

(2023) 11 KAR CK 0012
In the Karnataka High Court
Case No : Criminal Appeal No. 429 Of 2014 (A)

State By Town Police Harihar ? 577601

APPELLANT

Vs

Imtiyaz Ahamed

RESPONDENT

Date of Decision : 02-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2023) 11 KAR CK 0012

Hon'ble Judges : S Rachaiah, J

Bench : Single Bench

Advocate : Rahul Rai K, V B Siddaramaiah

Final Decision : Dismissed

Judgement

S Rachaiah, J

1. This appeal is filed by the appellant-State being aggrieved by the judgment and order of acquittal dated 11.03.2014 in C.C. No.433/2012 on the file of the Principal Civil Judge and JMFC, Harihar, wherein the Trial Court has acquitted the accused for the offences punishable under Sections 279 and 304-A of the Indian Penal Code (for short 'IPC').

2. The rank of the parties in the Trial Court henceforth will be considered accordingly for convenience.

Brief facts of the case :

3. On 27.02.2012 at about 5.00 p.m., the deceased Mudenur Pakirappa was sitting on the dais (Katte) of Hirekerur Durgamma Temple of Sunagar Oni of Harihar City. It is stated in the complaint that he was sitting on the dais by stretching his leg towards the land. At that time, the accused being the driver of the Maruthi Omni van bearing registration No.KA-17/M-2726 drove the said vehicle in a rash and negligent manner proceeding towards Kailas-Imam Nagar Road, dashed against the deceased Pakirappa, as a result, the said Pakirappa

sustained injuries to his leg. Thereafter CW2 – Raghavendra and CW3 – Basavaraj have shifted Pakirappa to C.G. Hospital, Davanagere for treatment. After taking treatment from C.G. Hospital, Davanagere, he was discharged from the Hospital on 15.03.2012. However, he died on 23.03.2012 at 3.00 p.m. On the same day, Smt.Sarojamma who is the wife of the deceased examined as PW.2 lodged a complaint before the jurisdictional police and the jurisdictional police have registered a case in Crime No.27/2012 for the offences punishable under Sections 279 and 337 of the IPC. After the death of the said Pakirappa, the provision under Section 304-A was incorporated. The jurisdictional police have conducted the investigation and submitted the charge sheet.

4. To prove the case of the prosecution, the prosecution examined in all seven witnesses as PWs.1 to 7 and got marked seven documents as Exs.P1 to P7. The Trial Court after appreciating oral and documentary evidence on record, opined that the prosecution has not proved the case and acquitted the accused.

5. Heard Sri. Rahul Rai K., learned High Court Government Pleader for the appellant-State and Sri. V.B. Siddaramaiah, learned counsel for the respondent and perused the material on record.

6. It is the submission of the learned HCGP for the appellant-State that the findings of the Trial Court in recording the acquittal in spite of the evidence of the eyewitnesses, is erroneous and perverse. Even though the negligence and rashness is proved by the prosecution, the said aspect has not been considered properly by the Trial Court. Consequently, the impugned judgment is passed, which is required to be set-aside.

7. Further, the learned High Court Government Pleader submits that PW.1 being an eyewitness, has identified the accused who was driving the Maruthi Omni Van as on the date of the accident. PW.4 who was the owner of the said vehicle has stated in his evidence that the accused was a driver of the said vehicle as on the date of commission of offence. The said aspect should not have been considered by the Trial Court while appreciating the evidence. Appreciating the evidence without proper application of mind certainly leads to passing of impugned judgment. Therefore, re-appreciation is required by the Appellate Court. Making such submission, the learned HCGP for the appellant-State prays to allow the appeal.

8. Per contra, the learned counsel for the respondent vehemently justified the findings of the Trial Court and submitted that though PW.1 claims that he was present at the place of accident and in fact, he being a eyewitness to the accident, has not taken initiation to lodge the complaint on the same day and also not accompanied the injured when the injured was shifted to hospital. Therefore, the evidence of PW.1 cannot be considered as eyewitness to the incident. The Trial Court has rightly appreciated the evidence on record and passed the judgment and order of acquittal which requires no interference. Making such submission, the learned counsel for the respondent prays to dismiss

the appeal.

9. Having heard the learned counsel for the respective parties and perused the evidence of all the witnesses, this court being the First Appellate Court, it is necessary to re-appreciate the evidence of all the witnesses to conclude as to whether the Trial Court recorded the acquittal is relevant or not.

10. PW.1 stated to be the eyewitness to the incident, has stated that the accident took place on 27.02.2011, however, the actual date of accident was 27.02.2012. There are inconsistencies in the evidence of PW.1 in respect of his presence at the spot. In the examination-in-chief, he states that he was present and talking with injured Pakirappa, however, in the cross-examination, he has stated that he has seen the accident 15 to 20 meters away. The manner in which he attended the situation appeared that he was not present at the spot and he has not seen the accident. However, he is depicted as if he was present and an eyewitness to the incident. Therefore, his evidence as an eyewitness cannot be accepted.

11. PW.2 being the wife of the deceased Pakirappa is not eyewitness to the incident and she has not stated the name of the driver of the said offending vehicle. PW.3 is witness to spot panchanama. The said panchanama is marked as Ex.P1, he has turned hostile.

12. PW.4 the owner of the Maruthi Omni Van has stated in examination-in-chief that the accused was the driver of the said vehicle on the date of the accident. However, in the cross-examination, he has stated that his Maruthi Omni Van was taken by the accused, however, he did not know who was driving the vehicle.

13. PW.5 working as PSI stated to have conducted the investigation partly. Thereafter, PW.6 completed the investigation and submitted the charge sheet. PW.7 also witness to the spot panchanama which is marked as Ex.P1 supported the case of the prosecution regarding the accident.

14. There is a dispute regarding the accident which occurred. PW.2 states that soon after the incident, she visited the hospital where the deceased was taking treatment. However, complaint came to be registered on 28.02.2012 by the injured. In the said complaint, the name of the driver has not been mentioned. If the evidence of PW.1 is believed to be true, he should have stated the name of the driver and should have seen that his name should be mentioned in the FIR. Therefore, the alleged accident appears to be untrue. The Trial Court rightly appreciated the evidence and recorded the acquittal which is appropriate.

15. The identity of the driver of the said Maruthi Omni van has not been proved by the prosecution. Even though Ex.P1 which is spot mahazar indicates that the Maruthi Omni Van was found at the spot, PWs.3 and 7 being witness to the Ex.P1 have turned hostile and not supported the case of the prosecution. Therefore, the seizure of the said Maruthi Omni vehicle has not been proved. Considering the inconsistency and the contradiction in respect of alleged accident, the Trial Court has rightly recorded the conviction which requires no interference.

16. In the light of the observation made above, I proceed to pass the following:

ORDER

The appeal filed by the appellant-State stands dismissed.