

HIGH COURT OF ANDHRA PRADESH**Bench : A.V Ravindra Babu****Date of Decision: 22-02-2024**

CRIMINAL REVISION CASE NO. 378 OF 2012

G. SOMASEKHAR REDDY**...PETITIONER****VERSUS****THE STATE OF A P, THROUGH INSPECTOR****OF POLICE REP BY PP HYD****...RESPONDENT****Legislation:**

Section 304-A, 337, 338 of the Indian Penal Code, 1860 (IPC)

Code of Criminal Procedure, 1973 (Cr.P.C)

Subject: Criminal revision case challenging the conviction and sentence for the offence under Section 304-A IPC, involving a road accident caused by rash and negligent driving resulting in death and injuries.

Headnotes:

Conviction for Offence under Section 304-A IPC – Petitioner, G. Somasekhar Reddy, driver of Diesel Auto, convicted for causing death by rash and negligent driving – Accident resulted in one fatality and multiple injuries – Conviction and sentence by trial court and confirmed by Additional Sessions Judge upheld. [Paras 1, 3, 7, 17]

Prosecution's Case – Accident on 29.11.2006 with overloaded auto, resulting in it turning turtle due to rash driving – Death of one and injuries to several passengers – Testimonies of injured passengers (LWs) and forensic evidence confirm prosecution's case. [Paras 3, 13, 14, 16, 17]

Evidence and Witness Testimonies – Reliance on testimonies of injured passengers – No dispute over identity of accused as the driver during the accident – Accused's denial of rash driving not accepted by Court. [Paras 14, 17, 18]

Application of Legal Principles – Judgment based on facts established by witness testimonies and forensic evidence – Consideration of accused's overloading of vehicle and consequent rash driving leading to the accident. [Paras 13-17]

Decision – Criminal Revision Case dismissed – Conviction and sentence for offence under Section 304-A IPC confirmed – Directions for execution of remaining sentence. [Para 19, 20]

Representing Advocates:

Not specified in the provided document.

Referred Cases:

Not mentioned.

ORDER

A.V Ravindra Babu, J. - Challenge in this Criminal Revision Case is to the judgment in Criminal Appeal No.1 of 2012, dated 03.02.2012, on the file of the Court of Additional Sessions Judge, Hindupur (for short, 'the learned Additional Sessions Judge') whereunder the learned Additional Sessions Judge dismissed the Criminal Appeal, filed by the appellant/accused, confirming the conviction and sentence imposed against him in Calendar Case No.133 of 2007, dated 04.11.2011, on the file of the Court of Judicial Magistrate of First Class, Penukonda, Ananthapur District (for short, 'the trial Court') for the offence under Section 304-A of the Indian Penal Code, 1860 (for short, 'the IPC').

2. The parties to this Criminal Revision Case will hereinafter be referred to as arrayed before the trial Court, for the sake of convenience.

3. The case of the prosecution, in brief, as averred in the charge sheet filed by the Sub-Inspector of Police, Gorantla PS in Crime No.101 of 2006, for the offences under Sections 337, 338 and 304-A of IPC, is that accused is resident of Reddicheruvupalli village of Gorantla Mandal, Ananthapur District. He was the driver of Diesel Auto bearing registration No.AP-02-V-6312 (for short, 'the auto'). On 29.11.2006 at about 10:00 a.m. the accused left Reddicherupalli village along with LW.1 - Beedupalli Adinarayana Reddy, LW.5 - V. Sunkappa, LW.6 - V. Gangarathamma, LW.7 -B.P. Narayanappa, LW.8 - V. Narasimhappa, LW.9 - K. Chenna Krishna Reddy, LW.10 - A. Rami Reddy, LW.11 - R. Venkata Reddy, LW.12 - K. Sreenivasa Reddy, LW.13 - Lalepalli Narayanappa, LW.14 - Karennagari Mangamma, LW.15 - M. Venkataramappa, LW.16 - Boya Krishtappa, LW.17 - Uppara Nagamma, LW.18 - Karennagari Adilakshamma and LW.19 -Boya Lakshmi Narasamma and B. Narasimha Reddy (deceased) to go to Hindupur. He was driving the aforesaid auto. On the way, when they reached near Thimmappakunta on Reddicheruvupalli-Thimmarayunipalli cross-road at

10:30 a.m., he drove the auto in a rash and negligent manner, at high speed, due to which the auto went out of control and he applied sudden brake and on account of the same, it fell down and turned turtle, as a result of which B. Narasimha Reddy fell under the auto and died on the spot due to multiple injuries. LW.1 and LWs.5 to LW.19 sustained grievous and simple injuries. Subsequently, injured were shifted to Government Hospital, Hindupur. LWs.2 to LW.4 - kith and kin of the deceased came to know about the incident, rushed to the spot and found the dead body of deceased. Basing on the complaint of LW.1, a case in Crime No.101 of 2006 for the aforesaid offences was registered and investigated into. LW.25 - SI of Police, Gorantla PS conducted inquest over the dead body of deceased on 29.11.2006. LW.22 - Civil Assistant Surgeon, who conducted autopsy over the dead body of deceased, opined that the deceased died of shock and haemorrhage due to multiple injuries. LW.23 -Deputy Civil Surgeon, Government Hospital, Hindupur who treated all the injured, issued their wound certificates stating that the injuries are simple or grievous as the case may be. LW.24 -Motor Vehicle Inspector, Hindupur inspected the crime vehicle and found that the accident was not occurred due to any mechanical defect of the vehicle. LW.25 - SI of Police arrested the accused on 06.12.2006 and sent him for remand. Hence, the charge sheet.

4. The learned Judicial Magistrate of First Class, Penukonda, took cognizance of the case for the offences under Sections 337, 338 and 304-A IPC. After appearance of the accused and on compliance of Section 207 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C'), the learned Judicial Magistrate of First Class examined the accused under Section 251 Cr.P.C with regard to the allegations in the case of prosecution for which he denied the same, pleaded not guilty and claimed to be tried.

5. During the course of trial, on behalf of the prosecution before the learned Magistrate, PWs.1 to PW.22 were examined and Exs.P-1 to P-22 were marked.

6. After closure of the evidence of prosecution, accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in for which he denied the incriminating circumstances. During his 313 Cr.P.C examination, he put forth a version that on that day, there is a bus scheduled to Hindupur. Though he refused to run the Auto but the passengers with all force boarded the Auto.

7. The learned Magistrate on hearing both sides and after considering the oral and documentary evidence on record, found the accused guilty of the offences under Sections 337, 338 and 304-A IPC, convicted him under Section 255(2) Cr.P.C and, after questioning him about the quantum of sentence, sentenced him to suffer Simple Imprisonment for six (6) months and to pay a fine of Rs.5,000/- in default to suffer Simple Imprisonment for 45 days for the offence under Section 304-A IPC. The judgment did not reveal as to what was the sentence imposed for the offences under Sections 337 and 338 IPC.

8. Felt aggrieved of the aforesaid conviction and sentence, unsuccessful accused therein filed the aforesaid Criminal Appeal before the learned Additional Sessions Judge, which came to be dismissed on merits. Even the learned Additional Sessions Judge made an observation in Criminal Appeal No.1 of 2012 that the trial Court ought to have convicted the accused for the offences under Sections 337 and 338 IPC also. However, the judgment of the learned Magistrate in convicting and sentencing the accused under Section 304-A IPC was confirmed by the learned Additional Sessions Judge. It is to be noted that though there was a finding by the learned Magistrate finding the accused guilty of the offences under Sections 337 and 338 IPC but he was not sentenced. Though this fact was found even before the appellate Court, no remedial measures were taken by the prosecution. At this stage, in the Criminal Revision Case, in the absence of any Appeal, it is not possible now to take recourse to sentence the revision petitioner for the offences under Sections 337 and 338 IPC. Apart from this, even if there was any sentence under Sections 337 and 338 IPC by the learned Magistrate, it could have been only by directing that the sentences for those offences would run concurrently.

9. Under the circumstances, at this stage, the scope of this Revision is only confined to decide as to whether the judgment of the learned Additional Sessions Judge in Criminal Appeal No.1 of 2012, dated 03.02.2012, in confirming the conviction and sentence of the learned Magistrate is sustainable under law and facts and whether there are any grounds to interfere with the same?

10. Firstly, this Court would like to make it clear that the revision petitioner filed the present Criminal Revision Case against the concurrent findings of the learned Judicial Magistrate of First Class, Penukonda and learned Additional Sessions Judge, Hindupur. Hence, the scope of this Criminal

Revision Case is limited as to whether there was any illegality or irregularity in the judgment of the learned Magistrate and learned Additional Sessions Judge so as to interfere with the same?

POINT:

11. Sri V. Sai Kiran, learned counsel, representing Sri N. Ranga Reddy, learned counsel for the petitioner, would contend that the evidence adduced by the prosecution was interested in nature and there was no corroboration to the testimony of the injured witnesses. There was no Test Identification Parade and the accused was not identified by the prosecution witnesses, who witnessed the occurrence. Both the Courts failed to consider all these aspects as such the Criminal Revision Case is liable to be allowed.

12. Smt. D. Prasanna Lakshmi, learned Special Assistant, representing learned Public Prosecutor, would submit that not only PW.1 but there were several witnesses examined by the prosecution who were all injured and they categorically identified the accused as driver of the offending vehicle. Accused allowed the passengers as against the seating capacity and driven the vehicle in a rash and negligent manner and the prosecution placed ample evidence to prove the offence under Section 304-A IPC as such the findings arrived at by the learned Magistrate as well as the learned Additional Sessions Judge needs no interference as such the Criminal Revision Case is liable to be dismissed.

13. It is to be noted that, according to the case of prosecution, PW.1 was one of the injured witness who set the criminal law in motion. PWs.2 to PW.4 were the persons who came to know about the occurrence and PWs.5 to PW.17 were the injured witnesses. PW.18 is the Motor Vehicle Inspector, who inspected the crime vehicle. PW.19 was the person who acted as inquest panchayatdar. PW.20 was the Medical Officer, who conducted autopsy over the dead body of the deceased. PW.21 was the other Medical Officer who examined the injured and issued wound certificates. PW.22 was the SI of Police, who took up the investigation and filed charge sheet in this case.

14. Firstly, this Court would like to deal with the identity aspect of the accused. As seen from the evidence of PW.1, he categorically testified that he along with the deceased and other passengers 13 in number moved in the auto being driven by the accused and the accused drove the auto in a rash and negligent manner and applied the brake suddenly as such it tilted resulting into the death of the deceased. He (PW.1) and others received severe

injuries. During the entire cross-examination, identity of the accused was not in dispute. Apart from this, PWs.5 to PW.17, categorically testified the fact that the accused was the driver of the offending vehicle. Even in 313 Cr.P.C examination also accused admitted the fact that he was the driver of the offending vehicle at the time of accident but he put blame on the passengers on the ground that they all boarded the Auto with force. When that being so, the grounds raised by the Revision Petitioner in the grounds of Revision as well as in the course of hearing that the Investigating Officer did not conduct any Test Identification Parade gathering the injured so as to identify him is nothing but baseless.

15. Apart from this, another ground in the Revision is that Investigating Officer did not choose to give any requisition to the Motor Vehicle Inspector to inspect the crime vehicle. It is also baseless for the reason that there is evidence of PW.18 - MVI, to the effect that at the requisition of SI of Police, he inspected the crime vehicle on 07.12.2016 at 10 a.m. and he found that the accident was not due to any mechanical defect of the Auto. Ex.P-2 is his report. So, the contention canvassed in the grounds of Revision is devoid of merits.

16. The fact that the deceased died in the accident is amply clear by virtue of the evidence of the Medical Officer i.e., PW.20, who conducted autopsy over the dead body of the deceased. He testified that the cause of the death of the deceased was due to shock and haemorrhage on account of the multiple injuries over the body. Apart from this, there was evidence of PW.21 in detail to speak to the fact that he examined the injured in this case and issued wound certificates. His evidence goes to prove that at the request of Police, he examined PW.1 and PWs.5 to PW.17 and issued their wound certificates. The prosecution proved the factum of death of the deceased and receipt of injuries by PW.1 and PW.5 to PW.17.

17. Coming to the rash and negligent act alleged against the accused, the evidence of PW.1 and PW.5 to PW.17 consistently shows that the vehicle was driven in a rash and negligent manner. It is to be noted that there is no dispute that the seating capacity of the Auto, which was driven by the accused, was only 3+1 i.e., three passengers and one driver but the accused loaded 16 passengers into his auto to travel as against the seating capacity.

He had knowledge that if he overloads the auto with such heavy passengers, there would be every possibility for happening of untoward incidents. The evidence on record would reveal that in spite of such overloading of the auto,

he drove the same in a rash and negligent manner and applied sudden brake as such it tilted and turtle. The evidence on record goes to conclude that it was only on account of rash and negligent act of the accused, the accident was occurred resulting into death of the deceased and injuries to PW.1 and PW.5 to PW.17. These were all the finding of facts recorded by the Magistrate as well as learned Additional Sessions Judge. The contention of the revision petitioner/accused in the grounds of revision is nothing but baseless and devoid of merits. The accused wanted to canvass a contention contrary to the voluminous evidence on record. Accused was not supposed to allow such huge number of passengers into his auto. He put forth a version in his 313 Cr.P.C examination that passengers with force boarded in the auto. He never agitated before the injured witnesses that they boarded the auto against his wishes and with all force. So, the version which was put forth by the accused during his 313 Cr.P.C examination was the first time and it was an after thought.

18. Having regard to the above, the findings of facts recorded by the learned Magistrate as well as Additional Sessions Judge are with sound reasons. Both the Courts rightly appreciated the evidence on record in proper perspective and found the accused guilty of the offence under Section 304-A IPC as such concurrent findings made by both the Courts were duly after considering the evidence on record. Absolutely, there are no grounds to make any finding that both the judgments suffer with any illegality or irregularity.

19. In the result, the Criminal Revision Case is dismissed confirming the judgment in Criminal Appeal No.1 of 2012, dated 03.02.2012, on the file of the Court of learned Additional Sessions Judge, Hindupur.

20. The Registry is directed to take steps immediately under Section 388 Cr.P.C to certify the order of this Court along with the trial Court record, if any, to the trial Court on or before 04.03.2024 and on such certification, the trial Court shall take necessary steps to carry out the remaining sentence imposed against the revision petitioner/accused in C.C. No.133 of 2007, dated 04.11.2011, and as confirmed in Criminal Appeal No.1 of 2012, dated 03.02.2012 and to report compliance to this Court. A copy of this order be placed before the Registrar (Judicial), forthwith, for giving necessary instructions to the concerned Officers in the Registry.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

*Disclaimer: Always compare with the original copy of judgment from the official website.