

(2016) 09 KAR CK 0005

**KARNATAKA HIGH COURT (KALABURAGI BENCH)**

**Case No:** Criminal Revision Petition No. 2589 of 2011.

Ramesh Anjineyya Wadder -  
Petitioner @HASH State of  
Karnataka

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 1, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Motor Vehicles Act, 1988 - Section 181
- Penal Code, 1860 (IPC) - Section 304A, Section 337, Section 338

**Citation:** (2016) 4 AirKarR 438

**Hon'ble Judges:** Budihal R.B., J.

**Bench:** Single Bench

**Advocate:** Ishwaraj Chowdapur, Advocate, for the Petitioner; P.S. Patil, HCGP, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

**Budihal R.B., J.** - This is the revision petition filed by the revision petitioner - accused being aggrieved by the Judgment and Order of conviction passed by the Civil Judge (Jr.Dn) & J.M.F.C. Manvi dated : 17.7.2008 passed in C.C.No.67 of 2007 and also the Judgment and Order of confirmation passed by learned Addl. Sessions Judge, Raichur, dated : 5.9.2011 passed in Criminal Appeal No. 35 of 2008.

2. By the impugned Judgment, the trial Court convicted the revision petitioner herein for the offences punishable u/Sec.279, 337, 338, 304-A of IPC and u/Sec.181 of IMV Act and sentenced the revision petitioner-accused, as mentioned in the Order portion of the said Judgement.

3. The prosecution to prove its case, before the trial Court examined 14-witnesses, produced 11-documents and 6-material objects. On the side of the defence, no witnesses were examined nor any documents produced.
4. After evaluation of the materials produced before the trial Court, trial Court comes to the conclusion that prosecution proved its case as against the revision petitioner - accused and accordingly convicted him for the said offences.
5. Being aggrieved by the Judgment and Order of conviction passed by the Courts below, he come up before the First Appellate Court and Appellate Court also after re-appreciating the materials, dismissed the appeal of the revision petitioner - accused and confirmed the Order of conviction and sentence imposed by the trial Court.
6. The legality and validity of the Judgments and Orders of the Court below were challenged before this Court in this revision petition on the grounds as mentioned in the memorandum of the revision petition.
7. Brief facts of the prosecution case are that on 11.12.2006 at about 11.00 a.m., one Mehmood (deceased) was proceeding towards Manvi along with his wife PW-11 Khajabi on motor cycle bearing No. KA- 36-J-6375 for attending marriage of their relative. Gouse Sab PW-4 and PW-6 Aktar were coming behind on another motor cycle. The revision petitioner was driving the tractor and trailer bearing No. KA-36-T-4218 and KA-36-T-4219 came from opposite direction and dashed with motor vehicle of Mehmood and said tractor was turned turtle in the land. PW-11 and CW-9 Durgappa and revision petitioner sustained injuries. Said Mehmood succumbed to injuries while under treatment at OPEC hospital. On the basis of the said complaint, case came to be registered for the said offences as against the revision petitioner, who was the driver of the said tractor.
8. Heard the arguments of the learned counsel for the revision petitioner-accused and so also learned HCGP for the respondent-State.
9. Counsel for the revision petitioner made the submission that looking to the evidence of the prosecution witnesses, the evidence of the witnesses is not cogent and consistent and it is not worth believable. Even then both the Courts below have wrongly read the evidence and wrongly relied upon the said evidence and thereby convicted the revision petitioner-accused. Learned counsel submitted that the prosecution witnesses have not explained in their evidence the mode and manner of the accident and how it has taken place. It is also his submission that the driver of the tractor when he overtook his vehicle by the other side and apprehending that he may dash to the two wheeler vehicle and in order to save that person, he has turned the said vehicle, it might be accidental hit to the deceased, who was proceeding on the two wheeler. Hence that possibility cannot be completely ruled out. Hence the learned counsel submitted that looking to the evidence of the prosecution witnesses, serious doubt will arise in the mind of the Court about the evidence of

these witnesses that really they are the witnesses who witnessed the incident. He also made the submission that all the witnesses are relatives. The revision petitioner herein was not the driver of the said vehicle. Hence he made the submission that, these aspects were completely ignored by the Courts below and wrongly convicted the revision petitioner. Alternatively, counsel made the submission that, in case, if the Court comes to conclusion of confirming the Orders of the Courts below, in that case, the sentence imposed by the trial Court which is confirmed by the First Appellate Court has to be modified, as it is not proportionate to the nature and gravity of the offences alleged against the revision petitioner. In this connection, learned counsel for the petitioner also relied upon the decision of the Hon<sup>ble</sup> Apex Court reported in **AIR 2002 SC 1529 in the case of State of Karnataka v. Sharanappa Basnagouda Aregoudar.**

10. Per contra, learned HCGP made the submission that deceased was proceeding on two wheeler vehicle along with his wife PW-11 Khajabi who was the pillion rider. It is also his submission that PW-4 Gouse Sab and PW-6 Aktar are the eye witnesses to the incident who have clearly deposed in their evidence that behind the two wheeler vehicle of the deceased, they were also proceeding on another motorcycle and hence it is their evidence that they personally witnessed the incident and the driver of the said tractor driving it rashly and negligently and dashed to the two wheeler of the deceased. Hence learned HCGP made submission that when there are the accounts of eye witnesses who are three in number, consistently deposed before the Court and learned HCGP also made the submission that another important factor of this case is that the revision petitioner who was driving the said Tractor was proceeding along with another person Durgappa CW-9.

They also sustained injuries. Hence, he made the submission that, this itself clearly goes to show that he was the driver of the said tractor and caused the accident. Hence, he made the submission that both the Courts below have recorded the concurrent findings of the factual aspects of the story of the prosecution case regarding committing of the said offences by the revision petitioner. Regarding the Judgment of the Hon<sup>ble</sup> Apex Court relied upon by the learned counsel for the revision petitioner, he submitted that, whatever the sentence imposed by the trial Court is reasonable and proportionate. Therefore, there is no necessity to reduce the sentence which is confirmed by the First Appellate Court. He also submitted that the decision relied upon by the learned counsel for the revision petitioner is not made applicable to the facts and circumstances of the case on hand. Hence he submitted that, there is no ground even to modify by reducing the sentence of imprisonment.

11. I have perused the grounds urged in the revision petition, Judgment and Order of conviction passed by the trial Court which is confirmed by the First Appellate Court and also perused the oral evidence of the parties about which learned counsel for the revision petitioner and learned HCGP taken this Court through the

deposition of the witnesses so also the documents produced. I have also considered the submission made at the Bar by both the side during the course of their arguments.

12. The case of the prosecution is that when the deceased along with his wife were proceeding on his two wheeler vehicle, the accused who was the driver of the tractor in the process of overtaking, came rashly and negligently and thereby dashed to the two wheeler and caused the accident. The injured witness PW-11 Khajabi was also proceeding along with her husband on the said vehicle. Her husband expired in the hospital while taking treatment and she also sustained injuries. The prosecution story also goes to show that revision petitioner - driver of the tractor, i.e. the accused herein and one Durgappa CW-9 who was travelling in the said Tractor sitting by the side of the accused also sustained injuries. PW-11 Khajabi also deposed in her evidence that the driver of the tractor was coming in a rash and negligent manner and dashed to their two wheeler vehicle. Perusing the documents produced by the prosecution, Ex.P-6 is the injury certificate of Khajabi PW-11, Ex.P-7 is the injury certificate of Durgappa CW-9 who was travelling in the tractor and Ex.P-8 is the injury certificate of Ramesh - revision petitioner herein. Perusing all these three injury certificates, they go to show what are the injuries sustained by all the three and I have also perused the document Ex.P-9 the post mortem report in respect of Mehmood. The opinion of the Doctor regarding the cause of death is "shock and haemorrhage as a result of head injury associated with multiple fractures of bones". So this material also goes to show about the injuries sustained by the deceased and also the cause of death. There are five external injuries noted by the Doctor while conducting the post mortem examination over the dead body of the deceased. Coupled with this, two independent witnesses were examined, one Ghouse Sab PW-4 and another one Aktar PW-6. This Court was taken through the evidence of these two witnesses by the learned counsel for the revision petitioner. Looking to their evidence, they have clearly stated that they personally witnessed the incident and it is the accused who was the driver of the tractor, drove it in rash and negligent manner and dashed to the two wheeler of the deceased. Looking to the cross examination of PWs-4, 6 and 11, though it was a lengthy cross examination, nothing worth is elicited from their mouth so as to disbelieve the story of the prosecution that it is the accused who drove the vehicle in a rash and negligent manner and caused the said accident.

13. I have also perused the IMV report issued by the RTO Authority. Looking to this Ex.P-10, wherein he has noticed the damage caused to both the vehicles by mentioning under S1.No.7 under the head Mechanical Condition of Vehicle. He clearly mentioned separately damages to MV(1) below that damages to MV(2). So both the vehicles sustained damage. This again supports the case of the prosecution. The sketch map of the scene of occurrence is produced under Ex.P-11. Looking to the sketch map, even tyre marks of the said tractor have been shown in the sketch, this itself clearly goes to show that the speed of the vehicle, when such

tyre marks are visible on the road and on the basis of which the speed of the vehicle can be taken into consideration as per the MV Rules.

14. Therefore, looking to these material placed on record, the Courts below have considered these aspects properly and rightly comes to the conclusion in convicting the accused person. I have also perused the statement of the accused recorded U/Sec.313 of Cr. P.C., under which, he has been examined by the Court and put him to the incriminating evidence through the mouth of prosecution witnesses and when he was asked as per Question No. 30, whether he wanted to say anything in this regard, he said "No". So in spite of such an opportunity, the accused himself has not come forward to explain the mode and manner of the accident and how it has taken place and who was at fault. He is the proper and competent person to speak about all these things, even then, he has not stated about these things. Taking into consideration the cumulative effect of all these materials placed on record before the trial Court, the trial Court is justified in convicting the revision petitioner - accused for the said offences so also the First Appellate Court in confirming the Judgment and Order of conviction passed by the trial Court. Appreciating the entire materials, I do not find any illegality in the Judgments of the Courts below. No grounds are made out to interfere in this revision petition either to modify or to set-aside the Judgments of the Courts below.

15. Now coming to the sentence part of the accused, which is imposed by the Courts below and confirmed by the First Appellate Court. I have perused the copy of the Judgment relied upon by the learned counsel for the revision petitioner in this case. It goes to show that there were four deaths and the case of the prosecution was that the driver who caused the accident was rash and negligent. The trial Court after conviction, imposed the sentence of six months imprisonment and it was maintained by the Appellate Court, but, when the matter was before the High Court, High Court imposed fine only and said Order was challenged before the Hon<sup>ble</sup> Apex Court. Hon<sup>ble</sup> Apex Court comes to the conclusion and held that High Court is not justified in the revision petition to impose fine only. Accordingly, the Judgment of the High Court was set-aside and sentence awarded by the trial Court was restored.

16. Looking to these principles of the Hon<sup>ble</sup> Apex Court and coming to the case on hand, looking to the facts and circumstances of the case and after hearing the accused and the prosecution, the trial Court imposed the sentence of one year with fine and same is confirmed by the First Appellate Court. Therefore, in the facts and circumstances of the case, whatever the sentence imposed by the trial Court is proportionate to the nature and gravity of the offences and hence does not call for any interference in this revision petition for reducing the same.

17. Accordingly, revision petition is dismissed.