

SUPREME COURT OF INDIA

Renu Kunta Mallaiah

Vs.

State of A.P

CrI.A.No.1026 of 2001

(Dr.Arijit Pasayat and Dr.Mukundakam Sharma JJ.)

16.10.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court dismissing the Criminal Revision Petition filed by the appellant. The accused faced trial for alleged commission of offences punishable under Section 304-A of the *Indian Penal Code, 1860* (in short the 'IPC'). The learned Judicial Magistrate First Class, Jagtial, found the accused guilty and convicted him to sentence to undergo rigorous imprisonment for one year and a sum of Rs.4,000/- was imposed as fine with default stipulation. In appeal the first appellate Court reduced the sentence to six months but maintained the fine and the default stipulation. The revision petition as noted above was dismissed.

2. Prosecution version in a nutshell is as follows:

“On 9.11.1994 at about 1800 hours, at Mallial when Thota Satish was playing by the side of the Road and when Gandla Buchaiah (PW-11) was also present there at that time, the accused herein drove the A.P.S.R.T.C. bus bearing No. AP9Z-6991 with high speed in a rash and negligent manner and dashed against Thota Satish, due to which, the said Satish received bleeding injuries and while undergoing treatment, the said Satish died in Civil Hospital, Jagtial. On the complaint given by Gandla Buchaiah, a case in Cr. No. 82 of 1994 under Section 304-A I.P.C., was registered against the accused and copies of F.I.R. were sent to all concerned. Subsequently, the police investigated the case and charge- sheet was laid against the accused U/s 304-A I.P.C., and after appearance of the accused before the Lower Court, he was supplied with the documents and was also examined, for which he pleaded not guilty of the charge u/s 304-A I.P.C. To substantiate the above charge, the prosecution examined PWs. 1 to 11 and Exs. P1 to P11 were marked. After closure of the prosecution evidence, the accused was examined u/s 313 of the Code of Criminal Procedure, 1973 (In short 'Cr.P.C.') regarding the incriminating circumstances that are appearing

against the accused and he simply stated either "false" or "does not know" for all the questions put to him. He did not state anything about manner of accident at least for the last question: Do you wish to say anything about this case." he simply stated that there is nothing to say and he did not explain being the driver of the A.P.S.R.T.C. bus as to how exactly, the accident took place. Exs. D1 and D2 are the contradictory portions in Section 161 Cr.P.C. statement of PW. 5 and Ex. D3 is the contradictory portion in Section 161 Cr.P.C. statement of PW11. Except this, neither any defence witness has been examined on behalf of the accused, nor the accused himself came into the box to explain as to how the accident took place.

Stand of the appellant before the trial court, First Appellate Court and the High Court was that the evidence on record does not establish that he was driving the vehicle stated to be involved in the occurrence or that he was driving the vehicle in a rash or negligent manner. Same was reiterated in this appeal.”

3. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court and the High Court. PWs 4, 5 & 11 were stated to be eye witnesses. PWs 4 & 11 stated that at the time of occurrence it was dark. Interestingly in the First Information Report the name of the accused appellant and bus No. was indicated. PW 11, the informant stated that PWs 4&5 told him the number of bus. He admitted that he is illiterate and does not know the number of the bus. Interestingly, PWs 4&5 did not state that they had either noted the number of bus or had told the PW 11 about the number of bus. It was the accepted case of PWs 4, 5 & 11 that the offending vehicle after the occurrence sped away from the place. If that was so, it is improbable that PWs 4&5 could have noted the long number of the bus. The investigating officer has stated that he could know the details of the bus after about four days of the occurrence. Both PWs 4 & 5 stated that the bus was being driven on the left side. But PW 11 stated that the bus was being driven on the right side. The evidence on record shows that the bus hit the victim on the right side and the boy was on the middle of the road. PWs 4&5 have stated that they did not say anything about the accident to PW 11. Contrary to this PW 11 stated that the bus No. was given to him by PWs 4&5. Evidence of PW 11 is also to the extent that he was with the victim boy at the spot of occurrence. Strangely he has not suffered any injury. In contrast PWs. 4&5 have stated that there was no body near the child. In view of the aforesaid unsatisfactory nature of evidence, the prosecution cannot be said to have established the accusations. The conviction as recorded by Courts below is set aside.

4. Appeal is allowed.