

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1509 OF 2006

ORDER:

This revision is filed by the petitioner-accused under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 04.09.2006 in CrI.A.No.72 of 2004 on the file of the V Additional Sessions Judge, West Godavari, Eluru.

2. Heard learned counsel for the petitioner-accused, learned Assistant Public Prosecutor, representing the State and perused the record.

3. The case of the prosecution is that P.Venkateswara Rao (hereinafter referred to as 'the deceased') was the driver of the lorry bearing No. ADB 7889 and the accused is the driver of the lorry bearing No. APA 5338. On the date of incident, the deceased along with L.Ws. 1 and 2-Sundara Raju and Srinivasa Rao left Rajanagaram in the lorry to go to Mangalagiri to unload Palmyrah leaves. When the lorry reached between Ananthapalli and Nallajerla, the rear tyre of the lorry was punctured. As such, the deceased stopped the lorry on the road side margin for replacing the tyre. At that time, the accused who is the driver of the lorry bearing No. APA 5338 drove the same in a rash and negligent manner and dashed against the stationed lorry, as a result of which, the deceased, accused and others sustained injuries. Thereafter, the deceased and the accused were shifted to hospital. The deceased died while undergoing treatment in Eluru Hospital.

4. In support of it's case, the prosecution examined P.Ws. 1 to 9 and got marked Exs.P1 to P14.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the offence. No evidence, either oral or documentary was adduced on behalf of the accused.

6. After considering both oral and documentary evidence, the learned Addl. Judl. Magistrate of I Class, Tadepalligudem, vide judgment, dated 07.04.2004 in C.C.No.144 of 2000, convicted the accused for the offence punishable under Section 304-A IPC and sentenced him to undergo simple imprisonment for two years and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for one month. The accused was further convicted for the offence punishable under Section 337 IPC and sentenced him to undergo simple imprisonment for six months. Aggrieved thereby, the accused preferred CrI.A.No.72 of 2004 before the 1st appellate Court and the same was dismissed by confirming the judgment of the trial Court. Hence this revision.

7. Learned counsel for the petitioner-accused would submit that the Court below depending upon Ex.P9-statement of P.W.8, Investigating Officer, found the accused guilty for the offences referred above. There is no proper identification of the accused. Both the Courts below erred in convicting and sentencing the accused and ultimately, prayed to set aside the same.

8. On the other hand, learned Assistant Public Prosecutor representing the State would submit that there is ample evidence on record to prove the accusation against the

accused. There are no merits in the revision and ultimately, prayed to dismiss the same.

9. In view of submission made by both parties, the point for determination is whether the conviction and sentence imposed against the petitioner-accused is liable to be set aside?

10. The material on record reveals that on the intervening night of 18/19.09.1999 around 1.00 A.M., the accused drove the lorry bearing No. APA 5338 while proceeding from Kovvur side to Eluru side in a rash and negligent manner and dashed against the stationed lorry bearing No. ADB 7889. As per the evidence of P.Ws. 1 and 2, they were sleeping in the lorry bearing No. ADB 7889 on the date of occurrence of the accident. P.Ws. 1 and 2 also deposed that one lorry came from opposite direction of the stationed lorry and dashed the stationed lorry. If P.Ws. 1 and 2 were sleeping, they could not give the details of the lorry coming in a particular direction and causing the accident. As per the statement of the deceased, he was the driver of the lorry bearing No. ADB 7889. He clearly stated in the statement recorded by P.W.8- the Investigating Officer that on 18.09.1999 at about 1.00 A.M., while he was carrying palmyrah leaves load, the left rear tyre of the lorry got punctured. When he was changing the tyre of his lorry, one lorry bearing No. APA 5338 driven by the accused came from Ananthapalli to Nallajerla in a rash and negligent manner and dashed against their lorry. Consequently, he sustained injuries on his both hands, trunk and on the legs. He also stated that P.W.1 received injuries on his body and legs. He further stated that their lorry fell in a ditch. The accused, who is the driver of the lorry bearing No. APA 5338 also received injuries in that accident. It is also stated that

the deceased-driver received injuries in the accident. As seen from the record, lorry bearing No. APA 5338 was driven by the accused in a rash and negligent manner and dashed against the stationed lorry bearing No. ADB 7889. There is also evidence on record to show that P.Ws. 1 and 2 sustained injuries. Therefore, it can safely be concluded that there is rash and negligence on the part of the driver of the lorry bearing No. APA 5338.

11. As far as the identification of the petitioner-accused is concerned, P.Ws. 1 and 2 did not identify the accused. Merely because, P.Ws. 1 and 2 did not identify the driver of the lorry bearing No. APA 5338, on that ground, the case of the prosecution cannot be thrown out. There is no evidence on the part of the petitioner-accused that how he suffered injuries in the same accident. Further, the statement given by the deceased can be relied upon under Section 32 (1) of the Indian Evidence Act. Both the Courts below while dealing with the subject matter of the revision, elaborately discussed the entire evidence and assigned reasons in convicting and sentencing him for the offences referred above. The Courts below had properly acted upon the evidence of the prosecution witnesses. There is no miscarriage of justice. The revision is devoid of merit and is liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed confirming the judgment, dated 04.09.2006 in CrI.A.No.72 of 2004 on the file of the V Additional Sessions Judge, West Godavari, Eluru. Miscellaneous petitions, if any pending in this Revision shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 10-04-2018.
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