

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO.772 OF 2012

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the respondent State.

2. The present Criminal Revision Case is filed by the petitioner against the judgment passed in Crl.A.No.356 of 2011 dated 14.5.2012 on the file of the Principal Sessions Judge, West Godavari district, Eluru, confirming the conviction and sentence in C.C.No.81 of 2008 dated 8.12.2011 on the file of the Court of the Special Judicial Magistrate of First Class (Excise), Eluru.

3. The facts in brief are that the petitioner has been charged for the offence under Section 304-A IPC and he was convicted and sentenced to undergo rigorous imprisonment for a period of six months in addition to paying fine of Rs.1,000/- and in default of payment of such fine, to suffer simple imprisonment for two months.

4. The gravamen of the charge against the petitioner is that on 2.7.2007, the petitioner being the driver of the vehicle bearing registration No.AP 29 T 1756, drove the vehicle in a rash and negligent manner and hit another lorry bearing registration No.AHF 7029 from behind, at the toll booth,

Kalaparru village. Due to the said impact, the front lorry bearing registration No.AHF 7029 fell on the rear side of the car bearing No.AP 07 AK 1426 causing death of two persons and injuries to others. In connection with the said incident, a crime was registered vide FIR.No.105 of 2007. After investigation, a charge sheet was filed. Learned Magistrate, after taking cognizance of the offence against the petitioner, numbered the case as C.C.No.81 of 2008. In compliance with Section 207 Cr.P.C., the petitioner was furnished with all the documents. He was examined under Section 251 Cr.P.C. explaining the acquisitions levelled against him for the offence under Section 304-A IPC. The petitioner pleaded not guilty and claimed to be tried. The prosecution, to prove the guilt of the accused, examined PWs 1 to 19 and got marked Exs. P1 to P12. After closure of the evidence, the petitioner was examined under Section 313 Cr.P.C. showing the incriminating evidence adduced by the prosecution. However, the petitioner denied the incriminating evidence and stated that the evidence is false. He has not adduced any evidence in defence. The trial Court, after appreciating the evidence brought on record, framed the following points:

“1. Whether the prosecution established identity of the accused?

2. Whether the prosecution established rash/negligent driving of the accused?

3. Whether the prosecution established the guilt of the accused for the offence under Section 304-A of Indian Penal Code beyond all reasonable doubt or not?"

5. The trial Court, after hearing both the counsel and appreciation of evidence, convicted the petitioner and sentenced him to undergo rigorous imprisonment for six months and to pay fine amount of Rs.1,000/- for the offence under Section 304-A IPC and in default to undergo simple imprisonment for two months by judgment dated 8.12.2011. Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.356 of 2011 on the file of the Principal Sessions Judge at Eluru and the same was dismissed by judgment dated 14.5.2012, against which, present Revision is filed.

5. Since there was a dispute with regard to the petitioner being set up by the owner of the vehicle, the prosecution examined PW3 who is the cleaner of the vehicle and PW8 who was working as a cashier in the booth at Kalaparru toll gate. From the evidence of the said witnesses, the identity of the petitioner was established. In fact, in the cross-examination of PWs 3 and 8, nothing is elicited to discredit their evidence, more particularly, throwing any doubt with regard to the

identity of the petitioner being the driver of the subject crime vehicle. As far as rash and negligent driving of the petitioner is concerned, the prosecution examined PW1 who deposed that the crime vehicle came from Visakhapatnam at high speed and hit the rear side of the lorry bearing No. AHF 7029 and due to the said impact, the said lorry fell on the rear side of the car. It is also brought on record that at the time of accident, the petitioner was in a drunken state. In fact, he was not even cross-examined though opportunity has been given to the counsel for the petitioner. Therefore, the evidence of PW1 is trustworthy. PW2 also deposed in the lines of PW1. In fact, she also said that the deceased 1 and 2 have sustained grievous injuries and they succumbed to injuries at the place of accident itself. In fact, she also sustained injuries over her hand, on the left side of her nose and on her left hand. LW3 who is the driver of the car also sustained injuries but he was not examined. In fact, PW3 deposed that the crime vehicle came at a high speed and though he raised voice, it hit against the rear side of another lorry stopped at the toll gate. Due to the said impact, he fell down from the cabin. However, some persons have caught hold of him. In fact, PW17 who is the Motor Vehicle Inspector, on examination, deposed that on the requisition of the SHO, Pedapadu P.S., he inspected the crime

vehicle and opined that the brake system connection are intact and the accident was not due to any mechanical defect of the vehicle. In fact, PW5, driver of the front lorry which fell on the car also deposed that the crime lorry came at a high speed and hit on the rear side of his lorry and in turn, his lorry fell on the Maruti car. He categorically deposed that due to impact of the said hitting, the front portion of his lorry raised and moved further and fell on the rear side of the Maruti Car. PW6, cleaner of the lorry bearing No.7029, PW7, PW8 who is the cashier at Pottipadu and PW9 who is the money collector at Kalaparru also deposed and described the accident. Therefore, the evidence of PWs 1, 2, 3, 5, 6, 7, 8, 9 and 17 established that the petitioner drove the crime vehicle at a high speed in a rash and negligent manner causing the accident.

6. In the light of the evidence of PWs 4, 10, 11, 12, 13 and 14 who is an independent mediator, it is established that the petitioner, due to driving the crime vehicle at a high speed in a rash and negligent manner, caused the death of two persons.

7. Even the lower appellate Court, appreciating the evidence let in by the prosecution, categorically held that the petitioner drove the crime vehicle in a rash and negligent manner causing the accident. In fact, relying on the evidence of PW17, it is observed that the brake system, conditions of the crime vehicle

were intact and in order. Therefore, the prosecution has proved the guilt of the petitioner for the offence under Section 304-A IPC beyond all reasonable doubt.

8. In these circumstances, though the counsel vehemently contended that the prosecution has not established the guilt of the accused by not examining LW3 i.e., the driver of the car and evidence of PW3 to the effect that the brakes of the said vehicle failed and the petitioner has been set up by the owner of the vehicle and though he sustained injuries, he was not taken to the hospital, cannot be considered as they do not in any way discredit the evidence let in by the prosecution.

9. In the above circumstances, this Court is of the opinion that there are no merits in the Criminal Revision Case and the same is, accordingly, dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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P. KESHAVA RAO,J

Date: 28.8.2018

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