



IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

CRIMINAL REVISION CASE No.412 OF 2007

Between:-

C SHANMUGAM GANGA
S/o C ManikyaM, R/o D No 220, Manchala Street,
Tirupati Town & Mandal, Chittoor District.

... Petitioner

AND

THE STATE OF A P
rep by its Public Prosecutor, High Court of A.P. Hyderabad

...Respondent

DATE OF ORDER PRONOUNCED: 12.05.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes/No
2. Whether the copies of judgment may be marked to Law Reports/Journals? : Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes/No

VENKATA JYOTHIRMAI PRATAPA, J.



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ Criminal Revision Case No.412 of 2007

% DATE: 12.05.2023

Between

C SHANMUGAM GANGA
S/o C ManikyaM, R/o D No 220, Manchala Street,
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... Petitioner

Vs.

THE STATE OF A P
rep by its Public Prosecutor, High Court of A.P. Hyderabad

... Respondent

! Counsel for the petitioner : Sri J.Ugra Narasimha

^Counsel for respondents : Public Prosecutor

< Gist:

> Head Note:

?CASES REFERRED:

1) 2007 CriLJ 1089



THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA
CRIMINAL REVISION CASE No.412 OF 2007

ORDER:

This Criminal Revision Case is preferred against concurrent judgments of conviction and sentence passed against the revision petitioner in Crl. Appeal No.214 of 2005, dated 15.03.2007 on the file of VI Additional District & Sessions Judge (FTC), Tirupathi, Chittor District, by confirming the sentence passed in C.C. No.551 of 2002 dated 21.07.2005 on the file of the II Additional Judicial Magistrate of I Class, Tirupathi.

2. The gravamen of charge against the accused is for the offence punishable under Section 304-A of Indian Penal Code (in short 'I.P.C.') and Section 3 r/w.181 of Motor Vehicle Act (in short 'M.V. Act').

3. Case of the prosecution in brief is that, on 23.07.2003 at about 10.00 P.M., deceased baby Gowri went to attend nature calls beside the road and in front of the house of PW.1. PW.2 – A.Nirmala Jyothi is mother of the girl, PW.1 – A.Vajram is the mother-in-law of PW.2. PW.1 was standing in front of their house on the main road itself and with a view to return to her house, while she was crossing the road, the accused drove the Auto bearing No.AP 03 V 3383 with high speed in rash and negligent manner and hit the girl, due to which she sustained bleeding injuries on her head and right leg.



PW.1 and others took the injured girl to SVIMS Hospital. She died at about 11.00 A.M. while undergoing treatment. Basing on the statement of the grandmother of the child i.e. PW.1, case was registered against the accused for the offence punishable under Section 304-A of I.P.C., vide Ex.P7.

4. After registering case, S.I. of Police K.Venugopal – PW.7 proceeded to the scene of offence, prepared rough sketch, vide Ex.P8, observed scene of offence under panchanama, vide Ex.P3 and found the crime vehicle at the scene. On the next day, he conducted inquest over the body of the deceased in the presence of the mediator - PW.3 under Ex.P2 panchanama. The owner of the auto produced the accused before the police. The Motor Vehicle Inspector issued report that there are no mechanical defects of the vehicle in the occurrence of the accident. To substantiate the case of the prosecution, PW.5 to PW.7 are the witnesses examined. Ex.P1 to Ex.P8 were the documents marked before the trial Court. In defence, accused did not choose to adduce any evidence but he pleaded innocence of the offence.

5. After hearing both the counsel and on appreciation of the evidence on record, the learned trial Judge found the accused guilty for the offence punishable under Section 304-A of I.P.C and Section 3 r/w.181 of M.V. Act and sentenced to undergo simple imprisonment for a period of 6 months and also to pay a fine of Rs.300/- for the offence punishable U/s.304-A of I.P.C. and in default to suffer simple imprisonment for a period of one



month and further to pay fine of Rs.200/- for the offence punishable U/s.3 r/w.181 of M.V. Act and in default to suffer simple imprisonment for 15 days.

6. Aggrieved by the impugned judgment of the trial Court, accused carried the matter in appeal before the IV Additional District & Sessions Judge (FTC), Tirupati vide Crl. Appeal No.214/2005, wherein the Appellate Court dismissed the appeal confirming conviction and sentence imposed against the accused.

7. Aggrieved and dissatisfied with the concurrent judgments, the accused preferred the present revision challenging validity and correctness of the impugned judgments on the grounds that,

- i) The Courts below grossly erred in not observing the vital aspect of the matter that the deceased girl suddenly rushed on to the road and came in front of the auto and fell down.
- ii) There is no rash and negligent driving on the part of the accused.
- iii) Identity of the accused is not properly established.
- iv) No independent witness were examined to prove the guilt of the accused.
- v) No Test Identification Parade was conducted.

8. Heard Sri J.Ugra Narasimha, learned counsel for revision petitioner and the learned Public Prosecutor. Having heard the submissions of both the



counsel, the point that would emerge for determination in this petition is that,

Whether the Courts below exercised the jurisdiction erroneously or failed to exercise the jurisdiction which is vested? Whether the impugned judgment of conviction and sentence passed against the accused is erroneous or any interference is warranted in the revision or not?

9. Before going to discuss the point framed herein, it is relevant to extract Section 304-A of I.P.C.

[304A. Causing death by negligence.--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

10. In light of the legal provision referred to supra, firstly, the burden is on the prosecution to establish the identity of the driver i.e. the accused was the driver at the relevant point of time and then that, the accused drove the vehicle in rash and negligent manner resulting the accident wherein the deceased sustained injuries and died.

Identification of the driver

11. According to PW.7, the owner of the auto produced the accused before him on the next date of the incident, thereby, he identified the accused and arrested him and produced before the Court for sending him to



judicial custody. It is pertinent to mention that the owner of the vehicle was shown as Accused No.2 in the case. The prosecution says, PW.1 and PW.2 are the direct witnesses to the occurrence. PW.1 in her evidence deposed that A1 is the driver of the auto at the time of the incident. In the cross examination, she reiterated her stand stating that, she identified the driver at the time of accident since electric tube lights existed in front of her house. According to PW.1, on hearing her cries, PW.2 came out, so PW.2 is not an eye witness to the occurrence and immediately after the occurrence she came out of the house. PW.2 is the mother of the deceased. She also identified the accused No.1 stating that he was the driver at the time of the accident. Therefore, the evidence of PW.1, PW.2, PW.7 would establish that accused No.1 was the driver at the relevant point of time.

Rash & Negligent Act

12. Next, the prosecution has to prove that the accused drove the vehicle in rash and negligent manner resulting in the accident. The evidence of PW.1 is that on 23.07.2002 at about 10.00 PM, she took the deceased for nature calls and when they were returning one auto came from Bhavani Nagar side in high speed in a negligent manner and dashed against the deceased. As seen from Ex.P1, this is the statement given by PW.1 who is the maternal grandmother of the deceased Gowri.



13. The contents of Ex.P1 would show that at about 10.00 P.M., the deceased girl went to nature calls in front of their house near the canal and when returning to the house, she was hit by an auto and sustained injuries. She got shifted to hospital and died at 11.00 P.M. Ex.P1 does not disclose that the grandmother escorted the small girl Gowri who is 6 years old but in the evidence of PW.1, it shows as if she escorted the baby girl for attending nature calls. If the version of PW.1 that she escorted the small child is true, the accident would not have been happened. They might have sent the girl by herself to attend the nature calls. When a 6 years old child suddenly runs across the road, no driver can avoid the accident. The Courts below lost sight of the very fundamental thing to be established by the prosecution i.e., rash and negligent driving on the part of the accused.

14. The observation of the learned trial Judge as to the rash and negligent driving that the accused that he failed to place any material to show that there is no rash and negligence is unwarranted. In ***Abdul Subhan Vs. State (NCT of Delhi)***¹, it was held that,

“It was observed that the point to be established is that the act of the accused was responsible for the death and that such act of the accused must have been rash and negligent although it did not amount to culpable homicide. As observed in Badri Prasad (supra), to establish the offence either under Section 279 or Section 304A, the commission of a rash and negligent act has to be proved. The

¹ 2007 CriLJ 1089



only distinction being that in Section 279, rash and negligent act relates to the manner of driving or riding on a public way while the offence under Section 304A extends to any rash and negligent act falling short of culpable homicide. As correctly observed by the learned judge, the rashness or negligence which needs to be established is something more than a mere error of judgment. There is also a distinction between rashness and negligence in that, rashness conveys the idea of doing a reckless act without considering any of its consequences whereas negligence connotes want of proper care. The case in *Badri Prasad (supra)* was one, where, akin to the facts of the present case, apart from a bare statement made by a witness that the vehicle was being driven at a high-speed, there was no attempt made to establish that there was any rash and/or negligent act on the part of the driver of the vehicle.”

15. In the light of the discussion referred *supra*, this Court is of the view that the Courts below erroneously exercised their jurisdiction and found the accused guilty for the offence punishable under Section 304-A of I.P.C. It is not uncommon to see that whenever any accident occurs, the police register the case against the driver of the big vehicle or in case of any death against the driver of the offending vehicle irrespective of the act of rash and negligence on his part. It is the sacred duty of the Court to examine such aspects in the actual scenario to come to the conclusion while convicting the accused guilty for the offence punishable under Section 304-A of I.P.C.



16. In the circumstances of the case, the Criminal Revision Case is allowed setting aside the impugned order and the petitioner is acquitted.

As a sequel thereto, miscellaneous petitions, if any, pending shall stands closed.

VENKATA JYOTHIRMAI PRATAPA, J.

Date : 12.05.2023

Note: L.R. Copy to be marked

B.O./PND