

(2011) 11 KAR CK 0169

In the Karnataka High Court

Case No : Criminal Revision Petition No. 874 of 2011

Sri Nagendra

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 279, 304 A

Citation : (2011) 11 KAR CK 0169

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Harish for Sri B.M. Siddappa, for the Appellant; P.M. Nawaz, Addl. SPP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar

1. This revision petition u/s 397 of Cr.P.C. by a person who is convicted of the offences punishable u/s 279 and section 304-A of IPC and has been sentenced to undergo simple imprisonment for a period of one year and fine of Rs. 2,000/- and in default undergo simple imprisonment for further period of one month for the offence punishable u/s 304-A. of IPC and is also sentenced to undergo simple imprisonment for a period of fifteen days and to pay fine of Rs. 500/- and in default undergo simple imprisonment for a further period of one week for the offence punishable u/s 279 of IPC and all punishments to run concurrently.

2. The accused - petitioner had preferred an appeal against this Judgment and order of the trial court dated 19.2.2010 to the Additional Sessions Judge [Fast Track Court], Chitradurga in Criminal Appeal No. 15 of 2010. The learned Sessions Judge having formulated the following points for determination.

1. Whether prosecution proves beyond all reasonable doubts that on 05.06.2008 at about 9.30 p.m. near Udevu Village on Nayakanahatty Kolammanahalli public

road, the accused drove the vehicle bearing No. KA 16A-7210 in a rash and negligent manner which was endangering human life and as a result Bosaiah sustained grievous injuries on his body and he died on 18.06.2008 at 10:15 p.m. when he was taking treatment at Bapuji Hospital Davanageri and thereby he has committed the offences punishable U/s 279 & 304-A of IPC?

2. Whether the impugned judgment passed by the learned trial court is arbitrary, perverse, capricious and opposed to law?

3. Is there any sufficient reason to interfere in the order of learned trial court?

4. What order?

and having found no occasion to interfere with the conviction and sentence of the trial court, dismissed the appeal in terms of the Judgment and order dated 14.9.2010 which is questioned in this revision petition.

3. Mr. Harish, learned counsel for the petitioner has urged that the conviction and sentence by the trial court and the affirming order of the appellate court are not tenable in law: that PW.2 was the sole witness who supported the prosecution case, but PW.2 also having admitted that due to darkness he could not see what happened at the relevant point of time and the accident took place resulting in the death of one Bosaiah who was travelling in a three wheeler goods vehicle auto along with PW.2 and an oxen which was also being carried in the three wheeler due to the rash manner of speeding of the vehicle by the driver, the vehicle toppled over at a curve and the deceased fell off from the vehicle, was thrown out of the vehicle and the vehicle fell on him resulting in his death etc.; that it was due to speeding vehicle who had not seen what happened outside and therefore the prosecution had not made good its case.

4. Mr. Harish, learned counsel for the petitioner points out that the mahazar witnesses - PW.1 & PW.2 turning hostile and there being absolutely no other evidence to connect the incident to the accused, conviction is not sustainable. It is also submitted by Sri. Harish, learned counsel for the petitioner that none of the prosecution witness had identified the accused person, particularly, as PW.2 when deposed the accused had not attended the court on that day etc.

5. Mr. Harish, learned counsel for the petitioner has also pointed out that PW.2 not receiving any injuries while other passenger receiving injuries which ultimately resulted in his death after undergoing treatment for about fourteen days is also a pointer of the falsity of the prosecution case etc.

6. The accused was charged of the offences as a Driver of the three wheeler which not only carried the deceased, an oxen and PW.2, it appears even the oxen also died due to injuries which the animal suffered due to its jumping out of the vehicle, being frightened and all these things happening because of the speeding of the vehicle, more so in a curve etc.

7. A revision petition u/s 397 of Cr.PC is not an appeal. The learned Judge of the

trial court who had appreciated the evidence chose to accept the evidence of PW.2 who according to the learned trial Judge was not an interested witness nor a chance witness and being a witness who was present at the spot when the incident took place, the other material was supportive of this narration of PW.2, particularly, the incident such as accident on the date of complaint, namely, on 5.6.2008, first information report and the accused himself having been arrested on the very day, but later enlarged on bail etc. Under such circumstances, the learned trial Judge found the accused guilty of the offences charged with and convicted him and sentenced him to punishment as noted above.

8. In the appeal, the learned appellate Judge reapprised the evidence on record and after discussing the relevant case law, found no occasion to interfere with the Judgment and order of the trial court. The grounds urged by Sri. Harish, learned counsel for the petitioner are more in the nature of impugning the finding of the learned trial Judge as affirmed by the learned appellate Judge. As observed. earlier, this court does not act as a court of appeal while exercising jurisdiction u/s 397 of Cr. PC.

9. I am satisfied that there is no miscarriage of justice or the criminal law being misused or abused to the detriment of the revision petitioner and he being victimized etc. The fact that the revision petitioner's whereabouts were not known from the date of dismissal of the appeal upto a few days before the filing of this revision petition when he was taken into custody i.e. the period whereafter the benefit of enlargement on bail, suspending sentence imposed by the trial court came to an end on 14.9.2010 when the appellate court dismissed the appeal and the revision petitioner filing this delayed revision petition within a few days after his apprehension is a rather puzzling development to serve the sentence and does not lend credence to the bonafides of the revision petitioner in prosecuting this revision petition.

10. I do not find any merit for interference in this revision petition and accordingly this revision petition is dismissed. The bail bonds are cancelled and he is directed to surrender within fifteen days from today before the learned trial Judge, failing which action can be taken in accordance with law for ensuring that the accused serves the remaining period of his sentence.