2024 INSC 1038

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____OF 2024
(@ Special Leave Petition (Crl.) No. 1296/ 2023)

JAMES **Appellant(s).....**

VERSUS

THE STATE OF KARNATAKA **Respondent(s).....**

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted.

2. The present special leave petition is filed by the petitioner against the judgment and final order dated 08.07.2022 passed by the High Court of Karnataka at Bengaluru whereby the High Court dismissed the Revision Petition and upheld the sentence of 6 months S.I. under Section 304A of the Indian Penal Code, 1860 (hereinafter 'IPC') and also upheld the fine of Rs. 1000/- for the

offence punishable under Section 279 of IPC passed by the Trial court on 23.09.2013.

FACTS

3. The case of the prosecution is that on October 18, 2009, at approximately 1 pm, the petitioner was driving his Qualis vehicle, registration number KA-01/M-3840, on the NH 206 road from Bhadravathi to Tarikeri, with a high speed and in rash and negligent manner and he dashed against the motor cycle of one Dinesh Kailaje from behind who was riding his TVS Motorcycle, registration number KA 14 W 9116, with his son PW2 as a pillion rider. Due to the said accident, Dinesh Kailaje suffered severe injuries to his head and other parts of his body, while his son sustained minor injuries. On October 21, 2009, early in the morning, Dinesh Kailaje succumbed to grievous injuries in Mangalore's KMC Hospital. The Police of Paper Town Police Station, Bhadravathi, registered a case CC No. 473/2010 against the accused punishable under Sections 279 and 337 of IPC based on the information provided by the eyewitness to the case. When the accused appeared before the Trial court, he claimed to be tried and pleaded not guilty to the charge brought against him.

4. On appreciation of the evidence, the trial court vide judgment dated 23.09.2013, concluded that the prosecution had successfully proven the guilt of the accused beyond reasonable doubt and accordingly, sentenced him to pay fine of Rs. 1,000/- for the offence punishable under Section 279 of Indian Penal Code and in default, one month S.I. alongwith 6 months S.I. for offence punishable under Section 304A of Indian Penal Code.

5. On appeal filed by the petitioner, the First Appellate Court i.e. the court of Fast Track at Bhadravathi, vide order dated 24.01.2015, confirmed the judgment of conviction and order of sentence passed by the trial court.

6. The High Court of Karnataka dismissed the Criminal Revision Petition filed by the petitioner, vide impugned judgment dated 08.07.2022, holding that the judgment of conviction and sentence passed by the Trial court subsequently upheld by the Appellate court has come to the right conclusion that the prosecution has successfully proved the guilt of the accused beyond all reasonable doubt and the accused has not probabilised his defence.

CONTENTIONS

7. Learned counsel for the Petitioner has contended before us that the courts below have failed to appreciate that even if the case of the prosecution is accepted in its totality, the ingredients of offense under Section 279 and 304(A) of Indian Penal Code are not made out. It is further contention of the counsel for the Petitioner that in fact, the incident occurred as a result of contributory negligence. Learned counsel for the petitioner contends that the testimonies of PW 1, 2, 3 and 4 are not reliable as they are interested witnesses and as they happen to be the relatives of the deceased. The counsel further contended that there are differences in the versions of the witnesses of which the benefit ought to be given to the accused. Further, PW 1, 5 and 8 have not supported the case of the prosecution and evidence of PW 2 to 4 (eyewitnesses) does not corroborate with evidence of other prosecution witnesses. None of the witnesses stated anything specific about rash and negligent act on the part of the accused. Moreover, the evidence of PW 3 and 4 was full of improvements and the same contradicts statements given before the police. Thus, it was contended that the version of the witnesses was not trustworthy. It was also contended that the High court

failed to consider the contents of Ex. P.11/MVI report that the incident was due to negligence of the rider of TVS which corroborated the defence of the petitioner.

8. Learned counsel for respondent the State of Karnataka submitted that the order passed by the High Court is a well-reasoned order and does not warrant any interference by this Court.

ANALYSIS

9. Heard the arguments and perused the judgments of the High Court as well as relevant documents from both sides.

10. As per the deposition of PW2, he was riding with his father to their uncle's residence in Bhadravati. He was the pillion rider at the time of collision. It is impossible to determine the likelihood that PW2 witnessed the collision because his car struck them from behind.

11. PW3 had stated in his deposition that he was waiting for the deceased and his son to arrive. Around 1:00 PM, he noticed that the deceased person's motorcycle was approaching from the Shivamoga side. At that moment, the Qualis vehicle was approaching at a high speed, acting rashly and carelessly, and it

crashed into the back side of the vehicle of the deceased person. The Qualis vehicle continued and came to a stop a short distance away. Following the aforementioned incident, the deceased and PW2 collapsed onto the road, where they observed blood seeping from the deceased's ears.

12. According to the deposition of PW4, Dinesh Kailaje had turned on his indicator light to turn left when he was 20 meters away from Kalinganahalli Cross. The accident took place at that point of time when his son who was pillion rider on the motorcycle was extending his left hand. The Qualis vehicle coming behind dragged his son along with the bike. The front side portion near head light on the left side of the Qualis vehicle dashed against the rear side of the bike. Both the riders fell down on the road at the place of accident.

13. According to the post-mortem performed on the body of the deceased person, the cause of death was blunt force trauma-related cranio-cerebral injuries. The deceased had suffered as many as 19 physical wounds. Based on the post-mortem report, the courts below have rightly observed that death of the deceased is due to above mentioned injuries suffered.

14. The prosecution to bring home the guilt of the accused has further relied upon the spot sketch which is Ex. P 13 as per the

oral testimony of PW10. The High Court has rightly appreciated the fact that the width of the road being 24 feet, there was enough room available for the Petitioner who was riding the Qualis to pass through the wide road without getting entangled with the vehicle of the deceased. The trial court also has rightly appreciated the fact that as the road was so wide it would not have been prudent for a person to make a sudden turn which is the bone of contention of the Petitioner to suggest that there was contributory negligence.

15. Another significant fact is that the Qualis vehicle was at such a high speed that the vehicle of the deceased was dragged for about 15 feet and was not just an incidental collusion. The Reports annexed coupled with the testimonies of the witnesses does indicate that the conduct of the accused was indeed a rash and negligent one.

16. The record also indicates that during the stage of recording the statement under Section 313 Cr.P.C, the accused had failed to give a reasonable explanation when the incriminating material was brought to his notice.

17. In our considered opinion, the Petitioner has miserably failed to raise a reasonable doubt to probabalise the version narrated by

him. The High Court and the Courts below are right in concluding that the act of the Petitioner was a rash and negligent one and have thereby rightly convicted the accused Petitioner.

18. Learned counsel for the Petitioner Mr. Farrukh Rasheed, while arguing, had submitted that the petitioner is 48 years old, doing a small business and has old, aged ailing parents. He is the sole bread earning member of his family and has three sons and a wife who are all dependent on him. He has no criminal antecedent. He also submitted that Section 304A of Indian Penal Code also provides a punishment as fine and considering the special circumstances of the present case, prayed for the sentence of six months to be converted into fine. In our considered opinion, the present case is not fit for extending sympathy and taking a lenient view especially considering that the said rash and negligent act of the accused has caused death of one person as well as injuries to one other.

19. In view of the above, we observe that this appeal does not warrant any interference and is hereby dismissed.

20. Pending application(s), if any, are also accordingly disposed of.

.....J.

[SUDHANSHU DHULIA]

.....J.

[PRASANNA B. VARALE]

NEW DELHI;
DECEMBER 20, 2024.