

APHC010459792009



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

[3369]

THURSDAY, THE SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL REVISION CASE NO: 1721/2009

Between:

1.MARELLA KOTESWARA RAO, S/O VEERA BRAHMAM, DRIVER, R/O
EDLAPADU VILLAGE & MANDAL, GUNTUR DISTRICT.

...PETITIONER

AND

1.THE STATE OF AP REP BY ITS PP HYD, rep. by its Public Prosecutor,
High Court of AP, at Hyderabad.

...RESPONDENT

Revision filed under Section 397/401 of Cr.P.C., praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to present this Memorandum of Crl.R.C., to this Hon'ble Court against the Crl.A.No.344 of 2008, dt. 13.10.2009 on the file of the Court of the VIII Addl. Dist. Judge, Guntur District.

IA NO: 1 OF 2009(CRLRCMP 2386 OF 2009)

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 sentence in Crl.A.No.344 of 2008 on the file of the Court of the VIII Addl. Dist. Judge, Guntur District, and to release the petitioner on bail, pending disposal of the above Crl.R.C., before this Hon'ble Court.

Counsel for the Petitioner:

1.MD SALEEM

Counsel for the Respondent:

1.PUBLIC PROSECUTOR

The court made the following ORDER:

1. The present Criminal Revision Case, filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), is preferred by the petitioner/accused, challenging the judgment dated 13.10.2009 passed in Crl.A.No.344 of 2008 by the learned VIII Additional District Judge, Guntur (for short, the '1st Appellate Court'). By the said judgment, the 1st Appellate Court partly allowed the appeal and modified the conviction recorded by the learned Additional Junior Civil Judge, Chilakaluripet (for short, the 'Trial Court') in C.C.No.149 of 2008 dated 05.11.2008. Specifically, the conviction for the offence under Section 338 of the Indian Penal Code, 1860 (for short, 'IPC') was altered to one under Section 337 IPC.

2. The parties to this Criminal Revision Case will hereinafter be referred to as described before the Trial Court for the sake of convenience.

3. The brief facts of the case of the prosecution are that:

The accused, driver of auto No. AP 07 W 5868 caused an accident on 24.02.2008. After completing their coolie work, PWs.1, 3, and others boarded the auto to return to their village. Around 5:00 PM, near the Madigapalli tank in Unnava village, the driver drove recklessly at high speed, lost control and overturned the auto. PWs.1 and 3 were injured and shifted to private hospitals in Guntur through an ambulance. The Head Constable at Arundelpet L&O PS, Guntur (LW.5), recorded PW.3's statement at 11:50 PM the same day and forwarded it to PW.4 for jurisdictional action. On 26.02.2008, PW.4 registered the case as Cr.No.18 of 2009 at Edlapadu PS and conducted the investigation. Upon completion, PW.4 submitted the charge sheet to the Additional Junior Civil Judge, Chilakaluripet.

4. The learned Trial Court took cognizance under Sections 337 and 338 of the IPC against the accused. Upon the accused's appearance, copies of relevant documents were provided as required under Section 207 of the Cr.P.C. The accused was then examined under Section 251 of the Cr.P.C., where the substance of the accusation was explained to him in Telugu regarding the offences under Sections 337 and 338 of the IPC. The accused denied the allegations and pleaded not guilty, claiming his innocence.

5. During the course of the trial, on behalf of the prosecution, PWs.1 to 4 and documents Exs.P1 to P6 were marked. After the closure of the prosecution evidence, the accused was examined under Sec.313 Cr.P.C., explaining the incriminating evidence deposed by prosecution witnesses to the accused in Telugu, on that the accused denied the incriminating evidence and stated that he had no defence evidence. Hence, the defence evidence was closed.

6. The Trial Court on hearing both sides and on considering the oral as well as documentary evidence, found the accused guilty of the offence punishable under section 338 of IPC as stated supra *vide* its judgment, dated 05.11.2008 in C.C.No.149 of 2008 and convicted the petitioner/accused and sentenced him to suffer Simple Imprisonment for four (04) months for the offence under Section 338 of IPC and also to pay a fine of Rs.1000/- and in default to suffer Simple Imprisonment for one month.

7. Aggrieved by the conviction and sentence passed by the Trial Court, the unsuccessful accused filed Criminal Appeal No.344 of 2008 before the 1st Appellate Court. The 1st Appellate Court partly allowed the appeal, modifying the conviction for the offence under Section 338 of the IPC in C.C.No.149 of 2008 to Section 337 of the IPC. However, the sentence of imprisonment imposed by the Trial Court for the offence under Section 338 of the IPC was upheld for the offence under Section 337 of the IPC. Dissatisfied with the same, the appellant has filed the present Criminal Revision Case, challenging

the judgment of the learned Sessions Judge in Criminal Appeal No.344 of 2008.

8. During arguments, learned counsel for the petitioner stated that he is pressing the revision petition only insofar as the sentence imposed by the Trial Court is concerned, but the petitioner is not challenging the conviction under Section 337 of the IPC. The petitioner's counsel further submits that the sentence imposed may be modified. It is contended that the petitioner was the sole breadwinner of his family. Furthermore, the petitioner has no prior criminal record.

9. Now, the point that arises for consideration is:

Does the sentence passed by the 1st Appellate Court warrant any interference?

POINT:

10. As seen from the record, the 1st Appellate Court imposed the sentence of simple imprisonment for four months on the accused for the offence under Section 337 of the IPC, along with a fine of Rs. 500/-. The 1st Appellate Court's judgment also indicates that the accused has already paid the fine amount.

11. It is a well-established principle of sentencing policy that the punishment imposed must be proportionate to the gravity of the proven offence. The sentence should be neither nominal nor excessive. What constitutes a proportionate sentence must be determined on a case-by-case basis, having due regard to the specific facts and circumstances of each matter.

12. While ordering the sentence, the facts and circumstances of each of the case before the court has to be appreciated on its own merits and the circumstances in one criminal case cannot be taken as a binding precedent in so far as the order on sentence in another case, unless the facts and circumstances of each of the instances corresponds to each other or exactly

tallies. But always, the court must bear in mind the cardinal principle that the sentence ordered must be proportionate to the gravity of the proven guilt, and it should not be excessive or exorbitant.

13. True that in the instant case, the petitioner / accused has been found guilty of an offence punishable under Section 337 of the IPC. However, it is pertinent to note that there is no allegation that the accused was under the influence of liquor or any other substance impairing his ability to drive at the time of the accident. The act was one of rash and negligent driving simpliciter, and not one involving inebriation, a factor which, if present, would have constituted an aggravated and despicable offence warranting a stricter and more severe sentence.

14. The sentence for an offence under Section 337 of the IPC may consist of imprisonment for a term of up to six months, or a fine of Rs.500/-, or both, with the extent of the sentence left to the court's discretion. However, in 1973, the Indian Parliament introduced a limitation on this judicial discretion by inserting sub-section (4) into Section 354 of the Code of Criminal Procedure. This provision mandates that when a court imposes a sentence of imprisonment for less than three months for an offence punishable with imprisonment of one year or more, the court must record its reasons for such a sentence. This amendment clarifies that imprisonment should be the norm, while imposing only a fine should be the exception in such cases.

15. In light of the observations made above, and considering that the offence under Section 337 of the IPC carries a maximum punishment of six months, this court finds merit in the submission of the learned counsel for the petitioner that a fine may be imposed at the court's discretion in lieu of sentencing the petitioner to imprisonment.

16. In *Hazara Singh V. Raj Kumar*¹, the Hon'ble Supreme Court held that:

¹ (2013) 9 SCC 516

"10. ... it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict."

"11. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

17. When the petitioner/accused was questioned by the Trial Court regarding the quantum of sentence, he stated that he has two female children and is responsible for their welfare.

18. As seen from the record, the offence in question occurred on 24.02.2008, nearly 17 years ago, and the petitioner was approximately 35 years old at the time of the accident. Upon consideration of the material on record, it is evident that the petitioner/accused is a first-time offender and has no prior criminal record or antecedents. He is not reported to have ever misused a concession of bail/suspension of sentence.

19. Considering the nature of the offence committed by the accused, his age, economic condition, and the significant passage of time since the incident, this court is inclined to assess the implications of imprisonment at this juncture. Incarceration after such a prolonged period could severely disrupt the petitioner's personal life and adversely impact the welfare of his family, who may be dependent on him. Accordingly, this court finds that the sentence imposed under Section 337 of the IPC is disproportionately severe and may be deemed excessive. In light of these factors, this court views that this case presents exceptional circumstances warranting judicial intervention, particularly concerning the sentence of imprisonment. Given the absence of any prior criminal record, this court concludes that the sentence imposed on the accused under Section 337 of the IPC should be reconsidered as

excessive. Therefore, this court deems it necessary to interfere with the impugned judgments solely to the extent of setting aside the imprisonment imposed by both Courts, while upholding the 1st Appellate Court's judgment to impose a fine of Rs.500/-, which adequately serves the interests of justice. Point is answered accordingly.

20. In the result, the criminal revision case is ***partly allowed***. The conviction of the petitioner/accused under Section 337 of the IPC, as upheld by the learned 1st Appellate Court, is confirmed. However, the sentence is modified as follows:

- (i) The sentence of Simple Imprisonment (SI) for a period of four months is set aside.
- (ii) The fine imposed by the 1st Appellate Court is confirmed. It is noted that the accused has already paid the fine, as reflected in the judgment of the 1st Appellate Court.

Accordingly, the bail bonds of the accused are hereby discharged. The Registry is directed to forthwith transmit a copy of this order, along with the case records, to both the Trial Court and the First Appellate Court for necessary compliance.

Miscellaneous applications pending, if any, shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 07.08.2025

SAK

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL REVISION CASE NO: 1721 of 2009

Date: 07.08.2025

SAK