

Kashim Vs The State of Karnataka

Court: Karnataka High Court (Dharwad Bench)

Date of Decision: Nov. 28, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Motor Vehicles Act, 1988 â€” Section 184

Penal Code, 1860 (IPC) â€” Section 279, 304A

Hon'ble Judges: Jawad Rahim, J

Bench: Single Bench

Advocate: Satish S. Raichur, for the Appellant; V.M. Banakar, Addl. SPP, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Jawad Rahim, J.

Convicted accused is in revision against the judgment in Crl. Appeal No. 67/09 confirming his conviction for the offences

punishable under Sections 279 and 304A, I.P.C. and consequent sentence. Heard Sri Satish S. Raichur, learned counsel for the petitioner and Sri

V.M. Banakar, learned Addl. SPP for the respondent-State. Perused records in supplementation thereto.

2. Prosecution case is, petitioner drove a Tata Indica car bearing No. KA-28-M-4809 at high speed and in a reckless manner consequent to

which he lost control and hit against a young girl aged 5 years who was walking on the side of the road to go to her uncle"s house situate in the

garden land. Due to the impact, she suffered injuries and died in the accident that occurred on 2.8.2008 at 7.15 pm. on Jamkhandi-Bijapur Road.

3. Accused denied the charge and was put to trial in which the prosecution examined in all witnesses and placed reliance on 7 documents. Learned

trial judge analyzing the evidence, opined eyewitness account establishes the charge against the accused and thus convicted him for the offences

referred to above.

4. Assailing it he was, in Crl. Appeal No. 67/09 which has since been dismissed, confirming the conviction of the petitioner by the trial court.

5. Learned counsel for the petitioner would submit, accident was not due to negligence of the petitioner, but on account of negligence on the part

of the complainant, his wife and the child also. In this regard, he submits the accident has occurred on the main road where the petitioner could not

be expected to have seen the child crossing; due to such unexpected movement, the accident has occurred. He submits, none of the witnesses

have spoken to the manner in which the accident occurred. Hence there is no material to show there was rash and negligent driving of the vehicle.

He has taken me through the evidence to contend the charge is not established and therefore, seeks acquittal.

6. Learned Addl. SPP, Sri V.M. Banakar has supported the impugned judgment.

7. I have re-appraised the evidence on record. It reveals, P.W. 1-Ishwar Mallappa Nyamgouda is the complainant and father of the child-Triveni

who succumbed to the injuries in the accident. PW3-Kallappa Konappa Nyamgouda and PW4-Gurappa Sidravappa Jangamashetti claim to be

eyewitnesses. PW5-Bharati Ishwar Nyamgouda is the mother of the unfortunate victim girl. PW2- Revanasiddappa Muttappa Jangamashetti is

witness to the inquest mahazar. PW6-Dr. Gaibusab Saidusab Galagali is the medical officer who conducted autopsy. PW7-Shivanand Basagond

Guddodagi is the Motor Vehicle Inspector. PW 8-Yashwant Hanamant Bisanalli is the Inspector of Police who registered the case and PW9-

Balachandra is the investigating officer.

8. P.W. 1 in his evidence has identified the petitioner and has deposed to the manner in which the accident occurred. According to him, at 7.15

p.m. his daughter-Triveni aged 5 years was proceeding to he uncle-Shankar"s house situate in the garden land on the side of Jamkhandi-Bijapur

road when the car driven by the petitioner proceeding from Bijapur towards Jamkhandi at high speed, hit against her; she was crushed and died

instantly. He claims to have seen the accident and identified the vehicle. Ex. P1 is the complaint on which the case is registered. Though suggestions

are put to him about negligence on the part of the child, nothing worthy of acceptance has been elicited. PW4-eyewitness has also deposed to the

facts similar to what is stated by P.W. 1 and their testimony corroborates with each other, showing that the accused had driven the vehicle at high

speed.

9. PW3, another eyewitness who claims to be near the temple and had full view of the accident, has also corroborated the version of P.W. 1 so far

as the accident is concerned, establishing the accident was due to rash and negligent driving. PW4, also an eyewitness, who has also corroborated

the version of P.W. 1, has attributed culpable negligence in the driving of the vehicle by the petitioner.

10. From the evidence of these witnesses, it could be seen even in cross-examination, they have consistently maintained that the place where the

accident occurred is a residential area where many children, aged and infirm could be found. There may not be any need to refer to the evidence

so far as inquest, spot mahazar as the same are not in dispute.

11. The moot question is, whether there was negligence in the driving of the vehicle. The driver has not explained how it occurred if it is not in the

manner stated by the prosecution. Accused had opportunity to explain even at the stage when he was questioned u/s 313, Cr.P.C. He has given

no explanation. In the circumstances, we have to analyze evidence keeping in mind the age of the victim. She was 5 years old and cannot be

expected to be conscious of her safety. It is the road users who have to be cautious.

12. Cross-examination of the witnesses shows the place where the accident occurred is a residential area on the other side of the Jamkhandi-

Bijapur road and is a State Highway. The contention of the petitioner's counsel that petitioner could not have expected the presence of the child

can hardly be sustained, as it is the driver who has to drive the vehicle keeping in mind the mandate of Section 184 of the Motor Vehicles Act. In

that, he has to keep in mind the topography of the place, habitation, possibility of movement of persons and time factor. The accident has occurred

at 7.15 p.m. in the evening. It was a State Highway and it was expected of him to be doubly cautious of the place, lest it will be a risk to the life of

other road users. In this view, the fact that the victim was aged 5 years and the petitioner had hit-and-run after the accident, no liberal view is

permissible. Unfortunately the girl's death speaks of rashness in his driving, but for which she would have survived. The evidence of the

prosecution is convincing and establishes that the accused had indulged in the act of over-speeding consequent to which he could not control the

vehicle and ultimately resulted in the mishap. I am, therefore, satisfied conviction recorded by the trial court was fully justified for the offences

punishable under Sections 279 and 304A, I.P.C. Rightly the appellate court has confirmed the same. In the circumstances, I find no merit in the

petition against the concurrent finding recorded by the courts below. The grounds urged in the appeal merit no acceptance.

13. However, as could be seen, punishment has to be modulated depending on the facts and circumstances of the case and the circumstances in

which the accused is placed. Here accused had caused the accident at 7.15 p.m. when visibility would be low. Therefore reasonable margin has to

be given. While confirming conviction, we have to decide about quantum. The punishment for the offence u/s 304A, I.P.C. is either imprisonment

for 2 years or fine. Petitioner has been sentenced to both. Considering the period of time that has taken for the courts to decide the issue and other

circumstances, the sentence of imprisonment imposed on the petitioner-accused is set aside. Instead he shall pay the fine amount as directed by the

trial court. Besides, he shall pay by way of compensation a sum of Rs. 30,000/- to be deposited in the trial court within six weeks. Upon such

deposit, the same shall be paid over as compensation to P.W. 1-father of the unfortunate child. In the result, the revision petition is disposed of in

terms stated above. The impugned judgment is set aside only so far as the order regarding sentence is concerned, confirming the rest of the order.