

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1241 OF 2006

ORDER:

This criminal revision case is filed by the petitioner/appellant/accused aggrieved by the judgment dated 19.07.2006 in Criminal Appeal No.227 of 2005 passed by learned I Additional District and Sessions Judge, Chittoor, dismissing the appeal by confirming the judgment in C.C.No.113 of 2005 passed by V Additional Judicial Magistrate of First Class, Chittoor, convicting the accused for the offences under Section 304-A IPC and Section 3 r/w 181 and Section 134(a) & (b) r/w 187 of Motor Vehicles Act, 1988.

2. The factual matrix of the case is thus:

(a) The prosecution case is that on 22.02.2005 at about 08.30 A.M. on Chittoor Tirupati Road, near Andhra Bank, Chittoor, the accused being the driver of the Auto bearing No.AP 13U 1733 drove the said vehicle in a rash and negligent manner while plying from Chittoor to Tirupati side and dashed against complainant's mother S.Jayamma, while crossing the Tarroad. As a result, she fell down and sustained internal head injury. The injured was shifted to Government Hospital, Chittoor for treatment. A case in Crime No.26 of 2005 was registered with Traffic Police Station, Chittoor. While undergoing treatment, the injured expired at about 09.30 P.M. on 20.02.2005 in the Government Hospital. On the same day, receiving her death intimation, the section

of law was altered from Section 337 IPC to Section 304-A IPC. After investigation, charge sheet was filed and the same was taken cognizance by the trial court. During trial, P.Ws.1 to 6 were examined and Exs.P1 to P9 were marked. The trial court, having regard to the evidence adduced by the prosecution, particularly P.Ws.1 and 2 who were the eye-witnesses to the incident, came to the conclusion that the deceased met with the accident and died due to the rash and negligent driving of the accused and further, the accused was not having driving license to drive the vehicle. Thus, the trial court held that the accused drove the vehicle rashly and negligently and dashed against the deceased without taking care and caution and without having driving license and accordingly convicted and sentenced him for the offences under Section 304-A IPC and Section 3 r/w 181 and Section 134(a) & (b) r/w 187 of Motor Vehicles Act, 1988.

(b) Aggrieved thereby, the petitioner filed Criminal Appeal No.227 of 2005. The appellate court also, on appreciation of evidence, had come to the conclusion that the accident was occurred due to the fault of the accused. It observed that though there is a slight discrepancy in the evidence of P.Ws.1 and 2 with regard to the manner in which the accident was occurred, the said discrepancy is only a minor one. It observed that as per the evidence of P.W.1, while his mother was crossing the road, the auto came and dashed against her, whereas, according to P.W.2, while his mother was still

standing on the road, the auto came and dashed against her. The lower appellate court observed that the facts would mistakenly tell that the auto went and hit her and the accident was occurred in the broad day light at about 08.30 A.M. and had the auto driver driven the vehicle slowly and cautiously, the woman crossing the road would have definitely avoided the accident. On all such observations, the appellate court confirmed the judgment of the trial court.

Hence, the criminal revision case.

3. In this matter, there has been no representation on behalf of the petitioner continuously. Hence, heard the arguments of learned additional public prosecutor.

4. (a) In the grounds of criminal revision, it is contended that the evidence of P.Ws.1 and 2, who are said to be the eye-witnesses cannot be believed, because the deceased was their mother and they are interested witnesses. It is contended that at about 100 feet away from the place of occurrence, there was a traffic point where a traffic police constable was posted and the scene of offence was surrounded by residential houses and shops and therefore, the prosecution was in a position to secure independent witnesses, but they examined the interested witnesses i.e., P.Ws.1 and 2 to suit its case.

(b) Nextly, it is contended that, at the time of accident, the deceased was crossing the road after purchasing tea from

eastern side of the road to the western side of the road. Therefore, the deceased was supposed to be cautious about the ongoing vehicles and other persons. Without observing caution, she suddenly tried to cross the road and therefore, she was responsible for the accident, as there was no chance for the accused to drive the vehicle at high speed.

(c) There is a discrepancy in the evidence of P.Ws.1 and 2 with regard to the manner of occurrence of the accident. While P.W.1 stated that while his mother was crossing the road the accident was occurred, whereas, P.W.2 stated that while his mother was standing on the road, the accident was occurred. It shows that none of the two witnesses was an eye-witness to the incident.

(d) It is thus prayed that the criminal revision case may be allowed and conviction and sentence passed by the trial court and confirmed by the appellate court may be set aside.

5. The argument of the additional public prosecutor is that the accident was occurred in the broad day light at about 08.30 A.M. on the road leading from Chittoor to Tirupati. The deceased was an old lady and while she was crossing the road, the accused, who was auto driver, drove his auto in a rash and negligent manner without observing due care and caution and dashed her and thereby, she fell down and suffered internal head injury, which resulted in her death. He would argue that P.Ws.1 and 2 are the

eye-witnesses to the incident. Merely because they happened to be the sons of the deceased, their evidence cannot be discarded for, their evidence is intrinsic and they have had no enmity against the accused to speak falsehood. The slight discrepancy, if any, in their evidence need not be viewed seriously.

6. The points for determination are:

- (i) Whether the prosecution could able to prove the rash and negligence on the part of the accused in the accident, which resulted in death of the deceased?
- (ii) Whether the judgments of the court below is legally sustainable?

7. As stated supra, the accident was occurred on 20.02.2005 at about 08.30 A.M. on Chittoor Tirupati road, near Andhra Bank, Chittoor. At that time, the accused being the driver of the auto bearing No.AP 13U 1733 was proceeding in his auto and while, the deceased was crossing the road, his auto went and dashed her resulting head injury to the deceased. She was admitted in the Government Hospital, Chittoor, where she breathed her last.

8. Coming to the evidence, the prosecution projected P.Ws.1 and 2 as eye-witnesses to the incident. Both of them are admittedly the sons of the deceased. P.W.1 stated that on 20.05.2005 at about 08.30 A.M., after completing his work, he reached Andhra Bank to go to his house, which was near

to the Andhra Bank and at that time, his mother was standing opposite to the Andhra Bank in order to cross the road from left side to right side and at that juncture, the accused drove the auto proceeding towards Tirupati side and dashed against his mother and thus caused the accident. P.W.1 stated that, on his enquiry, the accused gave his particulars and he shifted his mother to Government Hospital and he gave Ex.P1 statement to police and his mother died on the same day while undergoing treatment in the Hospital. Thus, according to P.W.1, the accident was occurred due to the fault of the driver.

9. A close scrutiny of the evidence of P.W.1 would disclose that the house of P.W.1 is situated near Andhra Bank, Chittoor, where the accident was occurred. Before accident, P.W.1 was returning home after completing his work. Therefore, this witness though a close relation of the deceased, still he can be regarded as a natural witness because he was returning home after completion of the work and he happened to witness the incident. There is no enmity between P.W.1 and the accused so as to give false evidence.

10. Then, we have the evidence of P.W.2, who is also the son of the deceased. He deposed that on 20.02.2005 at about 08.30 A.M., while he was proceeding near Andhra Bank, Chittoor, at that time, his mother was present in front of Andhra Bank and while she was about to cross the road, one

auto bearing No.AP 13U 1733 came from Chittoor side and in the course of proceeding towards Tirupati dashed against his mother and thereby, she sustained injuries and blood was oozed from her nostrils. He further deposed that he saw the driver at the time of accident. He also stated that P.W.1 shifted his mother to Government Hospital where she was succumbed to injuries.

11. As already stated supra, since the house of P.Ws.1 and 2 and deceased is near the Andhra Bank where the accident was occurred, there is every possibility for these witnesses to witness the incident. The slight difference in the evidence of both the witnesses is with regard to the manner of the occurrence. While P.W.1 stated that while his mother was standing opposite to the Andhra Bank, Chittoor, the offending auto went and dashed her, whereas, P.W.2 stated while she was about to cross the road, the auto dashed her. The slight difference in their evidence will not affect their veracity. If an incident is witnessed by a number of persons, while narrating the incident, slight differences are bound to occur. On that count, their credibility cannot be discarded unless the difference in their narration is so glaring and absurd that the narration by one person cannot be accepted when compared with the narration by the other witness. That is not the situation here. As stated supra, the difference is only a minor one, which will not cut across the prosecution case.

12. As rightly observed by the lower appellate court, had the accused drove his vehicle with caution and slow speed, probably he could have averted the accident. The fact that on receiving the hit, the deceased fell down and suffered internal injury to head and died on the very same day in the hospital indicates, the high speed at which the offending vehicle went and dashed her. Even according to the accused, the accident spot is a busy locality and the time of the accident was 08.30 A.M., which was a busy time for everyone to go on different works. At such time, the vehicle drivers were expected to drive the vehicles at normal speed to avert any possible accidents. However, that caution seems to be not followed by the accused. Added to it, the accused had no driving license. The facts and evidence amply established that he drove the vehicle in a rash and negligent manner and at high speed and dashed the deceased. Therefore, both the courts have rightly convicted him. I see no irregularity or illegality in the judgment impugned to warrant interference.

13. Accordingly, criminal revision case is dismissed by confirming the judgment in Criminal Appeal No.227 of 2005 passed by learned I Additional District and Sessions Judge, Chittoor.

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

U.DURGA PRASAD RAO, J

30.10.2018
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