

Hyderkhan Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-12-2006

Reported in : 2006CriLJ3143; 2007(6)KarLJ637

Judge : A.C. Kabbin, J.

Acts : Indian Penal Code (IPC) - Sections 279, 304A and 338; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Revision Petition No. 465 of 2003

Appellant : Hyderkhan

Respondent : State of Karnataka

Advocate for Def. : Satish R. Girji, HCGP

Advocate for Pet/Ap. : Nanjundaswamy, C.G. ;Sundar and ;Anjana Sundar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.C. Kabbin, J.

1. This revision petition was dismissed for default by order dated 6-3-2006, LA. II/2006 has been filed for re-calling the said order. The reason assigned for the failure of the Counsel for the revision petitioner to appear on that day is non-receipt of cause list of 6-3-2006. Accepting the said explanation, J.A. II/2006 is allowed and recalling the order dated 6-3-2006, the revision petition is restored to file.

2. This revision petition has been preferred challenging the conviction of the revision petitioner for offences punishable under Section 279, 338 and 304-A of the IPC and consequent sentence awarded by the Learned JMFC, II Court, Belgaum, in order dated 12-6-2001 in C.C. No. 458/2000. The appeal preferred by the revision petitioner in Criminal Appeal No. 57/2001 having been dismissed by the Learned I Additional Sessions Judge, Belgaum, dated 17-3-2003, this revision petition has been preferred.

3. On 20-4-2000 at 00.30 hours, truck bearing No. MYL 4586 of which P.W. 3 Iragouda Patil was the driver, had been parked by the side of Belgaum-Sankeshwar Road in Sutagatti ghat, to repair the broken connecting pipe of that truck, Iragouda Paul, the driver of the truck (P.W. 3) and Papul Mulla (P.W. 5- another driver of the same truck) were repairing the broken pipe and were under the truck. Mohammed Hussain (the deceased) was sitting in front of the said truck to facilitate repairs. Ismail Bagawan (P.W. 1), was standing by the side of the truck. It is alleged that at that time, another truck, i.e, truck bearing No. MCU-2672 came in high speed and dashed to the said truck bearing No. MYL 4586 on its rear side, on account of which the truck bearing No. MYL 4586 went further, hit Mohammed Hussain and ran over him. That caused grievous injuries to Mohammed Hussain and injuries to P.W. 5 Papul Mulla. Ismail Bagawan (Uncle of Mohammed Hussain) went to Hattaragi P.S. to inform about the incident. On the point of jurisdiction, he was directed to go to Kakati P.S.I. However Hattaragi police arranged for an ambulance. The injured were shifted in that ambulance to the hospital at Belgaum. Before they reached the hospital, Mohammed Hussain died. The driver of the truck bearing No. MCU-2672 (the accused) was prosecuted for offences punishable under Sections 279, 338 and 304-A of the IPC. After Trial, he was convicted by the Trial Court for the said offences and was sentenced to

undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/- in default to undergo simple imprisonment for one month for the offence punishable under Section 279 of the IPC, to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/- in default to undergo simple imprisonment for one month for the offence punishable under Section 338 of the IPC and to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for two months for the offence punishable under Section 304-A of the IPC.

4. Challenging the said conviction and sentence, the accused preferred Criminal Appeal No. 57/2001. That appeal having been dismissed on 17-3-2003 by the learned I Additional Sessions Judge, Belgaum, the present revision petition has been preferred.

5. It is submitted by Sri Nanjunda Swamy, Learned Counsel for the revision petitioner that the accident was not caused by truck bearing No. MCU-2672 driven by the accused, but that the truck bearing No. MYL 4586 which had been parked by P. W. 3 in a slope suddenly went further and ran over Mohammed Hussain and P.W. 4, resulting in the incident. He submits that therefore the conviction of the revision petitioner needs to be set aside. He mainly places reliance on the lack of opportunity to the accused to explain the events, contending that omnibus questions put by the Trial Court while examining the accused under Section 313 of the Code of Criminal Procedure denied proper Opportunity to the accused to explain his version. He argues that therefore taking into consideration that factor, the conviction may be set aside and the matter may be remanded to the Trial Court to reexamine the accused under Section 313 of the Code of Criminal Procedure.

6. Sri Satish R. Girji, Learned High Court Government Pleader submits that the evidence sufficiently shows that the incident was due to rash or negligent driving of the vehicle by the accused and that therefore there is no need to remand the matter. In view of this specific contention of the accused, the defect pointed out by the Learned Counsel for the revision petitioner has to be considered before going into the merits of the case.

7. Examination of the accused under Section 313 of the Code of Criminal Procedure after the closure of prosecution evidence and before he is called on for his defence is a very important step in a criminal trial. This examination is not an empty formality. The underlying object behind this provision is to enable the accused to explain any circumstance appearing in evidence against him. This important step in the trial is based on the maxim Audi Alteram Partem, i.e, hear the other side or hear both sides, an injunction which means that no man shall be condemned unheard. Therefore, a duty is cast upon the Court conducting the trial to formulate questions in such a way that the accused can understand from such questions what adverse material in evidence he is required to explain. There is no need to formulate separate questions for the evidence of each witness. If an inculpatory material is spoken to by more than one witness, question formulated with regard to that material may mention which of the witnesses have spoken to about that material factor. Where a question is a combination of different materials in evidence, there is possibility of the accused being confused about the material which he is required to explain. In that event, if by such omnibus question, the accused has been prejudiced, the trial may be vitiated from that stage. Therefore a Trial Court shall, while examining the accused under Section 313 of the Code of Criminal Procedure, avoid stringing together several circumstances into one question and seeking explanation of the accused to such common question. It may also be borne in mind that whatever may be the number of accused persons, each and every accused must be examined separately and distinctly. The answers given by the accused shall not be scribbled, since answers which may be given by an accused in his examination under Section 313 of the Code of Criminal Procedure may throw light on the question of guilt or otherwise of the accused and in some cases, the truth may be crystalised by such answer. Answers so recorded shall be legible and in understandable handwriting.

8. In the present case, out of four relevant questions put by the learned Trial Judge, one question covers the whole of the evidence of P.W. 1 consisting of more than two material facts. The next question covers what all has been spoken to by P.W.3 and the last question is the evidence of P.W. 4. This has deprived the revision petitioner of proper opportunity to explain in one answer all the materials. The nature of the incident requires proper explanation. Therefore, I find that the

examination of the accused in the present case was not in accordance with the requirement of Section 313 of the Code of Criminal Procedure and it had prejudiced the accused.

9. For the above said reasons, the revision petition is allowed and setting aside the conviction and sentence recorded by the Trial Court as affirmed by the Appellate Court, the matter is remanded to the Trial Court to proceed with the trial from the stage of examination of the accused. While examining the accused, the Learned Trial Judge shall bear in mind the principles referred to above. The Trial shall be completed and the case shall be disposed of as far as possible within four months from the date of the receipt of a copy of this order.

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