IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY ,THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 518 OF 2011

Revision filed under Sections 397 and 401 of Cr.P.C, aggrieved against the Judgment of the learned Sessions :: Prakasam Division: Ongole (before the Additional District and Sessions Judge FTC Ongole) passed in Crl.A.No.27 of 2009, dated 11.02.2011, dismissing the Appeal preferred against the conviction and sentence dated 27.01.2009 of the learned Assistant Sessions Judge, Ongole, in SC.No.337 of 2008 and confirming the conviction and sentence of the petitioner.

Between:

Shaik Maznu, S/o: Khasim Peera, aged 20 years, Muslim, R/o. Papinenipalli Village, Ardaveedu Mandal, Prakasam District.

...Accused/Appellant/Petitioner

AND

The State of AP, Rep. by its Public Prosecutor, High Court of A.P., at Amaravathi through SHO., Ongole II Town P.S.,

...Complainant/Respondent/Respondent

Counsel for the Petitioner : Sri. Subba Rao Korrapati

Counsel for the Respondent : Ms. P. Akila Naidu, Public Prosecutor

The Court made the following:

APHC010386662011

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

FRIDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 518/2011

Between:

Shaik Maznu **...PETITIONER**

AND

The State of AP Rep by Its Public Prosecutor, Hyderabad **...RESPONDENT**

Counsel for the Petitioner:

Subba Rao Korrapati

Counsel for the Respondent:

Public Prosecutor

The Court made the following:

ORDER:

The Revision has been preferred under Sections 397 and 401 of Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C') against the judgment dated 11.02.2011 in Crl.A.No.27 of 2009 passed by the learned V Additional District & Sessions Judge, Ongole, confirming the judgment dated 27.01.2009 in S.C.No.337 of 2008, passed by the learned Additional Assistant Sessions Judge, Ongole, finding the revisionist guilty for the offence punishable under Section 354, 452 and 506 of the Indian Penal Code, 1860 (for short 'the I.P.C')

and convicted and sentenced him to undergo rigorous for five years and to pay a fine of Rs.800/-.

2. I have heard the arguments of the learned counsel for the revisionist and the learned Assistant Public Prosecutor.

3. Sri N. Chalapathi Rao, learned counsel for the petitioner argued that the learned Appellate Court had not provided an opportunity to the learned counsel for the revisionist while disposing of the criminal appeal. It is submitted that if no arguments were not advanced by the learned counsel for the appellate/accused, the learned Sessions Judge ought to have taken the aid of the legal aid counsel or appointed an *amicus curie* to hear the arguments. Thus, no fair opportunity was given to the revisionist by the learned Appellate Court. Therefore, the judgment is liable to be interfered and set aside and it is urged to remand the case to the learned Appellate Court for fresh hearing and disposal.

4. *Per contra*, Ms. P. Akila Naidu, learned Assistant Public Prosecutor also fairly submitted that, as can be seen from the impugned judgment passed by the learned Appellate Court no opportunity of advancing arguments by the learned counsel for petitioner/accused was provided, therefore requested to pass appropriate orders.

5. Thoughtful consideration is bestowed on the arguments advanced by the learned counsel for the Petitioner and the learned Assistant Public Prosecutor. I have perused the record.

6. Now the point for consideration is:

> *"Whether the judgment in Crl.A.No.27 of 2009 dated 11.02.2011, passed by the learned V Additional District and Sessions Judge, Ongole, is correct, legal, and proper with respect to its finding, sentence, or judgment, and there are any material irregularities? And to what relief?"*

7. The learned counsel for the revisionist has brought to the notice of this Court at para No.8 of the impugned judgment which is extracted as under:

> *"8. In this Court, no arguments advanced on behalf of the appellant/accused. Heard the arguments of the learned Additional Public Prosecutor."*

8. On perusal of the impugned judgment at para No.8, it is clear that the learned Appellate Court had not provided any opportunity to the learned counsel for the petitioner/accused for advancing the arguments. Without hearing the arguments of the petitioner/accused, it was not proper on the part of the learned Sessions Judge to dispose of the appeal on merits.

9. In **Khaili v. State of U.P**[1] at para No.1 it is held as under:

> *1. "...But even though the fees and expenses were not paid, the Advocate should not, in our opinion, have refused to argue the case. It must be remembered by every advocate that he owes a duty to the court, particularly in a criminal case involving the liberty of the citizen, and even if he has not been paid his fees or expenses, he must argue the case and assist the court in reaching the correct decision. We can appreciate a situation where an advocate may be unable to argue the case in the absence of instructions from the client, but non-receipt of fees and expenses can never be a ground for refusing to argue the case. The learned Advocate in the present case, however, refused to argue the case and consequently the learned Judge went through the record of the case and decided the appeal. Now one thing is clear that howsoever diligent the learned Judge might have been and however careful and anxious to protect the interests of the appellants, his effort could not take the place of an argument by an advocate appearing on behalf of the appellants. We think that in a case such as this, what the learned Judge should have done was to appoint an advocate amicus curiae and then proceed to dispose of the appeal on merits".*

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[1] Criminal Appeal No. 137 of 1980 dt. 18.2.1980

10. In **Mangat Singh v. State of Punjab**[2] it is held at para No.2 as under:

> *"2. It is unfortunate that the counsel had not appeared in the High Court in a case of appeal of conviction under Section 302 IPC. The question of accountability of the advocate looms large in a case of this nature. However, the High Court could have appointed an amicus curiae to assist the Court rather than relying on the assistance of the learned counsel for the State. No doubt, the High Court had considered the matter elaborately. However, it is no substitute for the judgment rendered after hearing the counsel especially in a case in which the appellant is convicted under Section 302 IPC and sentenced to life imprisonment. Learned counsel appearing for the appellant has drawn our attention to the observations in the decision of this Court in Khaili v. State of U.P. We are, therefore, constrained to set aside the a impugned judgment and remit the matter to the High Court for fresh disposal expeditiously after appointing an advocate as amicus curie."*

11. In **Shankar v. State of Maharashtra**[3] it is held that at para No.5 as under:

> *"5. When the accused has preferred the appeal against the conviction, the appeal can be disposed of on merits only after hearing the appellant or his counsel. When there was no representation for the appellant, in our considered view, the High Court ought not to have disposed of the case on merits. It was held in **2005 (11) SCC 185 titled Mangat Singh v. State of Punjab** that where the advocate for the appellant is absent on the date of hearing, the Court shall either appoint an amicus curiae and then decide the appeal. Once the appeal against the conviction is admitted, it is the duty of the Appellate Court either to appoint an advocate as amicus curiae or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose of the appeal. When the appellant was not represented by the advocate, in our view, the High Court ought not to have decided the matter on merits and the impugned order is liable to be set aside and the matter is remitted back to the High Court. The High Court shall restore the Criminal Appeal No. 296 of 2014 and afford sufficient opportunity to the appellant and proceed with the matter in accordance with law. In case, if the appellant is still not represented, we request the High Court to nominate a counsel for the appellant through the Legal Services Authority and proceed with the matter. Since the appellant is said to have undergone more than twelve years of imprisonment and since the Criminal Appeal No.296/2014 is remitted back to the High Court, the sentence of imprisonment imposed upon the appellant is ordered to be suspended and the appellant is ordered to be released on the condition that he should execute bail bond for a sum of L 10.000/- with two sureties for a like sum each to the satisfaction of the committal Court. The High Court shall proceed with the Criminal Appeal in accordance with law."*

12. In view of the above said decisions, as no opportunity was provided to the learned counsel for the petitioner/accused by the learned Sessions Judge,

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[2] 2005 (11) SCC 185
[3] 2019 (2) ALT (CRL) (SC) 460 (D.B).

the impugned judgment is not sustainable and it suffers from material irregularity. The learned Sessions Judge was expected to provide an opportunity of hearing counsel for the appellate before disposing of the criminal appeal. In case the learned counsel for the petitioner/accused was not available or was not present for advancing arguments, the learned Sessions Judge ought to have appointed a legal aid counsel or taken the aid of an amicus curie for effectively dispose of the criminal appeal. Thus, the principles of natural justice have been violated in this case.

13. Therefore, the impugned judgment dated 11.02.2011 in Crl.A.No.27 of 2009 passed by the V Additional District and Sessions Judge, Ongole is not sustainable and the same is set aside. The learned V Additional District and Sessions Judge, Ongole, is directed to hear afresh the Criminal Appeal in Crl.A.No.27 of 2009 and pass appropriate judgment within two months from the date of receipt of this order and submit report to the Registrar (Judicial) of this Court.

Accordingly, this criminal revision case is allowed. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

Sd/- M RAMESH BABU
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Registrar (Judicial), High Court of Andhra Pradesh at Amaravathi.

2. The V Additional District and Sessions Judge FTC, Ongole, Prakasam District **(with records)**
3. The Additional Assistant Sessions Judge, Ongole, Prakasam District
4. The II Additional Judicial Magistrate of 1st Class, Ongole, Prakasam District
5. The Superintendent, Central Prison, Nellore, SPSR Nellore District
6. The Station House Officer, Ongole II Town P.S., Prakasam District
7. One CC to Sri. Subba Rao Korrapati Advocate [OPUC]
8. Two CCs to the Public Prosecutor, High Court of Andhra Pradesh at Amaravathi [OUT]
9. The Section Officer, Criminal Section, High Court of Andhra Pradesh at Amaravathi
10. **Three CD Copies**

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HIGH COURT

DATED:07/03/2025

ORDER

CRLRC.No.518 of 2011



ALLOWING THE CRIMINAL REVISION CASE