

Ramesh Anjineyya Wadder - Petitioner @HASH State of Karnataka

Court: KARNATAKA HIGH COURT (KALABURAGI BENCH)

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

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'ble 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'ble 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 these materials also go 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 has 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'ble Apex Court. Hon'ble 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'ble 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.