

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF DECEMBER, 2014

B E F O R E

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

CRIMINAL REVISION PETITION NO.565/2014

BETWEEN:

NASIR
S/O SHAIKH IBRAHIM,
AGED ABOUT 34 YEARS,
RESIDENT AT BEHIND COURT,
GHANASURYA LAYOUT,
BAGEPALLI TALUK,
CHIKKABALLAPUR DISTRICT – 562 101.

... PETITIONER

(BY SRI A.S.KULKARNI, ADV.)

AND:

THE STATE OF KARNATAKA
BY R.T.NAGAR TRAFFIC POLICE STATION,
BANGALORE-560 032.

... RESPONDENT

(BY SRI K.R.KESHAV MURTHY, ADDL. SPP)

THIS CRL.RP FILED U/S. 397 R/W 401 CR.P.C., PRAYING
TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE
DATED 07.09.2011 PASSED BY THE M.M.T.C.-III, BANGALORE
IN C.C.NO.1641/2010 IN CONVICTING THE PETITIONER FOR
THE ALLEGED OFFENCE P/U/Ss.279 AND 304-A OF IPC AND
JUDGMENT AND ORDER DATED 18.06.2014 PASSED BY THE
P.O., FTC-XIII, BANGALORE IN CRL.A.NO.685/2011 IN

DISMISSING THE APPEAL AND ACQUIT THE PETITIONER FOR THE ALLEGED OFFENCE P/U/Ss.279 AND 304-A OF IPC.

THIS CRL.RP COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The challenge in this Revision Petition is to the Judgment and Order dated 18.06.2014 passed in Criminal Appeal No.685/2011 by the Presiding Officer, FTC-XIII, Bengaluru, whereby, the Appellate Court concurred with the Judgment of conviction and Order of sentence passed on 07.09.2011 in C.C.No.1641/2010 by the Chief Metropolitan Magistrate, Traffic Court-III, Bengaluru, convicting the accused for the offences punishable under Sections 279 and 304-A of IPC and sentencing him to undergo imprisonment and pay fine, with default stipulation.

2. Material facts leading to the trial of the petitioner and this petition, with reference to the rank of the parties in the Trial Court are that:

(a) On 03.08.2010, at about 08.15 P.M., the accused was driving Eicher Canter vehicle bearing registration No.KA-05/D-9217 in rash and negligent manner and dashed to a motorcycle bearing registration No.KA-02/EN-1902. Due to the impact, the rider of the motorcycle Mr.Arunkumar, fell down and the front wheel of the Eicher Canter vehicle ran over him and he sustained grievous injuries and succumbed on the spot i.e., in front of Hebbal Bus Stop, on NH-7, Bengaluru-Bellary Road. PW-1 lodged complaint - Ex.P1. Case was registered and FIR was sent to the Court. After investigation, charge sheet was filed against the petitioner for the offences punishable under Sections 279 and 304-A of IPC.

(b) The Prosecution, in order to substantiate the allegations, examined PWs - 1 to 6 and marked Exhibits - P1 to P6. The accused, when examined, under Section 313 of Cr.P.C., denied the incriminating materials brought against him. The accused did not adduce any defence evidence. Learned Magistrate, upon appreciation of evidence, held that the Prosecution has proved the guilt of

the accused beyond all reasonable doubts. As a result, the accused was convicted for the offences punishable under Sections 279 and 304-A of IPC. The accused was sentenced to pay a fine of ₹1,000/- for the offence punishable under Section 279 of IPC, in default of payment of fine, to undergo S.I. for 30 days. He was sentenced to pay a fine of ₹5,000/- for the offence punishable under Section 304-A of IPC and was sentenced to undergo S.I. for 6 months.

(c) Accused filed Criminal Appeal No.685/2011 in the Sessions Court, Bengaluru, assailing the said Judgment of conviction and Order of sentence. Learned Appellate Judge, by concurring with the findings recorded by the learned Trial Judge, dismissed the appeal. This Revision Petition is directed against the said Judgments and Orders.

3. Sri A.S.Kulkarni, learned advocate, contended that in the absence of credible evidence with regard to the rash and negligent act on the part of the petitioner and the Investigating Officer having not been examined, the

conviction and sentence as per the impugned Judgments/Orders, being illegal, are liable to be set aside. Alternatively, he contended that the sentence imposed being excessive, interference is called for.

4. Sri K.R.Keshav Murthy, learned Addl. SPP, on the other hand, contended that the analysis of the evidence and reasons recorded by the learned Trial Judge and also by the learned Appellate Judge is neither perverse nor illegal and that there being ample evidence on record that the accident took place due to rash and negligent driving of the Eicher Canter vehicle driven by the petitioner, the concurrent findings recorded by the Courts below, does not call for any interference in exercise of revision jurisdiction by this Court. He submitted that the sentence imposed on the petitioner being the minimum, the petitioner is not entitled for any relief.

5. In the light of the submissions made by the learned advocates and the record of the case, the point for consideration is:

"Whether the impugned judgments and orders are perverse or illegal and call for any interference?"

6. PW-1 is the complainant. Ex.P1 is the complaint. PW-1 has witnessed the accident. PW-2 is another eyewitness. He is also witness to Ex.P2 – the Mahazar. Occurrence of the accident is not in dispute. PW-5 has issued Ex.P5 – Motor Vehicle Inspection Report, which does not show any mechanical failure. Death of the rider of the motorcycle on account of the injury sustained due to the accident in question is well established from the Post Mortem Report – Ex.P6, which has been spoken to by PW-6. There is no dispute that the petitioner was the driver of the Eicher Canter Vehicle bearing No.KA-05/D-9217. Both the Courts below have concurrently found that on account of the rash and negligent driving of Eicher Canter vehicle by the petitioner, the accident has taken place and as a result, the rider of the motorcycle i.e., Arun Kumar, fell down and the front wheel of the Eicher Canter vehicle ran over him and that he sustained grievous injuries and succumbed in the spot, in front of Hebbal Bus

Stop on NH-7, Bengaluru-Bellary Road. Sri A.S.Kulkarni was unable to point out as to how the concurrent findings recorded by the Courts below against the petitioner are either perverse or illegal. The findings recorded by the Courts below having the support of two eye-witnesses i.e., PWs 1 and 2 and there being proof of Ex.P2 – Spot Mahazar, I do not find the findings of the Courts below to be either perverse or illegal.

7. In RAVI KAPUR Vs. STATE OF RAJASTHAN, 2012 AIR SCW 4659, Apex Court has observed that a person who drives on the road is held responsible for the act as well as the result and that it may not always be possible to determine with reference to the speed of the vehicle whether the person was driving rashly or negligently and that even if one is driving the vehicle at a slow speed, but recklessly and negligently, it would amount to rash and negligent driving, within the meaning of Section 279 of IPC. It has been held therein as follows:

“10. In order to examine the merit or otherwise of contentions (b) and (c) raised on behalf of the appellant, it is necessary for the Court to first and foremost examine (a) what is rash and negligent driving; and (b) whether it can be gathered from the attendant circumstances. Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to ‘rash and negligent driving’ within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words ‘manner so rash or negligent as to endanger human life’. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

11. ‘Negligence’ means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is

difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

8. From the evidence, which has been brought on record, by examination of PWs.1 to 6 and marking of Exs.P1 to P6, the prosecution has established the ingredients of Sections 279 and 304-A of IPC. Sri A.S.Kulkarni was unable to point out any jurisdictional error committed by either of the Courts below. Consequently, there is no ground to interfere with the

finding on fact with regard to the guilt of the accused, recorded in the impugned judgments.

9. In STATE OF KARNATAKA VS. KRISHNA @ RAJU, 1987 (1) SCC 538, Apex Court, while dealing with the concept of adequate punishment in relation to the offence under Section 304-A of IPC, has held that consideration of undue sympathy in such cases will not only lead to miscarriage of justice but will undermine the confidence of the public in the efficacy of the criminal justice dispensation system.

10. In STATE OF KARNATAKA Vs. SHARANAPPA BASANAGOUDA AREGOUDAR, 2002(3) SCC 738, Apex Court has held that, if accused is found guilty of rash and negligent driving, the Court has to be on guard to ensure that they do not escape from the clutches of law very lightly and sentence imposed by the court should have deterrent effect on the wrong doers and it should be commensurate with the seriousness of the offence.

11. Thus, the sentence imposed on the petitioner is neither irrational nor harsh. The alternate submission of Sri A.S.Kulkarni is also devoid of merit.

Since neither of contentions urged by Sri A.S.Kulkarni has any merit, this petition being devoid of merit is dismissed. The petitioner shall surrender before the Trial Judge and serve the sentence imposed on him.

Sd/-
JUDGE

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