

(2017) 01 KAR CK 0250
In the Karnataka High Court
Case No : 18 of 2010

SUNIL KUMAR S/O. NAGARAJU

APPELLANT

Vs

STATE OF KARNATAKA BY VIJAYAPURA P.S. REP. BY ITS
PUBLIC PROSECUTOR

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Indian Penal Code, 1860, Section 279,
Section 304(A) - Rash driving or riding on a public way -
Punishment for culpable homicide not amounting to murder

Citation : (2017) 01 KAR CK 0250

Hon'ble Judges : John Michael Cunha

Bench : SINGLE BENCH

Advocate : M. SHASHIDHARA, VIJAYA KUMAR MAJAGE

Final Decision : Dismissed

Judgement

1. The revision petitioner was convicted by the Addl. Civil Judge(Jr.Dn.) & JMFC, Devanahalli for the offences punishable under sections 279 and 304(A) IPC and was sentenced to undergo simple imprisonment for a period of one year and a fine of Rs.1,000/- for the offence punishable under section 279 Indian Penal Code; simple imprisonment for a period of two years and a fine of Rs.2,000/- for the offence punishable under section 304(A) Indian Penal Code in C.C.No.831/2007. The petitioner having carried the matter in appeal, the District & Sessions Judge, Fast Track Court-1, Bengaluru Rural District acquitted the petitioner herein of the offence punishable under section 279 Indian Penal Code and confirmed the conviction for the offence punishable under section 304-A Indian Penal Code and reduced the sentence to simple imprisonment for a period of one year and a fine of Rs.2,000/- in default, simple imprisonment for a period of three months.

2. The petitioner has challenged the impugned judgment mainly on the ground that the courts below have failed to appreciate the material evidence in proper

perspective. It is the submission of the learned counsel for the petitioner that the evidence of the eyewitness(PW-2) and the facts depicted in the sketch Ex-P4 are contradictory to each other. The learned counsel points out that according to the prosecution, the petitioner was driving the canter lorry bearing registration No.AP-02-W-5930 from Bengaluru to Chikkaballpur and the said vehicle dashed against the TVS Moped bearing registration No.KA-040-Q-550 coming from the opposite direction; but PW-2 the only eyewitness examined by the prosecution has stated in his evidence that at the relevant time, he was driving his maruthi van and was proceeding from Devanahalli towards Bengaluru and therefore he could not have witnessed the accident. This material discrepancy has not been taken into consideration by the lower courts resulting in convicting the accused and therefore the petitioner has sought for interference by this Court in exercise of the revisional jurisdiction.

3. In view of the contention urged by the petitioner, I have carefully scrutinized the sketch Ex-P4 and the evidence of PW-2 and I do not find any such discrepancy or contradiction as sought to be made out by the learned counsel for the petitioner.

4. The charge framed against the petitioner reads as under:-

"VERNACULAR MATTER OMITTED"

5. The sketch of scene of the accident at Ex-P4 depicts that the accident has taken place on the right side of the road leading to Chikkaballapur, even though the canter lorry driven by the accused was supposed to be on the left side of the road. The spot of accident is shown at a distance of 3 ft from the eastern edge(right side) of the road and it is specifically stated that after collision, the TVS Moped was dragged to a distance of 65 ft. The evidence of PW-2 is in conformity with the facts depicted in Ex-P4. In his chief examination, PW-2 has clearly stated that on the date of the accident at about 8.00 p.m., deceased Muniraju was driving his motor cycle on the left side of Chikkaballapur-Bengaluru road and at that time, the canter lorry came from opposite direction and hit against the moped cycle. He has specifically stated in his chief examination that the petitioner herein was driving the said canter lorry at a high speed and after the accident, he stopped the lorry and ran away from the spot.

6. In the cross-examination of PW-2, it is elicited that at the time of the accident, PW-2 was driving his car from Devanahalli towards Bengaluru. He was driving his car at a speed of 40 kms per hour and from behind the canter lorry over-took his car and after about 2 minutes, the accident took place. According to the learned counsel, as PW-2 has stated that he was proceeding towards Bengaluru, there was absolutely no occasion for the canter lorry to overtake his car and therefore no credence to be given to his evidence as his presence on the spot of occurrence is doubtful.

7. It is a basic rule of appreciation of evidence that evidence has to be read as a whole and not in isolation. Learned counsel for the petitioner appears to have

built up his argument solely on the basis of the answer elicited from the mouth of PW-2 that at the time of the incident, he was proceeding towards Bengaluru forgetting that in the course of cross-examination, it is elicited that at the time of the incident, the distance between the Maruthi Van and the canter lorry was about 200 ft. When a specific suggestion was made to PW-2 that since the canter lorry was proceeding ahead of the Maruthi van driven by him and therefore, he could not see the oncoming vehicle, PW-2 has answered that he was going ahead of the canter lorry. If this statement is read alongwith further answer elicited from the mouth of PW- 2 that the canter lorry overtook his vehicle and two minutes thereafter, the accident took place, it becomes evident that while overtaking the maruthi van of PW-2, the accused/petitioner took the lorry to the extreme right side of the road leading to the accident. Both the lower courts have appreciated this evidence and have recorded a categorical finding that the vehicle driven by the petitioner which was supposed to proceed on the left side of the road had crossed to the right side of the road, hitting the oncoming TVS Moped driven by the deceased causing his death. Therefore, the contention urged by the petitioner that the courts below have misconstrued the evidence and have committed the factual error cannot be accepted.

8. Nextly, it is contended that the road repair work was going on at the place of the accident and therefore the canter lorry could not have been driven at a high speed as alleged by the petitioner and on this count also, the finding recorded by the lower court calls for interference by this Court.

9. No-doubt, it is true that it has come in the evidence that the road near the place of the accident was under repair, but that circumstance would not any way lead to the conclusion that the vehicle in question was driven by the petitioner with all care and caution. The very fact the petitioner had taken the vehicle to the right side of the road and after hitting the oncoming vehicle had dragged it to a distance of 65 ft itself suggests that the petitioner had not reduced the speed of the vehicle even though the repair work was going on. If the vehicle was driven in a moderate speed, merely by applying the brake, the vehicle would have stopped after collision. But the evidence discloses that after collision, the moped was dragged to a distance of 65ft which by itself speaks of rash and negligent driving of the offending vehicle by the petitioner. In this context, it may be relevant to refer to the observations made by the Hon"ble Supreme Court in the case of RAVI KAPUR vs. STATE OF RAJASTHAN reported in (2012) 9 SCC 284 wherein it is observed as under:

"Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly or negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle

at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of section 279 IPC. That is why the legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life".

10. In the light of the above proposition, the contentions urged by the petitioner that the vehicle was driven with care and caution and that he is not liable for the consequences that have arisen on account of the accident in question are liable to be rejected.

11. Learned counsel has pleaded for reduction of sentence on the ground that the petitioner has no criminal antecedents and he is aged 25 years and taking into consideration the circumstances in which the accident has occurred, a lenient view be taken by setting aside the term of imprisonment imposed by the lower court. In support of his argument, learned counsel has referred to the decision of this Court in the case of S. Lokesh -vs- State of Karnataka decided on 5.7.2012 in CrI.RP.No.509/2010.

12. I have gone through the said decision. In the said case, having regard to the infirmities pointed out in the judgments of the lower courts, this Court found it proper to set-aside the sentence of imprisonment. But in the instant case, initially the petitioner was awarded a sentence of two years of imprisonment and the appellate court has reduced the term of imprisonment for one year considering the age and antecedents of the petitioner. It is proved in evidence that the petitioner was driving the involved vehicle in a rash and negligent manner resulting in the death of rider of the moped. Therefore, I do not find any justifiable reason to further reduce the sentence awarded by the Appellate Court. In the facts and circumstances of this case, any further leniency would be contrary to the intendment of the Act resulting in undermining public confidence in the justice system. Petitioner having not brought on record any circumstance warranting imposition of only fine, prayer in this regard is rejected. As the revision petition is devoid of any merit, the criminal revision petition is dismissed.