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RENU KUNTA MALLAIAH

v.

STATE OF A.P.

(Criminal Appeal No. 1026 of 2001)

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OCTOBER 16, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ]

*Penal Code, 1860:*

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*s. 304-A – Accident caused by a bus – Resulting in death of a boy – Conviction of the driver by trial court – Upheld by appellate court, and High Court in revision – HELD: In view of unsatisfactory nature of evidence, prosecution failed to establish the accusations – Conviction set aside – Evidence.*

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The appellant-accused was prosecuted for commission of an offence u/s 304-A IPC on the allegations that he, while driving an A.P.S.R.T.C. bus in a rash and negligent manner, at about 1800 hrs on 9.11.1994 dashed the bus against a boy as a result of which the victim received bleeding injuries and died in the hospital. The trial court convicted the accused. The appellate court, and the High Court in the revision petition, upheld the conviction.

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In the instant appeal the accused reiterated his stand taken before the trial court, the appellate court and the High Court that the evidence on record did not establish that he was driving the offending vehicle or that he was driving the vehicle in a rash and negligent manner.

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Allowing the appeal, the Court

HELD: 1.1 PWs 4 and 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 number was indicated. PW 11, the informant, stated that

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PWs 4 and 5 told him the number of the bus. He admitted that he was illiterate and did not know the number of the bus. But, PWs 4 and 5 did not state that they had either noted or told PW-11 the number of the bus. It was the accepted case of PWs 4, 5 and 11 that the offending vehicle after the occurrence sped away from the place. In that event, it is improbable that PWs 4 and 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. [para 3] [515-E-F]

1.2 Both PWs 4 and 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. Evidence of PW 11 is also to the extent that he was with the victim boy at the spot. Strangely, he has not suffered any injury. In contrast, PWs. 4 and 5 have stated that there was nobody near the child. [para 3] [515-G-H; 516-A]

1.3 In view of the unsatisfactory nature of evidence, the prosecution cannot be said to have established the accusations. The conviction as recorded by the Courts below is set aside. [para 3] [516-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1026 of 2001

From the final Judgment and Order dated 17.1.2000 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Revision Petition No. 780 of 1999

C. Mukund, Jinendra Jain, Shashank Sharma, Anueesh Garg, Vandana Anand and Bijoy Kumar Jain for the Appellant.

Prabhakar Rao Voruganti, D. Bharathi Reddy and Fatima for the Respondent.

The Judgment of the Court was delivered by

A **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  
B Code, 1860 (in short the 'IPC'). The learned Judicial Magis-  
trate 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 stipu-  
C lation. 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:

D 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 ac-  
cused herein drove the A.P.S.R.T.C. bus bearing No. AP9Z-  
6991 with high speed in a rash and negligent manner and  
E dashed against Thota Satish, due to which, the said Satish re-  
ceived 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 Sec-  
tion 304-A I.P.C., was registered against the accused and cop-  
ies of F.I.R. were sent to all concerned. Subsequently, the po-  
F lice investigated the case and charge-sheet was laid against  
the accused U/s 304-A I.P.C., and after appearance of the ac-  
cused before the Lower Court, he was supplied with the docu-  
ments 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,  
G the prosecution examined PWs. 1 to 11 and Exs. P1 to P11  
were marked. After closure of the prosecution evidence, the ac-  
cused was examined u/s 313 of the Code of Criminal Proce-  
dure, 1973 (In short 'Cr.P.C.') regarding the incriminating cir-  
cumstances that are appearing against the accused and he sim-  
ply stated either "false" or "does not know" for all the questions  
H 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

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- A 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.

R.P.

Appeal allowed.