

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.623 of 2006

ORDER:

This Criminal Revision Case is filed by the petitioner under Sections 397 and 401 Cr.P.C. aggrieved by the Judgment dated 23.03.2006 in CrI.A.No.101 of 2005 on the file of II Additional District and Sessions Judge, Chittoor at Madanapalle, whereby the learned Judge confirmed the judgment passed by the II Additional Judicial Magistrate in C.C.No.258 of 2001.

2) Brief facts of the case are that:

a) On 02.05.2001 at about 4.30 PM, when Manjulamma, Gangi Reddy and Chakalai Ramana along with PW1 and others were travelling in the trailer bearing No.KA 07 T 2180 on Kurigepalle—Badikayalapalle main road, the driver of the tractor bearing No.KA 07 T 2179 drove the same in a rash and negligent manner due to which the tractor and trailer turned turtle resulting death of three persons i.e. Manjulamma, Gangi Reddy and Chakalai Ramana and PW1 and others sustained injuries. PW1 made a complaint to the police. Basing on the said complaint, PW18—SI of Police, B.Kothakota registered a case in Cr.No.44 of 2001 for the offences under Section 304A and 337 IPC, took up investigation, conducted inquest over the dead bodies of the deceased and referred the dead bodies to post mortem examination. After completion of investigation police laid charge sheet for the offences under Section 304A and 337 IPC and Section

b) The learned Magistrate took cognizance of the same and registered as C.C.No.258 of 2001 under Sections 304A and 337 IPC and Section 134(a)(b) r/w 187 of Motor Vehicles Act.

c) PWs.1 to 19 were examined and Exs.P1 to P17 were marked on behalf of prosecution. No evidence was adduced on behalf of defence.

d) The trial Court found the accused guilty of the offences under Sections 337, 304A IPC and Section 134(a)(b) r/w 187 of MV Act and accordingly convicted and sentenced him to undergo RI for two years and to pay fine of Rs.2,000/- in default to undergo SI for three months for the offence under Section 304A IPC and also sentenced to undergo RI for 2 months and to pay fine of Rs.25/- each for the offences under Section 337 IPC and Section 134(a)(b) r/2 187 of MV Act in default to undergo SI for 15 days each. Both the sentences are directed to run concurrently.

e) Aggrieved, petitioner filed CrI.A.No.101 of 2005. The learned Sessions Judge confirmed the conviction and sentence passed by the trial Court.

Hence, the present CrI.R.C. at the instance of petitioner.

3) Heard arguments of Sri D.Kodanda Rami Reddy, learned counsel for petitioner and learned Additional Public Prosecutor for the State (A.P.).

4) Fulminating the judgments of the Courts below, learned counsel for petitioner would argue that the prosecution failed to establish that the accused was driver of the offending vehicle at the relevant time of accident and Courts below also failed to consider that he was implicated in a false case due to the

connivance of owner of the vehicle and family of PW1. It is further argued, even assuming for argument sake the accused was driver of the vehicle, the evidence on record does not prove his culpability inasmuch as PWs.3 and 7 who are the victims of the accident did not support the prosecution case. Further, the accident was occurred due to snapping of the binding rope. However, the Courts below did not consider these aspects in a right perspective and mechanically convicted the accused. He thus prayed to allow the CrI.R.C.

5) Per contra, learned Additional Public Prosecutor supported the judgments of the trial Court and lower Appellate Court and argued that similar arguments were raised by the accused before the Courts below and they have rightly rejected them and therefore there are no merits in the revision. He thus prayed to dismiss the revision.

6) In the light of above rival arguments, the points for determination are:

1. Whether accused is the driver of the tractor and trailer at the relevant point of accident?

2. If point No.1 is held affirmatively, whether the accident which resulted in three deaths and injuries to others was caused due to rash and negligent driving by the accused and whether the prosecution could establish his guilt beyond reasonable doubt?

3. Whether the judgment of the lower appellate Court upholding the conviction and sentence passed by the trial Court is factually and legally sustainable?

7) **PONT No.1**: As per prosecution, the accident was occurred on 02.05.2001 at 4.30 PM on the road leading from Kurigepalle—Badikayalapalle when the tractor bearing No.KA 07 T 2179 with trailer bearing No.KA 07 T 2180 taking paddy crop and PWs.1 to 3, 5, 7 and 10 and others was turned turtle resulting in death of three persons and injuries to others. The factum of accident, the resultant deaths and injuries are of course not disputed by the accused and as already stated supra, his prime contention is that he was not driver of the said vehicle. It must be said that this argument does not hold much conviction in view of the overwhelming evidence produced by the prosecution which clinchingly established that the accused was the driver of the offending vehicle at the relevant time.

a) PW1 is one of the victims in the accident and his statement was registered as FIR. He deposed that he knows the accused who was the driver of the tractor at the time of accident. He narrated the particulars of the accident and stated that the accident was occurred due to rash and negligent driving by the accused. The other facts spoken by this witness will be discussed at a later stage of the judgment. For the time being his evidence stating that it was accused who was the driver of the offending vehicle is considered for deciding point No.1 This witness staunchly denied the suggestion that accused was not the driver of the crime vehicle and he foisted a false case against him in collusion with the owner of the vehicle due to disputes between the owner of vehicle and accused. He also denied the suggestion that this witness was working under the owner of the vehicle.

b) So, a close scrutiny of his evidence would show, PW1 categorically stated that accused was driver of the crime vehicle. Except giving a denial suggestion nothing useful could be extracted in the cross-examination to impeach the credibility of testimony of PW1 on the aspect that accused was the driver of the vehicle. It is to be noted that the accident was occurred at about 4.30 PM on 02.05.2001 and PW18—SI of Police, B.Kothakota proceeded to hospital at 6.30 PM and recorded Ex.P1—statement of PW1 at 7.30 PM. Basing on Ex.P1, he registered FIR in Cr.No.44 of 2001. Thus Ex.P1 is the earliest version of PW1 immediately after the accident. In Ex.P1 he clearly stated that tractor was driven by C.Ramana—accused. Therefore, the evidence of PW1 gets corroboration from Ex.P1. Though accused suggested that disputes between him and his owner led PW1 to foist a false case against him, he did not narrate the nature of disputes nor could he establish such disputes. Therefore, such a possibility can be safely discarded. The version of PW1 was corroborated by PWs.2, 5, 6, 7 and 10 who categorically stated that accused was the driver of the crime vehicle at the time of accident. They too were elaborately cross-examined, but their testimony could not be impeached. They are the victims in the accident and I find no reason for them to speak falsehood against the accused. Thus, the evidence of PW1 coupled with aforementioned other witness would clinchingly establish that the accused was the driver of the offending vehicle.

c) PW3 though travelled in vehicle did not identify the accused and therefore, he stated that he does not know the accused. However, he has not specifically stated accused was not the driver of the vehicle. His version is that

he does not know the accused. In that view, his evidence is not useful for the prosecution. However, the categorical evidence of other witnesses is suffice to hold that accused was the driver of the vehicle.

Therefore, it is now to be seen whether the accused was guilty of rash and negligent driving in the point infra.

8) **POINT No.2:** Coming to PW1, he stated that the deceased—Manjula is his wife; he knows other deceased—Ramana and Gangi Reddy. He further stated that he is the cultivating tenant of land belonging to Rama Subbu of Kurgepalle and he raised paddy crop in it. In May, 2001, himself, his wife, his family members and others went to harvest the crop and after harvesting they returned in the tractor driven by the accused. All of them sat on the crop loaded in the trailer. Regarding the manner of accident, he stated when they reached Mangammavaripalle area of Kothakota Road, the accused drove the vehicle in a rash and negligent manner though the road was down and thereby tractor turned turtle. They fell under the trailer. Two persons i.e. his wife and Gangi Reddy died on the spot and another injured—Ramana died in the hospital and others suffered injuries. He stated that his statement was recorded in the hospital. In the cross-examination he stated that the paddy crop was tide with rope and the load was almost two feet over the height of trailer. He stated that just before the place of accident there was a road curve. He denied the suggestion that the level of the road was even and there was no down gradient at the place of accident. When his evidence is perused with reference to Ex.P17—sketch, it tallies. The sketch would show that there was a road curve before the vehicle met with accident and the vehicle was turned turtle at a

place which is 150 feet away from the road curve. Thus, it would appear that after turning, there was a slight down gradient on the road. The facts and evidence would show that accused negotiated the curve in a rash and negligence manner and thereby the vehicle turned turtle. This is the inference that can be drawn from the evidence of PW1. The evidence of PW1 is corroborated by PWs.5, 6 and 10.

a) PW5 stated that the accused drove the tractor at high speed and in a rash and negligent manner in spite of their warning and thereby the tractor turned turtle. In the cross-examination he further vivified the manner of accident and stated that after turning, the tractor was run on two wheels i.e. on one side just like in circus. The witness made gestures also. It is suggested to him that accident was occurred because the rope was snapped and thereby paddy stock slipped and so all the witnesses who sat on the paddy crop fell down. This suggestion was staunchly denied by PW5. Hence, the said suggestion cannot be taken into consideration. Thus, the evidence of PW5 supports PW1 and explains that accused negotiated the curve in such a manner that wheels on one side went up and vehicle was balanced to some extent on the wheels of the other side and thereby the vehicle turned turtle. His evidence clearly manifests the rash and negligence on the part of accused.

c) PW6 stated about three years back they all went to the fields for harvesting the paddy and after that work while they were bringing the crop in the tractor the accident took place. He further stated that the accused drove the vehicle and for some reason he moved the tractor to right side and then tractor turned turtle and all of them fell under the paddy stock. In the cross-

examination he stated that accused was resident of his neighbouring village. He denied the suggestion that the accident was occurred when the wire fasten to the crop was snapped. He volunteered tractor was turtled into a road side pit.

d) PW10 deposed that accused was the driver of the tractor and it turned turtle near Badikayalapalle.

Thus, the evidence of PWs.5, 6 and 10 corroborates PW1.

e) It is true that PW7 though a traveller in the vehicle but did not support the prosecution case. He stated that the accused drove the vehicle slowly but it went to the road side margin and turned turtle. This witness was declared hostile and cross-examined by Additional Public Prosecutor. In the cross-examination he stated that accused is his friend since 8 years. It would appear that due to friendship between him and accused, PW7 deposed falsehood. If really accused drove the vehicle slowly, there is no possibility of vehicle being turned turtle as the road was in a good condition as stated by IO. Hence, prosecution by cogent evidence could establish the guilt of the accused.

This point is answered accordingly.

9) **POINT No.3:** It is a case where three persons died and six others were injured in the accident which was caused by the rash and negligent driving of the accused. Having regard to the gravity of the offence and the circumstances under which it was committed, the Courts below have rightly convicted and sentenced him. I find no illegality or perversity in the impugned judgments.

10) In the result, the Crl.R.C. is dismissed by confirming the judgment of the lower Appellate Court in Crl.A.No.101 of 2005.

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

U.DURGA PRASAD RAO, J

Date: 14.06.2018
Murthy

