

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22ND DAY OF SEPTEMBER 2004

BEFORE

THE HON'BLE MR.JUSTICE K.RAMANNA

CRIMINAL REVISION PETITION NO.259/2001

BETWEEN:

**DYVA SHIKAMANI
S/O THANGAVELU
AGE:52 YRS
R/O 16/82,
A.V.RAO STREET
PUNGANOOR
CHITTOOR DIST.**

.. PETITIONER

(By Sri A N.RADHAKRISHNA, ADV.)

AND:

**STATE OF KARNATAKA
BY BYATARAYANAPURA POLICE
REP. BY THE S.P.P.
HIGH COURT BUILDINGS
BANGALORE.**

.. RESPONDENT

(By Sri.B.PALAKSHAIAH, HCGP)

**THIS CRL.R.P. IS FILED U/S. 397 AND 401 CR.P.C. PRAYING TO
SET ASIDE THE ORDER DT. 29.2.2000 PASSED BY THE VIII ADDL.
C.M.M., BANGALORE IN C.C.NO.12142/97 CONFIRMED BY THE ORDER
DT. 9.1.2001 PASSED BY THE XIX ADDL. SESSIONS JUDGE,
BANGALORE IN CRL.A.NO.171/2000.**



THIS PETITION COMING ON FOR HEARING THIS DAY, COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed under Section 397 r/w 401 Cr.P.C. against the order of conviction and sentence passed by the 8th Addl.CMM, Bangalore, in C.C.No.12142/97 dated 29.2.2000 and the judgment and order of dismissal of the Criminal Appeal.No.171/2000 passed by the 19th Addl.Sessions Judge, on the ground that both the Courts below have erroneously come to a conclusion that the revision petitioner was negligent in driving his lorry on the date of the accident which caused the death of an innocent person who was proceeding in car towards Mysore at about 11.30 p.m. on 9.2.1997.

2. Brief facts of the case are that on 9.2.1997 at about 11.30 p.m. the petitioner being the driver of the lorry bearing No.AP-03-T-9117 drove the said vehicle on Mysore Road rashly and negligently near the Christian Cemetery while being driven

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from West to East dashed against a car, which was coming from the opposite direction going towards Mysore bearing No.KA-02-Q-5222 causing grievous multiple injuries to the driver of the said car and also damaged the car. The injured driver while being shifted to the hospital died on the way. Therefore, the revision petitioner/accused was alleged to have committed the above said offence u/s.279, 304-A I.P.C. It is averred that neither P.Ws.1 and 2 nor P.W.7 are the eye witnesses to the incident to hold that the accident in question occurred only on account of the rash and negligent driving of the lorry by the revision petitioner. Law was set in motion on the basis of the complaint filed by P.W.7, prosecution falls to prove that P.Ws.1 and 2 were present near the place of the accident. If really P.W.7 was near the place of the accident, he would have shifted the injured (deceased person) to the hospital. Therefore, since there are no eye witnesses to the accident, the trial Court erroneously came to the conclusion in convicting the revision petitioner.

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3. Heard the arguments of the learned counsel appearing for the revision petitioner and the learned Addl.S.P.P. appearing for the respondent and perused the records.

4. Having heard the arguments on both sides, the point that arises for my decision is:-

a. Whether the order of conviction and sentence passed by the trial Court, which was confirmed by the learned Sessions Judge is illegal, incorrect or perverse?

b. If so, what order?

5. It is an undisputed fact that on the fateful day i.e., on 9.2.1997 the revision petitioner was the driver of the lorry bearing Regn. No.AP-03/T/9117 at about 11.30 p.m. and the said lorry is said to have been carrying sugarcane load and proceeding towards Bangalore City on Mysore-Bangalore Road. At that time, the car in which the deceased was proceeding was going towards Mysore City and the inmate of the car namely



deceased T.Krishnappa sustained grievous injuries on account of rash and negligent driving of the lorry and the lorry dashed against the car. It is further alleged that at the time of the accident the revision petitioner being the driver of the said lorry without observing the traffic rules and regulations went to the extreme right side by driving it in a rash and negligent manner and hit the car and consequently, Krishnappa sustained fatal injuries and he was declared dead by the doctor of the Victoria Hospital, Bangalore. In the instant case, P.Ws.1 and 2 are the injured witnesses. Both the Courts below have entirely relied on the oral testimony of P.Ws.1, 2 and 7 coupled with the documentary evidence namely Ex.P.6 and the Inquest proceedings. It is contended that P.Ws.1, 2 and 7 are not the eye witnesses to the accident and therefore, they could not identify the petitioner as the driver of the lorry. This aspect has already been considered by the learned Sessions Judge and also by the trial Court in their respective judgment. When once the petitioner admits about the involvement of the vehicle in the accident and when he does not dispute that he was not the



driver on the particular day and it could be rightly inferred that he was rash and negligent in driving the vehicle. According to P.Ws.1 and 2, after the accident, driver of the vehicle ran away. Considering the fact that the accident occurred at about 11.30 p.m. and in order to save himself from the hands of the public, the petitioner might have run away and this part of the evidence cannot be discarded. According to the petitioners there were no eye witnesses and merely because they have not seen the petitioner after the accident, it does not mean that he was not at all the driver of the said vehicle. More over, petitioner herein has not given any explanation in his statement recorded by the trial Court under Section 313 Cr.P.C. to show that he was not the driver of the said vehicle at the particular point of time. Both the Courts below have rightly considered the evidence that P.Ws.1 and 2 are the eye witnesses. According to P.W.1 on that day the driver of the vehicle drove it in a rash and negligent manner and took turn to the extreme right side and dashed the vehicle. It is also clear from the evidence that the lorry went to the extreme right side and hit



the car. Of course the Bangalore-Mysore Road near Gall Anjaneya temple towards the fly over may be an upgradient and therefore the contention of the learned counsel for the petitioner that the driver was not rash or negligent in driving the vehicle in high speed does not arise. It is seen from the materials placed on record by the prosecution that though the road in question near the place of the accident is an upgradient from Mysore side while coming towards city on fly over, but the question of driving the vehicle with high speed cannot be considered as rash and negligent driving and petitioner is the proper person to explain under what circumstance his vehicle met with an accident. It is not the case of the revision petitioner that from the particular point of time there was heavy traffic and some animal tried to cross and during that time he took the vehicle to the extreme right side and in that process his vehicle came and dashed. Considering the fact that the accident took place around mid night and the fact that traffic at that time would be quite less, the contention of the learned counsel for the petitioner cannot be accepted and this fact has



also been considered by the trial Court. The other contention raised by the learned counsel for the revision petitioner is that the deceased being a police constable was driving the car as a driver and therefore, he himself is responsible for the accident. The deceased was an employee of the police department so, in order to help the kith's and kin's of the deceased, a false mahazar and sketch has been drawn by the police.

6. I have gone through the contents of the post mortem report which disclose that the doctor who has conducted post mortem over the body which discloses that his stomach did not contain alcohol. Therefore, the contention of the learned counsel that the deceased drove the car in drunken state and hit the lorry cannot be accepted. According to P.W.3 the accident took place near the Gali Anjaneya Temple on Mysore Road and the Mahazar was drawn on 9.2.1997 at 9.30 a.m. According to him, mahazar Ex.P.2 was drawn at the spot and he has signed the same. The only admission made by P.W.3 is that the police have not explained as to why they are preparing the



mahazar and it does not mean that he was not present at the time of drawing the mahazar Ex.P.2. P.W.4 is an eye witness and according to him, the lorry hit the car on the right side, which goes to show that both the Courts below have appreciated the evidence in the right perspective manner and I do not find any perversity or illegality in appreciating the evidence. Therefore, the order of conviction passed by the trial Court, which has been confirmed by the learned Sessions Judge, are liable to be upheld.

7. As far as the sentence is concerned, learned counsel for the revision petitioner submitted that this accident in question took place about 7 years back and the revision petitioner is stated to be married and having wife and children and that he has to maintain the family out of his income and if he is sentenced to suffer imprisonment, great hardship will be caused to his family members and instead of that some lenient view may be taken and fine may be imposed. I have gone through the entire materials placed on record by the



respondent/prosecution. Considering the manner in which the accident took place, the petitioner does not deserve any leniency in reducing the sentence by enhancing the fine amount as far as the order of sentence passed by the trial Court for an offence under Section 304-A IPC is concerned. As far as the offence under Section 279 IPC is concerned, the same is liable to be set aside mainly on the ground that the offence under this Section merges with the major offence like 304-A IPC.

8. Accordingly the revision petition is partly allowed. The order passed by the trial Court for an offence under Section 279 IPC is set aside and the order of conviction and sentence passed by the trial Court for an offence under Section 304-A IPC is hereby confirmed.

Sd/ 
Judge

Mvs/