

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.360 OF 2010

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/accused aggrieved by the judgment, dated 03.12.2009, passed in S.C.No.170 of 2009 by the learned Sessions Judge, Nizamabad, whereby and whereunder, the appellant/accused was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 304-A IPC and to undergo simple imprisonment for a period of two months and to pay fine of Rs.500/- in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 337 IPC. Both the sentences were ordered to run concurrently.

2. Heard the learned counsel for the appellant/accused, the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would submit that there was no proper identification of lorry driver, who caused the subject accident. The owner of the lorry was not examined, who is an important witness in the subject crime. The trip sheet was also not seized by the police. Though it is contended that the appellant/accused was handed over to the police on 08.04.2008, the subject accident was occurred on 06.04.2008. The apprehension of the appellant/accused in this case is doubtful. The appellant/accused was found only in the lorry cabin. Taking

advantage of the same, a false case is foisted against him. The prosecution failed to prove the identity of the appellant/accused as well as the subject accident caused due to rash and negligent driving of the lorry bearing No.MWT-3054 on 06.04.2008. Though there are six deaths and injury to a person, the guilt of the appellant/accused was not proved beyond all reasonable doubt for the offences punishable under Sections 304-A and Section 337 of IPC and ultimately prayed to set aside the conviction and sentence imposed against the appellant/accused.

4. Learned Additional Public Prosecutor representing the respondent/State would submit that there is a specific evidence of P.Ws.1, 2, 3, 4, 5 and 6 to substantiate that the appellant/accused was the driver of the lorry bearing No.MWT-3054 and caused the subject deaths and injuries to P.W.16. There is proper identity of the appellant/accused. All the requirements under Sections 304-A and 337 of IPC were proved against the appellant/accused beyond all reasonable doubt. The trial Court rightly convicted and sentenced the appellant/accused for the offences under Section 304-A and 337 of IPC. There is no infirmity in the impugned judgment and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:

1. Whether the appellant/accused was the driver of the subject lorry bearing No.MWT-3054 at the time of alleged accident on 06.04.2008?
2. Whether the prosecution proved all the requirements under Sections 304-A and 337 of IPC against the appellant/accused?

3. Whether the conviction and sentence imposed against the appellant/accused is liable to be set aside?

Points 1 to 3:-

6. To prove the guilt of the accused, the prosecution was examined P.Ws.1 to 25 and got marked Exs.P1 to P32 and M.Os.1 and 2. No evidence, either oral or documentary, was adduced on behalf of the appellant/accused.

7. It is contended that the accused was not the driver of the subject lorry at the time of accident. It has been admitted on behalf of the accused that he was found in the cabin of the subject lorry. Taking advantage of the same, he is falsely roped into this case. To substantiate his case, even the appellant/accused did not enter into the witness box and stated the same. The specific case of the prosecution is that on 06.04.2008, when D1 to D4 and other injured person were travelling in auto bearing No.AP 25/U-7906 driven by D5 and when they reached near Nagepoor village near S.C.Colony around 3:30 pm, one lorry bearing No.MWT-3054 driven by the appellant/accused at high speed in a rash and negligent manner dashed the auto and caused the death of D1 to D5 as well as D6 and injuries to one person. Admittedly, trip sheet of the lorry was not seized and the owner of the lorry was not examined before the Court to substantiate the allegations against the appellant/accused.

8. P.W.1, who lodged the report to the police, has clearly and categorically stated about the involvement of the appellant/accused in causing the accident. He gave the details of manner of occurrence of accident. His evidence is that he was standing on the side of the road at that time. He gave the time of accident as 3:30 p.m. on

06.04.2008. There is specific evidence of P.W.1 that the lorry stopped on the road side at a distance of 15 feet after dashing the auto having six persons therein. Four persons died on the spot and one person died while undergoing treatment and one more person died on the way to the hospital. He also stated that he saw the driver of the lorry, who was in intoxication condition. The villagers enquired with the appellant/accused, but he was unable to understand what has happened. He also stated that the villagers took the appellant/accused to the police station and handed over him to the police. He also corroborates with Ex.P1 report lodged by him. There is also evidence of P.Ws.2, 3, 4 and 6 with regard to the occurrence of accident. P.W.3 specifically stated that he saw the accused in the cabin of the lorry and the manner how the accident was caused. He further stated that the accused was not in a position to state and he was in intoxication condition. P.W.4 also stated about the presence of the accused at the scene of offence. P.W.5 deposed about taking Exs.P2 to P10 photographs. P.W.6 spoke about the occurrence of accident and he was sitting in the cabin of the lorry at that time. There is evidence of P.W.7 with regard to his family members died in the accident. There is no dispute with regard to the death of D1 to D6 in the subject accident as deposed by P.W.1 and exhibited through the prosecution witnesses by examining the doctor, who issued the post mortem examination reports and also the witnesses, who conducted inquest panchanama.

9. The only dispute is whether the accused drove the lorry at the time of accident and caused the subject accident. It is vehemently contended that the appellant/accused was arrested and remanded to judicial custody on 08.04.2008. As per the evidence of P.W.1, the

accused was handed over to the police on 06.04.2008. The point is that whether the accused caused the subject accident and deaths due to the rash and negligent driving of the subject lorry bearing No. MWT-3054.

10. The evidence of P.W.1 coupled with the evidence of P.Ws.2, 3, 4 and 5 establishes the driving of the lorry in highspeed and rash and negligent manner and causing the death of D1 to D5 on 06.04.2008 at 3:30 P.M by the appellant/accused. There is specific evidence of P.W.1 for causing the accident. There is also identification of appellant/accused by P.W.1 and other witnesses in the subject case. It is not the case of the defence that some other persons drove the lorry and ran away. Absolutely, there is no evidence and even it is not suggested to the witnesses at all. Non-seizure of trip sheet and non-examination of lorry owner are not fatal to disbelieve the prosecution case. There is ample evidence to prove that the appellant/accused is the driver of the lorry and caused the subject accident thereby causing the deaths of D1 to D6 and injuries to P.W.16. Under these circumstances, all the requirements under Sections 304-A and 337 of IPC are proved against the accused. The trial Court was pleased to convict the accused to undergo rigorous imprisonment for a period of two years for the offence under Section 304-A of IPC and two months simple imprisonment for the offence under Section 337 of IPC. When six persons died due to the rash and negligent driving of the appellant/accused, the quantum of sentence imposed is not excessive or harsh. The trial Court had rightly convicted and sentenced the accused for the offences under Sections 304-A and 337 of IPC. There is no infirmity in the impugned judgment. There are no merits to allow the appeal.

11. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 03.12.2009, rendered in S.C.No.170 of 2009 on the file of the Sessions Judge, Nizamabad.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 28.01.2019
ssp

DR. SHAMEEM AKTHER, J