



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO. 1154 OF 2015

BETWEEN:

LAXME GOWDA .M.N,
S/O. LATE NANJE GOWDA,
AGED ABOUT 59 YEARS,
R/O. 113/2, OPP. RAMA MANDIR,
CHENNAPATNA, H.N. ROAD,
HASSAN-562 138.

...PETITIONER

(BY SRI. KARTHIK .S, ADVOCATE)

AND:

STATE BY PUTTUR .P.S,
HASSAN DISTRICT-574 201,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. JAIRAM SIDDI, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION
PASSED IN C.C.NO.671/2014 BY THE JUDGMENT DATED
25.04.2015 ON THE FILE OF PRL. SR. CIVIL JUDGE AND
A.C.J.M., PUTTUR AND THE JUDGMENT OF CONFIRMATION BY
APPELLATE COURT IN CRL.A.NO.5012/2015 BY ITS JUDGMENT
DATED 05.10.2015 ON THE FILE OF V ADDL. DIST. AND S.J.,
D.K., MANGALORE SITTING AT PUTTUR, D.K. THE PETR. MAY BE
ACQUITTED.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE
COURT MADE THE FOLLOWING:



ORDER

This revision petition is filed against the judgment of conviction and order of sentence passed by the Principal Senior Civil Judge & A.C.J.M., Puttur in C.C.No.671/22014 dated 25.04.2015 and confirmed by V Additional Sessions Judge, D.K. Mangalore sitting at Puttur in Crl.A.No.5012/2015 vide judgment dated 05.10.2015.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are as under:

On 10.02.2011 at about 1.00 a.m, in the mid night at Ichlampady Cross, of Puttur Taluk, the accused being the driver of ambulance vehicle bearing registration No. KA-13-G-407 drove the same in a rash and negligent manner endangering human life and public safety from Mangalore towards Bangalore on N.H.48 and hit Prabhakar, a forest guard who was in the uniform along with CW1 to CW5,



searching the vehicles on the highway. Due to the impact, said Prabhakara sustained fatal injuries over the body and immediately he was shifted to Nellyady Hospital and he was declared brought dead. In this regard a complaint is being lodged and the Investigating Officer on the basis of the complaint and after investigating the matter submitted the charge sheet under Section 279 and 304A of IPC and Section 134(a)(b) r/w Section 187 of I.M.V. Act.

4. The learned Magistrate has taken cognizance and issued summons to the accused and accused has appeared and was enlarged on bail. He was provided with prosecution papers as contemplated under Section 207 of Cr.P.C. The plea was framed against the accused for the aforesaid offences and same is read over and explained to the accused. He pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, prosecution has examined in all ten witnesses and also placed reliance on fourteen documents marked at Ex.P1 to Ex.P14. After conclusion of the evidence of the prosecution, the



statement of accused under Section 313 Cr.P.C. was recorded to enable him to explain the incriminating evidence appearing against him in the case of the prosecution. The case of accused is of total denial. Further he has submitted his written say asserting that he was not driving the vehicle at the time of the alleged accident and he has been falsely implicated in this case. However, he did not lead any oral or documentary evidence in support of his defence.

6. After having heard the arguments and after appreciating the oral as well as documentary evidence, the learned Magistrate has convicted the accused by imposing a sentence of imprisonment as well as fine for the offences punishable under Section 279 and 304(A) of IPC as well as for the offence punishable under Section 187 of I.M.V. Act.

7. Being aggrieved by this judgment of conviction and order of sentence, the accused approached V Additional Sessions Judge, Mangalore, Sitting at Puttur, in Crl.A.No.5012/2015. The learned Sessions Judge after re-



appreciating the oral and documentary evidence has dismissed the appeal by confirming the judgment of conviction and order of sentence passed by the learned Magistrate. Being aggrieved by these Concurrent findings, this revision petition is filed by the accused/revision petitioner.

8. Heard the arguments advanced by the learned counsel for the revision petitioner and learned HCGP. Perused the records.

9. The learned counsel for the revision petitioner would contend that the prosecution has failed to establish the involvement of the very vehicle and further, failed to establish that accused was the driver of the offending vehicle. He would also assert that the accident had admittedly took place in the night odd hours and the test of identification was not conducted by the Investigating Officer. He would also assert that the log book was also not summoned and the author of Exs.P10 & P11 were not examined. He would further assert that accused is



physically handicapped person and hence, there is no question of he driving the vehicle.

10. Alternatively, he would contend that the accused being now aged about 70 years and having suffered amputation of right leg and amputation of two digits of left leg, leniency may be shown as against him by setting aside the sentence of imprisonment by restricting the sentence to the fine alone.

11. Per contra, the learned HCGP would support the judgment of conviction and order of sentence passed by both the Courts below. He would contend that PW1 to PW4 who are material witnesses have supported the case of the prosecution and identified the accused. He would also contend that the documents Ex.P10 and Ex.P11 were not challenged and the statement under Section 313 of Cr.P.C of accused is only a formal denial and considering these aspects both the Courts were justified in convicting the accused. Hence, he would seek for rejection of revision petition.



12. Having heard the arguments and perusing the records, the following point would arise for my consideration:

"Whether the judgment of conviction and order of sentence passed by the trial Court and confirmed by the appellate Court are perverse, erroneous and arbitrary so as to call for any interference by this Court?"

13. It is the specific assertion of the prosecution that the accused was the driver of the offending vehicle, on 10.02.2011 at 1.00 a.m. when accident occurred. It is an admitted fact that offending vehicle is ambulance van belonging to the Health Department. According to the prosecution when the complainant was checking the vehicles in uniform at highway in the night odd hours along with CW1 to CW5, the accused drove the ambulance vehicle in a rash and negligent manner and dashed to the deceased resulting in his death and fled away by putting the light but before hitting he did not put the ambulance



light. It is also the assertion of prosecution that when the vehicle was intercepted in Gundy checkpoint it was coming with the lights on but on verification no patients were found in the vehicle. According to the prosecution when the injured was shifted to the hospital he was brought declared dead and subsequently, a complaint came to be lodged and charge sheet has been filed against the accused.

14. The defence of the accused is two fold. At the first instance, he disputes the involvement of the vehicle in the accident and the second ground of defence is that he was not driving the offending vehicle at the time of the accident. Interestingly, the health officers have never disputed that the vehicle was involved in the accident. Ex.P12 is the IMV report which disclose that the front wind screen glass was broken and engine bonet was dented. It is not the case of the defence that these damages were found on the vehicle prior to the accident. Even the Health Department has not produced any documents to show that



these damages notified in Ex.P12 were there prior to the alleged date of accident.

15. PW1 is the complainant and he is an eyewitness. He has deposed in accordance with the complaint allegations and he has also identified the accused. This witness was cross-examined at length and in the cross-examination initially there was a denial of the fact that the accused was the driver of the offending vehicle which was disputed. But, subsequently, it is suggested that accused has never driven the vehicle in a rash and negligent manner and caused any accident and the said suggestion was also came to be denied.

16. PW2 Danial is another eyewitness and he has also deposed regarding the government ambulance causing the accident but his cross-examination reveals that he did not observe who was the driver of the Government ambulance but he has substantially deposed as to the ambulance causing an accident. PW3 is another eyewitness and he has also supported the case of the prosecution. He is very specific in his cross-examination that in torch light



he has identified the accused as the driver of the offending vehicle. Much cross-examination was made as to which portion of the face was noticed by him, which becomes irrelevant aspect. The witnesses has also denied the suggestion that the accused was not the driver of the offending vehicle. Though all these three witnesses were cross-examined at length, nothing was elicited so as to impeach their evidence. Even PW4 has supported the case of the prosecution. PW5, PW6 and PW7 are the spot mahazar witnesses.

17. The death of Prabhakar in the road traffic accident is undisputed and the same is supported by inquest mahazar marked at Ex.P9 and Post mortem report at Ex.P13. The accused has not disputed the death but his defence was that the ambulance was not involved in the accident and he was not the driver of the offending vehicle, but the evidence of PWs.1, 3 & 4 clearly establish that the accused was the driver of the offending vehicle and from Ex.P12 IMV report, it is evident that ambulance vehicle met with an accident and the vehicle suffered damages.



18. The learned counsel for the accused all along asserted that test identification parade was not conducted since the witnesses have seen the accused for the first time when the alleged accident has taken place. He would also dispute the identity of the accused being the driver of the offending vehicle. But admittedly, the ambulance vehicle belongs to the health Department. Ex.P11 is the notice issued to Administrator of the Crawford General Hospital, Sakleshpura and Ex.P10 is the reply given by Administrator-M.B. Papanna, wherein he has specifically reported that the accused was the driver of the offending vehicle and he has also given the details of his driving license along with relevant records. The learned counsel for the revision petitioner contended that the author of these two documents were not examined, but Ex.P11 is issued by the investigating officer and he has deposed to that effect. Ex.P10 is issued by the administrator Papanna and it is marked in the evidence of the Investigating Officer. Interestingly, while marking Ex.P10 it was not objected and in the entire cross-examination authority of Papanna



to issue Ex.P10 is not at all challenged. When Ex.P10 is not challenged, question of examinaing the author does not arise at all. Hence, the arguments advanced by the learned counsel for the revision petitioner in this regard holds no water.

19. Considering the evidence of PWs.1, 3 & 4 coupled with Ex.P10 it is evident that accused was the driver of the offending vehicle at the time of accident Much arguments having advanced asserting that accused being physically handicapped he was incapable of driving the vehicle, but to substantiate the same he has not produced any documents to show that he has submitted any requisition to the department disclosing his incapacity to drive the vehicle by obtaining any physical disability certificate from the competent authority. He has not even surrendered his license and in case he was incapable of driving the vehicle he could have moved an application to District Health Officer, for changing his cadre of driver to any clerical post, but none of these steps were taken and now it cannot be stated that accused being the



physically handicapped person, is incapable of driving the vehicle. The said arguments also holds no water.

20. The learned counsel for the revision petitioner placed reliance on a decision reported in **(2014) 14 SCC 22 [DENY BORA vs. STATE OF ASSAM]** and invites the attention to para No.9, but the facts and circumstances are entirely different. In the said case, for the offence was under Section 302 and the author of the material document was not examined. But in the instant case, when Ex.P10 itself is not challenged, question of examining the author of document does not arise at all and hence, principles enunciated in the above cited decision will not come to the aid of the prosecution.

21. He has further placed reliance on a decision of Apex Court reported in **(1979) 3 SCC 319 [KANAN AND OTHERS vs. STATE OF KERALA]** and argued that non-holding of test of identification parade raise a serious doubt regarding identity of the accused, but the said principles cannot be made applicable in the instant case as PW1, 3 & 4 identified the accused. Apart from that, it is a



Government vehicle and Ex.P10 clearly establish that accused was the driver of the offending vehicle and this document is not challenged. Hence, considering the facts and circumstances, the said principles also will not come to the aid of the accused in any way.

22. Both the Courts below have appreciated the oral and documentary evidence in proper perspective and have rightly convicted the accused. No illegality or perversity is found in the judgment of conviction passed by the trial Court and affirmed by the appellate Court so as to call for any interference.

23. The learned counsel for the revision petitioner alternatively submits that accused is now aged about 70 years and he has suffered amputation of right leg and his two digits of left leg are also amputated and considering these aspects, sentence of imprisonment may be waved. The trial Court has convicted the accused with imprisonment for a period of six months with fine of Rs.2,000/- for the offence punishable under Section 279 and imprisonment for a period of one year with a fine of



Rs.3,000/- for the offence punishable under Section 304(A) of IPC. Further, for the offence punishable under Section 134(a) & (b) r/w Section 187 of I.M.V. Act, the offence after one month imprisonment with a fine of Rs.500/- was imposed. It is to be noted here that the accused was driving the ambulance and he caused the accident. But, instead of shifting the injured in his own ambulance, he fled from the spot without attending the injured. Under these circumstances, question of waving of entire sentence does not arise at all. The offence under Section 279 is punishable with imprisonment which may extend to six months or fine of Rs.1,000/- or both. But in the instant case, imprisonment for six months with fine of Rs.2,000/- came to be imposed, which is not permissible. Considering these aspects, the sentence of imprisonment for six months for the offence under Section 279 is unwarranted when the accused is already imposed with sentence of imprisonment for 304A of IPC and the offence under Section 279 merges with 304(A) of IPC. In view of the



same, independent imprisonment under Section 279 IPC does not warrant.

24. However, for the offence punishable under Section 304(A) of IPC the accused was sentenced to imprisonment for a period of one year with fine of Rs.3,000/-. The said offence is punishable with imprisonment upto two years or fine or both. Considering the age of the accused and considering the submission that he now suffered amputation, the imprisonment for a period of one year appears to be too high but at the same time fine imposed is also too less. Considering the facts and circumstances that accused being the driver of ambulance and after having caused the accident, fleeing spot without attending the injured, in my considered opinion he is required to pay fine of Rs.10,000/- for the offence punishable under Section 304(A) of IPC. As regards sentence of imprisonment, considering the age of the petitioner and the alleged amputation, in my considered opinion, the imprisonment up to four months can be imposed, which will serve the purpose. As regards



sentence for the offence punishable under Section 134 (a) & (b) r/w Section 187 of I.M.V. Act, it does not call for any interference.

25. Considering the facts and circumstances, the point the point under consideration is answered in partly ***affirmative*** so far it relates to sentence. Hence, revision petition needs to be allowed in part and accordingly, I proceed to pass the following:

ORDER

1. The revision petition is ***allowed in part***.
2. The judgment of conviction passed by the Principal Senior Civil Judge & A.C.J.M., Puttur in C.C.No.671/22014 dated 25.04.2015 and confirmed by V Additional Sessions Judge, D.K. Mangalore sitting at Puttur in CrI.A.No.5012/2015 vide judgment dated 05.10.2015, stands confirmed. However, the sentence for the offence under Section 279 of IPC, is set aside. The sentence passed pertaining to offence punishable under Section 134A & B r/w 187 of MV Act stands confirmed.



3. The sentence for the offence punishable under Section 304A if IPC is modified and the accused/revision petitioner is directed to undergo simple imprisonment for a period of four months and to pay a fine of Rs.10,000/- in default he is required to undergo further imprisonment for a period of one month. All the sentences shall run concurrently.

Send back the records to the trial Court along with copy of the judgment with a direction to the learned Magistrate to secure the presence of the accused for collecting fine amount and for serving the sentence.

Sd/-
JUDGE

DS
List No.: 1 SI No.: 20