

APHC010709062014



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

[3560]

WEDNESDAY, THE EIGHTH DAY OF APRIL  
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA**

**CRIMINAL REVISION CASE NO: 1347/2014**

**Between:**

1. GANGALA SRINIVASULU, NELLORE DT., S/O SUBBAIAH, AGED 34 YEARS, R/O MUTYALAPADU, CHILLAKURU (V&M), NELLORE DISTRICT.

**...PETITIONER**

**AND**

1. STATE OF A P REP BY P P, Rep. by its Public Prosecutor, High Court at Hyderabad

**...RESPONDENT**

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to file this Criminal Revision Case against the Judgment dt. 23.06.2014 passed in CrI.A. No. 101 of 2013 on the file of IV Additional District and Sessions Judge, Nellore confirming the sentence and conviction passed by the learned Additional Judicial Magistrate of First Class, Kavali, Nellore District in C.C. No. 360 of 2007 dt. 28.05.2013 sentencing and convicting the petitioner herein to undergo six months imprisonment and also to pay a fine of Rs. 1,000/- for the offence punishable U/s 304-A of IPC and further fine of Rs. 1,000/- and Rs. 5,00/- for offences u/s 338 and 337 of IPC with a default clause

**IA NO: 1 OF 2014(CRLRCMP 2105 OF 2014)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

dispense with the filing of the certified of order dt.28-05-2013 passed in C.C.N0.360 of 2007 by the learned Additional Judicial Magistrate of First Class, Kavali, Nellore District and to pass

**IA NO: 2 OF 2014(CRLRCMP 2166 OF 2014**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the judgment dated 23.06.2014 passed in Crl.A.No. 101/2013 on the file of the IV Additional District and Sessions Judge, Nellore confirming the sentence and conviction passed by the learned Additional Judicial Magistrate of First Class, Kavali, Nellore District in Cc.No.360/2007 dated 28.05.2013 by granting bail to the petitioner in the interest of justice

**Counsel for the Petitioner:**

1.M RAMALINGESWARA REDDY

**Counsel for the Respondent:**

1.PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA**

**CRIMINAL REVISION CASE NO: 1347/2014**

**ORDER:**

1. The instant criminal revision case has arisen out of conviction and sentence against the petitioner under Sections 304-A, 338 and 337 of the Indian Penal Code (for short, 'I.P.C.'). There are concurrent findings by the learned trial court and the appellate court.

2. **BRIEF FACTS OF THE PROSECUTION CASE:**

a) On 07.03.2007, the accused (petitioner herein), being the driver of a lorry transporting white stones, with some coolies, sat on top of the lorry along white stones. At the time of driving, the accused drove the vehicle in a rash and negligent manner and slept. Resultantly, the lorry dashed to milestone on the right side of the road and turned turtle towards right side. Due to which, two coolies who were sitting on top of the lorry with white stones was fell under the white stones and died on the spot. P.Ws. 1 to 5, who were travelling in the cabin of the lorry along with the accused driver, sustained minor injuries. P.W.1, being the cleaner of the lorry, reported the matter to police. Upon which, a case was registered and investigation was conducted.

b) During trial, prosecution has examined as many as eleven (11) witnesses and eight (08) documents are exhibited. After hearing the parties, learned trial court has found petitioner guilty for offence under

sections 304-A of IPC and imposed simple imprisonment for six (06) months with fine of Rs.1,000/-. The learned appellate court dismissed appeal and confirmed the order of conviction. Hence, present revision.

3. **SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:**

- a) It is argued on behalf of the petitioner that the petitioner was not the driver of the offending vehicle at the relevant point of time. He was falsely implicated in the case due to prior enmity between owner of the vehicle and the petitioner, on account of the demand of salary; the fact of the prosecution case cannot be believed as P.Ws. 2 to 4, who are stated to be eyewitnesses to the accident, did not support the prosecution case.
- b) The learned counsel further submits that there are several discrepancies in the evidence of the prosecution, thereby recording conviction and sentence is doubtful; if petitioner was driver of offending vehicle, he would have sustained injuries along with other inmates of the lorry. But in this case, petitioner was not driving the offending vehicle. Thus, order of conviction and sentence is not sustainable.
- c) Lastly, it is submitted that petitioner is more than 50 years of age and has been dealing with this criminal case since the year 2007. Thus, a lenient view may be adopted by imposing fine instead of conviction and sentence. .

4. **SUBMISSIONS OF THE LEARNED ASSISTANT PUBLIC PROSECUTOR APPEARING FOR THE STATE:**

- a) The learned Assistant Public Prosecutor submits that the prosecution sufficiently bring home charge against present petitioner. The petitioner was the driver of offending lorry and his rash and negligent driving was well proved from the evidence of P.Ws.1 and 5. Though P.Ws.2 to 4 did not support the prosecution case, evidences of P.Ws.1 and 5 are corroborative in nature. The involvement of the petitioner as the driver of the offending vehicle is thus well proved from the evidence of P.Ws.1 and 5.
- b) Further, the Investigating Officer and the witnesses who conducted inquest over the dead body has also supported the prosecution case. At this juncture, it cannot be said that the petitioner was not involved in the accident or was not driving the vehicle at the relevant point of time. P.W.1 has categorically stated that the petitioner drove the vehicle in a rash and negligent manner and he slept while driving. P.W.5 supported the version of P.W.1 saying that the petitioner was driving the lorry in a zigzag manner. He further submits that involvement of the petitioner as driver cannot be ruled out. Therefore, the order of conviction and sentence cannot be set aside.
5. Heard Sri I.V.N. Raju, learned counsel representing Sri M.Ramalingeswara Reddy, learned counsel appearing for the petitioner

and Sri K.Sandeep, learned Assistant Public Prosecutor appearing for the State.

6. **OBSERVATION OF THIS COURT:**

- a) It appears that, in order to bring home the charge against the petitioner under Section 304-A of I.P.C., the prosecution must have to prove that the petitioner, being the driver of the lorry, was driving the vehicle in a rash or negligent manner and that as a result thereof, two persons has expired. In this case, it has been alleged that P.Ws.1, 2, 4 & 5 were inside the cabin of the lorry while the petitioner was driving the vehicle. P.W.1 has stated that, at the time of driving, the petitioner slept. Reasons thereof, lorry dashed a milestone on the right side of the road and turned turtle to the right side.
- b) It is the case of the defence that petitioner was not involved in the accident and was not driving the vehicle at the relevant point of time. Upon a careful reading of the evidence of the prosecution witnesses (P.Ws.), it appears that the accident occurred due to the lorry driver slept while driving. When the driver of lorry slept during driving, accident may be occurred or lorry may hit the mile stone of the road.
- c) The evidence further suggested that P.Ws.1, 2, 4, and 5 were travelling inside the cabin of the offending lorry. Surprisingly, all the prosecution witnesses sustained minor injuries, except the petitioner, who is alleged to be the driver.

- d) It is the submission of the learned Assistant Public Prosecutor that the petitioner, being the driver, slept and suddenly he came to know that the lorry is out of control, thus, he was conscious to avoid any injury.
- e) In this case, if the lorry is turned turtle right side, all the persons in the cabin would have fallen over the driver. Moreover, when the driver was running the lorry in sleeping condition, he could not be so conscious to stop the lorry or saved himself from getting injured. Surprisingly in this case, the driver of the offending vehicle was not surrendered before the Court voluntarily, but he was arrested. It is the case of the petitioner that he was not driving the lorry at the relevant point of time. Though P.Ws.1 and 5 stated that the petitioner was driving the lorry, but in this juncture, as the petitioner could not sustain any injury, the presence of the petitioner becomes doubtful.
- f) Same doubt was appeared before the learned appellate court. In paragraph 20 of the judgment, learned appellate court has opined that the driver would have certainly received injuries. However, the learned appellate court is of the view that, from the evidence of P.Ws.1 and 5, who are the material witnesses to the accident, were travelling in the offending vehicle, the involvement of the petitioner is acceptable.
- g) This is a court of revision. While both the courts are of the view that the petitioner was driving the lorry at the relevant point of time and observations of the learned trial court are on the basis of evidence of P.Ws.1 and 2, there may have another view of accepting that the

petitioner has not received any injury may not have driving the lorry at the time of accident. But both learned trial court and learned appellate court accepted that involvement of the petitioner as driver of the lorry on the basis of the evidence of P.Ws.1 and 5.

- h) When in a case, two views are possible and both the courts below have adopted a view, this court being a the revisional court has to accept the view adopted by court below unless the view is so perverse to accept. In this case, in my view, learned appellate court has decided the issue correctly; though there may be certain other chances, where another view may be accepted. But, in this case, I cannot accept the submission of the learned counsel for the petitioner to hold that the petitioner was not driving the vehicle at that point of time. It further appears that rash and negligent driving of the petitioner has been well proved by the evidence of P.Ws.1 and 5 and other witnesses, including the Motor Vehicle Inspector and the Investigating Officer. Thereby, I find no justification to interfere with the findings of the learned trial court as well as the learned appellate court. The order of conviction and the sentence passed by the learned trial court and the appellate court are hereby confirmed.
- i) However, it appears that the present petitioner is more than 50 years old and has been roaming around the courts for 20 years. The petitioner has already suffered mental agony and hardship for a long period. The punishment under Section 304-A of I.P.C. provides imprisonment of

either description, or fine, or both. In this case, the learned trial court as well as the appellate court punished the petitioner for 6 months simple imprisonment as well as a fine of Rs. 1,000/- for the offence punishable under Section 304-A of I.P.C. In these circumstances, it is fit to observe that the period of simple imprisonment as ordered by the learned trial court is hereby converted into a fine of Rs.2,000/- (rupees two thousand only) more. The petitioner is directed to deposit the fine amount before the trial court within four (04) weeks from the date of this order. The fine amount of Rs. 2,000/- shall be in addition to the fine already imposed.

7. Accordingly, the criminal revision case is disposed of.
8. Pending miscellaneous petition(s), if any, shall stand closed.

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**JUSTICE SUBHENDU SAMANTA**

Dt.08.04.2026  
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