



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL REVISION PETITION NO. 1004 OF 2021

BETWEEN:

HARISH
S/O. LATE RANGANATH
AGED 42 YEARS
R/AT. 4TH CROSS
NEAR BANASHANKARI TEMPLE
JAYANAGARA WEST
TUMAKURU TOWN
TUMAKURU-572 101

...PETITIONER

(BY SRI. PAVAN KUMAR M.S., ADVOCATE A/W.
SRI. M. SHARASS CHANDRA, ADVOCATE)

AND:

STATE OF KARNATAKA
BY TAVAREKERE P.S.
(REP. BY SPP
HIGH COURT OF KARNATAKA)

...RESPONDENT

(BY SRI. CHANNAPPA ERAPPA, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 30.01.2021 IN CRL.A.No.100/2019 PASSED BY THE VI ADDITIONAL SESSIONS JUDGE, BENGALURU RURAL DISTRICT AT BENGALURU AND JUDGMENT AND ORDER DATED 29.07.2019 CHIEF JUDICIAL MAGISTRATE BENGALURU RURAL DISTRICT AT BENGALURU IN C.C.No.7726/2018 AND BE





PLEASED TO PASS THE ORDER OF ACQUITTAL AND ACQUITTING THE PETITIONER OF THE CHARGE.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

In this revision petition, the petitioner has assailed the order passed in CrI.A.No.100/2019 dated 30.01.2021 by the VI Additional Sessions Judge, Bengaluru Rural District, Bengaluru, (hereinafter referred to as 'the First Appellate Court' for brevity) whereby the First Appellate Court dismissed the appeal filed by the revision petitioner and confirmed the judgment of conviction and order of sentence passed in CC No.7726/2018 dated 29.07.2019 by the Chief Judicial Magistrate, Bengaluru Rural District, Bengaluru, (hereinafter referred to as 'the Trial Court' for brevity).

2. For the purpose of convenience, the parties are referred to as per their rankings before the Trial Court.



3. The abridged facts of the prosecution case are as under:

The PW-1 Manohara D.U. and the deceased in this case B.T. Dilip Kumar were friends. On 14.04.2018 at about 15.55 hours, they were returning following distribution of invitation cards for house warming ceremony from Mysore to Bengaluru on Hero Honda Splendor Plus motorbike bearing registration No.KA-02-H-2541. As the duo approached Ullala Bridge at Nice Road, they parked their motorbike on extreme left of the road to attend nature's call. At that time, while the pillion rider attended nature's call, the deceased B.T. Dilip Kumar was seated on the motorbike; the driver of Maruthi Suzuki Celero Car i.e., the petitioner/accused, drove rash and negligently resulting in him crashing his vehicle against the deceased's motorbike. Owing to the mishap, deceased B.T. Dilip Kumar sustained grievous bleeding injuries and he was forthwith admitted to the Victoria Hospital for treatment. However, he succumbed to the injuries in the hospital on the same day. Hence, PW-1 lodged a



complaint against the accused– Driver of the car before the jurisdictional police i.e., Tavarekere police as per Ex.P.1. On the strength of Ex.P1, police registered an FIR against the petitioner in Crime No.122/2018 dated 14.04.2018 for the offence punishable under Sections 279 and 304(A) of IPC as per Ex.P6. Subsequently, CW-13, conducted investigation and laid charge-sheet against the petitioner/accused for the aforementioned offences before the Trial Court.

4. The Trial Court, on securing the presence of the accused, framed charges against the accused for the aforesaid offences. To prove the charges leveled against the accused before the Trial Court, the prosecution, collectively examined five witnesses as PWs.1 to 5, and got marked 10 documents as per Exs.P1 to 10. On assessment of oral and documentary evidence, the Trial Court convicted the accused-petitioner for the offences punishable under Sections 279 and 304(A) of IPC and sentenced him as under;



"The accused is convicted U/s.255(2) of Cr.P.C for the offences punishable under Section. 279, 304(A) of IPC. His bail bond stands cancelled.

The accused is sentenced to suffer fine of Rs.1,000/- for the offence punishable under Section 279 of IPC. In default of payment of fine, he shall undergo simple imprisonment for fifteen days.

The accused is sentenced to suffer simple imprisonment for a period of two months and fine of Rs.5,000/- for the offence punishable under Section.304(A) of IPC. In default of payment of fine, he shall undergo simple imprisonment for 1-1/2 months."

5. The above judgment was challenged by the accused/petitioner before the First Appellate Court in Crl.A.No.100/2019. The First Appellate Court on reassessing the evidence and the documents on record, confirmed the judgment of conviction and order of sentence passed by the Trial Court and thereby, dismissed the appeal filed by the petitioner/accused. Challenge to the same is *lis* before this Court.



6. I have heard Sri. Pavan Kumar M.S., along with Sri. M. Sharass Chandra, learned counsel appearing for the revision petitioner/accused and Sri. Channappa Erappa, learned HCGP appearing for the respondent-State.

7. The primary contention of the learned counsel for petitioner is that, both the Trial Court and the First Appellate Court grossly erred while convicting the accused/petitioner for the charges leveled against him without duly appreciating the evidence on record in right perspective. He contended that PW.1-the complainant, being a sole eyewitness to the incident, categorically admitted in his cross-examination that he visited the hospital on receiving a call from the accused. He additionally admitted that the accused himself admitted the injured to the hospital. Further, he was not present in the scene of occurrence at the time of drawing spot mahazar. It is his specific admission in the cross-examination that he witnessed the accused and the



deceased's vehicle in the police station. Thus, the presence of PW.1 at the spot as alleged by him in the evidence and the complaint-Ex.P1 stands unbelievable. In such circumstances, it could be gathered that PW.1 is a planted witness to the prosecution case.

8. Albeit the learned counsel contended that the evidence of PW.1 categorically depicts that the driver of the car was driving at high speed, however, there are no traces of evidence adduced to establish that the accused was driving the vehicle in rash and negligent manner. Further he contended, hypothetically, if the evidence of PW.1 is considered for the sake of convenience, even then, the offences under Sections 279 and 304(A) of IPC cannot be attracted against the accused as per the settled law by this Court and the Hon'ble Apex Court. Accordingly, he prayed to allow the revision petition.

9. Rebutting the above submission, the learned HCGP appearing for the respondent-State contended that the Trial Court and the First Appellate Court, after



meticulously examining the evidence on record, passed well-reasoned judgments, which do not call for any interference at the hands of this Court. He further contended that the evidence of PW.1 coupled with medical evidence i.e., postmortem report undoubtedly established that the deceased passed away owing to the injuries he sustained in road accident. PW.1 being an eyewitness to the incident lodged a complaint forthwith as per Ex.P1 and he reiterated the contents of Ex.P1 in his evidence before the Trial Court. In such circumstances, there is no reason to disbelieve the evidence of PW.1. Further, the evidence of PW.1 corroborates with the evidence of PWs.2 to 5-material witnesses and established that the accused being the driver of the vehicle, drove his vehicle rash and negligently. He additionally contended that non-compliance of traffic rules resulted in an accident that led to the demise of an innocent person. Considering the evidence on record, the Trial Court and the First Appellate Court rightly convicted the accused. In such circumstances, he prays to dismiss the revision petition.



10. Having heard the learned counsel appearing for the respective parties and on comprehensive perusal of evidence on record, the sole point that arise for my consideration is;

"Whether the First Appellate Court is justified in dismissing the appeal filed by the petitioner/accused by confirming the judgment of conviction and order of sentence passed by the Trial Court in CC No.7726/2018?"

11. I have given my scrupulous consideration to the submissions made by the counsel for the respective parties and also have carefully perused the evidence adduced and documents produced before me.

12. As could be gathered from records, the accident in question on the fateful day which resulted in the demise of deceased B.T. Dilip Kumar on the spot is undisputed. Regardless, the prosecution has placed the postmortem report-Ex.P9, which depicts that the death occurred owing to head injury and fracture injuries sustained in road accident. Hence, the question for



consideration is, whether the accused is solely responsible for the accident resulting in the death of deceased B.T. Dilip Kumar? To prove this, the prosecution has predominantly relied on the evidence of PW.1-complainant and eyewitness to the incident.

13. On perusal of Ex.P1-complaint lodged by PW.1, it could be learnt that on the fateful day, the complainant and the deceased B.T. Dilip Kumar were returning from Mysore on a motorbike and they stopped the vehicle at Ullala Bridge, Nice Road to attend nature's call. It is significant to note that at this time PW.1-pillion rider got off the motorbike and the deceased still remained seated on the motorbike. According to PW.1, the accused-driver of the car, drove from similar direction i.e., Mysore and crashed on the rear portion of the motorbike. Owing to the impact, the deceased was tossed from the motorbike and he sustained severe injuries. Albeit he was admitted to hospital forthwith, he succumbed to the injuries, however, on perusal of the evidence of PW.1-complainant, in his



cross-examination, he has categorically admitted that he visited the hospital on being intimated by the accused over a call. Further, it is learnt from the evidence that the accused himself admitted the injured to the hospital. Interestingly, PW.1-purported eyewitness neither located precise place of incident to the police nor was he present at the time of drawing spot mahazar. He further stated that he witnessed the accused and the deceased's vehicle at the police station. Also, his signature was affixed on the mahazar at the police station. In such circumstances, as rightly contended by the learned counsel for the accused, the evidence of this witness generates doubt in the mind of this Court that, he is a chance witness to the prosecution, who appeared out of thin air and later disappeared on adducing evidence. Had PW.1 been physically present on the spot of the incident, then definitely he would have admitted the injured to the hospital. Further, he would have also been in a better position in locating precise spot where the accident occurred to the police during spot mahazar. In such circumstances, much



credence cannot be attached to the evidence of PW.1 though an alleged eye witness to the incident as per the prosecution. Besides PW.1, there are no other eyewitnesses to the incident.

14. It is pertinent to observe that the defence of the accused is that, at the time of the incident, the deceased was inebriated and under the influence of alcohol he rode the motorbike haphazardly which landed him in front of the accused's vehicle. Owing to this the accident occurred.

15. On perusal of the postmortem report-Ex.P9, it could be learnt that the remains in the stomach smelt pungent with strong traces of alcohol. In such circumstances, the defence of the accused appears to be probable. Notwithstanding the above contentions, the learned counsel for the petitioner vehemently contended that, nowhere in the evidence, PW.1-eyewitness deposed regarding rash and negligent driving of the accused. Albeit on perusal of evidence of PW.1, it could be gathered that,



he categorically deposed the driver of the car was speeding, however, nowhere he stated that the accused's driving involved traces of rash and negligent disposition.

16. Nevertheless, on perusal of the spot sketch, it could be gathered that the accident occurred on the left side of the road and the car in question was found on the right direction almost left side of the road. In such circumstances, the prosecution abjectly failed to place cogent evidence and documents to substantiate that the accused drove the car rash and negligently leading to the accident.

17. The Hon'ble Apex Court in the case of ***State of Karnataka Vs. Satish*** reported in (1998) 8 SCC 493 has settled the position of law that mere driving of vehicle in high speed neither amounts to negligence nor rashness in itself and has held in para 4 of the said judgment as under;

4. Merely because the truck was being driven at a "high speed" does not speak of either "negligence" or "rashness" by itself. None of the



witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

18. Effectively, at this juncture I find it imperative to touch upon the nuances of understanding the term 'negligence', negligence essentially is defined or rather understood in a rudimentary sense as a breach of duty. Meaning, an act of negligence must be coupled with willful omission of doing something which a prudent person would have done in similar circumstance. This breach of



duty should lead to some kind of damage. Further, while ascertaining the degree of negligence, it is significant to ruminate on the 'Principle of Foreseeability and Proximity' as laid down by Lord Atkin in the landmark case of *Donoghue v Stevenson* reported in 1932 A.C 562. Additionally, let us take a moment to delve into comprehending and elucidate the conundrum that needs to be addressed: What amounts to rashness and negligence? Rashness innately implies to recklessness coupled with a state of conscious breach of duty to care where there exists a necessity of care i.e., negligence. Rashness and negligence are multi-faceted concepts which cannot be comprehended and interpreted in isolation, it significantly depends on facts and circumstances of each case.

19. On applying hitherto position of law to the facts and circumstances of this case, it could be established that the prosecution failed to prove the rash and negligent driving of the petitioner/accused by placing cogent



evidence. Further, I find it utterly compelling to re-clarify the pith and substance of Section 279 of IPC which categorically stipulates that to attract the said provision there has to be an element of 'rash driving'. Albeit PW.1 stated that the accused was driving the vehicle on high speed, however, he grossly failed to explain what amounts to high speed and what was the speed at which the accused/petitioner was driving that made him imply petitioner/accused had transgressed the pursuant speed limit. In such circumstances, *per-se* an inference cannot be drawn that the petitioner was driving at high speed by merely relying on untrustworthy testimony of PW.1. Further as discussed supra as per postmortem report-Ex.P9 of the deceased depicts that the remains in the stomach smelt pungent with strong traces of alcohol. In such circumstances it could be gathered that the deceased was inebriated and under the influence of alcohol when he rode the motorbike. As such the degree of negligence of the accused cannot be ascertained on applying the 'Principle of Foreseeability and Proximity' since the



accused was driving his vehicle in right direction i.e. on the left side of the road, which rendered him unable to anticipate that the deceased would appear before him out of the blue.

20. Against this backdrop, I am convinced that the Trial Court and the First Appellate Court have erred in convicting the accused for the charges leveled against him. As such, interference is required in the impugned judgments passed by both the Courts. Accordingly, I answer the above point in the negative and proceed to pass the following:

ORDER

- i. The Criminal Revision Petition is ***allowed***.
- ii. The judgment of conviction and order of sentence passed by the Trial Court in CC No.7726/2018, dated 29.07.2019, which was confirmed by the First Appellate Court in Crl.A.No.100/2019 dated 30.01.2021, is hereby set-aside.



- iii. The petitioner/accused is acquitted for the offence punishable under Sections 279 and 304(A) of IPC.
- iv. The bail bond executed by the petitioner/accused stands cancelled.
- v. The fine amount, if any, deposited by the petitioner/accused shall be refunded to him on due identification.

**Sd/-
(RAJESH RAI K)
JUDGE**