
(2009) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 247 of 2004

Ala Anji Reddy

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 304A

Citation : (2009) 2 APLJ 188

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : N. Sreedhar Reddy, for the Appellant; Additional Public Prosecutor, for the Respondent

Judgement

B. Chandra Kumar, J.—This revision case is directed against the judgment dated 30.01.2004 passed in CrI.A. No. 63 of 2001 on the file of the VII Additional Sessions Judge, (FTC) Nizamabad at Bodhan, wherein the said appeal filed by the petitioner herein was dismissed and the conviction for the offence punishable u/s 304-A of IPC and sentence to suffer simple imprisonment for a period of six months and to pay a fine of Rs. 1000/-, in default to suffer simple imprisonment for one month in C.C. No. 373 of 1999, dated 24.07.2001, passed by the Judicial First Class Magistrate Court, Bodhan, was confirmed.

2. The brief facts of the case are as follows:

The gravamen of the charge against the petitioner is that on 12.10.1999 at about 12 noon at Jankampet Village, he drove the tanker bearing No. AP-7-T-6189 in a rash and negligent manner at high speed and dashed against Kum. Gadda Savitha, (hereinafter referred as "deceased") aged about 13 years, near Gandhi Statue, Jankampet, resulting in bleeding injuries. The father of the deceased reached the place of accident immediately and shifted to the District Head Quarters Hospital, Nizamabad and then lodged a written complaint to the police at about 6.00 PM on the same day alleging that the driver of the tanker drove it

in a rash and negligent manner and dashed against the deceased and that the deceased died in the hospital while undergoing treatment.

3. Basing on the complaint, PW.6 - A.S.I of Yedpally Police Station registered a case in Crime No. 129 of 1999 for the offence punishable u/s 304-A of I.P.C. Later, he recorded the statement of PW.1 in the police station and proceeded to the Government Hospital and examined PWs.2 and 3 and recorded their statements and held inquest over the dead body of the deceased in the presence of PW.4 and other panchayatdars and prepared Ex.P.2-inquest report. PW.7 conducted postmortem examination over the dead body of the deceased. Ex.P.4 is the postmortem examination. PW.5 is a Motor Vehicle Inspector, Bodhan, who inspected the vehicle and issued Ex.P.3 report.

4. After completion of investigation, charge sheet was filed against the accused. The accused pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution examined PWs.1 to 7 and marked Exs.P.1 to P.4. None were examined on behalf of the accused, but Ex.D.1 a portion in Section 161 Cr.P.C statement of PW.3 was marked.

6. The only contention of the learned Counsel for the petitioner is that there was no proper identification of the petitioner, and that the prosecution witnesses, who did not give descriptive particulars of the petitioner when they were examined by the police, identified him for the first time before the Court and therefore, their evidence cannot be relied upon. It is also his contention that it is unnatural to say that PW.2 would go to 200 mts. and see the petitioner and then come back to the place of accident and take the deceased to the hospital.

7. Learned Public Prosecutor supported the case of the prosecution and submitted that PWs.2 and 3 are natural witnesses and that they had seen the petitioner/accused at the place of accident and that they had sufficient opportunity to observe the petitioner and therefore, their evidence cannot be brushed aside.

8. The evidence let in is as follows:

PW.1 is the father of the deceased. While he was returning from his fields at about 10.10 noon, one Sanju of his Village informed him that his daughter Savitha had met with an accident near Gandhi Statue, Jankampet. Then, PW.1 ran to the place of accident and shifted the deceased to the Nizamabad Hospital, where she succumbed to injuries at 03.30 PM. He lodged Ex.P.1 complaint with the police. PW.1 deposed that the tanker bearing No. 6179 was stopped by the public near the check post, which is about 200 yards from the place of accident. PW.2-G.Chinna Sailoo claims to be an eyewitness. According to him, at about 12.00 noon he and Yemba Gangaram were having tea in a hotel near Gandhi Statue, a tanker came from Bodhan side at high speed on wrong side and dashed against the daughter of PW.1, aged about 7 or 8 years, while she was approaching the road after purchasing provisions in a kirana shop. He deposed

that the deceased sustained multiple injuries and that himself, PW.1 and others shifted the deceased to the District Head Quarters Hospital, Nizamabad. He also deposed that the public on the road stopped the tanker and dragged out the accused and took him to village Chavidi. PW.2 deposed that he stated to the police that he could identify the driver if shown and that he had given the descriptive particulars of the petitioner/accused to the police. The suggestion that the petitioner is no way concerned with the accident was denied.

According to PW.3, he had witnessed the incident and corroborated the evidence of PW.2 in all respects. PW.4 is the mediator at the time of holding inquest over the dead body of the deceased. PW.5 is the Motor Vehicle Inspector, who inspected the vehicle and opined that the accident was not due to any mechanical defects in the vehicle. PW.6 is the Investigating Officer in this case. PW.7 is the doctor, who conducted postmortem examination over the dead body of the deceased and found five injuries on the dead body of the deceased and opined that the cause of death was shock and hemorrhage of large intestine and urinal bladder rupture.

9. The only witness who had identified the petitioner is PW.2. His case is that immediately after the accident the tanker was stopped at a distance and the public dragged out the accused from the tanker and took him to the village Chavidi. It is not clear from the evidence of PW.2 as to what had happened subsequently to the petitioner.

10. The case of the prosecution is that the petitioner/accused was arrested on 14.10.1999. If at all the version of the Investigating Officer is true that the petitioner/accused was arrested on 14.10.1999, then the same contradicted version of PW.2 that the public dragged out the accused from the tanker and took him to the village chavidi. It is not the case of PW.2 or any other witness that the accused was not handed over to the police when the accused was caught red handed and taken to village chavadi, in all probabilities would have been handed over to the police. But, for the reasons best known to the police, they showed the arrest of the petitioner on 14.10.1999. This creates suspicion about the identity of the accused by PW.2 in the Court. PW.6 - IO admitted in the cross examination that PW.2 did not give the descriptive particulars of the driver nor arrested that he could identify the driver. If at all PW.2 had seen the accused at the place of accident he would have given the descriptive particulars of the accused to the police. It is not the case of PW.2 that he had any prior acquaintance with the accused. PW.6 further categorically stated that PW.2 did not state that the villagers detained the driver in grama chavadi. Whether the petitioner was caught red handed by the villagers or not assumes importance, because in case where an offender is caught red-handed, there is no need to hold test identification parade. In a case where there is no prior acquaintance with the offender and the witnesses claimed that they have seen the offender, then the investigating officers should ascertain the descriptive particulars of the offender from the witnesses who claimed to have seen him and hold the

identification parade as early as possible. If the witnesses identify the offender in the test identification parade, then their subsequent identification in the Court lends support from their earlier identification of the offenders in the test identification parade. Of course, it is not necessary that in each and every case identification parade should be conducted. It all depends on the facts and circumstances of each case what is to be seen is whether the witnesses had sufficient opportunity to observe the accused or not. Where the accused and witnesses were together for considerable time, the witnesses may identify the accused in the Court and even in the absence of test identification parade their evidence might be accepted. The investigating officers who present the case as it is and register the case immediately when a report of cognizable offence is given and show the arrest of the accused as and when an offender is arrested, the evidence of truthful and reliable witnesses would be in consonance with the prosecution case. The IO should stick to the truth with regard to the time and date of reporting of cognizable offence and the arrest of the accused, otherwise the version of truthful witnesses becomes unreliable because the same would be contradicting the prosecution version due to the delay on the part of the investigating officers in registering of a case and not showing arrest when the accused is actually arrested.

11. In view of the above discussion, it is clear that the Courts below have not considered the aspect that the petitioner was arrested on 14.10.1999. The contention of PW.2 that the petitioner was caught red handed by the public on the date of accident, becomes unbelievable. When an offender is not caught red handed, the evidence of witnesses with regard to the identity of the accused for the first time before the Court loses its importance. In view of the above discussion, I hold that the judgments of the Courts below are not based on record and contrary to the evidence on record and perverse. Therefore, they are set aside.

12. In the result, the Criminal Revision Case is allowed by setting aside the judgments of the Courts below. The petitioner/accused is found not guilty of the offence u/s 304-A IPC and he is acquitted thereof. The bail bonds of the accused shall stand cancelled. The fine amount paid by the petitioner/accused shall be refunded.