

---

**(2016) 02 KAR CK 0392**

**KARNATAKA HIGH COURT**

**Case No:** Crl. Revision Petition No. 1251/2010

Hanumanthanayak

APPELLANT

Vs

State of Karnataka

RESPONDENT

---

**Date of Decision:** Feb. 29, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, Section 360, Section 374(3)(a), Section 397
- Probation of Offenders Act, 1958 - Section 4

**Hon'ble Judges:** A.V. Chandrashekara, J.

**Bench:** Single Bench

**Advocate:** Mahantesh S. Hosmath, Advocate, for the Appellant; S. Rachaiah, HCGP, for the Respondent

**Final Decision:** Allowed

---

**Judgement**

@JUDGMENTTAG-ORDER

A.V. Chandrashekara, J.

1. Heard the learned concept by the petitioner and the learned HCGP.

2. The present petition is filed under section 397, Cr.P.C. challenging the judgment of conviction and sentence passed by the learned JMFC, Holenarsipur, in C.C. 3/07 and affirmation of the same by the 1st appellate court in Crl. Appeal No. 56/10. Petitioner was the accused in C.C. 3/07, a case registered by the Railway Police, Mysuru, against him for the offense punishable under Section 161 of the Railways Act, 1989.

3. The case of the prosecution is as follows:

"a) The accused was the driver of a tractor-trailer bearing No. KA-13-TA-222-223 belonging to CW-8, Kalegowda of Nagarthi village. On 20.8.2006 at 9.30 a.m., the petitioner drove the trailer on an unmanned level crossing near gate No. 67

between Mandagere and Shravanuru railway stations in a rash and negligent manner, without looking to the train coming from Mysuru towards Arsikere.

b) Because of the rash and negligent manner of the driving of the tractor-trailer, it dashed against the train and damaged the train, consequently the tractor turned turtle. On receipt of information given by the driver of the said train, a case came to be registered by the Railway Police for the above offence.

c) In order to bring home the guilt of the accused, in all eight witnesses have been examined inclusive of PW-3 driver of the train and I.O.-R.D. Patil. As many as 12 exhibits have been got marked. The accused is examined under Section 313, Cr.P.C., and his defence is one of total denial of the allegations leveled against him."

4. Section 161 of the Railways Act reads as follows:

"161. Negligently crossing unmanned level crossing-

If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year."

The fact that the damaged tractor-trailer was found by the I.O. near the railway gate is not in dispute. The best witness to speak about the manner in which the accident took place was the driver of the train who is examined as PW-3, Siddaraju, the driver who has given an account about the manner in which the accident took place. Though he has been cross-examined, nothing is elicited from his mouth to discredit his credibility. The IO chose to draw mahazar at the spot in the presence of witnesses. Though independent witnesses have not supported the prosecution case, there is nothing on record to doubt the veracity of the testimony of the official witness.

5. Corroboration is only a rule of prudence and not a rule of evidence. No court should do start evaluating the evidence of an official witness with distrust, is the law laid down by the Hon"ble Supreme Court. In the instant case, the learned judge of the trial court has properly evaluated the entire evidence and has come to the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt in regard to the negligent manner of driving the vehicle by the petitioner on an unmanned level crossing. Thus, judgment of conviction cannot be found fault with. In fact, the learned judge has directed the petitioner to undergo RI for 6 months for the offence under Section 161 of the Railways Act.

6. The learned judge of the first appellate has dealt with the matter in the appeal filed under Section 374(3)(a), Cr.P.C. He has once again evaluated the entire evidence available on record and has come to the conclusion that the trial court has adopted right approach to the state of affairs and no grounds are made out to interfere with such well considered order.

7. The scope of revision under Section 397 Cr.P.C. is very limited. The revisional court cannot reassess the entire evidence. No apparent illegality or perversity is found in the approach of the trial court or the first appellate court. Hence, no grounds are made out to interfere with the judgment of conviction.

8. At this stage, learned counsel, Mr. Mahantesh Hosmat, states that petitioner is an agriculturist in Holenarsipur Taluk having many responsibilities to be discharged towards his family, and a lenient view maybe taken. It is argued that he is aged 51 years and is a married man having many persons dependent on him.

9. The Probation of Offenders Act, 1958, which is a central act, provides for probation of offenders after due admonition and matters connected therewith. It is in force in the state of Karnataka. It empowers the court to release an offender in respect of certain offences. It also empowers the court to release on probation in suitable cases an offender who is found guilty of having committed an offense not punishable with death or imprisonment for life.

10. Provisions of the Probation of Offenders Act, 1958, is not at all considered either by the trial court or the 1st appellate court though it is not invoked by the learned counsel for the accused in the courts below. If the court forms an opinion that it is expedient to release an offender for his good conduct, regard being had to the circumstance of the case, such circumstances cannot be sidelined in forming the said opinion. The nature of the offence would be relevant and hence Section 4 can be resorted to when it considers the circumstance of the case to be proper and suitable. Principles to the said effect have been reiterated by the Hon"ble apex court in the case of Dalbir Singh v. State of Haryana (, AIR 2000 SC 1677) while dealing with the provisions of the Probation of Offenders Act, 1958, and Section 360, Cr.P.C. Instead of sentencing him at once to any punishment, he can be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep peace.

11. Remedy under the P.O. Act is a discretionary remedy and not a mandatory one. Principles to this effect have been laid down in the case of Dasappa & Another v. State of Mysore (, AIR 1965 MYSORE 224). It is held that Section 4 cannot be extended to the abominable culprit who is found guilty of a serious offence against women, children, and society.

12. A railway employee had been convicted for committing theft of certain articles from a goods wagon and was sentenced by the High Court to pay Rs. 500/- as fine, and in default to undergo R.I. for 2 months. The fine amount was paid and he was taken back to duty. The Hon"ble Supreme Court has observed that in view of his character, the benefit of the Probation of Offenders Act, 1958, could have been given by the High Court and therefore the sentence was set aside and the matter was remitted to the trial court to pass appropriate orders. This is found in a case

rendered by the Hon"ble Supreme Court reported in , AIR 1983 SC 291 (Keshav Sitaram Sali v. State of Maharashtra).

13. Neither the judge of the trial court or the first appellate court in the present case have bestowed their attention in regard to the application of the provision of the Probation of Offenders Act, 1958, to the facts and circumstances of the case, after convicting the accused. Even though no submission was made to that effect by the learned counsel for the accused, the court is, in fact, obliged to look into the applicability of the provisions of the act to the facts and circumstances of the case in the background of the age of the accused and other relevant factors. The Hon"ble Supreme Court has held as follows in the case of Hari Singh v. Sukhbir Singh & Others (, [1988] 4 SCC 551) about the applicability of Section 360, Cr.P.C. to the provisions of Probation of Offenders Act in paragraph 8:

"8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel We are of opinion that the High Court has not committed any error in the regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the court encourages their own sense of reasonability for their future and protects them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not shown to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate."

From a plain reading of the decisions referred to above, it is clear that all the courts dealing with criminal cases should, after convicting the accused, make an endeavour to ascertain about the applicability of the provisions of the Probation of Offenders Act, whether a submission is made to that effect or not, by the accused. Reasons must also be assigned if the provisions of the said Act are not made applicable to the case.

14. Hence, the matter needs to be sent back to the trial court to consider the applicability of the relevant provision of the Probation of Offenders Act, 1958, though the judgment of conviction is upheld by this court also.

15. In the result, the following order is passed:

"ORDER

I) The revision petition is allowed. The judgment of conviction passed by the trial court in C.C. 3/07 is upheld and the sentence of imprisonment imposed on the petitioner is set aside and the matter is remitted to the trial court for consideration

of the applicability of the provision of the Probation of Offenders Act, 1958, to the facts and circumstances of the case, since the petitioner is stated to be an agriculturist aged more than 50 years having many responsibilities in the family.

II) The petitioner shall appear before the trial court on 6.4.2016 and the learned judge to dispose of the matter on or before 30.4.2016 relating to the sentence and the applicability of the provision of the Probation of Offenders Act, 1958.

III) Office to send the lower court records forthwith to the trial court."