

(2017) 01 KAR CK 0261
In the Karnataka High Court
Case No : 433 of 2015

Abdul Waheed S/o Abdul Wazeer, Krishnappa

APPELLANT

Vs

State by PSI Holehonnur Police Station

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 279](#),
[Section 338](#), [Section 304](#) Se

Citation : (2017) 01 KAR CK 0261

Hon'ble Judges : Budihal R.B.

Bench : SINGLE BENCH

Advocate : Prasad B S, B J Eswarappa

Final Decision : Dismissed

Judgement

1. Though the matter is listed for Admission, but with the consent of both sides, it is taken up for final disposal.
2. This revision petition is preferred challenging the judgment and order of conviction dated 14.2.2014 passed in C.C.No.2743/2011 confirmed by the judgment and order dated 16.4.2015 passed by the IV Addl. District and Sessions Judge, Shimoga in CrI.A.No.52/2014.
3. Brief facts of the prosecution case are that on 20.4.2011 in Holehonnur-Channagiri N.H.13 road in front of Shaila Farm at 8.30 a.m., deceased Prashanth and C.W.2 Raghavendra were going in their bike bearing registration No.KA-14-Y-8636 from Holehonnur to Mydolalu village, at that time, a lorry bearing registration No.KA-01-7609 came from Channagiri to Holehonnur in a high speed, in a rash and negligent manner and dashed against the motor bike of deceased Prashanth, as a result, Prashanth and C.W.2 Raghavendra fell down and sustained grievous injuries and Prashanth succumbed to the injuries at the spot. C.W.2 Raghavendra sustained grievous injuries over his legs. Thereafter,

P.W.1 Bassoji Rao lodged first information before Holehonnur police on the same day at 9.30 a.m. Based on this first information, Holehonnur police have registered the case in Crime No.92/2011. Thereafter, the Investigating Officer filed the charge sheet against the accused for the alleged offences punishable under Sections 279, 338 and 304(A) of IPC. The trial Court, after considering the oral and documentary evidence placed on record, convicted the appellant-accused for the said offences. Being aggrieved by the judgment and order passed by the trial Court, the revision petitioner herein preferred the appeal before the first appellate Court in CrI.A.No.52/2014. The first appellate Court, also, after re-appreciating the entire materials, dismissed the appeal, confirming the judgment and order of conviction passed by the trial Court. Being aggrieved by the judgments of the Courts below, the revision petitioner- accused is before this Court.

4. Heard the arguments of the learned counsel for the revision petitioner, so also, the learned HCGP for the respondent-State.

5. Learned counsel for the petitioner has submitted that the prosecution has not proved its case beyond reasonable doubt; the Courts below have not appreciated the admissions of the witnesses during the course of cross-examination and have wrongly proceeded to convict the petitioner-accused. He has also submitted that the prosecution witnesses P.W.s.3 and 4 have deposed that the lorry driver when overtaking the two wheeler vehicle went on the right side of the road and dashed to the two wheeler, whereas, P.W.6 Raghavendra who was the pillion rider and also the eyewitness has deposed in his evidence that the appellant-accused being the lorry driver overtook another lorry and in that process, he came on the right side of the road and dashed to the two wheeler vehicle. Looking to the evidence of P.Ws.3, 4 and 6 who are all claiming to be the eyewitnesses to the incident, reasonable doubt arises in the mind of the Court as to the case of the prosecution. This aspect has been completely over looked by the Courts below, in not properly appreciating the evidence of the prosecution witnesses. Hence, the matter requires consideration in this revision petition.

6. Per-contra, learned Government Pleader has submitted that there are concurrent findings of the Courts below. P.W.6 is the injured eyewitness and he has deposed about the incident. Appreciating the evidence on record, both the Courts below have rightly come to the conclusion in convicting the revision petitioner-accused. Hence, there is no merit in the case and the same is to be dismissed.

7. I have perused the judgments and orders passed by the Courts below, grounds urged in the revision petition filed by the petitioner-accused, so also, the original records called for in the case on hand.

8. As per the prosecution case, deceased Prashanth and P.W.6 Raghavendra were proceeding on their two wheeler vehicle to go to Mydolalu village and the lorry driver who was coming from the opposite direction from Channagiri to go to

Holehonnur, came in a rash and negligent manner and took the lorry on the right side of the road and dashed to the two wheeler vehicle of the deceased and P.W.6 Raghavendra and thereby caused the accident.

9. P.W.6 Raghavendra is the injured eyewitness and he has spoken about the incident in question. He has also deposed that their vehicle was proceeding on the leftside of the road, whereas, the lorry came on the right side in the process of overtaking another vehicle and dashed to their vehicle.

10. I have also perused Ex.P7, the Motor Vehicle Inspector's report, which also shows that the right side front portion of the lorry is pressed and even the motorbike is damaged on the rightside. Ex.P7 is consistent with the oral evidence of P.W.6, the injured eyewitness, that the accident has taken place in between the two vehicles.

11. Even in the statement recorded under Section 313 of Cr.P.C. the petitioner-accused has clearly admitted that he was the driver of the said lorry and was driving the same slowly and carefully and that the rider of the two wheeler, the deceased, came in a rash and negligent manner and dashed to the lorry. This statement of the accused clearly establishes that the accident took place in between the two vehicles and he was the driver of the said lorry on the said date. Therefore, the contention of the learned counsel for the revision petitioner that identity of the driver of the lorry was not satisfactorily established will not arise at all. Apart from that, the accident has taken place in the broad day light in the early morning. Looking to the spot mahazar, so also, the sketch produced in the case, they clearly show that the accident took place on the left side of the road and damage is caused to the lorry on its right side. When the trial Court as well as the first appellate Court have already appreciated the oral and documentary evidence of the parties and have come to the conclusion that prosecution has established its case beyond all reasonable doubt and have recorded a concurrent finding, the scope of this Court in revision is very limited. Unless and until it is shown by the petitioner-accused that there is a patent illegality in the judgment and order of conviction passed by the trial Court and also confirmed by the first appellate Court, this Court cannot interfere into the judgments of the Courts below.

12. Perusing the entire materials placed on record, I am of the opinion that there is no merit in the case to interfere with the orders passed by the Courts below. Even the quantum of sentence imposed by the trial Court is reasonable and cannot be interfered with to modify the sentence.

13. Accordingly, revision petition is dismissed.