

**Krishna Vs. State of Goa and Another**

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**Court :** Mumbai Goa

**Decided On :** Jun-26-2014

**Judge :** A.R. Joshi

**Appeal No. :** Criminal Revision Application No. 35 of 2013

**Appellant :** Krishna

**Respondent :** State of Goa and Another

**Judgement :**

Oral Judgment:

1. Heard rival submissions at length on this Criminal Revision Application preferred by the present petitioner/original accused challenging both the earlier concurrent decisions against him in the matter of offences punishable under sections 279, 337 and 304-A of I.P.C.

2. The present petitioner was convicted by the Judicial Magistrate First Class vide order dated 22/3/2013 in Criminal Case No.89/S/2009/B for the offences mentioned above and was sentenced to suffer imprisonment for six months and pay fine of Rs.1000/- for the offence under section 279 I.P.C. He was directed to suffer simple imprisonment for six months and to pay fine of Rs.2000/- for the offence punishable under section 304-A of I.P.C. Thirdly, he was sentenced to suffer imprisonment for one month and pay fine of Rs.500/- for the offence punishable under section 337 of I.P.C. Substantive sentences were directed to run

concurrently.

3. Being aggrieved by the said judgment and order of conviction, Criminal Appeal No.45 of 2013 was preferred before the Sessions Judge (FTC), North Goa, Panaji. Said appeal was dismissed vide order dated 16/11/2013. As such, the present Criminal Revision is preferred.

4. The incident of accident occurred on the night of 14/1/2009. The road where the deceased and his relative PW.4, the first informant were proceeding on the motorcycle being driven by the deceased was from Nanoda to Assonora. The offending jeep apparently of Trax make being driven by the present petitioner/accused came from opposite side and gave a dash to the motorcycle thereby both the motorcycle riders fell down. The pillion rider PW.4 was thrown away but the victim who was driving the motorcycle trapped under the offending vehicle and he was dragged by the jeep for some distance ahead. Due to the severe injuries sustained in this accident, the victim died on the spot. Some parts of the motorcycle were dismantled including the front wheel. They were found on the road and in the surrounding area. The jeep turned turtle and was found by the side of the road towards the right side if one faces to Nanoda side. At this juncture it is to be mentioned that the jeep was proceeding from Assonora to Nanoda. Immediately after the accident, which was apparently witnessed by PW.6, Ratnakar Jena a call was given to the ambulance on no.108. The ambulance arrived at the spot. The para medical personnel found that the victim was already dead and PW.4 Jyoshna Salgaonkar, the complainant was in injured condition sitting nearby. They also found that the present petitioner/accused was in the jeep which turned turtle. In short time, the police patrolling vehicle also arrived in which PW.5 Ashok Gaonkar and PW.7 Kashinath Gaonkar reached the spot. They reached there on intimation from the control room regarding the accident. They also noticed the situation and took immediate action to give necessary help to the persons involved in the accident. Offence was registered against the present petitioner on the premise that he was driving the vehicle in a rash and negligent manner and dashed against the motorcycle coming from the opposite side.

5. Before the trial Court total 11 witnesses were examined. Out of them the main witnesses are PW.4 Jyoshna Salgaonkar, the first informant and PW.6 one Ratnakar Jena, who is the eye witness claiming to have seen the accident. Another important piece of evidence is regarding the factual position of the vehicles in the spot panchanama and depicted in the sketch attached to the spot panchanama. One of the spot panchas is PW.3 Vinod Azgaonkar. Apparently the case of the prosecution is based only on these witnesses as mentioned above. It appears that the trial Court and the First Appellate Court had marshalled the evidence and come to the conclusion as to establishment of guilt on the part of the present petitioner for the offences charged and consequently the accused was convicted by the trial Court and the conviction was upheld by the First Appellate Court.

6. During the arguments, learned counsel for the petitioner much argued on the veracity of the evidence of witness PW3 and stated that he is a got up witness and cannot be believed in order to ascertain the exact spot of the accident. It is also strongly argued that the sketch, though taken shelter of by both the earlier Courts below, does not depict the exact position of the spot inasmuch as there is nothing concrete in the substantive evidence of the witnesses as to who showed the spot to the police. But the fact remains that definitely the vehicles after the accident were found on the extreme left side beyond the road when one is facing towards Assonora. This factual position of the vehicles is not disputed by anybody which goes to show that the spot of the accident was definitely on the right side of the road i.e on the proper side of the way of the motorcycle. Needless to mention that the driver of a heavy vehicle has more duty of care and caution to be observed while driving the vehicle on a public road. During the arguments it is suggested on behalf of the petitioner that the spot of accident is apparently on the top of the ascending road and as such, if one goes from Assonora to the spot of the accident the road is ascending. This factual position is apparently substantiated by the evidence of the witnesses and cannot be denied. By pointing out this, it is submitted that the driver of the vehicle could not have seen any other vehicle coming from the opposite direction due to the ascending road and as such, it was pure and simple accident and further argued that the wheel of the motorcycle was entirely dislocated and came in the way of the driver of the jeep and in order to

avoid the impact the driver had taken the jeep to the extreme right side i.e. to his right side. During the arguments it is also submitted that the present petitioner/accused was not driving the vehicle and he was sitting by the side of the driver and the real driver employed was by name Rafiq Pathan. This defence shall be dealt with in detail here after at the appropriate place.

7. Now coming to the earlier defence argument as to that the driver was not in a position to see the vehicle coming from the opposite direction, in the opinion of this Court, in such a situation, more responsibility is lying on the driver of the vehicle when negotiating with ascending road. If there was an ascending road ahead then the driver of the vehicle must have taken care to slow down the vehicle and definitely to keep his vehicle in the right track that is towards the left side of the road while facing towards Nanoda. The factual position of the vehicles after accident clearly indicates that the motorcycle was on its right track and the jeep on the left side and went on the right track of the road while proceeding towards Nanoda. As such, definitely it is a case in which the jeep had left its track and went to the opposite side of the road, and as such, dashed on motorcycle. Even this finding has been arrived at by the learned J.M.F.C and also the First Appellate Court and as such, without there being any other material to accept otherwise, there is no legal necessity to view the matter differently and to set aside this finding.

8. Now coming to the defence as to the petitioner was not driving the vehicle. It must be stated that the petitioner has examined himself as a defence witness during which he gave the name of the one person to whom he allegedly employed as driver on his vehicle. It is significant to note that examination-in-chief of the accused when he examined himself is silent on various aspects. Firstly regarding the name and residential address of said Rafique Pathan, secondly, since when he was employed and thirdly what was the payment he was being given and fourthly, any other document of this alleged employment. This Court has not lost sight of the fact that the accused can raise any defence and prove it by preponderance of probability and he need not establish his defence beyond reasonable doubt. Even applying this test it can be said that on preponderance of probability this defence on behalf of the accused cannot sustain and as such, is

not acceptable. This is mainly so when admittedly the present petitioner/accused was in the motor jeep when the accident occurred and there was nobody else found on the spot though it is alleged by the petitioner/accused that his driver was present and he was driving and apparently the driver escaped the spot and the driver did not return at all and was all along missing. This defence cannot be accepted for the reasons mentioned earlier and it is required to be accepted as done by both the earlier Courts that the present petitioner was himself driving the jeep and has caused the accident by rash and negligent driving.

9. Considering the scope of this Court in the revision to interfere with the consistent earlier orders of holding the petitioner/accused guilty of the offences charged no different view can be taken and hence, there is no substance in the present revision petition and the same is dismissed and accordingly disposed.

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