

BAIL SLIP: The Petitioner/Accused was directed to be released on bail by the order of the High Court dated: 23/04/2012, in CRLRC.MP.No.1041 of 2012 in CRL RC.No. 658 of 2012

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE NO: 658 OF 2012

Revision filed under Section 397/401 of CrPC to set aside/against the Judgment dt.25.11.2011 passed in CrI.A.No.80 of 2011 on the file of III Additional District Judge at Gadwal Mahaboobnagar District by allowing the revision in the interest of justice.

Between:

1. BADE SHA , BADESAB , VENKATESHWARLU, S/o.Chinna Savaranna, R/o. Chinna Chintarula Village, Dharur Mandal, Mahaboob Nagar.

...REVISION PETITIONER/APPELLANT/ACCUSED

AND

1. THE STATE OF A.P. rep., by its Public Prosecutor, High Court Buildings, at Hyderabad, through Police Station, Dharur Vide Crime No.29/2006.

...RESPONDENT/ RESPONDENT/ COMPLAINANT

I.A. NO: 2 OF 2012(CRLRCMP. NO: 1041 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the petitioner /Accused on bail by suspending judgment passed in CrI.A.No.80/2011 dt.25-11-2011 on the file of the III Additional Judge at Gadwal Mahaboobnagar District.

Counsel for the Petitioner(s):SRI T C KRISHNAN

Counsel for the Respondent: PUBLIC PROSECUTOR (TG)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL
CRIMINAL REVISION CASE No.658 OF 2012

ORDER:

1. The present Criminal Revision Case is filed aggrieved by the Judgment dated 25.11.2011 in Criminal Appeal No.80 of 2011 on the file of III Additional District & Sessions Judge, (Fast Track Court), Gadwal (for short, "the appellate Court") partly confirming the conviction and sentence of rigorous imprisonment for a period of six (6) months and to pay a fine of Rs.2,000/- (Rupees Two thousand only), in default to suffer simple imprisonment for a period of three (3) months for the offence under section 304-A I.P.C. imposed against the revision petitioner-accused by the learned Judicial Magistrate of First Class, Gadwal (for short, "the trial court"), in C.C.No.22 of 2007, dated 10.08.2011.

2. Heard Sri T.C.Krishnan, learned counsel for the petitioner and Sri Vizarith Ali, the learned Assistant Public Prosecutor appearing for the State.

3. The case of the prosecution in brief is that on 30.03.2006 at 11:00 a.m. P.W.1 lodged Ex.P1 complaint

before Dharur Police Station alleging that on 30.03.2006 morning P.W.1 went to Gadwal and was returning to his Village Medipally in a jeep bearing No.AP-15-W/6171. Along with P.W.1, some other passengers also boarded in the jeep. After crossing Chintarevula Village at Mudireddy garden road turning, the driver of the jeep drove the same in a rash and negligent manner, resulting which the driver lost control over the jeep and went towards right side of the road and hit the trees, due to which, the jeep turned turtle and P.Ws.1 to 3 and P.W.6, who were travelling in the said jeep sustained injuries and deceased Nos.1 died on the spot and deceased No.2 succumbed to injuries at Kurnool hospital. The petitioner is the driver of the said jeep.

4. During the course of trial, on behalf of the prosecution, P.Ws.1 to 15 were examined and Exs.P.1 to P.16 were marked. On behalf of the petitioner/accused No.1 no oral or documentary evidence was adduced.

5. The petitioner herein was tried as accused A1 by the learned Judicial Magistrate of First Class, Gadwal, in C.C.No.22 of 2007 for the offence punishable under Sections

304-A, 338 and 337 of IPC. The learned Magistrate having assessed the entire evidence found the petitioner guilty for the offences punishable under Sections 304-A, 338 and 337 of IPC and accordingly convicted and sentenced him to suffer rigorous imprisonment for a period of six (6) months and to pay a fine of Rs.2,000/- (Rupees Two thousand only) in default of payment of fine to suffer simple imprisonment for a period of three (3) months for the offence under section 304-A IPC. He is further sentenced to suffer rigorous imprisonment for a period of three (3) months and to pay a fine of Rs.1,000/- (Rupees One thousand only) in default of payment of fine to suffer simple imprisonment for a period of one (1) month for the offence under Section 338 of IPC. He is further sentenced to suffer rigorous imprisonment for a period of one month and to pay a fine of Rs.500/- (Rupees five hundred only) in default of payment of fine to suffer simple imprisonment for a period of fifteen (15) days for the offence under Section 337 of IPC. All the above said sentences shall run concurrently. Total fine is Rs.3,500/-.

6. Aggrieved by the said judgment dated 10.08.2011, the petitioner preferred Criminal Appeal No. 80 of 2011 on the

file of the learned III Additional District & Sessions Judge at Gadwal and the learned Sessions Judge partly allowed the appeal modifying the findings of the learned trial Court by judgment dated 25.11.2011 and the conviction and sentence imposed by the trial Court against the petitioner for the offence punishable under Section 304-A IPC is confirmed and conviction and sentence imposed by the trial Court for the offences punishable under Sections 338 and 337 IPC are set aside. The fine amount paid by the petitioner in respect of offences punishable under Sections 338 and 337 IPC is ordered to be returned to the petitioner. The trial Court is directed to issue non-bailable warrant to the petitioner for serving sentence imposed on the petitioner for the offence punishable under Section 304-A IPC. Questioning the same, this revision is preferred by petitioner/accused No.1.

7. As seen from the evidence of P.Ws.1 to 3, who were ocular-cum-injured witnesses, it is clear that they were travelling in the jeep for a considerable time before the incident and they identified that the petitioner was the driver at the relevant point of time. Since, the witnesses had the opportunity to observe and identify the petitioner; the

contention of the petitioner that the prosecution failed to establish the identity of the driver is not accepted. As far as invoking the principle of doctrine of necessity under Section 81 of IPC is concerned, in Ex.P1 it is not stated by P.W.1 that a tipper came opposite to the crime vehicle and the petitioner turned the jeep all of a sudden to avoid collusion with tipper. Hence, principle of doctrine of necessity cannot be invoked when the driver fails to exercise proper care and caution while driving the vehicle at the road turnings.

8. The contention of the petitioner is that the prosecution has not examined the Doctor, who conducted the post-mortem over the dead body of the deceased P.Chennappa, and the Doctors, who issued wound certificates of P.Ws.1 to 3 and 6 under Exs.P12 to 15. Since the prosecution has not examined the Doctor, who conducted the post mortem over the dead body of the deceased P.Chennappa, it is held that the prosecution has not proved Ex.P11 post mortem report of the deceased P.Chennappa and wound certificates of P.Ws.1 to 3 and 6 in terms of the provisions of Evidence Act.

9. As seen from the evidence of P.W.11, Doctor, who conducted post-mortem over the dead body of the deceased No.1 Narsimlu issued Ex.P5 post mortem report, in which it is clearly mentioned that the death of the deceased is due to injuries and Ex.P8 inquest panchanama it is clear that the cause of death of the deceased Narsimlu is due to injuries sustained in road accident. As per the evidence of P.Ws.1 to 3 and P.W.15 and Ex.P7-rough sketch and photographs of scene of offence it is clear that the jeep was turned turtle and went out of road at the scene of offence. As per Ex.P9-Motor Vehicle Inspection Report, it is clear that there is damage to the front portion of the jeep, it can be said that the petitioner had not exercised proper care and caution while driving the vehicle, resulting which he lost control over the vehicle and went out of road and fell down. This fact is sufficient to come to a conclusion that there is rash or negligence on the part of the accused, which resulted the accident and two persons lost their lives in the accident.

10. The evidence of P.Ws.1 to 3 is corroborating with one another regarding the manner of accident and also identity

of the petitioner being the driver of the crime vehicle at the time of accident.

11. There is no ambiguity or any doubt with regard to the identity of the petitioner being the person responsible for the accident and he was the driver of the crime vehicle at the relevant point of time. Hence, I am of the considered opinion that the prosecution established the guilt of the petitioner for the offence punishable under Section 304-A IPC beyond all reasonable doubt.

12. While modifying the sentence the appellate court has given cogent and convincing reasons. Therefore, this court is not inclined to interfere with the order passed by the appellate court. Accordingly, the revision is dismissed.

Miscellaneous petitions, pending if any, shall stand dismissed.

SD/- M.RAMANA KRISHNA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The III Additional District Judge at Gadwal Mahaboobnagar District
2. The Station House Officer, Police Station, Dharur.
3. One CC to SRI. T C KRISHNAN Advocate [OPUC]
4. Two CCs to the PUBLIC PROSECUTOR (TG), TSHC at Hyderabad [OUT]
5. Two CD Copies

AA
NS

19/

HIGH COURT

EVVJ

DATED:14/09/2023

ORDER

CRLRC.No.658 of 2012



**THE CRIMINAL REVISION CASE
IS DISMISSED**

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for
15/12/23