

(2007) 07 KAR CK 0010
In the Karnataka High Court
Case No : Criminal R.P. No. 279 of 2005

Sri Akbar Gudusab Sanadi

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 134, 187
Penal Code, 1860 (IPC) — Section 279, 304 A, 337

Citation : (2007) ILR (Kar) 3498 : (2007) 6 KarLJ 593

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Jagadish Patil, for the Appellant; G. Honnaiah, Additional SPP, for the Respondent

Judgement

A.S. Pachhapure, J.—This revision petition is directed against the judgment and order passed by presiding Officer, Fast Track Court, Chikodi, in Criminal Appeal No. 16/2000 dated 12-01-2005 confirming the judgment and order passed by the JMFC, Sankeshwar, in C.C. No. 772/1999 dated 14-03 -2000 convicting the petitioner for the offences punishable Under Sections 279, 337, 304-A IPC and Section 134 read with 187 of Motor Vehicles Act and awarding the sentence.

2. The facts relevant for the purpose of this revision petition are asunder:

It is on 25-12-1998 at about 4.30 p.m., the complaint came to be lodged by Sri. Vijayakumar PW.1 the conductor of the MSRTC bus bearing registration No. MH-20 D-3114, alleging that on the date of accident in the evening at about 6-15 p.m., the bus bearing No. MH-20 D-3114 in which he was the conductor was proceeding from Belgaum towards Nippani and near Kanagal Village, the Tempo Tracks bearing Registration No. KA-23 M-4301 came from the opposite direction in a rash and negligent manner and overtaking a lorry, dashed the bus on its left side and in the impact, both the drivers of the Tracks and the bus were injured and two inmates of the Tracks died on the spot. The complaint on these facts was registered by Sankeshwar Police in Crime No. 158/1998 for the offences

punishable Under Sections 279, 337, 304-A IPC and Section 134 read with 187 of Motor Vehicles Act. PW.9 - the Sub Inspector of Police registered the crime and sent the first information to the Court. He visited the spot of the accident and held the scene of offence panchnama as per Exhibit P-2 and also seized the broken glass pieces. He prepared the sketch of the scene of accident as per Exhibit P-13. The CPI-P. W. -10 took out the further investigation and held the inquest over the dead bodies as per Exhibits P-3 and P-4, and recorded the statement of the witnesses. He sent the dead bodies for the post mortem examination and seized the clothes on the dead body of the deceased under the panchanam Exhibits P-7 and P-8. He secured the post mortem report Exhibits P-5 and P-6 and the injury certificates Exhibits P-9, P-11 of the petitioner and Exhibit P-10 injury certificate of the driver of the bus. He also secured the Motor Vehicle's Inspectors Report - Exhibits P-12 and after the completion of the investigation, filled the charge sheet before the JMFC Sankeshwar.

3. After framing the charge, the prosecution lead the evidence by examining PWs 1 to 10 and the documents Exhibits P-1 to P-13 were marked. The statement of the accused was recorded u/s 313 Cr.P.C. The accused has not led any evidence. After hearing the arguments, the learned Magistrate pronounced the judgment and order dated 14-03-2000 convicting the petitioner for the offences punishable Under Sections 279, 337, 304-A IPC and Section 134 read with 187 of Motor Vehicles Act and also awarded the sentence. Aggrieved by the said judgment and order, the petitioner preferred an appeal in Criminal Appeal No. 16/2000 before the Sessions Court, Belgaum. The case was made over to the Presiding Officer, Fast Track Court at Chikodi and the Learned Judge, after hearing, has pronounced the judgment on 12-01 -2005 dismissing the appeal. Aggrieved by the said order confirming the conviction awarded by the JMFC, this revision has been preferred.

4. I have heard Sri. Jagadish Patil, Learned Counsel appearing for the petitioner and Sri. G Honnaiah, learned Additional SPP for the respondent. The points that arise for my consideration are:

(1) Whether it is proved that the finding and order of the Sessions Court in Criminal Appeal No. 16/2000 confirming the judgment and order of the JMFC in CC No. 772/1999 is legal and valid?

(2) Whether there is any necessity to interfere with the finding and order of conviction?

(3) Whether the petitioner is entitled to any leniency in the quantum of sentence awarded by the Courts below?

Re. Point Nos. 1 and 2:

5. The prosecution to prove its case of rash and negligent driving has relied upon the evidence of PW.1 Sri. Vijay Kumar, the conductor of the bus, PWs 3 and 4 the eye witnesses, being the driver of the bus and a villager standing at the bus stop

respectively. It is the evidence of these witnesses which has been mainly relied upon by Courts below, to conclude an act of rash and negligent driving.

6. At the first instance, the perusal of evidence of PW.7 reveals that the accident was not due to any mechanical defect, in the vehicles. PW.7 - the Motor vehicles Inspector has submitted a report as per Exhibit P.12 and it does not reveal any such mechanical defect in the vehicles. Except suggesting that the Tracks was not in running condition, nothing is elicited in the cross examination of PW.7. Hence, the finding in this regard cannot be altered.

7. The contention that the petitioner was not driving the Tracks bearing No. KA 23 M 4031 at the relevant time but PWs 5 and 8 -the owners of the Tracks state in their evidence that the petitioner was employed as a driver on the date of the accident and other eye witnesses also state that the petitioner was driving the Tracks at the relevant time. Except the suggestion that the petitioner was not the driver, there is nothing to disbelieve the evidence of the Prosecution.

8. The accident has occurred on the National Highway No. 4. The road at the spot of the accident is 32 feet wide. The bus was proceeding from south to north. The Tracks came from the opposite direction overtaking a lorry and the evidence of the eye witnesses i.e., PWs 1 to 4 reveal that the driver of the Tracks came in a high speed after overtaking the lorry and when he was the bus coming from the opposite direction, on entertaining the fear was not in a position to take a decision as to on which side he should move the vehicle and at the that time, he took the Tracks to the extreme wrong side, i.e., the left side of the bus and hit the bus on the front left side. The Tempo Tracks fell at a distance of about 31 "8" inches from the spot of the accident and the bus stood at a distance of 120" from the spot towards the north. Perusal of Exhibit P.2 the scene of occurrence panchanama reveals the spots where the Tracks had fallen, the bus stood and the spot of the accident. Looking to the circumstances existing on the spot, an inference could be drawn about the rash and negligent driving of the Tracks by the petitioner. The principle of Res ipsa loquitur applies to the facts. Thereby, a presumption arises about the rash and negligient act. Consistent with the circumstances existing at the spot, the evidence of PWs 1,3 and 4 i.e., the conductor, the driver of the bus and an independent eye witness strengthens the presumption and there is nothing in the cross examination to disbelieve their evidence. So taking into consideration, the evidence referred to above, I am of the opinion that there is sufficient evidence and there is no illegality in the findings arrived at by the Trial Court and confirmed by the appellate Court. Hence, I do not find any necessity to interfere with the order of conviction passed by the Courts below. Therefore, I answer the point No. 1 in the affirmative and point No. 2 in the negative.

Re. Point No. 3:

9. The Learned Counsel for the petitioner has requested for reduction in the sentence of imprisonment awarded by the Trial Court. As could be seen from the

order impugned, the Trial Court has awarded the sentence of S.I. for six months and to pay a fine of Rs. 1,000/- for the offence punishable u/s 279 of IPC and in default of payment of fine, to undergo S.I. for one month, to pay a fine of Rs.500/- for the offence punishable u/s 337 of IPC in default to undergo S.I. for 15 days, to undergo R.I. for 8 months and pay a fine of Rs. 1,000/- for the offence punishable u/s 304-A of IPC and in default of payment of fine, to undergo R.I. for one month, to undergo S.I. for one month and to pay a fine of Rs.300/- for the offence punishable u/s 134 read with 187 Motor vehicles Act and in default of payment of fine, to undergo S.I. for 15 days. In the accident, two persons have died on the spot and two have been injured. The mere fact that a human life is lost due to negligent driving of a vehicle does not justify the Court in passing a deterrent sentence, if the loss of life could not have been reasonably anticipated by the accused. In considering the question of sentence, one has to consider whether the rash and negligent act of the accused shows consciousness on his part as regards the risk to which he was exposing other persons. The severity of the sentence must depend to a great extent on the degree of callousness in the conduct of the accused.

10. It is the human instinct in every individual that he intends to be ahead of others. This instinct has to be controlled by an individual in a given set of circumstances. When the accused intended to overtake the vehicle, he could have been diligent in his attempt and could have controlled the speed of the vehicle, soon after seeing the bus coming from the opposite direction. It is this inaction or negligence which requires to be punished. It may be that by such negligence there could have been many deaths, but that by itself is not a criterion to consider penalty.

11. Taking into consideration, the extent of negligence, and the circumstances in which accident occurred and the litigation for the last seven years, I think it would be just and proper to reduce the sentence of imprisonment for the offence u/s 304-A IPC to six months. In the circumstances, I proceed to pass the following:

ORDER

The conviction of the petitioner for the offence Under Sections 279, 337, 304-A IPC and 134 read with 187 of the Motor Vehicles Act is confirmed. The sentence of imprisonment and fine awarded, for all the offences except for the offence u/s 304-A IPC is confirmed. The sentence of imprisonment for the offence u/s 304-A IPC is modified and the petitioner is ordered to undergo Rule 1 for six months for the said offence and to pay the fine as ordered by the Trial Court. The judgment and order of the Courts below stand modified to this extent. The Courts below shall take steps to secure presence of the accused to undergo the sentence ordered.