

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Crl.R.C.M.P. No.5137 OF 2017

IN/AND

CRL. R.C. No.3178 OF 2017

COMMON JUDGMENT:

The present Criminal Revision Case is filed by the appellant - accused No.2 under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), challenging the conviction recorded under Section 255 (2) of the Code for the offences punishable under Sections 304-A, 338 and 279 IPC and Section 18 of the Motor Vehicles Act, 1988 by the learned III Special Magistrate, Hasthinapuram, L.B. Nagar, Ranga Reddy District, by his judgment, dated 10.07.2015, in C.C. No.333 of 2011, as affirmed by the learned IV Additional Metropolitan Sessions Judge, L.B. Nagar, Ranga Reddy District, by judgment, dated 18.07.2017, in Criminal Appeal No.710 of 2015.

2. Whereas, Crl.R.C.M.P. No.5137 of 2017 is filed by the petitioner - accused requesting to suspend the conviction recorded and the sentence of imprisonment inflicted by the learned Magistrate's Court as affirmed by the learned lower appellate Court.

3. The learned Magistrate having examined as many as (25) witnesses and marked (31) documents, on an analysis based on appreciation of evidence in accordance with evidentiary rule, arrived at the finding that the petitioner is responsible for five deaths and

injuries to others by his act of rash and negligent driving in a drunken state and without stopping the lorry bearing registration No.AP 22W 0441 at a Traffic Red Signal at Nagole Cross-roads and dashed against the standing vehicles numbering 10 and inmates of those vehicles numbering 5 died, either they succumbed to injuries while undergoing treatment and, thus, occasioned a ghastly accident involving injuries to 24 persons and damage to the vehicles witnessed by traffic constables monitoring the traffic examined as PWs.1 and 2 and convicted him inflicting one year simple imprisonment for the offence punishable under Section 304-A IPC, one month simple imprisonment for the offence punishable under Section 338 IPC, one month simple imprisonment for the offence punishable under Section 279 IPC and a fine of rs.500/- for the offence punishable under Section 181 of the Motor Vehicles Act, 1988 with default sentence to suffer simple imprisonment for a period of one week.

4. In fact, accused Nos.1 and 2 were originally arraigned and accused No.1 was the driver, and the present revision petitioner, who was arraigned as accused No.2, was driver-cum-cleaner of the aforesaid lorry. Accused No.1 died during the pendency of the proceedings and, therefore, the offences against accused No.1 stood abated and the same is recorded by the learned Magistrate.

5. The learned Sessions Judge, when the revision petitioner herein preferred appeal in Criminal Appeal No.710 of 2015, on

appraisal of evidence on record, did not agree with the submissions made on his behalf and arrived at the findings that the evidence of PWs.1 and 2 cannot be brushed aside and their evidence is clinching enough to prove the identity of the revision petitioner as their evidence is quite natural and believable and due to rash and negligent act of the revision petitioner, the injured witnesses received injuries and five others died, and thereby affirmed the conviction as well as sentences of imprisonment and fine inflicted and imposed by the learned Magistrate.

6. Questioning the same, the present Criminal Revision Case is preferred by accused No.2.

7. Heard Sri N. Venkataiah, learned counsel for the revision petitioner, and the learned Special Assistant Public Prosecutor for the State of Telangana.

8. The learned counsel for the revision petitioner would submit that, i) the revision petitioner is only a cleaner but not driver and the deceased accused No.1 was driver and the *de facto* complainant - PW.1 and other traffic constable - PW.2, who said to have been monitoring the traffic at Nagole Traffic Signal, were busy in performing the duty and, thus, there was no occasion for them to actually witness who was actually sitting in the driver's seat and the revision petitioner, being cleaner, had no occasion to sit in the driver's

seat and drive the accident lorry that caused accident. It is also according to him that both the Courts below completely failed in noting the said fact.

(ii) His further submission is that no Test Identification Parade was conducted and, therefore, the evidence of PWs.1 and 2 lacks corroboration.

(iii) Further submission is that PWs.1 and 2 are interested witnesses as they were traffic police constables and, therefore, their evidence ought not to have been believed by the Courts below.

(iv) His further submission is that the evidence of PWs.6 to 11 though, cited as eye-witnesses, but in reality they were not present at the time of accident as per their depositions and they learnt about the incident from others and, therefore, their evidence is 'hear-say'.

v) His further submission is that Nagole Cross-roads is very busy locality, where hundreds of people would be moving round-the-Clock and various shops have been located and the shop-keepers were not examined who would constitute the best witnesses to speak about the identity of the driver of the vehicle and to speak about the rash and negligent act, if any. Thus, when best evidence is not produced and withheld by the police, an inference adverse to the prosecution case ought to be drawn which the Courts below did not do and, therefore,

sought to set aside the conviction recorded and the sentences of imprisonment inflicted and the fine imposed.

9. At the outset, it is to be commented that the punishment meted out to the revision petitioner, in fact, is to be construed was a very lenient punishment. The maximum punishment provided for the offence punishable under Section 304-A IPC is a term extending up to two years. Where five deaths took place and (23) witnesses sustained injuries on account of rash and negligent act, a mere imposition of one year and one month punishments are not reasonable when the Courts believed that there is clinching evidence on record to prove the essential ingredients of Section 304-A IPC. Be that as it may, as the State appears to have not felt even a pinch of the magnitude of the ghastly accident, nothing more can be done except in assessing whether the findings recorded by the Courts below suffer from any patent illegality.

10. The submissions made by the learned counsel, as mentioned in the above, are, *ex facie*, not worthy of acceptance. Touching the first submission, merely because PWs.1 and 2 are traffic constables at the relevant traffic signal, it cannot be said that they were busy on their duty without observing what was going on. The manner, in which the ghastly accident took place itself, would speak that the police constables would not have missed in diverting their attention towards lorry and the driver, who was sitting in the driver's

seat when it goes on hitting the vehicles one after another. Certainly, the accident invariably would draw the attention of everyone, more particularly, when traffic constables on account of the fact that they were posted thereat discharging their duties would divert their attention only towards the driver who was driving the vehicle at the relevant time. It is not as though that something was brought out in the cross-examination of PWs.1 and 2 to view their testimony with suspicion. Absolutely, there is nothing in their cross-examination to draw any probabilities favouring the revision petitioner's case. On the other hand, their testimony is clear, cogent, convincing and beyond reproach. Therefore, the submissions of the learned counsel are without any merit.

11. Turning to the submission that PWs.6 to 11 are not the eye-witnesses, but they are only 'hear-say' witnesses, even if they are construed as not the eye-witnesses, it cannot be said that their evidence must be brushed aside totally. The very fact that the revision petitioner soon after causing the accident jumped out of the driver's seat is sufficient to hold that he was the person who caused the accident. When the testimony of PWs.1 and 2 is very specific, the question of conducting Test Identification Parade does not arise in a case of this nature. The Test Identification Parade would normally be conducted in cases where grave offences involving murder or dacoity.

12. Concerning the submission that best evidence was not produced, even if construed that Nagloe Cross-roads to be a busy locality, unless it is brought out in the evidence of witnesses that the shops are existing nearby and the distance between the shops and the place of accident so as to assess whether there was any chance for the shop-keepers to watch the incident, and to identify the drivers, and in the absence of any evidence being let in through the cross-examination of the witnesses examined by the prosecution, in that regard, the submission of the learned counsel is without any merit.

13. Thus, when examined the deaths of five persons is proved through the evidence of Medical Officer, who conducted autopsy and the injuries sustained by the witnesses on their persons respectively have been proved through the examination of the Medical Officers, who treated them and issued certificates, and the evidence of PWs.1 and 2 proving the identity of the revision petitioner as the driver of the vehicle, and the act of rash and negligent driving on his part at the relevant time, occasioning the ghastly accident without holding any valid license, it has to be held that the concurrent findings recorded by the Courts below cannot be disturbed as the revision petitioner herein is wholly unsuccessful in showing or projecting that patent illegality crept, in recording these findings. There is no merit in the present case.

14. Accordingly, the present Criminal Revision Case is dismissed confirming the conviction recorded and sentences of imprisonment inflicted and fine imposed by the learned Magistrate as affirmed by the learned Sessions Judge and, consequently, Crl.R.C.M.P. No.5137 of 2017 is also dismissed. Since the revision petitioner is serving out the sentences of imprisonments, he shall be released on completion of sentences of imprisonment inflicted by the Courts below.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

January 05, 2018.
Mgr

A. SHANKAR NARAYANA, J

