

HONOURABLE JUSTICE G. SRIDEVI
CRIMINAL REVISION CASE No.1626 of 2016

JUDGMENT:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the judgment, dated 05.05.2016, passed in CrI.A.No.148 of 2015 on the file of the VII Additional District and Sessions Judge at Bodhan, wherein the learned Sessions Judge, confirmed the conviction and sentence imposed by the learned Additional Judicial First Class Magistrate, Bodhan, against the revision petitioner/accused in C.C.No.583 of 2014 dated 10.12.2015.

It is the case of the prosecution that on 29.08.2010 the deceased Thokala Ravi @ Ravinder, went to Nizamsagar on his Scooter bearing No. AP-9-AG-8024, where he purchased fish, and while returning to Bodhan, on the way at about 2.00 P.M. or 2.30 P.M. at Sevalal Thanda of Varni Mandal, the accused being the driver of the APSRTC bus bearing No. AP 25 V 9459 came in opposite direction in a rash and negligent manner and dashed against the Scooter of the deceased. As a result of which, the deceased fell down, sustained head injury and died on the spot. Basing on the report lodged by P.W.1, Police, Varni Police Station registered a case in Crime No.144 of 2010 against

the accused for the offence punishable under Section 304-A of I.P.C. After completion of the investigation the police filed charge sheet against the accused, which was taken on file as C.C.No.583 of 2014. The accused was tried for the offence under Section 304-A of I.P.C.

The prosecution has examined PWs.1 to 11 and got marked Exs.P1 to P9 to prove the guilt of the accused. On behalf of the accused, no oral evidence was adduced, but Ex.D1, a portion in 161 Cr.P.C. statement of P.W.3, was marked.

On appraisal of the entire evidence, both oral and documentary, the trial Court found the revision petitioner/accused guilty of the offence under Section 304-A of I.P.C and accordingly convicted and sentenced the accused to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for one month. Aggrieved by the said conviction and sentence, the revision petitioner/accused preferred CrI.A.No.148 of 2015 before the Court of the VII Additional District and Sessions Judge at Bodhan. By its judgment, dated 05.05.2016, the learned Sessions Judge confirmed the conviction and sentence recorded by the trial Court. Challenging the same, the revision petitioner preferred this Criminal Revision.

Heard the learned Counsel for the revision petitioner/accused and the learned Additional Public Prosecutor for the State.

Learned Counsel for the revision petitioner/accused submitted that the Courts below failed to discuss the evidence in a proper perspective and came to the conclusion that the accident occurred due to the rash and negligent driving of the APSRTC bus driven by the revision petitioner/accused. He further submitted that P.Ws.1, 2 and 6, who are blood relatives of the deceased and P.W.5, who is the Conductor of the Crime Bus at the relevant point of time, have not supported the case of the prosecution. He further submitted that the evidence of P.Ws.3 and 4, who are alleged eyewitnesses to the incident, cannot be believed as there are material contradictions and omissions in their evidence. Though the prosecution failed to establish the identity of the revision petitioner/accused, the Courts below believed that the revision petitioner/accused was the person, who was driving the APSRTC Bus at the time of accident and convicted the accused for the offence punishable under Section 304-A of I.P.C. He further submitted that there is absolutely no evidence to establish the fact that the crime Bus was driven by the revision petitioner/accused in a rash and

negligent manner and on account of which only the alleged accident took place and, therefore, the revision petitioner/accused is entitled to the benefit of doubt.

Per contra, supporting the judgments of the Courts below, the learned Additional Public Prosecutor appearing on behalf of the respondent-State submits that both the Courts validated the entire evidence and came to a right conclusion that the revision petitioner was responsible for the commission of offence and, therefore, the conviction and sentence passed by the Courts below was justified and no interference is called for.

In the light of aforesaid submissions, the point for consideration is whether the conviction and sentence recorded by the Courts below against the revision petitioner/accused require any interference from this Court or not?

P.W.1 is the de facto complainant and brother-in-law of the deceased. P.W.2 is the wife of the deceased. P.Ws.3 and 4 are the alleged eyewitnesses to the incident. P.W.5, who is the Conductor of the Bus, turned hostile and did not support the case of the prosecution. P.W.6 is the brother of the deceased. P.W.7 is the panch witness for scene of offence and inquest panchanama. P.W.8 is the Motor Vehicle Inspector, who

inspected the Crime Bus. P.W.9 is the doctor, who conducted autopsy over the dead body of the deceased. P.W.10 is the Investigating Officer and P.W.11 is the Depot Manager, Bodhan.

The alleged eyewitnesses to the occurrence, according to the case of the prosecution, are P.Ws.3 and 4. The evidence of P.W.3 is that on 29.08.2010 around 2.00 P.M. to 2.30 P.M. he was coming on his bike from Banswada towards Bodhan and when he reached near Sevalal Thanda, he saw the deceased going on his Scooter in the same direction towards Bodhan and that an RTC Bus coming in opposite direction in high speed and in negligent manner, hit the Scooter of the deceased, as a result of which, the deceased fell down and died on the spot due to head injury.

The evidence of P.W.4 is that about four years back around 2.00 P.M. or 2.30 P.M. he saw an accident between one Scooter and a private bus No.A.P.25.V.9459, wherein the Scooter was coming from Banswada direction to Bodhan and the bus was coming in opposite direction and in the said accident, the bus came and hit the Scooter and the rider of the Scooter died on the spot due to head injury. Both the witnesses

have specifically deposed that they had also seen the driver of the bus at the scene of offence and they identified him as the accused before the Court. However, P.W.5, who was the Conductor of the bus at the relevant point of time, did not support the case of the prosecution and she turned hostile as she stated that she does not remember that who was driving the bus on the date of accident.

Further, P.W.1-brother-in-law of the deceased, P.W.2-wife of the deceased and P.W.6-brother of the deceased were not present at the time when the alleged accident took place and it is only on the basis of the information received by them, they went to the scene of offence and found the dead body of the deceased. Therefore, it is clear that the prosecution failed to establish the identity of the revision petitioner/accused at the relevant point of time. Hence, the learned Magistrate was erred in coming to the conclusion that the accused alone was responsible for the accident. The learned appellate Judge appears to have been prejudiced by the nature of the accident. He did not properly appreciate the evidence on record. He relied on the circumstances, which are not legally brought on record. The improper appreciation of legal evidence on record by the Courts below resulted in miscarriage of justice.

Coming to the rash and negligent act of the revision petitioner/accused is concerned, the entire case rests on the evidence of P.Ws.3 and 4.

PW.4 in his evidence, did not state about the rash and negligent driving of the driver of the bus. PW.3 simply stated that the bus came with high speed in the opposite direction in a negligent manner and dashed against the Scooter. Though, PW.3 stated in his evidence that he had seen the deceased going on his Scooter towards Bodhan and the RTC bus was coming in the opposite direction, but P.W.4 in his cross-examination stated that immediately after the accident he was the only person who reached scene of offence. Thus, there are material contradictions in the evidence of P.Ws.3 and 4, who were said to be the alleged eye witnesses to the accident and remained present at the time of accident, therefore, their evidence cannot be believed.

Moreover, during the course of investigation, the investigating officer has prepared the spot map (rough sketch), according to which both the deceased and the alleged bus involved in the accident were moving in the same direction i.e., from Bodhan towards Banswada and the said spot map along with Crime Details Form was marked as Ex.P3, but the two

alleged eye witnesses had given contradictory statements during their examination before the Court and they have categorically stated that the deceased was going on his Scooter from Banswada to Bodhan and the alleged bus which was coming from opposite direction i.e., from Bodhan to Banswada, hit the Scooter and caused the death of the deceased.

A perusal of the evidence of P.Ws.3 and 4, reveal that none of them were present at the scene when the accident had taken place and it seems that these two witnesses have been planted by the prosecution only for the purpose of claiming compensation. It is pertinent to mention that the accident had occurred at 2.30 P.M. on 29.08.2010 and none of the passengers of the bus have been either examined by the Investigating Officer or cited as eye witnesses in the charge sheet, regarding the rash and negligent driving of the driver of the bus. Thus, there are material contradictions between the oral evidence of the alleged eye witnesses, who are P.Ws.3 and 4, and the documentary evidence available on record, and that the learned trial Court as well as the appellate Court, have failed to take note of the said fact and have been swayed by the oral testimony of the alleged eyewitnesses.

In the aforementioned circumstances, I am of the view that the evidence let in by the prosecution does not inspire confidence of this Court to come to a conclusion that the revision petitioner/accused is guilty of the offence with which he was charged. Therefore, the revision petitioner/accused is entitled for benefit of doubt.

Accordingly, the Criminal Revision Case is allowed. The conviction and sentence recorded against the revision petitioner/accused in C.C.No.583 of 2014 on the file of the Additional Judicial First Class Magistrate at Bodhan, which was confirmed in CrI.A.No.148 of 2015 on the file of the VII Additional District and Sessions Judge at Bodhan, are hereby set aside and the revision petitioner/accused is acquitted of the said charge. His bail bonds shall stand cancelled and the sureties are discharged from their liability. The fine amount, if any, paid, shall be refunded to the revision petitioner/accused.

Miscellaneous petitions, if any, pending in this revision shall stands closed.

JUSTICE G. SRIDEVI

09.12.2019
Gsn/gkv