

**(2012) 08 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Criminal Revision Petition No. 842 of 2010

Aleem Pasha and Ahmed MohaIla

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 27-08-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 279, 304 A, 337

**Citation :** (2013) 2 ACC 367 : (2013) CriLJ 174 : (2012) 6 KarLJ 463

**Hon'ble Judges :** A.N. Venugopala Gowda, J

**Bench :** Single Bench

**Advocate :** S.G. Kashimath, for the Appellant; Vijayakumar Majage, HCGP, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.N. Venugopala Gowda

1. The petitioner, who has been convicted and sentenced under Ss. 279 and 304A IPC has filed this Criminal Revision Petition. The JMFC at Chamarajnaragar convicted the petitioner. On appeal, learned Session Judge at Chamarajnaragar maintained the conviction, but, modified the sentence to a certain extent. This petition is directed against the said Judgments and Orders. Sri S. G. Kashimath, learned advocate, contended that the CV: eident took place on 19.2.2001, at about 4.30 p.m., while the petitioner was driving his auto from Bisalavadi to Chatra and that the injured Chennigaiah was immediately taken to Chamarajanagar for treatment at the Government Hospital. He submitted that, case was registered and FIR was lodged for the offences under Ss. 279 and 337 IPC. He submitted that the injured Chennigaiah has died long thereafter i.e., on 28.3.2001 and the doctor having sent the report, case was registered and FIR was sent for the offence under S, 304A IPC. He submitted that the injured having died after about one and half months of the incident, there is no nexus between the crime and the cause or death. According to the learned counsel, the injured

did not die due to the injury sustained in the accident and that the death was on account of lack of proper treatment or other factors and thus, the prosecution of the petitioner for the offence under S. 304A IPC and his conviction thereunder is illegal. Learned counsel, submitted that the Courts below have not correctly appreciated the record of the case and hence, interference in the matter is warranted. Alternatively, it was contended that the sentence imposed is harsh and excessive.

2. Sri Vijayakumar Majage, learned HCJP, on the other hand, made submissions in support of the view taken by the Courts below and sought dismissal of the Criminal Revision Petition.

3. Most of the facts have been found concurrently by the Courts below and the only question for determination is;

Whether on the facts proved in the case, it can be held that the death of Chennigaiah was on account of the injuries sustained by him in the road traffic accident involving the vehicle which was driven by the petitioner and falls within the scope of S. 304A IPC?

4. The accident occurred on 19.2.2001, at about 4.30 p.m., on Kodiugana village near Jogaiahna Katte Baniyan tree, in a tar road. The road is straight, running from North to South. The width of the tar road is 16 feet. Width of the footpath to the West of the road is 8 feet. Width of the footpath to the east of the road is 6 feet. The auto bearing registration No. KA-15-309, driven by the petitioner came from Bisalavadi to Venkataiana Chatra and dashed against Chennigaiah, who was going on the road along with his cows and as a result, he sustained grievous injuries. The injured was immediately taken in the said vehicle to Government Hospital, Chamarajnagar. Statement of Chennigaiah (Ex. P4) was recorded in the presence of the doctor at the hospital and a case was registered in Crime No. 21/2001 against the petitioner for the offences under Ss. 279 and 337 IPC. FIR (Ex. P11) was sent to the Court. Chennigaiah, while undergoing treatment died in the hospital on 28.3.2011. Dr. Padmini/PW-1 sent an intimation/Ex. P1, reporting the death of Chennigaiah. Case was registered against the accused for an offence under S. 304A IPC and FIR (Ex. P5) was sent to the Court. After completion of investigation, charge sheet was filed. In response to the summons, accused appeared and when the accusation was put to him, on 23.7.2004, he pleaded not guilty. Prosecution in order to prove its case, examined PWs. 1 to 10, through whom Ex. P1 to P10 were marked. After closure of the prosecution case, statement of the accused under S. 313 of Cr.P.C., was recorded on 12.6.2006 and it is a case of mere denial. No defence evidence was adduced. Considering the rival contentions and the record, learned Magistrate found the accused guilty and convicted the petitioner for the offences under Ss. 279 and 304A IPC and imposed the sentence.

5. Occurrence of the accident on 19.2.2001 involving the auto which was driven by the petitioner and sustaining of injury by Chennigaiah is not under dispute.

Chennigaiah was taken in the very autorickshaw for treatment to Government Hospital at Chamarajnagar. On the basis of statement of Chennigaiah, case was registered against the petitioner for the offences under S. 279 and 337 IPC in Crime No. 21/2001 and FIR/Ex. P11 was sent to the Court. Ex. P8 is the wound certificate of Chennigaiah issued by the District Hospital, Chamarajnagar. Doctor has noticed the injury as "severe tenderness present on the hip joint. Movement of joint is restricted". He referred the patient to Orthopedic Surgeon. While undergoing treatment, Chennigaiah died in the hospital at 1.30 p.m., on 28.3.2001. Doctor reported the death of Chennigaiah, as per Ex. P1. A case for the offence under S. 304A TPC was registered and FIR - Ex. P5 was sent to the Court.

6. PW-1/Dr. Padmini has deposed regarding death of Chennigaiah, in the hospital, due to the injury sustained in the accident. Ex. P7 is the postmortem report of Chennigaiah. It has been noted therein that, "the deceased had the history, of compound fracture of (R) Trochanter and was an inpatient for septicemia and died during the course of treatment". Doctor has opined that the death was due to "respiratory failure secondary to septicemia".

7. Puttashanthu/PW-2, who saw the accident has said that, accused who was driving the auto in rash and negligent manner dashed to Chennigaiah, who was moving on the left side of the road and that Chennigaiah fell down and he rushed to the spot, took to the injured and admitted him at District hospital, where he died. He has identified the accused as the driver of the autorickshaw. He has identified his signature on Ex. P2, the spot mahazar.

8. Basavaiah/PW-3 has given a similar statement. He has stated that, accident occurred due to rash and negligent driving of the autorickshaw by the accused.

9. Mahadevaiah/PW-4 has said that, the mahazar was drawn after showing the autorickshaw and he has signed the recovery mahazar - Ex. P3. Naganna/PW-6 is a panch witness and has supported the prosecution case.

10. Shivanna Naika/PW-7 has said that, on 19.7.2001, at about 8.00 p.m., he received memo from the Chamarajnagar Hospital and on that basis registered a case and submitted FIR/Ex. P5 and later visited the spot, drew the mahazar, prepared the sketch of the accident spot/Ex. P6, recorded the statements of Basavaiah and Puttashanthu and further investigation was taken over by the PSI.

11. M. Marishetty/PW-8 has said that, on 2.4.2001, he took over further investigation, visited the spot, recorded the statements, obtained wound certificate, postmortem report and IMV report and submitted the charge sheet.

12. S. Nanjudnaiah/PW-9 has said that; on 28.3.2001, at about 4.30 p.m., Town Police Station constable produced a memo and on that basis, he visited the hospital, wherein, dead body of Chennigaiah was kept, made enquiries with the doctor and on the basis of the Memo, registered another case and submitted the FIR/ Ex. P11.

13. Padmaprasad/PW-10 has said that, after receiving a requisition from the Police Station, he inspected the auto rickshaw and there was no damage found to the auto and the brake system was in proper condition and he issued the report/ Ex. P9, wherein, he opined that the accident has not happened due to any mechanical defect.

14. The evidence of the said witnesses makes it offending autorickshaw when the accident occurred. I find no reason for not accepting the evidence of the said witnesses, which the Courts below have accepted after careful consideration. The rash and negligent driving of the offending autorickshaw by the petitioner being the cause for the accident is well established. The petitioner has dashed the said vehicle against Chennigaiah and as a result, Chennigaiah sustained grievous injury and was taken in the same vehicle to the hospital. Though, Chennigaiah was admitted on 19.2.2001, while undergoing treatment, died in the hospital at 1.30 pm., on 28.3.2001. PW-1 reported to the police as per Ex. P1, which is to the following effect.

Herewith I am informing that one ML case met with P. T. Accident on 19.2.2001, at 4.30 p.m., and was admitted in our Hospital and was on treatment. Today at 1.30 pm., patient expired. This is for your information and needful.

Name: Chennaiah S/o Late Chikkamadaiah, Kodiugani, Chamarajnagar, Sd/- (Dr. padmini).

15. In view of Exs. P8, P1, evidence of PW-1 and the 28.3.2001, as a result of the grievous injury sustained by him in the road traffic accident which occurred on 19.2.2001, due to the rash and negligent driving of the auto rickshaw by the accused. From the date of accident till the date of death, Chennigaiah was under continuous treatment at the hospital. It is only on account of a rash and negligent act of the petitioner in driving the auto and dashing against Chennigaiah, he suffered grievous injury. Though he was admitted to the hospital for treatment, became septicemic and died, while undergoing treatment. The injury sustained by Chennigaiah in the accident caused by the petitioner was the direct and proximate cause, which led to the death of Chennigaiah. There is no other intervening negligent act, which became the cause for the death of Chennigaiah. No evidence has been brought on record showing that there was no proper treatment or medical negligence due to which Chennigaiah died.

16. In view of the above, the Trial Court and the of rash and negligent driving which led to the death of Chennigaiah. Thus, the conviction of the petitioner for the offences under Ss. 279 and 304A IPC is justified. Keeping in view the ratio of the decisions In the case of Duli Chand Vs. Delhi Administration, and State of Punjab Vs. Balwinder Singh and Others, the sentence imposed on the petitioner is not harsh.

Consequently, the petition being devoid of merit is dismissed and the bail bonds are cancelled.