



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION No.990 OF 2016

BETWEEN:

1. SRI.GOPAL SALIAN
AGED ABOUT 55 YEARS,
S/O LATE ANNU KOTIAN,
KAMBALADADDA HOUSE,
MOODUKODI VILLAGE,
BELTHANGADY TALUK-574214

...PETITIONER

(BY SRI. CHANDRANATH ARIGA K, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
VENUR POLICE STATION, MANGALORE
BY PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BANGALORE -01

...RESPONDENT

(BY SRI VINAY MAHADEVAIAH, HCGP)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 26.11.2012 IN C.C.NO.770/2009 PASSED BY THE CIVIL JUDGE AND JMFC, BELTHANGADY D.K AND SET ASIDE THE JUDGMENT AND ORDER IN CRL.A.NO.345/2012 PASSED BY THE III ADDL. DIST. AND S.J., D.K., MANGALORE AND ETC.,

THIS PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA





ORAL ORDER

Heard Sri K.Chandranath Ariga, learned counsel for the revision petitioner and Sri Vinay Mahadevaiah, learned High Court Government Pleader for the respondent.

2. The revision petition is filed by the accused who suffered an Order of conviction in C.C.No.770/2009 dated 26.11.2012 on the file of the Civil Judge and JMFC, Belthangady, D.K. confirmed in CrI.A. No.345/2012 dated 12.02.2016 on the file of the III Add. District and Sessions Judge, Dakshina Kannada, Mangaluru.

3. Facts of the case in brief which are utmost necessary for disposal of the case are as under:

A complaint came to be lodged with Venuru Police contending that on 26.08.2009 at about 10.50 am, in a place called Aladangady of Badagakarandoor village, accused being the driver of the private bus by name 'Vishal' bearing registration No.KA-20/B-3027 drove the same in a rash and negligent manner and without taking necessary precautions turned the bus towards the right side to enter the bus stand, dashed against the motor cycle bearing registration No.KA-20/



S-4138, whereby both the rider and pillion rider of the motor cycle fell down and due to the impact, both of them sustained grievous injuries. They were taken to Community Health Centre, Belthangady.

On account of the injuries sustained in the accident, Ashok Acharya who was the rider of the motorcycle died enroute to the hospital and the pillion rider was treated in the Hospital.

The police, after registering the case in Crime No.50/2009, thoroughly investigated the matter and filed charge sheet against driver of the bus for the offences punishable under Sections 279, 338 and 304 of the Indian Penal Code.

4. Presence of the accused was secured by the learned Trial Magistrate and plea was recorded. Accused pleaded not guilty. Therefore, trial was held.

5. In order to prove the case of the prosecution 12 witnesses were examined as P.Ws.1 to 12 and as many as 17 documents were placed on record which were exhibited and marked as Exs.P.1 to P.17.



6. The detailed cross-examination of prosecution witnesses did not yield any positive material so as to disbelieve the version of the injured eye witness and other prosecution witnesses. Thereafter, learned Trial Judge recorded the statement of the accused as is contemplated under Section 313 of the Code of Criminal Procedure.

7. The accused denied all the incriminatory circumstances including the accident and did not offer any explanation to the incident in writing as is contemplated under Section 313(4) of the Code of Criminal Procedure. The accused did not place any evidence on his behalf, as well.

8. Thereafter, learned Trial Judge heard the parties and convicted the accused and passed the sentence as under:

"Acting under Section 255(1) of Cr.P.C. accused is hereby convicted for the offence punishable under Section 279, 338 and 304A of Indian Penal Code.

The accused is sentenced to undergo simple imprisonment for one year and also to pay fine of Rs.1,000/- for the offence punishable under Section 304A of Indian Penal Code.

In default to payment of fine he shall undergo simple imprisonment for two months.



The accused is sentenced to undergo simple imprisonment for six months and also to pay fine of Rs.500/- for the offence punishable under Section 338 of Indian Penal Code.

In default to payment of fine he shall undergo simple imprisonment for one month.

No separate sentence is imposed for the offence punishable under Section 279 of Indian Penal Code.

The sentence shall run concurrently.

The bail bond and surety bond stands cancelled.

The office is directed to provide free copy of judgment of the accused."

9. Being aggrieved by the same, accused filed an appeal before the District Court. The learned Judge in the First Appellate Court, after securing the records, heard the parties in detail and on re-appreciating the material evidence on record, dismissed the appeal and confirmed the Order of conviction and sentence passed by the learned Trial Judge.

10. Being aggrieved by the same, accused is before this Court in this revision petition, on the following grounds:

- *The conviction and sentence passed by the trial court and that of the appellate court are contrary to law, facts of the case and weight of evidence.*



- *The trial court has given a finding of the occurrence by the appellant solely based on the evidence of PW-1 Bhaskara Acharya. The said Bhaskara Acharya has admitted that he has not seen the signal indicated by the driver of the bus. He has further admitted that due to the accident, the backside bumper of the bus is damaged. This is a clear proof that there was no negligence on the part of the driver of the bus.*
- *The CW-4 was examined as PW-4. He was at the place where the accident took place and he has stated that he has not seen the accident. The police have not enquired him with about the accident.*
- *PW-8 is from the Motor Vehicles Department and has stated that there found a dent on the petrol tank. This probablises the theory that the motorbike was not hit from behind. Had it been the situation, only front portion of the bus would have been damaged.*
- *The first appellate court has not appreciated the evidence placed on record. It merely refers to the portion of the deposition of PW-1 to PW-12 and gives a finding that the prosecution has established that the caused by the appellant. This finding is totally erroneous.*
- *The trial court and the first appellate court both erred in giving a finding that the bus had hit the motorbike. Per contra, the evidence and the report of the motor vehicles inspector would probablise the fact that the motorbike came and hit the bus from behind and the accident occurred.*



11. Sri Chandranath Ariga, learned counsel for the revision petitioner, reiterating the grounds urged in the revision petition, vehemently contended that the material on record would go to show that before turning the bus to the bus stand which was on the right side, accused has given the hand signal which has been totally ignored by the rider of the motor cycle resulting in the accident for which the accused cannot be held liable.

12. He also pointed out that the eye witness went to the extent of deposing before the Court that with the speed 80 km/hour, the driver of the bus was entering the bus stand and turned all of a sudden towards the right side resulting in the accident, cannot be believed at all, inasmuch as, with the speed of 80 km/hour, nobody can drive the bus to the bus stand. Therefore, there is no proper appreciation of the material on record by both the Courts resulting in miscarriage of justice, and sought for allowing the revision petition.

13. Alternatively, Sri Chandranath Ariga contended that in the event this Court upholding the conviction order, Court may consider the aspect of reducing the sentence, as the accused is



the first time offender and there was no intention in causing the accident and sought for passing appropriate order.

14. Per contra, learned High Court Government Pleader opposes the revision grounds in *toto* and supports the impugned Orders.

15. Having heard the learned counsel for the parties, this Court perused the material on record, meticulously.

16. On such perusal of the material on record, the following points arise for consideration:

(i) Whether the accused/revision petitioner points out patent factual or legal error in the impugned judgments resulting in the judgments suffering from legal infirmity, perversity and thus calling for interference of this Court?

(ii) Whether the sentence is excessive?

(iii) What Order?

17. REGARDING POINT Nos:1 and 2: In the case on hand, death of Ashok Acharya, who was the rider of the motor cycle bearing registration No.KA-20/S-4138 in the road traffic accident that occurred on 26.08.2009 at about 10.50 am



involving private bus bearing registration No.KA-20/B-3027 is not in dispute.

18. According to the prosecution, accident has solely occurred on account of rash and negligent driving of the driver of the bus. The charge sheet material would amply establish the same.

19. However, as rightly contended by the learned counsel for the revision petitioner that if the bus was moving in a speed of 80 km/hour, cannot straight away take a turn into the bus stand to park the same.

20. It is settled principles of law and requires no emphasis that witnesses do exaggerate the factual aspects before the Court either to secure an Order of conviction somehow or to make themselves believable witnesses before the court. It is the duty of the Court to separate chaff from grain and appreciate the necessary material evidence on record.

21. Therefore, the eye witness deposing before the Court that the bus was moving in 80 km/hour should only be considered as an exaggeration.



22. Accused said to have given the hand signal before taking the bus into the bus stand by turning the bus on to the right side. The same should have been told by the accused while his statement under Section 313 of the Code of Criminal Procedure.

23. In the case on hand, even though such an opportunity was provided by the learned Trial Judge while recording the accused statement, the accused deliberately failed to make use of such an opportunity.

24. It is now settled principles of law and requires no emphasis that recording of accused statement as is contemplated under Section 313 of the Code of Criminal procedure is not an empty formality and it serves dual purpose.

25. Firstly, an opportunity would be given by the learned Trial Judge to answer the incriminatory evidence available in the prosecution case. Such a duty is a mandatory duty. Secondly, it provides an opportunity for the accused to have his version about the incident.



26. In the case on hand, accused was given such an opportunity, but he did not make use of the same by offering his version of the incident.

27. When such deliberate non utilization of the opportunity granted by the learned Trial Judge, the consequences in law should follow as is held in the case of ***Ravi Kapur vs. State of Rajasthan*** reported in ***(2012)9 SCC 284***.

28. Therefore, learned Trial Judge was justified in convicting the accused believing the testimony of eye witness.

29. No doubt, few discrepancies are found in the spot mahazar and other related documents. But that itself would not be sufficient enough to throw out the case of the prosecution in *toto* having regard to the fact that injured pillion rider being the father of the deceased has spelt out the nature of the accident with graphic details.

30. Therefore, conviction of the accused for the aforesaid offences is just and proper and requires no interference, as there is no patent factual or legal error in recording such a finding.



31. Now coming to the question of sentence, since the incident has occurred when the motorcycle was moving on the extreme right side of the road when the bus was about to take a turn to the right side to enter inside the bus stand, the rider of the motor cycle was also thus responsible for the accident in not riding the motor cycle properly. The spot sketch produced by the prosecution itself depicts the said aspect of the matter which is not taken into consideration by both the Courts.

32. Therefore, taking note of said aspects of the matter, while conviction of the accused has to be maintained, the sentence of one year needs to be reduced to six months by enhancing the fine amount by Rs.25,000/- and entire sum of enhanced fine of Rs.25,000/- to be paid as compensation to the dependents of the deceased would meet the ends of justice in the peculiar facts and circumstances of the case. Accordingly, point Nos.1 and 2 are answered in the negative and partly in the affirmative.

33. REGARDING POINT No.3: In view of finding of this Court on point Nos.1 and 2 as above, the following:



ORDER

- (i) The Criminal Revision Petition is ***allowed in part.***
- (ii) While maintaining the conviction of the accused for the aforesaid offences, sentence passed by the learned Trial Judge confirmed by the learned Judge in the First Appellate Court for a period of one year simple imprisonment for the offence under Section 304A of the Indian Penal Code is reduced to six months by enhancing the fine amount by Rs.25,000/- over and above the fine amount ordered by the learned Trial Judge.
- (iii) Time is granted for the accused to pay the enhanced fine amount till 15th November 2024, so also to surrender before the learned Trial Judge for serving the remaining portion of the sentence.
- (iv) Office is directed to return the Trial Court Records along with copy of this Order, forthwith, so as to issue modified conviction warrant.

Sd/-
(V SRISHANANDA)
JUDGE