

(2017) 01 KAR CK 0356
In the Karnataka High Court
Case No : 579 of 2014

K B Biddappa S/o K.C. Ponnappa

APPELLANT

Vs

The State of Karnataka Represented by Indiranagar Traffic
Police

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 279,&br/>Section 304A,

Citation : (2017) 01 KAR CK 0356

Hon'ble Judges : Budihal R.B.

Bench : SINGLE BENCH

Advocate : M T Nanaiah, Shankarappa, K Nageshwarappa

Final Decision : Dismissed

Judgement

1. Though this matter is listed for admission, with consent of learned Counsel for the parties and as the original records are received, it is taken up for final hearing.

2. This revision petition is preferred by the revision petitioner accused challenging the legality and correctness of the judgment and order dated 14.12.2012 passed by the Metropolitan Magistrate Traffic Court-VI, Bengaluru City in C.C. No.950/2011 and the judgment and order dated 30.06.2014 passed by the Fast Track Court No.VIII, Bengaluru in Crl. Appeal No.12/2013. By the judgment and order, the trial Court convicted the revision petitioner accused for the offences punishable under Sections 279, 337, 338 and 304A of IPC.

3. Brief facts of the case of prosecution as per the complaint averments are that on 31.07.2011 at about 11.00 a.m. in K.R. Pura on Mahadevapura Ring Road, the accused being the driver of Car bearing No.KA-01 MC-1742 drove his car on public road in rash and negligent manner so as to endanger human life. Due to

this, near Wines Cheese Shop, the Car of accused dashed two pedestrians who were waiting to cross service road to cross the road and then went ahead dashed one motor cycle bearing No.KA-03 EA-2331 and then dashed one electric pole and stopped. In this accident, pedestrian by name Meri and CW-4 and motor cycle rider sustained simple and grievous injuries. The injured Smt. Meri died on the way to hospital. In the accident, an electric pole got damaged. P.W.1, who is an eye witness and the son of the deceased, filed a complaint with K.R. Pura Traffic Police, who have registered a case in Crime No.102/2011 and investigated the matter. On completion of investigation, charge sheet has been filed.

4. I have heard the arguments of learned Counsel for the revision petitioner-accused and learned High Court Government Pleader for the respondent-State.

5. Learned Counsel for the revision petitioner accused submitted that the materials on record would show that the revision petitioner was proceeding in his car and there was a road hump and because of that reason, he lost control and as a result, the accident occurred. This itself goes to show that there is no rash and negligent driving by the revision petitioner accused. He submitted that though witnesses P.Ws.1 to 3 and 7 claim to be the eye witnesses to the incident, their evidence is not consistent and worth believable. There are major contradictions in their evidence. P.W.3 though claims to be the injured eye witness, he has not fully supported the case of prosecution and he has also turned hostile. Hence, he submitted that these material aspects were not at all properly appreciated by the Courts below. Because of this reason, the trial Court as well as the first appellate Court proceeded to pass the wrong judgment holding the revision petitioner guilty of the said offences. Hence, he submitted to allow the petition and set aside the judgment and orders of the Courts below.

6. Per contra, learned HCGP appearing for the respondent submitted that P.Ws.1 to 3 so also P.W.7 are the eye witnesses to the accident. P.W.1-complainant is the son of the deceased. P.W.1 has deposed that he has personally witnessed the incident. It is his contention that the accused has not taken any specific defence and he has not discharged onus which was shifted on him during the course of the trial proceedings. He submitted that these aspects were properly appreciated by the Courts below. There are concurrent findings by the Courts below. There are no grounds for interference by this Court.

7. I have perused the grounds urged in the revision petition, the judgment and orders passed by the Courts below and the also entire original records received by this Court.

8. Looking to the prosecution witnesses, it goes to show that the witnesses have consistently deposed that after dashing the deceased and P.W.3 (injured), the driver of the car i.e., the accused, dashed the car to the rider of the two wheeler vehicle and thereafter, dashed to the electric pole. This material makes it clear that the speed of the vehicle was high even though there was road hump. If the driver of the car would have been little careful and cautious and if he were slow

in driving, the accident would not have been happened and he would not have dashed the two pedestrians, one two wheeler vehicle and the electric pole. Therefore, as rightly observed by the Courts below, the contention of the revision petitioner that because of the road hump itself, the accident has taken place and there is no rash and negligent driving, cannot be accepted.

9. Looking to the IMV report (Ex.P.15), it is stated that the accident has occurred not because of any mechanical defect of the car in question, and the vehicle was in condition.

10. Looking to the statement recorded under Section 313 of Cr.P.C., the accused has been examined to say about the incriminating materials. It is no doubt true that he was asked as to whether he wanted to say any thing to defend himself? The accused said "no and he is not at fault". In the accident case, the driver of the vehicle is the best witness who explain as to how the accident has happened. Looking to the statement under section 313 of Cr.P.C., the accused has not explained except stating that he is not at fault.

11. Apart from that, the eye witnesses who have been examined before the Court have clearly stated that the accused came in rash and negligent manner and their evidence before the Court is also supported by the material that subsequently after passing the road hump, the vehicle dashed the pedestrian, the driver of the two wheeler vehicle as well as the electric pole. In view of this material, the trial Court has rightly appreciated the material on record and came to the conclusion holding that the accused is guilty in rash and negligent driving of the vehicle. Looking to the judgment and order of the first appellate Court, it has also re-appreciated the entire materials and held that the trial Court has not committed any error in coming to such conclusion.

12. Regarding the factual aspect is concerned, there are concurrent findings of the Courts below. Since this proceeding being the criminal revision petition, the scope is limited. This Court cannot look into the entire factual aspect unless it is shown that grave error has been committed by the Courts below in appreciating the material on record. Considering all these materials on record, I do not find any illegality in the judgment and orders of the Courts below. There are no justifiable +grounds for interference. The revision petition fails and it is accordingly dismissed.