
(2002) 03 AP CK 0024
In the Andhra Pradesh High Court

Erlapalli Prakasham

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 304A, 337, 338, 7

Citation : (2002) 3 ACC 227 : (2002) 1 ALD(Cri) 621 : (2002) 2 ALT(Cri) 4

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Judgement

S.R.K. Prasad, J.—This criminal revision case is directed against the judgment in Crl. Appeal No. 54 of 1997 dated 6.7.2000 passed by the learned Sessions Judge, Khammarn confirming the conviction and sentence imposed against him by the Judicial Magistrate of First Class, Yellandu in C.C. No. 524 of 1995 to undergo rigorous imprisonment for six months for the offence u/s 304-A, I.P.C., two months for the offence u/s 338, I.P.C., one month for the offence u/s 7, I.P.C. and also imposition of fine of Rs. 100/- for the offence u/s 252 r/w Section 177 of the Motor Vehicles Transport Rules, 1989 in default to suffer S.I. for fifteen day.

2. The case of the prosecution in brief is that on 19.2.1995 at about 4.45 a.m. due to the rash and negligent driving of the Matador van bearing No. AP 20 T 2388 by the revision petitioner-accused, it turned turtle and fell into a ditch. As a result of which Poddaji Nagamani, Mogili Rambabu and Nancherla Bhagyamma died and 10 other persons sustained injuries. After completion of investigation, the revision petitioner-accused was charge-sheeted for the offences under Sections 304A, 338 and 337, I.P.C. and Section 252 r/w Section 177 of the Motor Vehicles Transport Rules, 1989.

3. The prosecution examined P.Ws. 1 to 17 and got marked Ex. PI to Ex. P28 in support of its case. No oral or documentary evidence was adduced on behalf of the revision petitioner-accused.

4. On appreciation of oral and documentary evidence, the Trial Court found the revision petitioner-accused guilty of the offences under Sections 304-A, 338 and 337 of the Indian Penal Code and also u/s 252 of the Motor Vehicles Transport Rules, 1989 and accordingly convicted and sentenced him to undergo the sentences as stated supra.

5. Aggrieved by the said conviction and sentence, the revision petitioner-accused carried the matter in appeal to the learned Sessions Judge at Khammam in CrI. Appeal No. 54 of 1997. The learned Sessions Judge dismissed the said appeal confirming the conviction and sentence awarded by the learned Judicial Magistrate of First Class, Yellandu. Aggrieved by the said confirmation of conviction and sentence, the present revision is preferred.

6. The only ground raised and canvassed by the learned Counsel for the revision petitioner is that there was no rash and negligent driving on the part of the revision petitioner-accused and that the accident took place due to the sudden arrival of the bullock-cart on to the road across the vehicle.

7. The point that has to be considered in this revision case is as to whether there is any rash and negligent driving on the part of the revision petitioner-accused, which led to the accident and which resulted in three deaths and injuries to several persons.

8.1 have carefully perused the judgment of the learned Magistrate as well as the learned Sessions Judge. A close scrutiny of the appendix of evidence with meticulous care discloses that the post-mortem examination report is marked by consent. The Radiologist report is also marked without producing the X-ray films. Therefore, this Court has to consider about the effect of non-examination of the Doctor who conducted the post-mortem examination and marking the said documents by consent. Section 294, Cr.P.C. has been introduced in the Code of Civil Procedure, 1973 for the first time. Section 294, Cr.P.C. reads as follows:

No formal proof of certain documents --(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the Pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or others proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may in its discretion, require such signature to-be proved.

9. It is clear from Section 294, Cr.P.C. that the documents have to be filed with a list before the Court either by the prosecution or by the accused and the Pleader

for prosecution or the accused has to be called upon to admit or deny the genuineness of each such document. When the genuineness is not disputed, such a document may be read in evidence in any inquiry, trial or other proceeding under the Code without proof of the signature of the person to whom it purports to be signed. But the Court is given power to insist upon proof of signature in certain contingencies. The contingencies for insisting on proof have been left to the discretion of the Court. Unfortunately, though this section has been intruded in the Code of Criminal Procedure, 1973, the Form under which the list of documents have to be mentioned is not prescribed by the State Government till now. This is the only provision which empowers the Court to dispense with the formal proof of certain documents before admitting them. The Court has to adhere to the provision of Section 294, Cr.P.C. and mark the documents. The question of marking the documents by consent does not at all arise under the Criminal Procedure Code, since the valuable right of the accused will be taken away.

10. At the outset, I state that both the Courts below have failed to look at the matter in right perspective and proper angle. The marking of the post-mortem report by consent is against law. If that is discarded, the death of the person and the cause of death is not proved as per law. That shows that the offence u/s 304-A, I.P.C. is not proved in this case as contemplated under law.

11. Coming to the fact of sustaining of injuries, witness after witness were examined and the Radiologist produced his report. But unfortunately, the X-ray reports have not seen the light of the day. In the absence of production of X-ray films, the Radiologist's report loses its weight and no value can be attached for his testimony. If the Radiologist's report is ignored, the only evidence available on record is the evidence of the injured. The injured have categorically stated that they were travelling in the van and the revision petitioner-accused drove the vehicle in a rash and negligent manner, which led to the vehicle turning turtle and fallen into the ditch, which resulted in sustaining of injuries. Insofar as the appreciation of their evidence is concerned both the Courts below have given concurrent finding (sic.) and I do not find any reason to differ from the appreciation of evidence as it is based on sound reasoning. As already stated, the Radiologist has not produced the X-ray films and in the absence of the same, it cannot be said that there are grievous injuries and it must be taken that the injured have sustained simple injuries. Insofar as the offence u/s 304-A, I.P.C. is concerned, it cannot be said to have been proved as per law. Therefore, it must be held that the prosecution has been able to make out the offence u/s 337, I.P.C and Section 252 r/w Section 177 of the Motor Vehicles Transport Rules only.

12. This is a classic case where the prosecution has been conducted in a hasty knowing fully well that several deaths have occurred as well as several people have been injured. I hope and trust that the Director of Prosecution will give appropriate directions to the Public Prosecutors to bestow their attention in conducting the criminal cases which are grave in nature.

13. For the foregoing reasons, the conviction and sentence recorded by the learned Magistrate and as confirmed by the learned Sessions Judge for the offence u/s 337,I.P.C. and u/s 252 r/w Section 177 of Motor Vehicles Transport Rules are to be confirmed and the conviction and sentence for the offence under Sections 304-A, I.P.C. and Section 338,I.P.C. are liable to be set aside.

In the result, the conviction and sentence for the offence under Sections 304-A, I.P.C. and Section 338, I.P.C. imposed by the Trial Court and as confirmed by the learned Sessions Judge are set aside and the conviction and sentence u/s 337, I.P.C. and u/s 252 r/w Section 177 of the Motor Vehicles Transport Rules are confirmed. The period of remand is ordered to be given set off. The criminal revision case is accordingly ordered.