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Court : Karnataka

Decided On : Mar-04-2016

Judge : A.V. Chandrashekara

Appeal No. : Criminal Review Petition No.1317 of 2010

Appellant : Puttaiah and Mahesh

Respondent : State by Rural Police, Hassan, Represented by Public Prosecutor

Judgement :

(This Crl.RP is filed u/s. 397 r/w. 401 Cr.P.C. praying to set aside the judgment dated 23.09.2010 passed by the P.O. and Addl. S.J. FTC, Hassan in Crl.A.28/07 and Judgment and sentence of conviction dated 01.03.07 passed by the Prl.C.J. (JR.DN.) and JMFC., Hassan in C.C.No. 122/02 and dismiss the Complaint of the Respondent.)

Heard learned counsel for the revision petitioner and learned HCGP for the respondent.

2. The present revision petition is filed under Section 397 r/w. 401 of Cr.P.C. challenging the judgment of conviction and sentence passed by the JMFC-II in C.C.No.122/2007 and affirmation of the same by the learned Judge of the fast Track Court in Crl. Appeal No. 28/2007.

3. The appellant was the sole accused in Criminal case bearing C.C.No.122/2002. He had faced a trial for the offences punishable under Sections 239 and 304A of IPC. He is directed to pay fine a sum of Rs.1,000/- for the offence punishable under Section 279 of IPC in default to undergo simple imprisonment for one month and to undergo S.I. for three months the offence punishable under Section 304(A) of IPC and is further ordered to pay a fine of Rs.1,000/- in default, to pay the fine amount and further to undergo imprisonment for 20 days. The said judgment had been called in question by filing an appeal in Crl.A.No.28/2007 and the said appeal is dismissed affirming the judgment of the trial Court. Concurrent finding is called in question before this Court.

4. Several grounds have been urged in the appeal memo. The facts leading to filing of the charge sheet by the respondent-police are as follows:

Accused was the driver of a Tempo Trax bearing registration No.KA-12-4392. He was driving his vehicle from Hassan to Halebeedu i.e., from southern direction to northern direction. He is stated to have driven the said vehicle in a rash and negligent manner so as to endanger the human life at about 9.30 a.m. on 02.12.2001 in the vicinity of bus stop at Dasarakoppal, resulting in the death of a girl child aged about 3 years when she was being taken to hospital at Dasarakoppalu for administering pulse polio. The defence set up on behalf of the accused is one of the total denial of the allegation of rashness and negligent driving.

In order to bring home the guilt of the accused, the prosecution has examined in all nine witnesses and no evidence is adduced on behalf of the accused. The accused is examined under Section 313 of Cr.P.C. Mr. Hemant Kumar-PW1, PSI of the Rural Police Station conducted investigation and chose to file charge sheet. According to the prosecution-PW1, PW2-Vyramudi, father of the deceased, PW5-Sujatha, mother of the deceased, PW9-Chikkamma-grandmother of the deceased are stated to be the eyewitnesses to the incident in question. PW1 has not supported the prosecution case. The trial Court as well as the first appellate court have believed the version of PWs.2, 5 and 9.

First information marked as Ex.P6 was lodged by PW2-Vyramudi-father of the deceased girl. He lodged the same about 12.30 p.m. on the same day to the Rural Police Station. On this basis, a case came to be registered in Cr.No.239/2001. FIR can be used either for corroboration of the prosecution case or to contradict the same. It is better to look into the contents of Ex.P6 lodged by the father of the deceased. If one were to scan the evidence of PW2, it appears as though he was very much present at the accident spot and was an eye witness to the incident in question.

But the contents of Ex.P6 speak otherwise what is mentioned by him in Ex.P6 is that he, along with his wife-Sujatha, mother-Chikkamma and his daughter Harshitha were going for getting pulse polio administered to his daughter. According to him, when all of them were walking on the left side of the road, near KEB line, a tempo trax being driven by its driver rashly and negligently came from Hassan side and dashed against his daughter as a result of which, she sustained severe injuries on several parts of her body and immediately she was taken to Government Hospital where she was declared dead. If really he was present, he would have definitely mentioned in Ex.P6 that himself, his wife, his mother were taking the girl for getting pulse polio administered.

The evidence of other witnesses will have to be looked into to know whether PW2 was present at the time of accident took place. PW5-mother of the deceased girl has specifically deposed in her examination-in-chief that she was taking her daughter Harshitha along with her mother-in-law to Dasarakopplu at about 9.30 am. If really PW2 was present, she would have definitely spoken about the presence of her husband when the vehicle dashed against her daughter.

Learned counsel for the petitioner has submitted that the evidence of PW2-father will not inspire confidence in the mind of the Court to treat him as eye-witness and there is lot of force in his submission.

5. At the best, Ex.P6-complaint lodged by PW2 could be taken to the limited extent of setting the Criminal Investigation Agency into motion by lodging First Information in terms of Section 154 of Cr.P.C. Even PW9-Chikkamma-mother of PW2, grandmother of the deceased girl and mother-in-law of PW5 has deposed

that at the time when the accident took place, herself, her daughter-in-law and the deceased child were present. This clearly indicates that PW2 was not present at the time of accident. Therefore, the trial Court and the first appellate Court are not justified in considering the evidence of PW2 as an eye witness to the incident. Thus, both the Courts have committed serious illegality and perversity in relying upon the version of PW2 as an eye witness.

PW5-Sujatha-mother of the deceased has deposed in her examination-in-chief to the effect that the tempo trax came from Hassan side in a high speed and dashed against her daughter and as a result, she died due to injuries. She has admitted that one has to cross Hassan-Halebeedu road to reach her house from Dasarakoppalu. She has further admitted that the accident in question took place just in front of the bus stop. She has further admitted that the accident in question took place when they were crossing the road.

PW9 has deposed that she had held the child's hand when the accident took place and she had also sustained certain injuries but she was not treated and no document is produced in respect of PW9 having sustained any injuries. She, in her cross-examination, has deposed that by the time the accident took place, her daughter-in-law had already crossed the road. She has further deposed for the first time before the Court that she herself sustained injuries.

PW5, who is the eye witness to the incident in question has not deposed about the exact place where the accident took place. The words High Speed are relative in character and unless it is established by some other means, much credence cannot be attached to infer negligence or rashness. Even PW9 has not deposed about the exact place where the accident took place i.e., whether in the middle of the road or by the side of the road. Admittedly, PW2 has deposed that the accident in question took place when they were crossing the road. It is admitted by PWs. 2 and 5 that the road leading from Hassan to Halebeedu is a busy road and several vehicles pass through the said road.

PW3-Hanumanthegowda is an attester to Ex.P1-spot mahazar. He has not supported the prosecution. Ex.P9 is the rough sketch of the spot prepared by the I.O. The place where the accident allegedly took place is shown in the red ink. If

the place where the accident took place is considered as spot of accident, as shown in Ex.P9 it is hit under Section 161 of Cr.P.C. Only the eye witnesses can speak about the place of accident. Ex.P9 the rough sketch drawn at the spot relating to the accident by the Investigating Officer can be considered only to the limited extent of noticing the position of vehicles, blood spilled on particular place and position of the dead body, if any.

In the case of State of Karnataka vs. Satish reported in (1998) 8 SCC 493, the Hon ble Apex Court has held that burden is always on the prosecution to prove the allegations of negligence or rash driving. It is reiterated that negligence or rashness cannot be presumed on the basis of *res ipsa loquitur* . It is further reiterated that driving a vehicle at High Speed does not lead to the negligence or rash driving. In the present case, there is absolutely no acceptable evidence to establish the allegations of negligence or rashness in driving the vehicle.

Even as per the facts found in the case of Satish (*supra*), the respondent who was driving the vehicle (truck) caused death of 15 persons and injuries to 18 persons, was convicted by the trial Court for the offences under Sections 279, 337, 338 and 304A of IPC and the Appellate Court had infirmed the same. Both the Courts had not recorded any definite finding as to the negligent or rash driving, but had relied upon the doctrine of *res ipsa loquitur* . However, the High Court acquitted the respondent-accused and the matter was taken up to the Apex Court and the judgment of acquittal passed by this Court is upheld.

What is reiterated in the said decision is that 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* .

In fact, PW-2 father of the deceased has deposed that when all of them were going to administer pulse polio to his daughter a bus came from Halebeedu towards Hassan at a high speed and the accused drove his tempo trax and dashed against his daughter. If this version were to be accepted, there is no acceptable evidence on record about the manner in which the accident took place.

Even PW1 has not deposed anything about the speed with which the vehicle was driven by the accused. As already discussed, the version of PW2 cannot be considered as one which would inspire the confidence of the Court and his presence at the spot appears to be doubtful.

In this view of the matter, both the trial Court as well as the first appellate Court have not assessed the oral and documentary evidence in right perspective. Both the Courts should have navigated through the evidence of material witnesses cautiously. Glaring inconsistencies have been brushed aside as minor variations. They have adopted wrong approach to the real state of affairs and have not properly scanned the evidence. Both the Courts have forgotten that the initial burden was on the prosecution to establish the charge of rashness or negligence beyond reasonable doubt. Thus, the judgments of both the Courts suffer from perversity and illegality. Hence, this Court is of the opinion that the revision petition is to be allowed.

ORDER

Accordingly, the revision petition filed under Section 397 of Cr.P.C. is allowed and the judgment of conviction and sentence passed by the trial Court and affirmed by the first appellate Court is set aside acquitting the petitioner for the offence alleged against him. Bail bonds executed by him and surety/sureties stand cancelled.

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