

**K. Srinivas Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** May-28-2002

**Reported in :** 2002CriLJ3865

**Judge :** K. Sreedhar Rao, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 397; [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304A

**Appeal No. :** Criminal Revn. Petn. No. 209 of 1999

**Appellant :** K. Srinivas

**Respondent :** State of Karnataka

**Advocate for Def. :** S.G. Rajendra Reddy, Govt. Pleader

**Advocate for Pet/Ap. :** Hashmath Pasha, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**K. Sreedhar Rao, J.**

1. This Criminal Revision Petition is filed under Section 397, Cr.P.C, against the judgment of conviction and sentence passed by the IV Addl. CMM, Bangalore in

C.C. No. 10994/95 wherein the petitioner accused was convicted of committing the offence punishable under Section 304-A of the IPC. He was sentenced to undergo S.I., for a period of one year and to pay a fine of Rs. 5,000/-, in default directed to undergo S.I., for a period of six months. In appeal, the XII Addl. City Civil and Sessions Judge in Criminal Appeal 52/98 confirmed the conviction and sentence and consequently dismissed the appeal. Being aggrieved, the present revision petition is filed.

2. According to the prosecution version, on 16-11-1994 the petitioner accused was the driver of BTS Bus bearing No. Ka-01-F-403 plying from Vijayanagar to Majestic. Around 5.30 pm. the bus driven by the petitioner-accused was proceeding on the platform Road towards Majestic. The deceased who was riding the TVS Moped bearing No. CAR 7758 was dashed by the bus and as a result of the injuries sustained, he succumbed on the same date. The police registered the case in Crime No. 407/94 and after completion of the investigation filed the charge-sheet. In the course of investigation, spot mahazar and the rough sketch relating to the scene of occurrence were drawn which were marked as Exs. P2 and P4 respectively. According to the prosecution version, PWs. 1 and 2 are the eye-witnesses to the incident who were by-standers who witnessed the occurrence of the incident. According to the oral evidence adduced before the trial Court it is stated by PWs. 1 and 2 that the driver of bus was driving the bus in rash and negligent manner and the driver of the bus avoided going round the circle, took a short cut drive as a result of which the deceased was coming on the Moped was hit by the bus resulting in fatal injuries. The trial Court and the appellate Court appears to have been fully swayed by the oral evidence of eye-witnesses and found that the accused-petitioner is guilty of the offence punishable under Sections 279 and 304A of the IPC.

3. After hearing the counsel for the petitioner and the learned Government Advocate, it is evident that there is great divergence between the oral evidence and the documentary evidence with regard to the scene of occurrence and the manner of accident. According to the recitals in the panchanama, Ex. P-2 and the rough sketch, Ex. P-4, the accident takes place much before the circle and it is about 50 ft. before the circle, the place of impact is shown. Therefore, the theory

that the driver of the bus avoided taking round the circle and proceeded towards the right side of the road directly appears to be an untenable version and contrary to the documentary material. As per the sketch and the recitals of Panchnama, the bus was not even in the reasonable vicinity of the circle and the accident takes place in the middle of the road. The recitals of the Panchanama does not corroborate the oral testimony of P.Ws. 1 and 2 in this regard. It is not clear from the sketch or from the Panchanama as to whether the circle described as an Island in the rough sketch had any signal points and whether it was manned by the police to regulate the traffic. Merely because the bus was going in high speed on the middle of the road cannot be a basis to infer rashness or negligence on the part of the driver of the bus. It is evident from the sketch that the TVS Moped rider was also going on the middle of the road. In fact there are road dividers put on the platform road from the circle to an extent of 40 ft. The manner of accident as per sketch and the recitals in the panchanama does not disclose that the driver of the bus alone can be castigated for the accident in question. It appears that the driver of the moped has also contributed for causation of the accident. The contributory negligence in realm of torts may be an extenuating circumstance to mitigate the liability to pay the damages but that cannot a sole decisive factor to avoid the liability of compensation. However in criminal jurisprudence if the victim has also contributed for the causation of the accident by contributory negligence and in the absence of any material to show that only on account of rash and negligent driving of the accused driver the accident has occurred, it would not be permissible under such circumstances to hold the accused driver guilty of committing an offence under Sections 279 and 304A of I.P.C. Since the contributory negligence of the victim or deceased affords as an intervening circumstances but for if the accident could not have happened. However, the law keeps a clear distinction between cases of composite negligence and contributory negligence. In the cases of composite negligence, the drivers of both the vehicles would be guilty of rash and negligent driving. Whereas in a case of contributory negligence, no penal liability can be fastened on the accused/driver. Obviously for the reason that put for the contributory negligence the accident could not have occurred. In the instant case, there is no credible oral evidence to show that the bus was driven in rash and negligent manner at least to sustain a conviction under Section 279 of the I.P.C.

After all, the bus was proceeding on the middle of the road. The circle was still 50 ft. away from the place of impact. Under the circumstances, the speed of bus cannot be a sole determinative factor to attribute rashness or negligence on the part of the driver of the bus. In that view of the matter, I find that both the trial Court and the appellate Court have gravely erred in appreciating the oral evidence which is totally contradictory with the documentary evidence produced in the case.

Accordingly, the judgment and order passed by the IVth Additional CMM, Bangalore in CC No. 10994/1995 and confirmed by the XIIth Addl. City Civil and Sessions Judge, Bangalore in Criminal Appeal No. 52/1998 are set aside.

The criminal revision petition is allowed. The accused-petitioner is acquitted and his bail bonds shall stand cancelled.

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