

Medappa Vs. The State of Karnataka,

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Court : Karnataka

Decided On : Aug-10-2018

Judge : S.Sujatha

Appeal No. : CRL.RP 205/2011

Appellant : Medappa

Respondent : The State of Karnataka,

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 10TH DAY OF AUGUST, 2018 R BEFORE: THE HONBLE MRS. JUSTICE S.SUJATHA
CRIMINAL REVISION PETITION No.205/2011 BETWEEN: Medappa Aged About 60 Years, S/O Thimmappa, R/O Chikkenahalli Village, Tavarekere Hobli, Bangalore South Taluk ... PETITIONER (BY SRI.H C HANUMAIAH, ADV.) AND: THE STATE OF KARNATAKA, BY RAMANAGARA (R) POLICE BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BANGALORE - 560 001 (BY SRI.S.RACHAIAH, HCGP) ... RESPONDENT THIS CRL.RP IS FILED U/S.397 R/W.SEC.401 CR.P.C, PRAYING TO SET ASIDE THE

JUDGMENT

OF CONVICTION AND SENTENCE DATED 11.2.2008 IN C.C.NO.21/2001 ON THE FILE OF THE C.J.(JR.DVN) AND ADDL. JMFC, RAMANAGARA AND ALSO

JUDGMENT

PASSED BY THE DISTRICT AND SESSIONS JUDGE, RAMANAGARA IN CRL.A.NO.3/2008 DATED 19.01.2011 AND ACQUIT THE PETITIONER BY ALLOWING THIS CRIMINAL REVISION PETITION. THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:- - 2 -

ORDER

This Revision Petition is filed by the accused under Sections 397 read with 401 of the Code of Criminal Procedure calling in question the legality and correctness of the order passed by the District and Sessions Judge at Ramanagaram in Crl.A.3/2008 dated 19.1.2011 whereby the judgment of conviction and sentence passed under Sections 279, 338 and 304(A) of IPC by the Additional JMFC, Ramanagaram in C.C.No.21/2001 dated 1.1.2008 has been confirmed.

2. The case of the prosecution in brief is that Ramangaram Rural police had filed a charge sheet in C.C.No.21/2001 against the petitioner and another for the offences punishable under Sections 279, 338 and 304(A) of IPC and under Section 56 read with 177 and Section 66 read with 192(A) of the Motor Vehicles Act, 1988 alleging that on 28.7.2000 at about 9.30 a.m. when the petitioner, being the driver of the bus bearing - 3 - registration No.KA062332 drove the same in a rash and negligent manner so as to endanger human life, dashed against the tree and thereafter dashed against the house of PW1-Prabhu, due to which CWs 91 to 105 suffered simple injuries, CWs 43 to 90 have suffered grievous injuries and about 8 passengers traveling in the said bus succumbed to the injuries suffered by them; thereby the petitioner has committed the offences referred to above. On the basis of the charge sheet filed as aforesaid, trial was held and accused was convicted for the offences under Sections 279, 338 and 304(A) of IPC. The trial Court passed the sentence of 6 months simple imprisonment with Rs.500/- fine for the offences under Sections 279 of IPC, one year simple imprisonment with fine of Rs.500/- under Section 338 of IPC and two years simple imprisonment with Rs.500/- fine for the offence under Section 304A of IPC and the said sentence shall run concurrently.-. 4 - 3. Being aggrieved by the same, petitioner preferred Crl.A.3/2008 before the learned Sessions Judge at Ramanagaram which came to be dismissed. Hence, the Revision Petition.

4. Sri.H.C.Hanumaiah, learned counsel appearing for the petitioner, would mainly contend that 24 witnesses were examined by the prosecution to prove the guilt of the accused and out of the said 24 witnesses, 5 witnesses turned hostile, 12 witnesses have deposed in favour of the accused and 3 witnesses in favour of the prosecution. Apart from the police officer-PW4, the evidence of PWs 1 to 10 & 12 & 13 was recorded by the trial Court in a cavalier manner. Attention of the court was drawn to the testimony of these witnesses.

5. It is submitted that there is material irregularity in conducting the trial by the Trial Court which is in contravention of Section 461(I) of the Code of - 5 - Criminal Procedure. Secondly, it is submitted that there were two types of evidence available on record; majority of the witnesses have deposed in favour of the accused whereas, only four witnesses have deposed in favour of the prosecution. In such circumstance, the court below ought to have balanced the testimony of the witnesses available on record and the benefit of doubt has to be given to the accused considering the evidence of the witnesses who have deposed in favour of the accused. In other words, if there are two sets of evidence, which is favourable to the accused has to be considered to arrive at the decision. Nextly, the learned counsel submitted that the vehicle in question was moving from Ramanagaram to Kootgal on the ill-fated day as per the timings assigned to the route. The driver-accused was aged about 46 years at the time of the incident and he was an experienced driver who was driving the vehicle in the regular route for more than 20 years. In his profession as a driver, he had no - 6 - antecedent of any rash and negligent driving and no motor vehicle accident was committed by him. It is owing to the bullock cart which came on the way in the intersection of Shanuboganahalli while taking right towards Kootgal, in order to avoid collision with the said bullock cart, to avert the accident, the accused/driver moved in the same direction further, but unfortunately hit the tree and further to the house situated nearby. Rash and negligent aspect of the driver in causing the accident has to be proved by the prosecution through cogent evidence. The evidence of the witnesses which were favourable to the accused was totally ignored by the courts below. Though the first appellate Court observed that there was callousness on the part of the Trial Court in recording the evidence of the witnesses, proceeded to confirm the judgment and sentence of the trial Court without setting right the irregularity committed by the

trial Court.-. 7 - 6. In support of his contention, the learned counsel placed reliance on the following judgments :

1. Chheduram v. State of Chhattisgarh (2015 CRL. L.J.2271;

2) Mohanta Lal Saha v. The State of West Bengal (1968 ACJ124;

3) Bhim Singh v. State of Haryana (2003 Supreme Court Cases (Cri) 1469 7. Learned HCGP appearing for the respondent justifying the impugned judgments and orders submitted that PW6 & PWs 20 to 23 have supported the case of the prosecution which has to be considered to determine the rash and negligent driving of the accused/driver for causing the accident in question. There were about 95 to 105 passengers traveling in the bus in question at the time of accident which is also a cause for the occurrence of the accident.

8. In the case of rash and negligent cases of motor vehicles, the doctrine of res ipsa loquitor is - 8 - applicable. The things speaks for themselves, is the principle to be adopted looking at the magnitude of the accident and its impact which has resulted in the death of about 8 passengers coupled with grievous injuries to many of the passengers travelling in the bus. The theory of bullock-cart coming in the way of the bus is a created story by the accused to come out of the clutches of the legal action to be initiated against him for which he is responsible. The courts below having analysed the evidence in extenso and appreciating the same, convicted the accused which deserves to be confirmed by this court. No material irregularity or perversity is found in the appreciation of evidence by the courts below. Learned counsel pointed out that Section 461 of the Cr.P.C. is not at all applicable to the present set of facts for the reason that the said provision deals with the irregularities which vitiate proceedings. If any Magistrate not being empowered by law in this behalf, does, - 9 - 461(a) to (k): xxxx (l) tries the offender, on which much emphasis is placed by the learned counsel for the petitioner is an irregularity. It is not the case that the trial court was not empowered by law to try the offender. Trial court indeed was competent by law to conduct trial of the accused. Learned counsel placed reliance on the Judgment of the Honble Apex Court in the case of Ravi Kapur -v- State of Rajasthan (2012) 9 SCC284 9. I have given my thoughtful consideration to the arguments advanced by the learned

counsel appearing for the parties and perused the original records.

10. At the outset, it is apt to examine the irregularity if any, committed by the trial court in conducting the trial. Recording of evidence is an important factor in conducting the trial. It is to - 10 - ascertain the truth. The witnesses are called to the witness box and their statements are recorded as per chapter XXIII of the code. This is a sacrosanct act which forms the basis for the court to ascertain the veracity of the challenge made by the parties in the proceedings. Trial is nothing but a voyage to discern the truth which is invincible. This act of recording of evidence plays paramount role to adjudge the dispute. It is significant to quote the cyclostyled type of evidence recorded by the trial court of the witnesses PW-8 to 11 (as a specimen/sample) which reads thus: ig 6 U Az MAz U 9.00 UAm Aiz dAigAz PIUU Dg Zwz Q APmg Aiiwz, sU Ai zj CWvQqv. EzjAz UAIUAq, U zj z Evg AiiPg Q g gt Azg, U Ezg UAIUAqg. WI Azsz zj QQjz AiiPjAz vAv, WI Azsz zj UV Zwv. zj z g - 11 - Pzz gP rQ qz Avg g Pz U rQ rv. zj g mg gAiiVz, WI Azsz g AiiU zj gAi Nqqwg. U Evg AiiPg F CWvz UAIUAq Pgt g g..D. Ai aQv qzPAq. WI AAzs vSPjAig Az P rz. n .P.J.J. QjAz: .g Az K P qzPARzg Jz U RzV Uw. CWv z MI g PqU g sdAiiUvz Jz j. WI qAi sU Ai tz P wP U Czg ZP zsV ZPAq gvz Jz j. D Azsz PIU PqAz KPKQ gU CqV Jw UrAiAz Az Pgt zj Jw UrU rQ qAiz v AiwzU F CWv Asz Jz j. F CWv Dg vAz Aszg DgU Ai iq GzAz AiiAiz QAi rAiwz Jz . WI Azsz zj Dg zsVAi Zwz. - 12 - It is indisputable that the evidence of the witnesses PW-8 to 20 except PW-18 shows that the chief examination as well as cross-examination is verbatim the same. It is true that the accident involved is one but the evidence of different witnesses need not be verbatim the same. It would have been appreciated if there is a minor resemblance but the lines, words, comma and full stop remains the same. This aspect of the matter has been seriously considered by the appellate court and it is recorded. The same is quoted herein for ready reference: 19. At this stage, it necessitates this court to make a mention here, the approach of the learned trial judge in recording the evidence of PWs.8 to 16, 19 and 20 is very causal. As rightly pointed out by the learned counsel for appellant, the evidence of PWs.8 to 15 is verbatim. Not even a single letter in this evidence is changed. Similarly, the evidence of PWs. 16, 17, 19 and 20 is verbatim. It appears the learned Magistrate has applied - 13 - cut and paste method in recording the evidence of these witnesses. The learned Magistrate ought to have understood

the seriousness of the case and ought to have recorded the evidence of prosecution witnesses properly. But this defect cannot be enured to the benefit of the appellant as the evidence of these witnesses unequivocally points out the guilt of the accused appellant. If the evidence of these witnesses is analyzed in proper perspective, it emerges that the accident had occurred due to rash and negligent driving of the appellant and appellant alone.

20. These prosecution witnesses would depose in one voice that on the date of accident, they were all traveling as inmates of the bus. The bus was jam-packed with passengers, the driver was driving the bus in a great speed, it has dashed to a tree situated by the side of road and then went ahead crashed into the house located by the side of road. At the time of accident, no other vehicles were plying on the road except the - 14 - bus in question. On account of the injuries they were shifted to Ramanagara Govt. Hospital for treatment. In the cross- examination of PWs. 8 to 15, they have admitted the suggestion of the defence that at the place of accident, there is a deviation of three roads. Before the accident, the driver was driving the bus slowly in order to allow the school children to board the bus and at that time suddenly a bullock cart entered the road, the driver of the bus tried to avoid the accident to the cart, in that process this accident occurred. As already discussed above, the learned Magistrate has recorded the evidence of PWs.8 to 15 in a cyclostyle form as the evidence of these witnesses reads verbatim. But the other eyewitnesses PWs. 16, 17, 19 and 20 have deposed before the court in an identical fashion that about 6 years ago they were travelling in the bus which was jam-packed with passengers. At the time of accident, the driver was driving the bus in a great speed and dashed to a tree situated by the side of road and thereafter, went ahead and dashed to the house. On - 15 - account of impact, many passengers in the bus sustained injuries. In the cross examination of these witnesses, they have denied the suggestion that on account of sudden entry of bullock car into the road, the accident has occurred. Unfortunately, the evidence of these 4 witnesses is verbatim. The learned Magistrate did not bother to record the evidence properly. The learned counsel for appellant relying on these two sets of evidence would strenuously contend that these two versions are contrary to each other. One set of witnesses admits that the bus was going slowly and the accident had occurred due to sudden entry of bullock cart into the road, whereas other set

of witnesses does not admit the suggestion. When there are two views, the view which is favourable to the accused has to be accepted. In support of his contention, he places reliance on judgment at sl.no.5 referred to supra rendered by the Honble Supreme Court of India in Bhim Singh Vs State of Haryana Reported in 2003 SCC (Criminal) 1469, which reads thus: - 16 - Criminal Trial - Benefit of doubt - If there are two pieces of evidence in regard to the same fact, both uncontroverted and uncorroborated, the benefit of doubt must be given to the accused. I do not propose to accept the contention of learned counsel for appellant for the obvious reason that firstly no two views are forthcoming in the evidence of the prosecution witnesses. Secondly, the principle of law enunciated in the aforesaid authority applies only in case of re-appreciation of evidence and interference with the findings of acquittal in an appeal against acquittal. 11. Having observed so, the appellate court ought to have remanded the matter back to the trial court for fresh trial. It is the well settled principle that justice not only be done; it must also seem to be done. The confidence reposed by the public in the judiciary should be protected and safeguarded irrespective of the number of witnesses examined. It is incumbent on the trial court to make efforts to record the statements in - 17 - befitting manner. Likewise it is the duty cast upon the prosecution to examine the witnesses with seriousness and interest. If such seriousness is not made out by the prosecution, it is nothing but an irregularity in conducting the case. It is not in dispute that the principles of *res ipso loquitur* are applicable to the motor vehicle cases/criminal cases as laid down by the Honble Apex Court in Ravi Kapur's case (supra). The Honble Apex Court laid out the principles relating to rash and negligent driving in para 12 and 13 of the said Judgment which is quoted hereunder for ready reference:

12. Rash and negligent driving has to be examined in 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 - 18 - whether a person was driving rashly and 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. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. Negligence means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which - 19 - negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence. Thus it is clear that in every motor vehicle accident, rash and negligent driving of the driver would not be the reason for the accident i.e., the mere fact of occurrence of an accident does not normally imply that it cannot be due to the negligence of someone. It is a logical conclusion depending on the evidence let in by the parties. It is also well settled law that if there are two different sets of evidence in regard to the same fact, both uncontroverted and uncorroborated, the benefit of doubt must be given to the accused (Bhim Singh -v- State of Haryana (2003 SCC (cri) 1469).- 20 - 12. It is apt to quote the following passage from the judgment of the Hon'ble Apex Court in Criminal Appeal Nos.32-33 OF2017[S.L.P. (Crl.) Nos. 7694-7695 of 2016]. Ajay Singh and Another and Etc. Vs. State of Chhattisgarh and Another: Performance of judicial duty in the manner prescribed by law is fundamental to the concept of rule of law in a democratic State. It has been quite often said and, rightly so, that the judiciary is the protector and preserver of rule of law. Effective functioning of the said sacrosanct duty has been entrusted to the judiciary and that entrustment expects the courts to conduct the judicial proceeding with dignity, objectivity and rationality

and finally determine the same in accordance with law. Errors are bound to occur but there cannot be deliberate peccability which can never be countenanced. The plinth of justice dispensation system is founded on the faith, trust and confidence of the people and nothing can be allowed to contaminate and corrode the same. A litigant - 21 - who comes to a court of law expects that inherent and essential principles of adjudication like adherence to doctrine of audi alteram partem, rules pertaining to fundamental adjective and seminal substantive law shall be followed and ultimately there shall be a reasoned verdict. When the accused faces a charge in a court of law, he expects a fair trial. The victim whose grievance and agony have given rise to the trial also expects that justice should be done in accordance with law. Thus, a fair trial leading to a judgment is necessitous in law and that is the assurance that is thought of on both sides. The exponent on behalf of the accused cannot be permitted to command the trial as desired by his philosophy of trial on the plea of fair trial and similarly, the proponent on behalf of the victim should not always be allowed to ventilate the grievance that his cause has not been fairly dealt with in the name of fair trial. Therefore, the concept of expediency and fair trial is quite applicable to the accused as well as to the victim. The result of such trial is to end in a judgment as - 22 - required to be pronounced in accordance with law. And, that is how the stability of the creditability in the institution is maintained. This court is conscious that denovo trial can be ordered only in exceptional cases, to avert the failure of justice. However, in the facts and circumstances discussed above, retrial is the only solution to prevent the miscarriage of justice. As aforesaid, there is material irregularity in conducting the trial by the trial court which is nothing but perverse and is unsustainable. Confirming the said judgment passed by the appellate court also deserves to be set aside, as no super structure built upon a hollow base would survive. No doubt Section 461 of the Cr.P.C. may not be applicable to the facts of the present case, the material irregularity as discussed above vitiates the trial. The decision making process is paramount than the decision itself.

13. For the reasons aforesaid, the impugned Judgment and orders are set-aside. The matter is - 23 - remanded back to the trial court to hold a fresh trial in accordance with law. All rights and contentions of the parties are left upon to be adjudicated before the trial court. The trial court is requested to proceed with the

matter in an expedite manner and pass appropriate orders in accordance with law as expeditiously as possible. Parties shall cooperate for the expedite trial. Sd/-
JUDGE In.

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