

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY ,THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V SRINIVAS

CRIMINAL REVISION CASE NO: 788 OF 2012



Between:

Boddeti Mutyala Naidu, S/o. Atchi Babu, Aged about 34 years, Occ: Driver,
R/o. D.No.5-126, Isukathota, Visakhapatnam.

...PETITIONER/ACCUSED

AND

The State of Andhra Pradesh, through Public Prosecutor, High Court of A.P.,
Hyderabad.

...RESPONDENTS

Revision filed under Section 397 & 401 of CrPC against the judgment
passed in CRI.A.No.96/2007, dated 08.06.2009 on the file of the IV
Additional District & Sessions Judge, Visakhapatnam, confirming the
judgment dated 09.08.2007 passed in CC.No.559 of 2005 on the file of the
Chief Metropolitan Magistrate, Visakhapatnam.

Counsel for the Petitioners : SRI K S S NARAYANA

Counsel for the Respondents : PUBLIC PROSECUTOR (AP)

Counsel for the Respondent : MS P AKHILA NAIDU SPL APP

The Court made the following ORDER :

THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.788 of 2012

ORDER:

Assailing the judgment dated 08.06.2009 in CrI.A.No.96 of 2007 on the file of the Court of learned IV Additional Sessions Judge at Visakhapatnam, confirming the conviction and sentence passed against the accused by the judgment dated 09.08.2007 in C.C.No.559 of 2005 on the file of the Court of learned Chief Metropolitan Magistrate at Visakhapatnam, for the offences under Section 304-A and 337 of Indian Penal Code (hereinafter referred to as "IPC"), the petitioner/accused filed the present criminal revision case under Section 397 r/w.401 of the Criminal Procedure Code, 1973.

2. The revision case was admitted on 24.05.2012 and the sentence imposed against the petitioner was suspended, *vide* orders in CrI.R.C.M.P.No.1232 of 2012.

3. The shorn of necessary facts are that:

- i). On 12.04.2005 at about 08.50 p.m., while P.W.1 returning to home by foot from Sri Krishna Homes Chicken Center, near Velampeta Junction at Visakhapatnam, the accused being driver of the Vignan

School Bus bearing No.AP 70 4427 (hereinafter referred to as "crime vehicle") driven the same in rash and negligent manner, dashed her (P.W.1) from behind, resulting sustained injuries. The accused also hit one Sanyasi Rao (hereinafter called as "deceased"), resulted the deceased sustained injury on the forehead. While undergoing treatment, the deceased succumbed to injuries.

ii). Basing on the Ex.P.1 report of P.W.1, P.W.14-S.I of Police, I Town Traffic Police Station, registered a case in Cr.No.15 of 2007 under Section 338 and 337 of IPC and investigated into and after receipt of death intimation of deceased, altered the section of law into 304(A) IPC.

4. After completion of investigation, P.W.14 laid charge sheet and the same was numbered as C.C.No.559 of 2005 on the file of the Court of learned Chief Metropolitan Magistrate at Visakhapatnam, after full-fledged trial, found the accused guilty of the offences under Section 304-A and 337 of IPC, *vide* judgment dated 09.08.2007, sentenced him to undergo simple imprisonment of one year and also sentenced him undergo simple imprisonment of one month for the respective offences and both the sentences shall run concurrently.

5. Aggrieved by the same, the petitioner/accused preferred an appeal, *vide* CrI.A.No.96 of 2007, before the Court of learned IV Additional Sessions Judge at Visakhapatnam and the same was dismissed, *vide* judgment dated 08.06.2009, by confirming the conviction and sentence passed by the trial Court against the accused.

6. Against the said judgment of the first Appellate Court, the present criminal revision case was preferred by the petitioner/accused.

7. Heard Sri K.S.S.Narayana, learned counsel for the petitioner/accused and Miss P.Akhila Naidu, learned counsel appearing for the respondent-State.

8. Now the point that arises for determination in this revision is "whether there is any manifest error of law or flagrant miscarriage of justice in the findings recorded by the Trial Court as well first Appellate Court?"

9. Sri K.S.S.Narayana, learned counsel for the petitioner/accused submits that the Courts below failed to appreciate the testimony of prosecution witnesses in proper perspective; that there is no material on record to identify the accused as driver of the crime vehicle by the time of incident, thereby, the prosecution utterly failed to prove the offences

alleged against the petitioner; that the Trial Court as well Sessions Court failed to appreciate the material on record in a proper perspective, erroneously convicted the petitioner and the same is liable to be set aside.

10. Per contra, Miss P.Akhila Naidu, learned counsel appearing for the respondent-State submits that the testimony of P.W.1, who is injured coupled with testimony of P.Ws.2 and 3, who are eye-witnesses to the incident, clearly goes to show that P.W.1 and deceased sustained injuries due to rash and negligent driving of the crime vehicle by the accused; that the testimony of P.W.9 shows that petitioner driven the crime vehicle by the time of incident; that the prosecution got marked Ex.P.4 post mortem examination report of deceased through P.W.12, which shows the death of the deceased in the incident; that Ex.P.5 wound certificate of injured coupled with testimony of P.W.13 shows the injuries sustained by P.W.1 in the incident; that the Courts below rightly appreciated the evidence of on record and convicted the petitioner for the said offences; that the prosecution proved the guilt of the accused beyond all reasonable doubt by examining P.Ws.1 to 14 and producing Exs.P.1 to P.10, thereby, the present revision has no merits.

11. In view of the above rival contentions, this Court perused the material available on record. It is not in dispute about the injuries sustained by P.W.1 as well death of the deceased in the incident, involvement of the crime vehicle in the accident.

12. The only contention raised by the petitioner is that he was not the driver of the crime vehicle on the date of alleged incident and there is no negligence on the part of the driver of the crime vehicle in casing the incident.

13. It is the categorical testimony of P.Ws.1 to 3 that while P.W.1 proceeding by foot, the crime vehicle coming in a rash and negligent manner dashed her from behind, resulted she sustained injuries, the crime vehicle also dashed the deceased and P.W.3, resulted the deceased sustained severe injury to the head and cycle of P.W.3 was fully damaged.

14. The testimony of P.W.1 is fully corroborated with the testimony of P.Ws.2 and 3. Nothing incriminating was elicited during cross examination to disbelieve their testimony. Even though it is not the testimony of P.Ws.1 to 3 in particular that they were identify the accused as driver of the crime vehicle by the time of incident, the testimony of P.W.9 Transport In charge of Vignan School is very much categorical that the accused was the driver of the crime vehicle by the time of accident. No contra

material was produced before the Courts below to disbelieve the testimony of P.W.9 as well P.Ws.1 to 3.

15. Furthermore, the testimony of P.W.11 motor vehicle inspector as well Ex.P.3 report issued by him categorically shows that the accident that occurred was not due to any mechanical defect of the crime vehicle. Viewing from any angle, prosecution categorically proved the guilt of the accused for the said offences beyond all doubt.

16. It is settled law as observed by the Hon'ble Supreme Court in ***State of Maharashtra v. Jagmohan Singh Kuldip Sing Anand***¹, that "in exercise of revisional powers, this Court need not undertaken in-depth and minutest reexamination of entire evidence, when there is no error in the findings arrived by the Trial Court as well first Appellate Court."

17. By taking into consideration of above evidence of P.Ws.1 to 4, 9 to 14 and Exs.P.1 to P.10, the trial Court came to conclusion that prosecution proved the guilt of the accused for the offences under Section 304-A and 337 of IPC, which was affirmed by the first Appellate Court.

18. It is settled law that in view of the concurrent findings on facts by the Courts below, this Court being Revisional Court is

¹ (2004) 7 SCC 659

not expected to set aside the same without any material of perversity or manifest error in the findings arrived by the Court below. There is no material before this Court to discard the trustworthiness of prosecution witnesses and there is no material to disbelieve the contents of Exs.P.1 to P.10.

19. All these facts go to show that both the Courts below rightly came to conclusion that there is rash and negligence on the part of the petitioner in causing the incident and that there is no apparent failure on the part of the Courts below in appreciating the evidence on record or to arrive at a conclusion that prosecution proved the guilt of the accused for the said offences. In these circumstances, this Court is of the considered opinion that there is no perversity or flaw in the findings recorded by both the Courts below in convicting the accused for the offences under Section 304-A and 337 of IPC.

20. However, while arguing the matter, learned counsel for the petitioner/accused submits that the accident was occurred on 12.04.2005, the petitioner already undergone two (2) months imprisonment and there are mitigating circumstances to reduce the sentence imposed against the petitioner by the Courts below; that the petitioner is suffering from 90% disability and he is unable to talk and walk without any assistant. In support of

the said ailment, the learned counsel for the petitioner submitted medical record. He brought to the notice of this Court a judgment of the Hon'ble Supreme Court in **Nand Ballabh Pant v. State (Union Territory of Delhi)**², wherein the APEX Court considered the facts and reduced the period of sentence of imprisonment imposed on the appellate from two (2) months to one (1) month rigorous imprisonment.

21. He also brought to the notice of this Court another judgment of Hon'ble Supreme Court in **Jagdish Chander v. State of Delhi**³, wherein also the APEX Court considered the relevant circumstances and reduced the sentence of imprisonment to that of already undergone but increased the sentence of fine from Rs.500/- to Rs.700/-.

22. In this connection, it is relevant to make a mention a pronouncement of the Hon'ble Supreme Court in **Manish Jalan v. State of Karnataka**⁴, wherein the relevant observation of Hon'ble Supreme Court at paragraph Nos.15 and 16 was that "the appellant has been found to be guilty of offences punishable under Sections 279 and 304A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. It was a rash and

² AIR 1977 SC 892

³ AIR 1973 SC 2127

⁴(2008) 8 SCC 225

negligent act simplicitor and not a case of driving in an inebriated condition. Having regard to the all these facts, a lenient view can be taken in the matter and the sentence of imprisonment can be reduced.”

23. Even in **Nagaraj v. Union of India**⁵, the APEX Court at paragraph Nos.18 and 19 held that “the appellant/accused has already undergone one month jail sentence; second, the offence in question neither against the society nor it involves any moral turpitude and nor it has resulted in causing any harm or injury to any human being except causing some damage to the railway property, viz., one railway crossing gate; and lastly, the offence is now 13 years old. In view of the aforementioned three reasons and in the interest of justice, therefore of the considered opinion that the six months jail sentence awarded to the appellate by the three Courts below deserves to be altered to what he has already undergone by the appellant till date.”

24. As well in **Mohinder Singh v. State of Haryana**⁶, the Hon’ble Supreme Court held at paragraph No.2 that “they are not inclined to interfere on the merits of the case and at the same time, they cannot lose sight of fact that the occurrence

⁵2019 (1) ALT (Cri.) 209

⁶2019 (3) Crimes 89

took place more than a quarter of century back and to send the accused in prison after 25 years, would be travesty of justice.”

25. No doubt, in the present case also the incident was said to be happened on 12.04.2005 and by this time eighteen (18) years have already been lapsed; that as per the medical record placed on record, the petitioner is suffering from severe ailments, but there was a loss of one human life and injuries sustained by P.W.1.

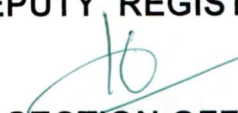
26. Having regard to the above discussion and in view of the above pronouncements of the Hon'ble Supreme Court, this Court is of the considered opinion that the conviction is upheld, however, to meet the ends of justice, the sentence of imprisonment is reduced to that of already undergone by him from one year for the offence under Section 304-A IPC.

27. In the result, the Criminal Revision Case is allowed in part, modifying the sentence of imprisonment imposed against the petitioner/accused to that of already undergone by him instead of one year for the offence under Section 304-A IPC. The rest of the judgment dated 09.08.2007 in C.C.No.559 of 2005 on the file of the Court of learned Chief Metropolitan Magistrate at Visakhapatnam, which was affirmed by the judgment dated 08.06.2009 in CrI.A.No.96 of 2009 on the file of the Court of

learned IV Additional Sessions Judge at Visakhapatnam, shall stand confirmed.

Interim orders granted earlier if any, stand vacated.

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

SD/- V.DIWAKAR
DEPUTY REGISTRAR

SECTION OFFICER

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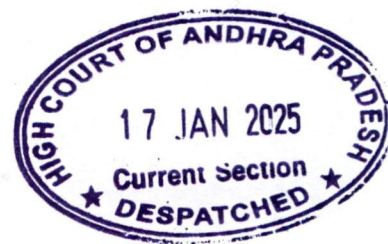
1. The IV Additional District & Sessions Judge, Visakhapatnam.
2. The Chief Metropolitan Magistrate, Visakhapatnam.
3. One CC to Sri. K.S.S. Narayana Advocate [OPUC]
4. One CC to Sri. P. Akhila Naidu, Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court of Andhra Pradesh at Amaravathi. [OUT]
6. THREE CD COPIES
TAC

HIGH COURT

DATED:25/11/2024

ORDER

CRLRC.No.788 of 2012



CRIMINAL REVISION CASE IS ALLOWED IN PART .