



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

[3367]

**TUESDAY ,THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE**

**PRESENT
THE HONOURABLE SRI JUSTICE V SRINIVAS**

CRIMINAL REVISION CASE NO: 1352/2016

Between:

Vemagiri Raju @ Yesu, E.g.dt.,

...PETITIONER

AND

The State Of Ap Rep Pp

...RESPONDENT

Counsel for the Petitioner:

N SUBBA RAO

Counsel for the Respondent:

PUBLIC PROSECUTOR (AP)

The Court made the following:

JUDGMENT:

Assailing the judgment dated 02.06.2016 in CrI.A.No.358 of 2014 on the file of the Court of learned III Additional Sessions Judge, East Godavari at Kakinada, confirming the conviction and sentence passed against the accused by the judgment dated 25.09.2014 in C.C.No.87 of 2011 on the file of the Court of learned Special Mobile Judicial Magistrate of First Class at Kakinada, for the offence under Section 304-A 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 07.06.2016 and the sentence imposed against the petitioner was suspended, *vide* order in CrI.R.C.M.P.No.2019 of 2016.

3. The shorn of necessary facts are that:

i). On 21.03.2011 at about 09.00 p.m., while one Karri Ramarao (hereinafter called as ‘deceased’) proceeding on his bicycle, when he reached in-front of Power Control Office, outskirts of 3rd A.P.S.P. at Kakinada, the accused being driver of the Auto bearing No.AP 05 TA 3407 (hereinafter referred to as “crime auto”), drove the same in a rash and negligent manner at high speed, dashed against the deceased cycle, resulted the deceased fell on the road, received severe injuries and died on the spot.

ii). Basing on the Ex.P.1 report of P.W.1, P.W.9-Inspector of Police, Sarpavaram Police Station, registered a case in Cr.No.66 of 2011 under Section 304-A of IPC and investigated into.

4. After completion of investigation, P.W.9 laid charge sheet and the same was numbered as C.C.No.87 of 2011 on the file of

the Court of learned Special Mobile Judicial Magistrate of First Class at Kakinada, after full-fledged trial, found the accused guilty of the offence under Section 304-A of IPC, *vide* judgment dated 25.09.2014, sentenced him to undergo simple imprisonment of one year and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment of three (3) months.

5. Aggrieved by the same, the petitioner/accused preferred an appeal, *vide* CrI.A.No.358 of 2014, before the Court of learned III Additional Sessions Judge, East Godavari at Kakinada and the same was dismissed, *vide* judgment dated 02.06.2016, 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 A.S.K.S.Bhargav, learned counsel representing Sri N.Subbarao, 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 A.S.K.S.Bhargav, learned counsel representing Sri N.Subbarao, learned counsel for the petitioner/accused submits that the incident occurred was not due to negligence on the part of the accused; that the prosecution witnesses did not identify the accused as driver of the crime auto by the date of incident; that no identification parade was conducted by the investigating agency; that the prosecution failed to prove the offence 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.Ws.2 to 4 categorically shows the rash and negligent driving of the accused in causing the incident, resulted death of the deceased; that the testimony of P.Ws.1 and 7 shows that the accused is the driver of the crime auto by the date of incident; that the testimony of P.W.6 coupled with Exs.P.3 and P.7 show that the deceased died due to the injuries sustained in the incident; that the Courts below rightly appreciated the evidence

of on record and convicted the petitioner for the said offence; that the prosecution proved the guilt of the accused beyond all reasonable doubt by examining P.Ws.1 to 9 and producing Exs.P.1 to P.7, thereby, the present revision has no merits. In support of the above contentions, she relied upon the judgment of Hon'ble Supreme Court in ***Dana Yadav @ Dahu v. State of Bihar***¹.

11. In view of the above rival contentions, this Court perused the material available on record. It is not in dispute about the death of the deceased in the incident and involvement of the crime auto.

12. It is the contention of the learned counsel for the petitioner/accused that the accident occurred was not due to the rash and negligent driving of the accused and that no prosecution witness identified the accused as driver of the crime auto by the date of incident.

13. It is the categorical testimony of P.W.2 that on 21.03.2011 at about 09.00 a.m., near Atchimpeta Junction, A.P. Transco Controlling Office, while he was proceeding from Atchimpeta Junction on his bicycle, he witnessed the accident, resulted death of the deceased. He saw the driver of the crime auto

¹ (2002) 7 SCC 295

bearing No.AP 5 TA 3407 at the time of accident. He identified the accused as driver of the crime vehicle by the date of incident. Even though P.Ws.3 and 4 did not identify the driver of the crime vehicle, but, they categorically testified about the rash and negligent driving of the crime auto in causing the incident. Nothing was elicited during cross examination to disbelieve their testimony.

14. Furthermore, it is the categorical testimony of P.W.7, who is owner of the crime auto, that on 21.03.2011 one Yesu (accused) took his auto. On 28.03.2011, the said Yesu informed him that his auto met with an accident. On coming to know the said accident, he took the said Yesu to Police Station along with vehicle record and got him surrendered. He can identify the said Yesu who is present in the Court.

15. It is also contention of the learned counsel for the accused that no identification parade was conducted, which would vitiate the entire prosecution case. The said contention has no legs to stand in view of the categorical observation made by the Hon'ble Supreme Court in Dana Yadav (referred to supra) by referring its earlier pronouncements in ***Dharamvir v. State of M.P.***², ***Mehtab Singh v. State of M.P.***³ and ***Sajjan Singh v.***

² (1974) 1 SCC 150

Emperor⁴ that “if an accused person is already well known to the witnesses, an identification parade would, of course, be only a waste of time.”

16. Having regard to the above, it is categorical that if the accused person was identified by the prosecution witnesses before the Court as driver of the crime vehicle by the date of incident, no separate identification parade is required. In the present case on hand, the testimony of P.Ws.2 to 4 coupled with testimony of P.W.7 proved the offence committed by the accused beyond all doubt. Thereby, this Court has no reason to disbelieve the prosecution case.

17. It is settled law as observed by the Hon’ble Supreme Court in **State of Maharashtra v. Jagmohan Singh Kuldip Sing Anand**⁵, 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.”

18. By taking into consideration of above evidence of P.Ws.1 to 9 and Exs.P.1 to P.7, the trial Court came to conclusion that prosecution proved the guilt of the accused for the offence

³ (1975) 3 SCC 407

⁴ AIR 1945 Lah 48; 46 Cri.LJ 550

⁵ (2004) 7 SCC 659

under Section 304-A of IPC, which was affirmed by the first Appellate Court.

19. It is settled law that in view of the concurrent findings on facts by the Courts below, this Court being Revisional Court is 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.7.

20. 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 offence. 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 offence under Section 304-A of IPC.

21. However, while arguing the matter, learned counsel for the petitioner/accused submits that the accident was occurred on 21.03.2011, he is having family depending on him and there

are mitigating circumstances to reduce the sentence imposed against the petitioner by the Courts below. 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)***⁶, 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.

22. He also brought to the notice of this Court another judgment of Hon'ble Supreme Court in ***Jagdish Chander v. State of Delhi***⁷, 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/-.

23. 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***⁸, 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

⁶ AIR 1977 SC 892

⁷ AIR 1973 SC 2127

⁸(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.”

24. Even in ***Nagaraj v. Union of India***⁹, 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.”

25. As well in ***Mohinder Singh v. State of Haryana***¹⁰, 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

⁹2019 (1) ALT (CrI.) 209

¹⁰2019 (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.”

26. No doubt, in the present case also the incident was said to be happened on 21.03.2011 and by this time thirteen (13) years have already been lapsed, but there was a loss of one human life.

27. 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 six (6) months from one year for the offence under Section 304-A IPC.

28. In the result, the Criminal Revision Case is allowed in part, modifying the sentence of imprisonment imposed against the petitioner/accused to that of six (6) months instead of one year for the offence under Section 304-A IPC. The rest of the judgment dated 25.09.2014 in C.C.No.87 of 2011 on the file of the Court of learned Special Mobile Judicial Magistrate of First Class at Kakinada, which was affirmed by the judgment dated 02.06.2016 in CrI.A.No.358 of 2014 on the file of the Court of learned III Additional Sessions Judge, East Godavari at Kakinada, shall stand confirmed. The petitioner/accused is

directed to surrender before the Court of learned Special Mobile Judicial Magistrate of First Class at Kakinada to serve the remaining sentence imposed against him, if not, the learned Magistrate concerned shall take steps against the petitioner/accused.

Interim orders granted earlier if any, stand vacated.

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

JUSTICE V.SRINIVAS

Date: 04.03.2025
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THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.1352 of 2016

(J U D G M E N T)

DATE: 04.03.2025

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