

**K M Appachu Vs. The State Of Karnataka By**

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**Court :** Karnataka

**Decided On :** Nov-29-2021

**Judge :** Hanchate Sanjeevkumar

**Appeal No. :** CRL.RP 1159/2012

**Appellant :** K M Appachu

**Respondent :** The State Of Karnataka By

**Judgement :**

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE29h DAY OF NOVEMBER, 2021 BEFORE THE HONBLE MR.JUSTICE HANCHATE SANJEEVKUMAR CRL.R.P. NO.1159/2012 BETWEEN: K.M. APPACHU, S/O K.A. MADAPPA AGED ABOUT50YEARS NO.36, PALIBETTA VIRAJPET TALUK KODAGU DISTRICT PIN-571 215. PETITIONER (BY M.T. NANAIAH, SENIOR COUNSEL FOR SRI. SHANKARAPPA, ADVOCATE) AND: THE STATE OF KARNATAKA BY CIRCLE INSPECTOR OF POLICE HUNSUR CIRCLE HUNSUR-571 215. RESPONDENT (BY SRI.SHANKAR H.S. HCGP) THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION397R/W401CR.P.C PRAYING THIS HONBLE COURT TO SET ASIDE THE

JUDGMENT

AND

ORDER

DATED 07.11.2012 PASSED BY THE P.O., F.T.C, HUNSUR IN CRL.A.NO.168/2008 AND CONFIRMING THE

ORDER

DATED 26.07.2008 PASSED BY THE C.J.

(JR.DN.) & J.M.F.C, HUNSUR IN C.C.NO.357/2007. THIS CRIMINAL REVISION PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

2.

ORDER

The above criminal revision petition is filed under Section 397 read with 401 of Cr.P.C calling in question the legality and propriety of the order of conviction passed in C.C.No.357/2007 dated 26.07.2008 by the Civil Judge (Jr.Dn.) and JMFC at Hunsur, which is confirmed in Criminal Appeal No.168/2008 by the Fast Track Judge at Hunsur, Mysore District. Insofar as the conviction of the petitioner is concerned, the sentence is modified holding the accused is guilty for the offence punishable under Section 304-A of IPC and has set aside the judgment of conviction insofar as the offence punishable under Section 279 of IPC. Therefore, being aggrieved by the said order, petitioner-accused has filed the present petition.

2. Brief facts of the case: On 05.06.2007 at about 9.10 a.m. the deceased- Yashodamma was standing in front of the house of one Siddegowda on B.M.Road (Hunsur and Mysore road) along with her husband -P.W.4, waiting for the vehicle 3 to go to Hunsur for purchasing fertilizer. At that time, the accused being the driver of Santro Car bearing Registration No.KA-05-MD-665 coming from Mysore side drove the vehicle with high speed in a rash and negligent manner, so as to endanger human life and dashed against deceased- Yashodamma by running the car on the foot path. Due to the said accident, the deceased Yashodamma died on the spot. Therefore, the complaint was lodged and after investigation, charge

sheet was filed for the offence punishable under Section 279 and 304-A of IPC.

3. After full-fledged trial, the trial Court has convicted the petitioner for the offence punishable under Section 279 and 304-A of IPC and sentence was passed to pay a fine amount of Rs.1,000/- for the offence punishable under Section 279 IPC and also to undergo simple imprisonment for one year and to pay a fine amount of Rs.5,000/- under Section 304-A IPC. 4

4. Being aggrieved by the order, the criminal appeal was preferred before Sessions Court. The Sessions Court has confirmed the conviction order under Section 304-A IPC but set aside the conviction order for the offence punishable under Section 279 of IPC.

5. Being aggrieved by the conviction order, the accused preferred the present criminal revision petition on the ground that there is no appreciation of evidence by the Courts below, placing reliance on number of judgments.

6. Sri. M.T.Nanaiah, the learned senior counsel appearing for the petitioner submitted that in the present case, the Investigating Officer has not conducted Test Identification Parade (TIP) and P.W.1 and P.W.4 have first time identified the accused in the Court and this identification is doubtful as P.W.1 and P.W.4 did not know the accused earlier. Therefore, if the police present someone to the Court and make him to stand as an accused, then quite naturally the witnesses 5 are inclined to say that this is the person who has committed the accident. Therefore, the identification by P.W.1 and P.W.4 is a doubtful circumstance and hence if these P.Ws.1 and 4 evidence is not accepted insofar as identifying the accused is concerned, the prosecution does not have any incriminating evidence against the accused. Therefore, he prays for acquittal of the petitioner-accused. To countenance his arguments, he relied on the judgment of this Court in the case of STATE vs. S. MANOHARAN reported in 2014 CrI.L.J.3307 and also on the judgment of High Court of Punjab and Haryana in the case of HARTEJ SINGH vs. UT, CHANDIGARH reported in 2009 SCC (Online) P & H3543 6(a). Further, the learned Senior counsel submitted that the Investigating Officer had not got prepared the spot sketch by a qualified engineer but he himself prepared the spot sketch and the spot sketch suffers from bias. Therefore, he submitted that it is

incumbent upon the Investigating Officer to get 6 prepared the spot sketch by an engineer then that would be the correct way of investigation but the Investigating Officer himself has prepared the spot sketch which cannot be believed. Hence, prays for acquittal of the petitioner-accused. 6(b). Further, the learned Senior counsel submitted that P.W.6 who had partly conducted investigation, has stated that he has issued a notice under Section 133 of Motor Vehicles Act, 1988 (for short the 'MV Act') but as per Ex.P.5 he did not depose to the contents in the said notice issued under Section 133 of MV Act. Therefore, just because the said P.W.6 issued notice under Section 133 of MV Act, is produced, that does not mean that contents therein are proved. P.W.7 ought to have deposed about the contents in the said notice and without doing so, the evidence of said P.W.7 is not admissible. Therefore, submitted that mere production and marking of a document as Exhibit is not sufficient, but the contents therein are to be deposed, otherwise it is not admissible. In this regard, he places 7 reliance on the judgment of Hon'ble Supreme Court in the case of NARBADA DEVI GUPTA vs. BIRENDRA KUMAR JAISWAL AND ANOTHER reported in (2003) 8 SCC745 6(C). Further the learned senior counsel submitted that the Motor Vehicle Inspector who has given investigation report of the vehicle is not examined. Therefore, it is fatal to the prosecution case. The Motor vehicle inspector is author of the Ex.P.4- IMA report but he is not examined but that is produced through P.W.6- PSI and that is not sufficient. Therefore, it is fatal to the prosecution case and prays for acquittal of the petitioner-accused. In this regard, he places reliance on the judgment of this Court in the case of VEERABHADRAPPA VS. STATE OF KARNATAKA reported in 1989 (2) Kar.LJ255 7. Therefore, in view of the above submissions, the learned Senior counsel prays for acquittal of the petitioner -accused as there are infirmities that are revealed in the investigation and while giving evidence 8 as discussed above and hence, prays for acquittal of the petitioner-accused.

8. On the other hand, the learned HCGP submitted that conducting Test Identification Parade in each and every case of accident is not necessary and identification before the Court is sufficient and enough and if the evidence of such identification inspires the confidence of the Court, that can be made basis for conviction and that is what is done in the present case. Hence, there is no merit in the submission made by the learned Senior counsel for the petitioner. He places

reliance on the judgment of Hon'ble Apex Court in the case of MYLADIMMAL SURENDRAN AND OTHERS vs. STATE OF KERALA reported in (2010) 11 SCC129 Further he submitted that mere non-examination of Motor Vehicle Inspector is not fatal to the prosecution case, particularly, when the said report of the Motor Vehicle Inspector is produced and marked by consent in the trial then examination of Motor Vehicle Inspector is not necessary. 9

9. Further, the learned HCGP submitted that the Investigating Officer had produced Ex.P.7-Sketch and notice issued under Section 133 of MV Act and that would be sufficient and contents therein need not be deposed. Further, it is just a notice issued to the accused for giving statement and therefore just because the contents in Ex.P.7-sketch are not deposed, that cannot be a ground to suspect the prosecution case. Therefore, he submitted, there is no merit in the petition, hence prays for dismissal of the petition.

10. Upon hearing the rival submissions made by the learned senior counsel for the petitioner and learned HCGP for respondent, the points that arise for my consideration are as follows;

"1. Whether the judgment of conviction and sentence recorded against petitioner-accused for the offence punishable under Section 304-A IPC suffers from any illegality and impropriety?. And; (2) Whether there was any perverse approach in appreciating the evidence by the both courts below?. 10 11. The petitioner-accused faced charges under Section 279 and 304-A IPC that he has caused accident by dashing deceased- Yashodamma by driving Santro car bearing Registration No.KA-05-MD-665 with high speed and in a rash and negligent manner on 05.06.2007 at about 9.10 a.m., when the deceased was standing on the footpath in front of the house of one Siddegowda on B.M.Road. Soon after the accident, P.W.1 has lodged first information before Police. The accident was caused on 05.06.2007 at about 9.10 a.m. and this FIR was lodged on 05.06.2007 at about 11.30 a.m. after two hours from the time of accident. P.W.1 who has lodged a complaint is an eye-witness to the accident and narrated in the complaint that petitioner- accused was driving Santro car in a rash and negligent manner and dashed deceased-Yashodamma and she was thrown 25 feet away from the place

and died on the spot and he mentioned the registration number of Santro car in the complaint and also mentioned the name of the driver who is accused-petitioner. Therefore, the complaint is lodged just after two hours from the 11 time of accident, therefore, it cannot be said that there is manipulation in lodging the complaint.

12. P.W.1 has deposed in his evidence that he knows the deceased. On 05.06.2007 morning, at about 9.10 a.m, she was standing in front of the shop of C.W.6 at Kuppe gate which is Mysore-Hunsur road and at the time the deceased and her husband P.W.4 were standing on the footpath and waiting for the bus, he had enquired both and both stated that they would go to Hunsur for purchasing fertilizer. At that moment the Santro car was coming from Mysore side with high speed and dashed against the deceased - Yashodamma and she died on the spot and P.W.1 had identified the petitioner-accused that he was driving the Santro car and also stated that he lodged complaint as per Ex.P.1.

13. It is true that the I.O. had not conducted Test Identification Parade and P.W.1 had identified the petitioner -accused in the Court. P.W.1 is an eye witness to the accident and he was very much present and he knew the deceased and witnessed that the 12 accused had caused the accident. Therefore, P.W.1 had identified the petitioner-accused in the Court. This identification of the petitioner by the P.W.1 cannot be said to be tainted for the reasons that P.W.1 had seen the petitioner while he was driving the car at the time of accident. He enquired the name of the driver and same is stated in the complaint. In each and every case of accident, it is not necessary to conduct Test Identification Parade and also it is not practically possible, considering number of accidents that are occurred daily. Just because Test Identification Parade is not conducted in accident cases, it is not fatal to the prosecution cases. Insisting in conducting Test Identification Parade in each and every case of accident would be ridiculous, considering the number of accidents that occur daily, which are more than 100 in a day in the State.

14. Conducting Test Identification Parade is one of the methods to get corroborative evidence. That is always not mandatory in each and every case of 13 accident. Identification in the Court itself is sufficient and evidence of the

witness can be believed provided it inspires confidence of the Court and found to be not manipulative one. But upon considering cross- examinations of P.W.1, nothing can be revealed that the evidence of P.W.1 is manipulated one so as to falsely fix the petitioner-accused in the case. Therefore, I find no merit in the submission of the learned senior counsel for the petitioner in this regard.

15. In the case of S.Manoharan (Supra), the law laid down is that in each and every case of accident, the Test Identification Parade is mandatory and necessary. The learned senior counsel had read out the portion of the observation of the judgment that is sufficient if suggestion is made to the witness that earlier to the incident he is one of the accused at no point of time he does not know name of the driver therein and said lorry etc., and accused was not driving the vehicle on that particular day, but the said suggestion was denied. This is only observed in the said judgment. Therefore, the 14 above said judgment is not applicable and not helpful to the petitioner-accused.

16. What this Court has observed is that if any doubt arises in the mind of the Court, regarding the identity of the accused then that benefit always be given infavour of the accused. This is the only observation made by this Court in the above said case. But in the present case, there is no doubt that P.W.1 had correctly identified the petitioner in the Court that he was driving the car and caused accident and his evidence has inspired the Court in order to convict the accused which finding is not found to be perverse. So also in the same manner judgment of High Court of Punjab and Haryana in the case of HARTEJ SINGH (Supra) is also not applicable in the present case, considering the difference in the factual matrix and evidence revealed in the above said case and in the present case. In Hartej Singh's case name of the driver of the vehicle was not stated in the complaint and accused was arrested after one month after the accident. Therefore, in that factual 15 background Court had doubted the identity of the accused by the witness and gave benefit of doubt in favour of the accused. But in the present case, the facts are different. P.W.1 had witnessed the accident and saw that the petitioner was driving Santro car bearing Registration No.KA-05-MD-665 and after that he enquired the name of the driver and stated his name that is reflected in first information statement. Therefore, the difference in these factual

matrixes entails the above said judgment as not applicable to the present case. Therefore, just because the test identification parade is not conducted in the present case, that cannot be said that it is fatal to the prosecution case.

17. As observed above, conducting Test Identification Parade is only in the nature of corroborative evidence on behalf of the prosecution and that is not mandatory in each and every cases of accident. The purpose of conducting Test Identification Parade is to conduct the relevancy of the evidence in order to connect to other relevant facts and therefore it 16 is not mandatory in nature to conduct Test Identification Parade in each and every case of accidents. If the accused is able to prove that there is a gap in connection to the relevancy of the facts, then the said benefit can be extended in favour of the accused.

18. But in the present case, even without conducting Test Identification Parade the relevancy of facts occurred in the present case are established by the prosecution particularly from the evidence of P.W.1 and P.W.4. P.W.4 is husband of the deceased. He narrated the incident that deceased- Yashodamma and he were standing in front of the house of one Siddegowda and petitioner was driving the car in a rash and negligent manner and proved the case of accident. P.W.4 had identified accused in the Court. Evidence of P.W.4 cannot be doubted for the reason that he had witnessed the incident and saw the petitioner at the time of the accident. The petitioner was driving Santro car and therefore quite naturally he identified the petitioner before the Court. P.W.4 had already seen the petitioner 17 at the time of causing the accident. Therefore, quite naturally, P.W.4 had identified the petitioner. If petitioner absconded immediately after the accident and if there was no chance of seeing petitioner by P.Ws 1 and 4 at the time of accident, then the identification made by the P.W.4 before the Court can be doubted. But that is not the case here. Since soon after the accident, the petitioner was very much there on the wheel of the car and therefore P.W.4 has witnessed that it is the petitioner who had caused the accident. Therefore, the identification made by the P.Ws.1 and 4 in the Court is sufficient and enough and that is rightly considered by the Courts below. Hence, I do not find any perversity in the approach of both the Courts below.

19. Considering the submission made by the learned senior counsel that spot sketch- Ex.P.7 was prepared by the P.W.6- PSI himself instead of getting it prepared by an engineer. It is not necessary that spot sketch soon after the accident is always prepared through a qualified engineer. The Investigating Officer 18 can very well prepare rough sketch during the course of investigation soon after the accident and that is sufficient. Summoning any engineer of the department would consume time by following the procedure, by writing a letter to the department and securing engineer, and by that time the evidence could be vanished. Therefore, it is the bounden duty of the Investigating Officer to prepare the spot sketch immediately after the accident without disturbing any evidence at the place of accident.

20. In case of road accident, after the accident, the vehicle remained on the road and in most of the cases it would cause inconvenience to the passers-by vehicles. Therefore, without making any delay, Investigating Officer who is conducting investigation, prepares spot sketch and after completion of the process the vehicles would be shifted to by the side of the road giving way to other passers-by vehicles and therefore it is always not expected to get prepared the spot sketch by a qualified engineer by writing the letter 19 to the department etc., Therefore, the Investigating Officer has every power in his discretion while conducting the investigation to prepare spot sketch and this would be sufficient while appreciating evidence on record. Therefore, just because the spot sketch is not prepared by an engineer that cannot be fatal to the prosecution case for the reasons above stated.

21. Considering the rival submissions made by the learned senior counsel for the petitioner that P.W.6 had summoned the accused under Section 133 of MV Act and recorded statements, it is the submission of the senior counsel for the petitioner that just production and marking of document is not sufficient, unless contents therein are deposed. Issuance of notice under Section 133 of MV Act is just an attempt to summon the accused to have the witness to record his statement. Production of the same is sufficient. When a document is produced, the contents therein need not be deposed as it is not a civil case to prove the execution of document along with signature. After all, it is a notice 20 issued under Section 133 of MV Act to summon the person to record his statement.

22. In this type of accident cases, the execution of the document need not be proved as it is being done in the civil case. Here in the case, there is no dispute regarding the execution of notice under Section 133 of MV Act. Considering the execution of notice under Section 133 of MV Act is of no relevance at all, in proving the guilt of the accused. It is an effort on the part of the Investigating Officer that he had taken effort to summon the person for recording the statement. The execution of the said notice is not disputed and proving of execution of said notice is not relevant in each and every accident case. Therefore, for these reasons, I find no merit in the submissions made by the learned senior counsel.

23. Further it is submitted by learned senior counsel that in order to prove Ex.P.4-MV report, Motor vehicle inspector was not examined, hence, it is fatal to the prosecution case. It is always not necessary for 21 examining the Motor vehicle inspector in accident cases. At the most, the Motor vehicle inspector can give report regarding the status of the vehicle after the accident and nothing else. Evidence of the Motor vehicle inspector is not relevant in order to ascertain whether the petitioner- accused is guilty of the offence or not?.. Therefore, the Investigating Officer can get the Motor vehicle inspection report from the Motor vehicle inspector and same would be produced through the Investigating Officer and it can be considered while examining the Motor vehicle inspector if it is warranted for examination of the Motor vehicle inspector. Even if the Motor vehicle inspector is summoned and examined before Court, that would not be relevant for the purpose of finding the guilt of the accused. What he can depose is that he had given Motor vehicle Inspection report and nothing else. Therefore, in accident cases, it is not necessary to summon the Motor vehicle Inspector to examine him regarding the Motor vehicle Inspection report. In this regard, he places reliance on the judgment of this Court in the case of *MALLESHI @ 22 MALIK VS. STATE OF KARNATAKA* reported in ILR1999 Kar.

3835. 24. Therefore, mere non-examination of the Motor vehicle inspector is not fatal to the prosecution case. The judgment relied on by the learned Senior counsel in the case of *Veerabadrappa (Supra)* can be distinguished for the reasons that in the said case, conviction was based on the testimony of the witness and not presence during the accident and eye witness has not reported

about the rash and negligent driving. Therefore, under such circumstances, it was observed that Motor vehicle inspector could have been examined and it was necessary. Therefore in the present case, P.Ws.1 and 4 are the eye witnesses and have categorically deposed regarding the accident that petitioner had caused the accident and testimony of these eye witnesses cannot be doubted in the facts and circumstances of the present case. Therefore, this makes difference in the factual matrix in the above said Veerabadrappa's case and in the present case. 23 Therefore, it is always not necessary to summon the Motor vehicle inspector and examine him in each and every case of the Motor vehicle accident cases.

25. Considering the other evidence, P.W.2 who is Panch witness to the Ex.P.2-inquest report and P.W.3 who is also a Panch witness to the inquest report, who have stated that regarding the status at the place of accident that dead body of deceased was lying on the spot and head light of the car was damaged. The P.W.5 had stated that after the accident, he came to the spot but the presence of P.W.5 is very rare that soon after the accident, he was present there and saw the petitioner and other witnesses. Therefore, the evidence of P.W.5 is found to be relevant as per Section 6 of the Evidence Act.

26. P.Ws. 6 and 7 are PSI who have conducted enquiry and narrated the sequence of the event in the course of investigation and P.W.6 had filed a charge sheet. P.W.7- PSI had conducted substantial part of investigation and upon considering the evidence of 24 these two witnesses with reference to charge sheet, nothing else is revealed that the petitioner was falsely fixed into the case. Therefore, both the Courts below have correctly appreciated the evidence and no illegality and impropriety is found in the approach of Courts below. Hence, I do not find any perversity in the approach of the Courts below. Hence, I answer the points for consideration in negatives. Therefore, the present petition is liable to be dismissed. Hence, I proceed to pass the following;

**ORDER**

(1) CrI.R.P.No.1159/2012 is dismissed. Sd/- JUDGE RU

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