

(2012) 08 KAR CK 0189

In the Karnataka High Court

Case No : Criminal Revision Petition No 909 of 2008

V. Sengotavan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 304 A
Probation of Offenders Act, 1958 — Section 4

Citation : (2012) 08 KAR CK 0189

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : J. Rahamathulla Khan, for the Appellant; Vijayakumar Majage, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda

1. The petitioner was charged under Ss. 279 and 304A IPC for having driven a Government jeep bearing No. KA05-13-7103 in rash and negligent manner at about 10.00 a.m., on 14.5.2005, on Bangalore - Mysore road, in front of Delhi Joys Dhaba and hitting a Hero Puck vehicle bearing No. KA-09-R-6584, which was coming from the opposite direction and as a result, its rider, Vishnu Sharma sustained fatal injuries and succumbed. In response to summons, petitioner appeared and pleaded not guilty. During trial, the prosecution examined 7 witnesses and marked 8 documents. The learned Magistrate found the petitioner guilty. The petitioner was convicted for the offenses punishable under Ss. 279 and 304A IPC. Petitioner was sentenced to undergo S.I for a period of six months and pay fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for two months for the offence under S. 304A IPC. He was sentenced to undergo S.I for a period of three months and pay fine of Rs. 500/- and in default of payment of fine; to undergo simple imprisonment for a period of

one month, for the offence punishable under S. 279 of IPC. It was ordered that the sentences shall run concurrently, Criminal Appeal filed thereagainst was found devoid of merit and was dismissed. This petition is directed against the said judgment and order of conviction and the consequential sentence. Sri I Rahamathulla Khan, learned advocate, contended that the Courts below have committed illegality in convicting the petitioner for the offences under Ss. 279 and 304A IPC, when the ingredients thereof, has not been made out. Learned counsel submitted that the findings recorded in the impugned Judgments are perverse and illegal and warrant interference. Alternatively, he submitted that the Courts below have erred in not extending the benefit of the provisions in the Probation of Offenders Act, 1958.

2. Sri Vijayakumar Majage, learned HCGP, on the other hand, supported the judgments/orders passed by the Courts below.

3. Perused the record. Point for consideration is;

Whether the conviction of the petitioner for the offences under Ss. 279 and 304A. 279 and 304A IPC and the sentence imposed on him is justified?

4. Indisputedly, the petitioner was the driver of Jeep bearing No. KA-05-B-7103 and was proceeding from Srirangapatna side towards Mysore on Bangalore - Mysore High way, in the morning hours of 14.5.2005. In order to bring home the prosecution case, PWs. 1 to 7 have been examined and Exs. P1 to P8 have been marked.

5. Shankar/PW-4 has said that, when he was proceeding towards Srirangapatna on a two-wheeler, at about 10.00 a.m., on 14.5.2005, a Hero Puck also proceed in a same direction in front of him and at that time, a Jeep which was coming from the opposite direction came to the wrong side and dashed to Hero Puck vehicle and due to the impact, the rider of the Hero Puck vehicle fell down and sustained injury and immediately, he went to the place of accident and found that the injured was his friend, Vishnu Sharma and that he went to inform the family members of the injured and subsequently learnt about the death of Vishnu Sharma. PW-4 having not been cross-examined, his evidence has remained unchallenged.

6. Dvvarakariath/F"W-2 has said that, he rushed to K.R. Hospital, Mysore after getting information about the accident and having lodged Ex. P2/complaint and about the preparation of mahazar/Ex. P3.

7. Ramanna/PW-3 is a witness to inquest mahazar/Ex. P4. His evidence shows that, Ex. P4 was drawn in his presence. He was not cross-examined.

8. Dr. Udayashankar/PW-6 has conducted the postmortem examination on the dead body of Vishnu Sharma and has issued the P.M. report/Exp6. His . His evidence shows that the victim sustained injuries due to road traffic accident and Vishnu Sharma died due to said injuries. His evidence has remained unchallenged.

9. Jayaram/PW-7, Circle inspector. of Srirangapatna Police Station is the Investigation Officer. His evidence discloses that, he obtained IMV report/Ex. P7, arrested and released the accused on bail, recorded the statements of CWs-2, 3, 5 and 7 and after completion of the investigation, filed charge sheet. He has said that, PWs. 1 and 5 gave statement before him as per Exs. P1 and P5 respectively. He has further stated that CW-16, another investigation officer, who prepared the sketch of the scene of occurrence of the offence/Ex. P8, is no more. Nothing material has been elicited in his cross-examination, to disbelieve the testimony.

10. PWs. 1 and 5 were the occupants of the Jeep which was driven by the petitioner. They have not supported the prosecution case, though they have admitted the collision between the two vehicles. Petitioner, PWs. 1 and 5 being employee in the same office, the said witnesses have not supported the prosecution case. The same is not fatal to the prosecution in view of the other evidence on record.

11. Ex. P8/IMV report shows that, moped KA-02-R6584 was found severely damaged and that the Jeep KA05-B-7103 driven by the petitioner had the following damages:

1. Front right side head light glass broken.
2. Front right side bumper pressed inwards and damaged.

Brake systems of both the vehicles were found to be in order. It was opined that the accident was not due to any mechanical disorder of either of the vehicles.

12. Evidence of PW-4/eyewitness shows that the direction to the wrong side and dashed to the Hero Puck vehicle, which resulted in the rider of the Hero Puck vehicle falling down injured. Unless, the Jeep had been driven rashly and negligently by the petitioner, he could not have come to the wrong side of the road and dashed to the two-wheeler coming on the opposite direction. The front right side of the Jeep has been damaged since: it went to the extreme right side and dashed to the two wheeler, which was on its correct side. The two wheeler is completely damaged.

13. Ex. P8/spot sketch discloses that, at the place of accident, there was 24 feet wide tar road with 10 feet wide mud road on either side and that, it is a straight road. Jeep driven by the petitioner was proceeding towards Mysore, from north to south and the two-wheeler was proceeding towards Srirangapatna/Bangalore. The collision has occurred on the extreme right track of the road. It is clear from the sketch, that the victim was proceeding correctly and on the extreme left side of the road. The driver of the Jeep/accused, has gone to the extreme right side i.e., the wrong side and has dashed to the two-wheeler, which the victim was riding. Ex. P3 corroborates Ex. P8.

14. The facts in the case speak eloquently about what should have happened. The main criterion for deciding, whether the driving which led to the accident was

rash and negligent, is not only the speed, but, the width of the road, the density of the traffic etc. In this case, the Jeep which the petitioner was driving has gone to the wrong side of the road and hence, the petitioner was responsible for the accident. Entering the wrong side and causing the accident is clearly a rash and negligent act in the condition of the road and the condition of the traffic. Petitioner, when examined under S. 313 of Cr.P.C., has merely denied the incriminating evidence put to him and has not offered any explanation. The occurrence of the accident being not in dispute, the petitioner who had the knowledge as to how the accident occurred, ought to have offered his explanation.

15. On account of the injuries sustained in the road traffic accident, Vishnu Sharma has died, which evident from Ex. P6. S. 304A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, will in all probability will cause death. The provision applies to such acts which are rash and negligent and are directly the cause of death of another person.

16. In view of the factual scenario, noticed supra, the courts below have rightly found the petitioner-accused guilty of the offences under Ss. 279 and 304A IPC. The conviction of the petitioner is justified. In the case of State of Punjab Vs. Balwinder Singh and Others, Apex Court has observed that, considering the increase in the number of road accidents, the criminal Courts dealing with the offences relating to motor accidents cannot treat the nature of the offence under S. 304A IPC as attracting the benevolent provisions of Sec. 4 of the Probation of Offenders Act, 1958. In view the ratio of decision in the cases of State of Karnataka Vs. Krishna alias Raju, & Dull Chand Vs. Delhi Administration, (1975) 4 SCC (549, in my opinion, the sentence imposed on the petitioner is not harsh.

In the result, the petition being devoid of merit is dismissed. The bail bonds are cancelled.