

(2009) 06 KAR CK 0113

In the Karnataka High Court

Case No : Criminal Revision Petition No. 141 of 2007

Mukund Gyasoba Kongale

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 134 (a) (b)
Penal Code, 1860 (IPC) — Section 304 A, 337, 338

Citation : (2010) 3 KarLJ 116

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Vigneshwar S. Shastri, for the Appellant; P.H. Gotkhindi, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda, J.—The matter is listed for admission.

2. The learned Counsel for petitioner is absent. I have heard the learned Government Advocate for State.

3. There are concurrent findings of Courts below that accident took place due to rash and negligent driving of petitioner/accused and petitioner/accused is guilty of offences punishable under Sections 279, 337, 338, 304-A of the Indian Penal Code, 1860 read with Section 134(a)(b) of Motor Vehicles Act, 1988.

4. On 25-5-2004 at 9.30 a.m. petitioner was driving truck bearing No. MH-MU-7905, in a rash and negligent manner, as a result, it dashed against Tata Sumo bearing No. KA-16/M-1666 which was coming from opposite direction. The accident resulted in death of one Rajalaxmi and one Gangamma and simple and grievous injuries to others.

5. The eye-witness, injured witnesses and other documentary evidence such as spot mahazar, IMU report would prove that petitioner was driving the truck to his extreme right side at the time of accident. The accident took place within town

limits of Honnavar.

6. The Trial Court has recorded above findings, on appreciation of evidence of injured and eye-witnesses. The First Appellate Court on reconsideration of the matter has confirmed the findings of Trial Court.

7. In view of concurrent findings recorded by the learned Trial Judge and Appellate Judge, it is necessary to refer to a decision in the case of State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri, , wherein the Supreme Court has held:

5. ...Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappraising the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same.

8. On consideration of the matter, I find that Courts below have not committed any glaring errors in appreciation of evidence.

9. The Courts below have sentenced the accused for offences punishable under Sections 337, 338 and 304-A of the IPC, there was no need to pass separate sentence for an offence punishable u/s 429 of the IPC. Therefore, sentence needs modification.

10. In the result, I pass the following:

ORDER

The criminal revision petition is allowed in part, the impugned judgment as it relates to conviction and sentence for offences punishable under Sections 337, 338 and 304-A of the IPC is confirmed. The sentence passed for an offence punishable u/s 279 of the IPC is set aside.