

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**  
**CRIMINAL REVISION CASE No.299 of 2009**

**ORDER:**

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, dated 19.02.2009, passed in CrI.A.No.165 of 2007 by the V Additional Sessions Judge (III FTC) at Miryalaguda, whereby, the judgment, dated 06.12.2007, passed in C.C.No.274 of 2006 by the Judicial Magistrate of First Class at Huzurnagar, convicting the petitioner/accused of the offence under Section 304A of IPC and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for three months, was confirmed.

2. I have heard the submissions of the learned counsel for the petitioner/accused, learned Assistant Public Prosecutor representing the respondent/State and perused the record.

3. The case of the prosecution, in brief, is that on 19.06.2006 at about 14:45 hours, while the deceased-Satyanarayana Reddy was proceeding from new bus stand, Nereducharla Village on his motorcycle bearing registration No.AP 24H 4259 and reached near the house of one Sakkubai, the petitioner/accused, being driver of the RTC bus bearing No.AP 11Z 2932 came in high speed in a rash

and negligent manner in the same direction and dashed against the deceased, due to which the deceased fell under the engine of the bus, which dragged him about 100 feet distance resulting in his instantaneous death.

4. On receipt of the complaint presented by P.W.1, who is the brother of the deceased, a case in Crime No.85 of 2006 was registered against the petitioner/accused for the offence under Section 304A of IPC. The police, after investigation, laid charge sheet before the trial Court. The case was taken on file by the trial Court of the offence under Section 304A of IPC. On appearance of the petitioner/accused, copies of documents were supplied to him, as required under Section 207 of Cr.P.C. and he was examined under Section 251 of Cr.P.C. explaining the contents of the charge for which, he pleaded not guilty.

5. To substantiate its case, the prosecution got examined P.Ws.1 to 11 and got marked Exs.P1 to P9. P.W.1 is the complainant, P.Ws.2 to 5 are stated to be eye witnesses to the occurrence of the subject accident. P.W.6 and L.W.11-Sridhar are panch witnesses to the scene of offence panchanama. P.W.7 and L.W.12-G.Venkanna are panch witnesses to the inquest panchanama. P.W.8 is also stated to be an eye witness. P.W.9 is

the doctor, who conducted autopsy over the dead body of the deceased and issued PME report under Ex.P6. P.W.10 is the first investigating officer. P.W.11 is another investigating officer, who laid charge sheet before the trial Court, on completion of investigation. Ex.P1 is the complaint lodged by P.W.1. Ex.P2 is the signature of P.W.5 on the statement recorded under Section 161 Cr.P.C. Ex.P3 is the scene offence panchanama. Ex.P4 is the rough sketch. Ex.P5 is the inquest panchanama. Ex.P6 is the PME report. Ex.P7 is the FIR. Ex.P8 is the driving licence. Ex.P9 is the MVI report.

6. When the petitioner/accused was confronted with the incriminating evidence appearing against him and examined under Section 313 of Cr.P.C. he denied the same. No evidence, either oral or documentary has been adduced on behalf of the petitioner/accused.

7. The Court below, after adverting to the submissions made by both sides and the evidence placed on record, found the petitioner/accused guilty of the offence under Section 304A of IPC and sentenced him as stated supra. Aggrieved by the same, the petitioner/accused preferred an appeal in CrI.A.No.165 of 2007 before the Court below and the Court below, after re-appreciating

the evidence on record, confirmed the judgment passed by the trial Court. Aggrieved by the same, the petitioner/accused preferred this Criminal Revision Case.

8. Learned counsel for the petitioner/accused would contend that the essential ingredients of the offence under Section 304A of IPC are not made out against the petitioner/accused. Without there being any cogent and convincing evidence on record, the trial Court recorded conviction against the petitioner/accused for the offence under Section 304A of IPC, which was confirmed by the Court below. There are several discrepancies and contradictions in the evidence of the prosecution witnesses. P.W.4 categorically stated in his evidence that there is a school near the scene of offence. P.W.10 also deposed in his evidence that there was no possibility of the vehicles going at high speed at the scene of offence. For an act to squarely fall under Section 304A of IPC, such an act must be reasonably capable of resulting in death, which the perpetrator of the act takes the risk of causing and also there must be absence of *mens rea*. Mere carelessness is not sufficient to prosecute a person for the offence under Section 304A of IPC. Further, negligence and rashness, to be punishable in terms of Section 304A of IPC, must be attributable to a state of

mind, wherein the criminality arises because of no error in judgment, but after deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. The prosecution failed to prove the guilt of the petitioner/accused beyond all reasonable doubt for the offence under Section 304A of IPC and ultimately prayed to allow the Criminal Revision Case as prayed for.

9. Per contra, learned Assistant Public Prosecutor would contend that there is cogent and convincing evidence on record that the subject accident occurred on 19.06.2006 due to the rash and negligent driving of the driver of the RTC bus leading to the death of the deceased. There is evidence of P.Ws.2 to 5 and 8, who are direct witnesses to the occurrence of the subject accident, which substantiates that the petitioner/accused drove the bus in rash and negligent manner resulting in death of the deceased on the spot. Further, the credibility of the investigation and conducting scene of offence panchanama and inquest panchanama cannot be doubted in view of the supporting evidence of the mediators. The medical evidence on record coupled with the evidence of the eye witnesses and investigating officers supported by documentary evidence under Exs.P3, P4, P6, P7 and P8,

clinchingly prove that the subject accident occurred due to the rash and negligent driving of the driver of the RTC bus. Both the Courts below appreciated the evidence on record in proper perspective and rightly found the petitioner/accused guilty of the offence under Section 304A of IPC. The contentions raised on behalf of the petitioner/accused are untenable and ultimately prayed to sustain the order under challenge and dismiss the criminal revision case.

10. In view of the above rival contentions, the point that arises for determination in this Criminal Revision Case is as follows:

“Whether the judgment, dated 19.02.2009 passed in Crl.A.No.165 of 2007 by the V Additional Sessions Judge (III FTC) at Miryalaguda, is legally sustainable?”

**POINT:**

11. The petitioner/accused is convicted of the offence under Section 304A of IPC, which reads as follows:

304A. Causing death by negligence.--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The essential ingredients of Section 304A of IPC are that (1) There must be the death of a person; (2) The death must be

caused by the act of the accused; (3) The death must be caused due to any rash or negligent act of the accused; and (4) the act of the accused must not amount to culpable homicide. Section 304A of IPC applies when there is a direct link between the rash or negligent act of the accused to the death of the person that is in question. The act must result in the immediate cause for the death. A conscientious reading of the words used in [Section 304A](#) of IPC makes it clear that the act must be reasonably capable of resulting in death, which the perpetrator of the act takes the risk of causing and also that the *mens rea* must fall short of it.

12. The nature and scope of [Section 304A](#) of IPC was discussed in detail by the Hon'ble Apex Court in [Naresh Giri v. State of M.P.](#)<sup>1</sup>, wherein it was held as follows:

"8. [Section 304-A](#) carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under [Section 299](#) or murder under [Section 300](#). If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, [Section 304-A](#) has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or

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<sup>1</sup> (2008) 1 SCC 791

negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of [Section 304-A](#) must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. [Section 304-A](#) discloses that criminality may be that apart from any *mens rea*, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analyzed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3) as follows:

"1. General principles of the law of negligence.- Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of



foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

13. Considering the facts of the present case, I deem it apposite to also refer to the observations made by the Hon'ble Apex Court in **State of Karnataka Vs. Satish**<sup>2</sup>, wherein, the importance of the prosecution establishing guilt of the accused in a case of rash and negligent driving was discussed. It was held as follows:

"4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur".

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<sup>2</sup> (1998) 8 SCC 493

14. Keeping in mind the above settled legal position, if we look at the facts of the case, P.W.1 is the elder brother of the deceased. Admittedly, he is not an eye witness to the subject accident. P.Ws.2 to 4 are stated to be the eye witnesses to the subject accident. All of them consistently held that the offending RTC bus dashed against the motorcycle of the deceased and dragged him to some extent. P.W.5 deposed that about one year back, the subject accident took place in front of his house. He came out of the house after hearing loud noise and noticed a bus and a person with injuries. He also deposed that he has not observed the speed of the bus and who is the driver of the said bus. In his cross-examination, P.W.5 denied the suggestion that he stated before the police that the subject accident took place due to rash and negligent driving of the accused. P.W.6 is a panch witness to Ex.P3-scene of offence panchanama and Ex.P4-rough sketch. He testified that police conducted the scene of offence panchanama and prepared rough sketch in his presence. P.W.7 is the witness for Ex.P5-inquest panchanama. He testified that the police conducted inquest over the dead body of the deceased and he along with L.W.12-Venkanna signed on the inquest panchanama.

15. The evidence of P.W.8 assumes importance. He was the conductor of the subject RTC bus. He deposed that he knows the

petitioner/accused who was working as driver in his depot. He further deposed that on 19.06.2006, himself and the petitioner/accused started in service bearing No.AP11Z 2932 at Manuguru by 8:15 A.M. to go to Miryalaguda. After reaching Nereducherla centre, on the request of the passengers, they stopped the bus in order to get down the passengers. Thereafter, the petitioner/accused started the bus and immediately, applied sudden break. P.W.8 deposed that he got down from the bus and noticed that a motorcyclist fell in front of the bus. Immediately, he was shifted to hospital in a rickshaw by the persons present there. Later, he came to know that the said motorcyclist died. P.W.8 in his cross-examination categorically stated that the bus was running slowly and that the motorcyclist fell in front of the bus by losing control over the motorcycle. Further, the evidence of P.W.10-Assistant Sub-Inspector of Police also assumes importance. In his cross-examination, it was elicited that there is no possibility of vehicle going in high speed at the scene of offence.

16. On a careful analysis of the evidence of the prosecution witnesses, it cannot be held that the act of the petitioner/accused was reasonably capable of resulting in death of the deceased. In

the facts and circumstances of the case, it cannot be said that the negligence of the petitioner/accused was so patent to import *mens rea*. Mere carelessness is not sufficient to prosecute a person for the offence under Section 304A of IPC. Had the petitioner/accused did not stop the bus immediately after the subject accident, it would have been altogether different act. It has come up in the evidence of P.W.8 that the petitioner/accused applied sudden break and he got down from the bus and noticed that a motorcyclist fell in front of the bus. A careful scrutiny of the evidence placed on record reveals that none of the ingredients are made out to attract the offence under Section 304A of IPC against the petitioner/accused. Despite the fact that a complaint has been lodged, cognizance was taken and charge sheet was filed, there is nothing to proceed against the petitioner/accused since at the inception itself when the act alleged does not attract the penal clause under Section 304A of IPC and the same has been reinforced.

17. Further, merely because the offending vehicle was being driven at a high speed does not bespeak of either "negligence or rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to

what they meant by "high speed". High speed is a relevant term. It would be for the prosecution to bring on record material to establish as to what do they mean by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of proof everything essential to the establishment of the charge against the accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary proved. Criminality is not to be presumed, has to be of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on record, no presumption of rashness or negligence could be drawn against the accused. On a cumulative reading of the evidence placed on record, there being no cogent and convincing evidence to establish negligence or rashness on the part of the petitioner/accused in driving the offending bus, it cannot be said that the view taken by both the Courts below in convicting the petitioner/accused is a plausible view. The prosecution failed to prove the guilt of the petitioner/accused beyond all reasonable doubt for the offence under Section 304A of IPC. I, therefore, hold that both the Courts below erred in convicting the petitioner/accused of the offence under Section 304A of IPC. The order under challenge is illegal, improper and

irregular warranting interference of this Court in exercise of Revisional Jurisdiction under Section 397 and 401 of Cr.P.C. The petitioner/accused is entitled for acquittal of the offence charged against him.

18. Accordingly, the Criminal Revision Case is allowed by setting aside the judgment, dated 19.02.2009 passed in CrI.A.No.165 of 207 by the learned V Additional Sessions Judge (III FTC), at Miryalaguda. Consequently, the petitioner/accused stands acquitted of the offence under Section 304A of IPC. Bail bonds of the petitioner/accused, if any, shall stand discharged. Fine amount, if any, paid by the petitioner/accused shall be refunded to him.

Miscellaneous applications pending, if any, shall stand closed.

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**JUVVADI SRIDEVI, J**

Date:22.09.2022  
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