

(2014) 09 KAR CK 0097

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1016 of 2012

Pakariah Sangaiah Halakeri

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2015) 1 AKR 146 : (2015) 3 KCCR 2103

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V.B. Siddaramaiah, Advocate for the Appellant; K.R. Keshava Murthy, State Public Prosecutor, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—The present petition is considered for final disposal even at the stage of admission.

2. The petitioner was said to be a driver of a bus belonging to the Karnataka State Road Transport Corporation (hereinafter referred to as "the KSRTC", for brevity).

It is the case of the prosecution that one Ramesh was the complainant who had alleged that on 28.12.2009 at 3.00 a.m. in the morning, when he was on his way to defecate and therefore, he was crossing the National Highway-4, at which point of time he had noticed a KSRTC bus coming from Hiriyur in a rash and negligent manner and he noticed that the vehicle was out of control and the vehicle had fallen into a ditch near a Gurjanti Dhaba. He had rushed to the spot and others also came there and the inmates of the bus were extricated from inside the bus. There were several passengers who were injured. They were all taken to Hospital and thereafter, at 9.00 a.m., the complainant had lodged a complaint of the incident. A case was registered and the presence of the accused was procured before the Court and he was charge-sheeted. Ultimately, the plea of the accused was framed and the accused having pleaded not guilty and having

claimed to be tried, the prosecution had examined 12 witnesses and marked several exhibits. Thereafter, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C.", for brevity) and the court below framed the following points for consideration:

"1. Whether the prosecution proved beyond reasonable doubt that, the accused being the driver of the KSRTC bus bearing no. KA-26. F-771 drove it with rash and negligent manner on 28.12.2009 in the early morning at about 3 o'clock near the Gurjant Daba on N.H.4 and made the bus to turtle down and caused the accident. As a result of which, inmate of the bus were sustained simple and grievous injuries etc.,?

2. What order?"

The Trial Court held the points in the affirmative and convicted the accused to simple imprisonment for a period of six months for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC", for brevity). The same was challenged in appeal and the Appellate Court has confirmed the sentence imposed by the Trial Court. It is that which is under challenge in the present petition.

3. The learned counsel for the petitioner would contend that the accident has occurred not on account of any rash and negligent driving. The front left side tyre of the bus had burst and it is as a result of which the vehicle had gone out of control and had turned turtle. This circumstances is stated by the conductor of the bus. The time being 3.00 a.m., it was but natural that the passengers were asleep and though several of the passengers were examined as witnesses, the said witnesses not having spoken to the fact that the front side tyre of the bus had burst, is not unusual. Both the courts below have overlooked this defence of the accused which is supported by the conductor of the bus and have proceeded to impose a severe punishment of simple imprisonment of six months, though the petitioner could not be blamed for the accident, as it was not his fault that the bus had gone out of control. Apart from this primary contention, several other grounds are also raised. The learned counsel for the petitioner seeks to urge the same.

4. While the learned State Public Prosecutor would point out that the courts below have arrived at concurrent findings, the contention now raised by the petitioner was also urged before the courts below and since there was no cogent evidence in support of the said defence, the same has been negated. There is no warrant for reconsideration of the same.

It is further contended that even if the tyre had burst, if the bus was moving at a moderate speed, it would have come to a halt and only because it was driven at some speed, it had gone out of control. It is said that merely because the tyre had burst, it would not result in the bus turning turtle. As already stated if the bus was moving at a moderate speed, the accident would not have occurred. It is

on this primary finding of the courts below that the petitioner has been found guilty.

5. It is noticed that PW-1 who was the conductor of the bus who was inside the bus at the time the accident had occurred, had categorically stated that the accident was as a result of the front wheel of the tyre having burst and the vehicle was dragged to the left side, which was beyond the control of the driver. But however, the prosecution has treated him as a hostile witness and has negated the evidence. That evidence could not be overlooked. The evidence of the conductor was crucial and since he has categorically stated that it was as a result of the tyre having burst, the vehicle having dragged to the left side, the accident could not be ignored.

The Lower Appellate Court again has ignored the evidence of the conductor, except recording that he was treated as a hostile witness. This cannot be reconciled with the evidence of other witnesses who were apparently asleep at that point of time. Therefore, both the courts below have committed an error in holding that the accident had occurred as a result of the rash and negligent driving on the part of the petitioner. In any event, the injuries suffered by the passengers were not of such a serious nature as to warrant imprisonment for six months.

The driver of a bus does not intend to cause an accident and it is characterized as an accident, because it is an accident. Therefore, a serious view being taken of the same in the circumstances aforesaid, would result in a miscarriage of justice.

Consequently, the petition is allowed. The judgments of the courts below are set aside. The petitioner is acquitted. The fine amount if any paid shall be refunded to the accused.