

Shrinivas vs the State of Karnataka,

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Court : Karnataka Dharwad

Decided On : Feb-29-2024

Judge : Anil B Katti

Appeal No. : CRL.RP/100141/2016

Appellant : Shrinivas

Respondent : The State of Karnataka,

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 29TH DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MR JUSTICE ANIL B KATTI CRIMINAL REVISION PETITION NO. 100141 OF 2016 (397) BETWEEN: SHRINIVAS S/O KASHINATH BENDRE, AGE: 38 YEARS, OCC: DRIVER, R/O: HIRELINGADAHALLI, NOW RESIDING AT HAVERI, TQ & DIST: HAVERI. - PETITIONER (BY SRI SHIVASAI M. PATIL, ADVOCATE) AND: THE STATE OF KARNATAKA, REPRESENTED BY SPP, HIGH COURT OF KARNATAKA, DHARWAD BENCH, CPI HAVERI RURAL POLICE STATION, HAVERI. - RESPONDENT (BY SRI. PRAVEENA Y. DEVAREDDIYAVARA, HCGP) THIS CRIMINAL REIVISION PETITION

IS FILED U/S 397 AND Digitally signed by SAROJA HANGARAKI 401 OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND THE

SAROJA Location: HIGH COURT OF HANGARAKI KARNATAKA,DHARWAD BENCH Date: 2024.03.05 16:41:48 +0530 SENTENCE ORDER DATED 30.04.2016 PASSED BY THE I ADDL. DIST. AND SESSIONS JUDGE, HAVERI IN CRIMINAL APPEAL NO.66/2011 AND CONFIRMING THE JUDGMENT AND ORDER FOR THE OFFENCE UNDER SECTION 337 AND 304A OF IPC DATED 5.11.2011 PASSED BY THE CIVIL JUDGE AND JMFC, HAVERI IN C.C. NO. 145/2009 & ETC. THIS CRIMINAL REVISION PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

-2-

ORDER

Petitioner/ accused feeling aggrieved by the judgment of first appellate court on the file of I Addl. Dist. & Sessions Judge, Haveri, in Criminal Appeal No. 66/2011 dated 30.04.2016 in confirming the judgment of the trial court on the file of Addl. Civil Judge & JMFC, Haveri, in C.C. No. 145/2009, preferred this revision petition.

2. Parties to the revision petition are referred with their rank as assigned in the trial court, for the sake of convenience.

3. Heard arguments of both sides.

4. After hearing arguments of both sides and on perusal of trial court records so also the impugned judgment of the first appellate court under revision, the following points arise for consideration.

i) Whether the impugned judgment of the first appellate Court in confirming the judgment of trial court for the offences punishable U/s 279, 337 and 304(A) of IPC, is perverse, capricious and legally not sustainable? ii) Whether interference of this Court is required? -3-

5. The factual matrix leading to the case of prosecution can be stated in nutshell are to the effect that on 30.03.2008 at 2.15 p.m. while complainant Shashikantha Appasaheb Manasa

was proceeding near Guttal bus stand circle saw one motorcycle bearing No. KA-27-K-7150 was proceeding from Ranebennur towards Negalur. At that time one Katma (tempo) bearing No. KA-27-A-1235 came from Havanur side towards Haveri in rash and negligent manner and dashed against the motorcycle bearing No. KA-27-K-7150 and fell on it. Due to which rider of the motorcycle Fakkiragoud Sannasomanagoud Bhagavanthagoudra succumbed to the injuries on the spot and his son, the pillion rider Muralidhargouda sustained injuries.

The prosecution alleges that on account of actionable negligence on the part of accused in driving Katma (tempo) bearing No. KA-27-A-1235 the accident in question has occurred leading to the death of the rider of the motorcycle and causing injuries to the pillion rider and also injuries to CW5- Suresh Shekhappa Kallimani (PW3).

6. The prosecution to prove the allegations made against accused relied on the oral testimonies of PWs.1 to 10 and Exs.P.1 to P.15. On closure of prosecution side, the statement -4-

of accused U/s 313 of Cr.P.C. came to be recorded. It is the defence of the accused that accident in question had occurred due to the rash and negligent driving of the rider of the motorcycle. In support of such contention, got himself examined as DW1 and one witness as DW2. The trial court after hearing arguments of both sides and on appreciation of oral and documentary evidence placed on record, convicted the accused for the offences alleged against him and imposed sentence as per order of sentence.

7. Accused challenged the said judgment of conviction and

order of sentence before the first appellate court in Criminal

Appeal No. 66/2011. The first appellate court on re-

appreciation of the evidence placed on record, by judgment

dated 30.04.2016 has dismissed the appeal and confirmed the

judgment of the trial court in convicting the accused for the

aforementioned offences and also imposition of sentence.

8. Accused has challenged the concurrent findings of both the Courts below contending that both the Courts below have not properly appreciated the evidence on record and conveniently ignored the defence evidence of DW1 and DW2, -5-

the place of accident, spot panchanama-Ex.P.2, so also the evidence placed on record has not been properly appreciated by both the Courts below and as a result recorded improper finding against the evidence on record which cannot be legally sustained.

9. Per contra, learned HCGP has argued that accused was

the driver of the Katma (tempo) bearing No. KA-27-A-1235 and the factum of accident, so also the place of accident is not disputed by the accused. The said fact is further strengthened by the evidence of DWs.1 and 2. There is no material evidence that has been brought on record in the cross examination of PW4 to discredit his evidence regarding the manner in which

the accident has taken place. The courts below have rightly appreciated the oral and documentary evidence placed on record and justified in holding that the accident in question had occurred due to culpable rashness in driving the Katma (tempo) bearing No. KA-27-A-1235 leading to the accident in question

and as a result, rider of the motorcycle Fakk

said finding recorded by the Courts below is based on the -6- material on record and the same does not call for any interference by this Court.

10. The accused was the driver of Katma (tempo) bearing

No.KA-27-A-1235. The fact that rider of the motorcycle bearing No. KA-27-K-7150 succumbed to the injuries sustained in the accident on the spot itself, so also the pillion rider Muralidhar (PW4) who is the son of the rider and the inmate

(PW3) of the vehicle driven by the accused also sustained

injuries, are not disputed. The accused has disputed that accident in question had occurred due to culpable rashness or negligence on his part and claimed that place of accident is wrongly shown by the investigating officer in the panchanama.

11. The evidence of PW1-Shashikanth would go to show that on 30.03.2008 at about 1.00 to 1.15 p.m. while he was proceeding for lunch to his home from the shop near Guttal circle, he saw the accident in question. The accused came driving Katma (tempo) bearing No. KA-27-A-1235 from Havanur side towards Haveri and the motorcycle bearing No.KA-27-K-7150 was coming from Ranebennur towards Negalur side with the pillion rider. The vehicle driven by the - 7-

accused came with high speed in rash and negligent manner and dashed against the motorcycle due to which Katma (tempo) bearing No. KA-27-A-1235 fell on the motorcycle which resulted in the rider of the motorcycle succumbing to the injuries on the spot itself. The pillion rider who was son of the rider of motorcycle and another person (PW3), the inmate of vehicle driven by the accused, also sustained injuries. He has also identified the accused before the Court as the person driving Katma (tempo) bearing No. KA-27-A-1235 at the time of accident.

12. PW3-Suresh Shekappa Kallimani was also the inmate of Katma (tempo) bearing No. KA-27-A-1235 driven by the

accused. He has deposed to the effect that they were proceeding on the left side of the road while proceeding towards Haveri. At that time, rider of the motorcycle dashed to the left side portion door of the vehicle and fell to the ground due to which the vehicle driven by the accused fell on the rider of motorcycle who sustained grievous injuries over the head and died on the spot.

13. PW4-Muralidhar Fakkiragoud Bhagavanthagoud is the son

of rider of motorcycle who was moving with his father on the motorcycle aged about 11 years. He deposed to the effect that on 30.03.2008 his father was riding the motorcycle and he was the pillion rider and they were proceeding to the left side of the

road with empty bags. At that time, Katma (tempo) bearing No. KA-27-A-1235 driven by the accused came from Havanur side while proceeding towards Haveri and dashed against the motorcycle due to which his father sustained injuries over the head and succumbed to the said injury on the spot itself. He further deposed that he has sustained injuries in the accident and was shifted to the hospital.

14. The trial court has recorded finding that the evidence of

PW1 in view of the contradictions and omissions in the cross examination held that the witness in his cross examination has given a go-bye to the case of the prosecution. The evidence of PW4-Muralidhar, son of the deceased rider of the motorcycle, was found to be trustworthy with reference to the other material placed on record and proceeded to record finding in holding that the accident in question had occurred due to the

-9- culpable rashness or negligence in driving the Katma (tempo) bearing reg. no. KA-27-A-1235, by the accused.

15. The evidence of PW2-Channaveergoud Channappagoud

Goudappannavar would go to show that the investigating officer has prepared spot panchanama in his presence Ex.P.2 and he identified his signature as Ex.P.2(b). The place of accident was shown by the complainant-Shashikanth. The evidence of PW7- V.B.Mattikoppa would go to show that after registering the case he has visited the place of accident and drawn panchanama-

Ex.P.2 and also hand sketch map at Ex.P.3. The evidence of PW2-Channaveergoud and that of the investigating officer, PW7-V.B. Mattikoppa, it would go to show that spot panchanama was drawn on 30.03.2008 from 5.15 p.m.

to 6.15 p.m. on the day of the accident. The hand sketch map of the place of accident is prepared as per Ex.P.3.

16. On going through the recitals of the spot panchanama-

Ex.P.2 and sketch map-Ex.P.3, it would go to show that the road at the place of accident runs from East to West, i.e., from Havanur to Haveri road. There is also a circle at the place of accident. The accused was driving Katma (tempo) bearing - 10 - No.KA-27-A-1235 from Havanur to Haveri at Guttal Circle where four roads join. The rider of the motorcycle was proceeding from Ranebennur towards Negalur which runs from South to North. The rider of the motorcycle bearing No. KA-27- K-7150 had almost crossed the circle leading towards Negalur road. Accused who was driving Katma (tempo) bearing No. KA-27-A-1235 while proceeding from Havanur to Haveri on the road leading to East-West, was supposed to keep left side of

the road on the Southern side. The evidence of PW4- Muralidhar and the recitals of the spot panchanama-Ex.P.2 so also the hand sketch-Ex.P.3 would go to show that driver of Katma (tempo) bearing No. KA-27-A-1235 travelled to the extreme right side and dashed against the motorcycle bearing No. KA-27-K-7150 which had almost crossed the circle and in the process of entering Negalur road towards Northern side.

17. The aforementioned evidence on record would go to show

that the accused being the driver of the Katma (tempo) bearing No. KA-27-A-1235 has exceeded his way of limit towards left side and came to the extreme right side of the road and dashed to the motorcycle, due to which the accident had occurred.

- 11 -

18. It is the defence of the accused that rider of the

motorcycle dashed to the left side door of Katma (tempo) bearing No. KA-27-A-1235, due to which, the vehicle was toppled and fell on the rider of motorcycle. The accident had occurred solely on the rash and negligent riding of the motorcycle bearing No. KA-27-K-7150 by its rider. In support of such defence, he

got himself examined as DW1 and examined one witness on his behalf as DW2. If the evidence of these witnesses, DW1 and DW2 is read together then it would go to show that spot of the accident is to the left side of the road. It means that accused wants to claim that while he was proceeding from Havanur to Haveri from East to West, he was moving with the vehicle by keeping left side of the road. If that is the case, then the place of accident should have been

towards the Southern side. Whereas recitals of the spot panchanama at Ex.P.2 and hand sketch map at Ex.P.3 would go to show that accident in question had occurred to the extreme right side of the Katma (tempo) bearing No. KA-27-A-1235 driven by the accused. The accused claims that this place of accident is wrongly shown. However, he admits in the cross- examination looking to the photograph at Ex.P.12 that the - 12 - same was taken from the front side of the vehicle at the place of accident. It means that the photo was taken from Haveri side which is to the Western side. The said evidence clearly goes to show that while proceeding from Haveri towards

Havanur, the tempo was on the left side of the road. This necessarily means that while coming from Havanur to Haveri, the vehicle was on the right side and not on the left side of the road. Therefore, the defence of the accused that rider of the motorcycle came and dashed to the left side of the Katma (tempo) bearing No. KA-27-A-1235, is unsustainable in view of the aforementioned evidence on record.

19. The evidence of accused-DW2 also substantiate the spot

features of the accident during the course of his evidence. The said evidence rules out the possibility of rider of the motorcycle dashing against the left side of the tempo driven by the accused due to which the tempo had fallen on the rider of the motorcycle which resulted in sustaining injuries and succumbed to the said injuries at the spot itself.

20. If the oral testimony of PW4-Muralidhar, evidence of panch witness-PW1-Channaveeranagoud, PW2- Shashikanth - 13 -

and that of the investigating officer PW7-V.B. Mattikoppa, are perused and appreciated with the recitals of spot panchanama- Ex.P.2 and the hand sketch map-Ex.P.3, then it would go to show that accused while proceeding from Havanur to Haveri, i.e., road leading from Eastern to Western side, came to the extreme right side of the road and dashed against the rider of the motorcycle who had almost traveled Guttal Circle and about to enter Negalur road to the Northern side due to which the accident in question had occurred leading to the death of rider of the motorcycle.

21. The claim of accused that rider of the motorcycle dashed

against the left side of the road while he was proceeding from Havanur to Haveri by keeping left side, is totally ruled out in view of the aforementioned evidence on record. The accused who was expected to drive the vehicle by keeping left side of the road, i.e., towards Southern side while proceeding from Havanur to Haveri road, has exceeded his way of limit to the

extreme right side and dashed against the motorcycle. The accused has failed to exercise due diligence while driving the vehicle and allowed his vehicle to travel to the extreme right side of the road and dashed against the motorcycle. The - 14 - accused has offered no any explanation as to the reason or compelling circumstances to take his vehicle to the extreme right side towards Northern side which was beyond his control to dash against the rider of the motorcycle.

22. The photographs of the vehicle driven by the accused

would go to show that it was loaded with submersible pipes and other materials and it is a three wheeler vehicle. The road at the place of accident in view of the recitals of the panchanama- Ex.P.2 and hand sketch map-Ex.P.3, is a straight road runs from East to West. The evidence of inmate of the tempo (PW3- Suresh) driven by the accused, though turned hostile has spoken about the factum of accident and the vehicle driven by

the accused fell on the rider of the motorcycle. The hand sketch map-Ex.P.3 would go to show that the rider of the motorcycle while proceeding from Ranebennur

towards Negalur in Guttal circle had almost covered the circle and about to enter Negalur road which is the right side for the accused which was proceeding from Havanur to Haveri and dashed against the motorcycle leading to the death of the rider of the motorcycle.

- 15 -

23. The courts below have rightly appreciated the evidence

and have arrived at just and proper conclusion in holding that the accident in question had occurred due to culpable rashness or negligence in driving the tempo by the accused and on account of impact of such negligence, the Katma (tempo) bearing No. KA-27-A-1235 fell on the rider of the motorcycle due to which the rider of the motorcycle died on the spot. The said evidence would only suggest that accused was out of control of the vehicle driven by him and did not exercise due care and caution while driving the tempo at the place of accident. The findings of Courts below in holding accused guilty for the offences alleged against him are based on material evidence on record and the same does not call for any interference by this court.

24. The question now remains regarding imposition of

sentence. The trial court has sentenced the accused to undergo simple imprisonment for a period of six months and a fine of Rs.1,000/- for the offence punishable U/s 304(A) of IPC. The accused is also further sentenced to pay a fine of Rs.500/- and in default to undergo simple imprisonment for seven days for the offence punishable U/s 337 of IPC.

- 16 -

25. Learned counsel for the accused has argued that if the

Court comes to the conclusion that the accident in question had occurred due to the negligent driving of the Katma (tempo) bearing No. KA-27-A-1235 by the accused, then prayed for taking a lenient view while imposing sentence. In support of his contention reliance is placed on the judgment rendered by the Co-ordinate

Bench of this Court in Crl. R.P. No. Soraganvi Vs. The State of Karnataka). In the said case, this Court looking to the facts and circumstances set out in the said case and the accident having taken place about 19 years back, modified sentence for the offence U/s 304(A) of IPC and sentenced to pay a fine of Rs.50,000/-. In default of payment of fine, the accused was sentenced to undergo simple imprisonment for six months.

26. Learned counsel would also submit that in the present

case, the accident in question took place on 30.03.2008, nearly about 16 years back and the accused is required to look after his family who are dependent on his income.

27. On the other hand, learned HCGP relied on the latest

judgment of the Honble Apex Court in Razia Khan Vs. The

- 17 - State of M.P. (Criminal Appeal No. 2259/2023 dated 03.08.2023) wherein it has been observed and held at paragraph No. 8 has observed as under:

Considering the seriousness of the offence punishable under Section 333 of the IPC and since the punishment prescribed is both of imprisonment of either description and a fine, obviously, the appellant cannot be let off only on a fine. However, considering the circumstances set out in paragraph 5 above, we are of the view that the appellant deserves to be shown leniency when it comes to the substantive sentence. The distinct factors set out in paragraph no. 5, taken individually, do not constitute a ground by itself to show leniency. For example, only because an accused is on bail for a long time, it is no ground by itself to show leniency. It is only one of the several factors to be considered. But we have considered these factors cumulatively. Hence, we propose to bring down the sentence of the appellant for the offence punishable under Section 333 to simple imprisonment for one month. We propose to impose a fine of Rs.30,000/- for the said offence. (emphasis supplied)

In view of the principles enunciated in the latest judgment of the Honble Apex Court, it is evident that accused is on bail for a long time itself cannot be a ground to impose only fine amount instead of imprisonment. The courts below considering
- 18 -

imposition of sentence must take into consideration the facts

and circumstances of the case and nature of evidence on record.

28. Learned HCGP also placed reliance on another judgment

of Honble Apex Court in Thangasamy Vs. State of Tamil Nadu (2019) 16 SCC 235 wherein it has been observed and

held at paragraph no. 16 as under:

16. On the question of sentencing, this Court re- emphasised as follows: (Alister Anthony Case reported in SCC 674) - reiterated paragraph Nos.84 and 85.

84. Sentencing is an important task in the

matters of Crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the

facts and circumstances of each case and the court must

keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. - 19 -

85. The principle of proportionality in sentencing a

crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence. (emphasis supplied)

29. The Honble Apex Court having so observed on the

extraction of Alister Anthony case recorded its finding at paragraph No. 17 with reference to its earlier judgment in Dalbir Singh V. State of Haryana (2000) 5 SCC 82 wherein it has been observed and held as under:

"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic. - 20 -

13. Bearing in mind the galloping trend in road

accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304- A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he

cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.' (emphasis supplied)

In view of the principles enunciated in both the aforementioned judgments of the Honble Apex Court, it is evident that while considering the quantum of sentence to be imposed for the offence of causing death by rash and negligent driving of automobiles, one of the prime consideration should be - 21 - deterrence. Therefore, the contention of the learned counsel for the accused for imposing only the fine amount instead of sentencing the accused to imprisonment, in the facts and circumstances of the case cannot be legally sustained.

30. The trial court has rightly exercised its judicial discretion

in imposing sentence of imprisonment for six months for the offence punishable U/s 304(A) of IPC. The first appellate court on reappreciation of evidence on quantum of sentence also confirmed the sentence imposed by the trial court. The imposition of sentence is proportionate to the proved guilt of the accused and the same does not warrant for any interference by this court and consequently proceed to pass the following order.

ORDER

Revision petition filed by the revision petitioner/ accused is hereby dismissed as devoid of merits. Registry is directed to transmit the records with copy of this judgment for necessary compliance. Sd/- JUDGE BVV List No.: 1 Sl No.: 42

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