

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL REVISION CASE No.2192 of 2006

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Date:28.02.2014

Between:

Bayankar Madhusudhan Rao

..... Petitioner.

AND

The State of Andhra Pradesh,
rep by its Public Prosecutor,
High Court of A.P., Hyderabad.

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL REVISION CASE No.2192 of 2006

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ORDER:

This revision is preferred against judgment dated 28-12-2005 in CrI.A.No.126/2005 on the file of V Additional District & Sessions Judge (III FTC), Nalgonda at Miryalaguda whereunder judgment dated 03-08-2005 in C.C.No.361/2002 on the file of Judicial First Class Magistrate, Miryalaguda was confirmed.

2. Brief facts leading to filing of this revision are that on 27-

12-2001, while P.W.1 was ironing his clothes in his laundry shop, which is situated in front of his house, the deceased came there and sat on a stone near the laundry shop and waiting for a bus, meanwhile a lorry bearing No.AP-7-U-2295 driven by the accused came in a rash and negligent manner at a high speed dashed the shed in front of laundry shop of P.W.1 and also dashed the deceased due to which, he died and P.W.1 sustained injuries. On the report of P.W.1, police registered crime and investigated, which revealed that revision petitioner is liable for punishment for the offences under Sections 304-A & 337 IPC. On these allegations, trial Court examined nine witnesses and marked eight documents on behalf of prosecution. No one is examined on behalf accused and no document is marked. On an over all consideration of oral and documentary evidence, trial Court found accused guilty for the offence under Sections 304-A IPC & 337 IPC and sentenced him to suffer one year imprisonment with a fine of Rs.1,000/- for the offence under Section 304-A IPC and sentenced to pay a fine of Rs.500/- for the offence under Section 337 IPC. Aggrieved by the conviction and sentence, he preferred appeal to the Court of Sessions, Nalgonda and V Additional District & Sessions Nalgonda at Miryalaguda, on a reappraisal of the evidence, confirmed conviction and sentence. Now aggrieved by the judgments of the Courts below, present revision is preferred.

3. Heard both sides.

4. The main contention of the Advocate for revision petitioner is that there is a discrepancy in the evidence of P.Ws.3 & 8 with regard to arrest of the accused.

He further submitted that P.W.1 has not identified the accused who is the victim-*defacto*-complainant and P.W.3 who is no other than the brother of the deceased has identified him and there is no corroboration between these two witnesses with regard to identify of the accused. He further submitted that trip sheet is not marked as a document to connect the accused with the crime vehicle. He further submitted that the accused has subsequently met with an accident and he underwent surgery and some rods were fixed and disability was assessed at 40% by the District Medical Board and now he is not in a position to move and not able to work by considering these aspects, the sentence already undergone may be treated as punishment. Learned Public Prosecutor submitted that both the Courts rightly convicted the revision petitioner for the offence under Section 304-A & 337 IPC and with regard to sentence, he would leave the matter to the discretion of the Court.

5. Now the point that would arise for my consideration in this revision is whether the Judgments of the Courts below are legal, proper and correct?

6. **Point:-** According to the prosecution, the accident was on 27-12-2001 during evening time. According to P.W.1, on

the date of incident, he was in his laundry shop to which the deceased came and at that time, lorry bearing No.AP-7-U-2295 came in a rash and negligent manner and dashed the shed in front of his house in which he is running the laundry shop and also dashed the deceased and himself. Here police registered the case on the complaint of P.W.1. P.W.2 is wife of the deceased, P.W.3 is brother of the deceased, the other witnesses are panch witnesses, postmortem doctor and the doctor who treated the injured, motor vehicle inspector and investigating officers. One of the objection of the revision petitioner is that there is discrepancy with regard to identity of the accused. No doubt P.W.3 stated in his evidence that he caught the accused red handed and handed over him at Panchyat Raj Office, whereas P.W.8 deposed that accused himself surrendered in the police station. Here the main aspect that has to be seen is whether accused is driver of the crime vehicle on the date of incident or not. P.W.1 even in his report referred to the name of the driver and in the chief, he has not identified the accused, but in the cross that by putting a suggestion it was positively asserted that he is the driver of the crime vehicle. The other objection of the revision petitioner is that trip sheet is not seized by the investigating officer. But as seen from the record, the trip sheet is available in the record, which was not marked for the reasons best known to the prosecutor who conducted the prosecution. From the evidence of P.Ws.1 & 3, it is clear that vehicle bearing No.AP-7-U-2295 is involved in the accident and it is not the specific case of the revision

petitioner that he was not the driver of that vehicle on the date of accident. Considering these aspects, the trial Court found the accused guilty for the offence under Sections 304-A & 337 IPC, which is upheld by the appellate Court. I do not find any wrong appreciation of evidence either by the trial Court or by the appellate Court. I also do not find any wrong findings in the judgments of the Courts below for convicting the revision petitioner for the offence under Sections 304-A & 337 IPC.

7. For these reasons, it is held that there are no grounds to interfere with the conviction recorded against the revision petitioner for the offences under Sections 304-A & 337 IPC.

8. Now coming to the sentence part, it is the representation of advocate for revision petitioner subsequent to this case, revision petitioner met with accident and his leg was operated and rods were inserted and he is not able to do any work now and the District Medical Board assessed his disability at 40%.

He submitted that revision petitioner was in jail for about 10 days and that the same may be treated as punishment besides the fine amount already paid. Considering the fact that the revision petitioner has become disabled subsequent to this case and the fact that he cannot walk and do any work, I feel that the sentence of imprisonment can be modified to the period already undergone.

9. For these reasons, revision is dismissed confirming the conviction, but the sentence of imprisonment is modified to the period already undergone while confirming the fine imposed by the trial Court and upheld by the appellate Court.

10. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:28.02.2014

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