PW1 on material fact. PW2 who is said to be another eye-witness also deposed as if the van went and dashed against the deceased after he crossed the Tar road. So, the

version of PWs.1 and 2 that van went and dashed the deceased after he crossed the road cannot be believed for the reason that in the earliest version of PW1 after the incident, he mentioned the accident was occurred while his father was still crossing the road. In addition to version of PW1, Ex.P7—rough sketch would also show that the accident was occurred on the Tar road portion on its western part. Of course, the van is found to be placed on the extreme western side of the road. In that view of the matter, it has to be seen whether the accused is wholly responsible for the accident for driving the vehicle in a rash and negligent manner in causing the accident or deceased also contributed while crossing the road unmindful of the traffic. The accident was occurred, admittedly, in the morning time at about 10.45 AM. Therefore, the responsibility was also there on deceased to look into the ongoing vehicles and cross the road. The evidence of PW1 would show that immediately after the accident accused stopped the vehicle at a distance of 20 feet from the scene of offence. However, in Ex.P7—rough sketch the distance between van and accident spot was not mentioned. Hence, the statement of PW1 cannot be readily accepted. From Ex.P7, it can be inferred that accused might not be driving the vehicle with high speed as otherwise it would not be possible for him to stop the vehicle within that reasonable distance. Further, according to PW1, himself and accused have shifted the deceased to Government Hospital, Chittoor. Therefore, from the evidence on record, the accused cannot be ascribed for rash driving though he may be held guilty of negligence for not taking due care,

while negotiating the deceased who was crossing the road. Having taken the holistic view of the accident and also the submission of learned counsel for petitioner that accused is also now aged about 60 years, this Court finds that there is mitigating circumstance to modify the sentence while confirming the conviction.

7) Therefore, this Criminal Revision Case is partly allowed and while confirming the conviction recorded by the trial Court and upheld by the appellate Court for the offences under Section 304A IPC and Section 134(b) r/w Section 187 of MV Act, the sentence recorded by the trial Court for the offence under Section 304A IPC is modified and accused is directed to pay fine of Rs.2,000/- (Rupees two thousand only) and in default to suffer SI for one month. The sentence passed by the trial Court for the offence under Section 134(b) r/w 187 of MV Act is confirmed. The fine amount shall be deposited with the trial Court within ten (10) days from the date of this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 29.11.2018

Note: Issue CC in two days.

(b/o)
Murthy