

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

**TUESDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL NO: 752 OF 2012

Appeal under Section 377(1) of Cr.P.C filed against the Judgment dated 31.01.2006 passed in C.C.No. 427 of 2003 on the file of the Court of the Judicial Magistrate of I Class at Sulthanabad.

Between:

State of A.P., rep.by the Public Prosecutor, High Court of A.P., Hyderabad

...APPELLANT/PETITIONER

AND

Nalla Thirupathi Reddy,, S/o. Laxmi Reddy, Driver of tractor bearing No. AP 15 U
4555 R/o. Edulapoor (V), Karimnagar District

...ACCUSED/RESPONDENT

Counsel for the Appellant: PUBLIC PROSECUTOR

Counsel for the Respondent: NONE APPEARED

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRL.APP.NO.752 of 2012

JUDGMENT:

This Criminal Appeal has been preferred by the State of Erstwhile Andhra Pradesh through the Public Prosecutor under Section 377(1) of Criminal Procedure Code (for short 'Cr.P.C.') against the judgment dated 31-01-2006 in CC.No.427 of 2003 on the file of Judicial First Class Magistrate, Sulthanabad. The trial Court while disposing CC.No.427 of 2003 having found the sole accused, who is shown as respondent in the present appeal guilty for the offence under Sections 337 and 304-A of Indian Penal Code (for short 'I.P.C.') convicted him for the said offences under Section 255 (2) of Cr.P.C. but imposed a sentence of Rigorous Imprisonment for one month with a fine of Rs.500/- for the offence under Section 337 of IPC and also sentenced to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.2,000/- for the offence under Section 304-A IPC with default sentence. The Court below directed both the sentences shall run concurrently.

2. Being aggrieved by the judgment, the State while preferring the present appeal has claimed that the judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case. The trial Court having found the respondent/accused guilty for the offence under Sections 337 and 304-A IPC, committed an error in awarding meager sentence. The Court below ought to have seen that the Apex court held time and again that undue sympathy could not be shown to the accused and meager sentence cannot be awarded, thereby, sought for enhancement of the sentence.

3. Before going into the merits of the appeal, it is just and necessary to have a look over the judgment impugned in the present appeal and whether the findings and conclusions arrived by the Court below are justified. The sole respondent in the present appeal has been prosecuted by State through police, Srirampur with an allegation that he has committed the offence under Sections 337 and 304-A IPC.

4. The following was the brief case of the complainant as per the charge sheet :

On 09-09-2003 in connection with Ganesh festival, people at Edulapur Village, conducted immersion of Ganesh

Idols in Kamuni Cheruvu and in the said connection, they have engaged Tractor bearing No.AP 15 U 4555 for carrying the Ganesh Idols to the said Tank for immersion. The respondent was the driver of the Tractor. The prosecution has alleged that after the immersion of Ganesh Idol, when the Tractor returned to the village, the villagers including Agimalla Swamy and Sujan (who herein after will be referred as 'deceased'), PWs.5 to 9, who received injuries and some others, sat in the trailer of the Tractor. The prosecution has alleged that the accused drove the Tractor in high-speed, in a rash and negligent manner and in the said process while taking a turn, he could not control the vehicle. Therefore, the trailer over-turned, thereby, the persons boarded into the trolley were fell on the ground. The deceased Swamy and Sujan have been suffered major injuries and died. Whereas, PWs.5 to 9 suffered minor injuries.

5. In view of the above said incident and on the complaint presented by PW.1, a case was registered in Crime No.73 of 2003 and was investigated by PW.21. The Investigating Officer having completed the other formalities like examination of witnesses and conclusion of records

including the post-mortem report etc., laid the charge sheet against the respondent alleging that he has committed the offence under Section 337 and 304-A I.P.C.

6. The Court below having furnished the copies of charge sheet and other record, examined the accused under Section 251 of Criminal Procedure Code (for short 'Cr.P.C.') and on denial of allegations in the charge sheet by the respondent/accused, the Court below conducted trial. During the trial, the prosecution has examined PWs.1 to 21 and marked Exs.P1 to P47. On conclusion of the trial, the accused was examined under Section 313 Cr.P.C. He denied the material allegations/evidence, put forth before him. The Court below having heard the learned Public Prosecutor as well as the appellants counsel, came to the conclusion that the prosecution was able to prove the case against the respondent for the offence under Sections 337 and 304-A of IPC, thereby, convicted him as indicated above.

7. The present appeal has been filed questioning the quantum of sentence. According to the judgment impugned in the present appeal, it is very clear that the learned Magistrate found the respondent/accused guilty for the

offence under Section 337 of IPC and also under Section 304-A of IPC. Consequently, sentenced him to undergo Rigorous Imprisonment for one month with a fine of Rs.500/- for the offence under Section 337 of IPC and also sentenced to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.2,000/- for the offence under Section 304-A IPC with default sentence.

8. The brief grounds on which the present appeal is filed indicates that the State was not happy with the said sentence on the ground the Court below imposed a meager sentence. The maximum sentence imposed under Section 304-A IPC is two years and or fine. The Court below having appreciated the evidence and more particularly, in the above referred circumstances was of the opinion that ends of justice would meet, if the respondent/accused sentenced to undergo the above referred sentence, thereby, imposed the said punishment.

9. It is true, there was death of two persons and more than five persons suffered minor injuries. However, the circumstances elicited from the material witnesses clearly indicates that there was a festival atmosphere in the Village

on that particular day where the accident took place. One can imagine the situation where there was Ganesh Idol immersion, more particularly, in the state of Telangana where people use to celebrate the Ganesh Idol Immersion in a high-fi manner. There is no dispute about the manner of the accident. As could be gathered from the evidence of material witnesses, the accident occurred while the Tractor was returning from Tank where the Ganesh Idol was immersed and while the Tractor was taking a turn in the above stated circumstances, there could not have been a chance or opportunity for the respondent to drive the Tractor Trailer in high speed, definitely there could have been the huge gathering in the Village and people used to follow the Tractor and other vehicles in which they have carried the Idols to the Tank.

10. In fact, the evidence of witnesses examined before the Court indicates that the Tractor over-turned while the vehicle was taking a turn. The evidence of PWs.3, 6, 10, 15, 16, 17 is very clear that after the idol was immersed in the Tank, they returned to village and the above referred witnesses, deceased Swamy and Sujan and some others

traveled in the Auto and while the vehicle was taking a turn nearby, Edulapur Village, the accused said to have been driven the Tractor in a negligent manner. Therefore, the question of driving the vehicle in high-speed may not arise. But the evidence of the above referred witnesses can be considered that he was negligent in driving the vehicle. It is true, the respondent while carrying so many people in the trailer could have been vigilant and drove the vehicle cautiously. It is not as if the accused was rash or negligently driving the vehicle. The Court below while considering all the circumstances including the evidence of material witnesses was of the opinion that the accident took place due to the negligent driving by the respondent/accused. Therefore, imposed Rigorous Imprisonment for one year coupled with fine and also Rigorous Imprisonment for a month for the offence under Section 337 of IPC.

11. It has to be seen from the allegations in the charge sheet, this offence took place about 20 years ago and the above recorded sentence was imposed on the accused on 31-01-2006 more than 16 years lapsed from the date of the judgment. Taking all this circumstances into consideration,

this Court is of the opinion that simply because there is death of two persons and more than 5 persons received injuries, accused cannot be convicted with maximum sentence and the other circumstances is also to be taken into consideration. In view of the festival atmosphere at the time of the alleged offence, there could not have been a chance for the accused to drive the vehicle in high-speed or negligent manner, thereby, the Court below imposed an appropriate sentence. It is not known whether the accused undergone the above referred sentences or obtained any bail from the Court below. The learned Public Prosecutor had informed the Court that the accused filed appeal before the District Court, Karimnagar and challenged his conviction, but his appeal was dismissed and the Criminal Revision filed by the accused against the Judgment of District Court on his conviction was also dismissed.

12. Therefore, the judgment and conviction recorded by the trial Court can be confirmed but it is for the State to verify whether the respondent/accused has undergone the above sentence or whether he is on bail. In case if already undergone sentence, the State need not take the accused into

custody. However, if it is found that the respondent is on bail, he shall undergo the sentence imposed by the trial Court.

13. In the result, Appeal is dismissed.

Consequently, Miscellaneous Petitions if any, are closed.

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Sd/- I. NAGALAKSHMI
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Judicial Magistrate of I Class at Sulthanabad.(with records)
2. The Station House Officer, Srirampur Police Station, Karimnagar District.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad[OUT]
4. Two CD Copies

Plp/pr

CHP

HIGH COURT
DATED:13/02/2024

ORDER

CRLA.No.752 of 2012



DISMISSING THE Crl.APPEAL.

⑦
CHR
5/3/24