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**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**



DATED THIS THE 11TH DAY OF JUNE, 2018

BEFORE

THE HON'BLE DR.JUSTICE H.B. PRABHAKARA SASTRY

CRIMINAL REVISION PETITION NO.2051/2011

BETWEEN:

MOULASAB S/O. HASANSAB KARANACHI,
AGE 35,
R/O. SORATUR, TQ. GADAG,
DIST. GADAG.

... PETITIONER

(BY SRI. NEELENDRA L. GUNDE, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY NORTH TRAFFIC P.S., HUBLI,
REPTD. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DHARWAD-01

... RESPONDENT

(SRI RAJA RAGHAVENDRA NAIK, HCGP FOR RESPONDENT)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W. 401 OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT OF ORDER OF CONVICTION AND SENTENCE DATED 31.12.2010 PASSED BY THE LEARNED I-ADDL. DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING AT HUBBALLI IN CRL.A.NO.12/2010, THEREBY DISMISSING THE APPEAL FILED BY THE PETITIONER PASSED BY THE LEARNED JMFC-I, HUBLI IN C.C.NO.2113/2007 DATED 02.02.2010 THEREBY CONVICTING THE PETITIONER FOR OFFENCE PUNISHABLE UNDER SECTION 279, 304A OF IPC AND U/S. 134 R/W. 187 OF MOTOR VEHICLE ACT AND SENTENCING HIM TO ONLY UNDER SECTION 304A OF IPC THEREBY DIRECTING TO UNDERGO

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SIMPLE IMRISONMENT FOR THE PERIOD OF SIX MONTHS & IMPOSING THE FINE OF ₹2,000/- WITH DEFAULT.

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

ORDER

The present revision petitioner was the accused in the Court of the JMFC I at Hubballi (for brevity referred to as the 'Trial Court') in CC No.2113/2007 against whom the complainant-police had filed a charge sheet for the offence punishable under Sections 279, 304 A of IPC and under Section 134 r/w. Section 184 of Motor Vehicles Act.

2. The allegation leveled against the accused in the charge sheet of the complainant-police is that on 01.04.2007 at about 7:15 p.m. the accused being the driver of a lorry bearing registration No.KA-25/B-2985 drew the lorry at about 6:15 p.m. in front of Gateway Bar and Hotel near under bridge on Gadag road in Hubballi in a rash and negligent manner so as to endanger human life or likely to cause hurt or injury to any other and in the result he hit a cyclist by name one

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Sri. Shivanna from his hind side, due to which accident said Shivanna sustained injuries and succumbed to it. It is also alleged that the driver of the offending lorry left the place without informing the occurrence of the accident to the nearest police station. Since the accused not pleaded guilty the trial was held wherein the prosecution examined 11 witnesses from PW-1 to PW-11 and got marked documents from Ex.P-1 to Ex.P-15 and closed its side. Neither any witness was examined nor any documents were marked as exhibits from the accused side. The Trial Court by its Judgment and order on sentence dated 02.02.2010 held the accused guilty for the offence punishable under Sections 279, 304 A and under Section 134 r/w. Section 187 of the M.V.Act. The accused was sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo simple imprisonment for two months for the offence punishable under Section

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304 A of IPC. No separate sentence was ordered for the offence punishable under Section 279 of IPC.

3. Aggrieved by the said Judgment of conviction and order on sentence, the appellant preferred an appeal in Criminal Appeal No.12/2010 in the Court of the I Addl. District and Sessions Judge, Dharwad, sitting at Hubballi (for brevity referred to as Sessions Court) which also by its Judgment dated 31.12.2010 dismissed the appeal confirming the Judgment of conviction and order on sentence passed by the Trial Court. It is against the said Judgment of the Sessions Court in Criminal Appeal No.12/2010, the appellant has preferred this Criminal Revision Petition. Respondent is being represented by learned HCGP. Lower Court Records were called for and the same are placed before this Court.

4. Learned counsel for the petitioner in his argument while reiterating the contention taken up by the petitioner in his memorandum of petition submitted

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that there is no cogent material to prove the alleged guilt of the accused. The courts below ignored the fact that near the place where the alleged accident has taken place there were speed breakers and traffic signals, as such, it was impossible for the alleged offending vehicle to go in a high speed. He also submitted that, PW-2, PW-3 & PW-6 are residents of Ramnagar, as such their presence at the alleged place of accident was suspectable. Further stating that place of the offence is also not clear and there is a discrepancy and there are discrepancies in the evidence of the witnesses, the learned counsel prayed for allowing the appeal.

5 Learned HCGP representing the respondent in his argument submitted that material witnesses more particularly, PW-2, PW-3, PW-5 & PW-6 have supported the case of prosecution. PW-2 himself being the complainant cum eye-witness has given a detailed account of the incident. Since the evidence of the eye-witnesses have come in consonance they are reliable. He also submitted that, regarding the place of the offence,

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the explanation given by the witness go to show that the place shown in the panchanama and the place stated by the eye-witnesses are one and the same. He also submitted that, even if there is any minor discrepancy or variations they are immaterial and can be ignored. In which regard, he relied upon a Judgment of Hon'ble Supreme Court reported in 2012 (9) SCC 285.

6. Among the 11 witnesses examined by the prosecution, PW-1, PW-2, PW-3, PW-6 to PW-9 are the material witnesses. Among these witnesses, PW-1, PW-7, PW-8 & PW-9 have not supported the case of prosecution. After treating them hostile though the prosecution was permitted to cross examine them, still it could not elicit any favourable statements by them.

7. PW-2, PW-3 & PW-6 are the material witnesses whom the prosecution examined projecting them as eye-witnesses to the incident. Among these witnesses, PW-2 is the complainant. All these three witnesses have corroborated the version of the

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prosecution that on 01.04.2007 at about 6:15 p.m. it was the driver of the offending vehicle i.e. lorry bearing registration No.KA-25/B-2985 which was being driven by its driver in a rash and negligent manner came from the back side and hit the cyclist Shivanna who in the said accident succumbed to injuries. They have stated that at the time of accident deceased was proceeding from station road towards Gadag road by peddling his bicycle. Due to the lorry hitting him from the back side, the cyclist came to the rear left wheel of the lorry and was run over by it, due to which he succumbed on the spot. These three witnesses have stated that they are the residents of Ramnagar area of Hubballi to which area the deceased also belonged.

8. It is the contention of the learned counsel for the petitioner that since these three witnesses being residents of Ramnagar and the accident has taken place at a different place, their presence at the place of accident was unbelievable. However, in the cross-examination of these witnesses nothing could be elicited

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to show that these three witnesses were not there in the place at the time of incident. On the other hand, a suggestion was made to PW-2 in his cross-examination from the accused side that immediately after the accident, the said PW-2 and others damaged and broke the windshield and headlight of the lorry belonging to the accused. Further, it was also suggested in the cross-examination of the very same witness that, the driver of the offending lorry had gone to Keshwapur police station to lodge a complaint against these people i.e. PW-2, PW-3, PW-6 and others. By making these suggestion and also alleging that PW-2, PW-3 and PW-6 apart from being present in the matter had also caused some damage to the lorry, the petitioner has indirectly admitted the presence of these three witnesses in the spot at the time of the accident.

9. The second argument of the learned counsel for the petitioner was that the alleged place of accident was a traffic hit area and there were speed breakers as well the traffic signals, as such the alleged offending

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vehicle lorry could not run in high speed in that area. No doubt regarding the existence of speed breakers and traffic sign near the place of accident, PW-2, PW-3 and PW-6 have stated in their evidence. They have stated that the place of accident which was near the Pinto circle there was a traffic signal. They have also admitted that from the said circle up to railway station there will be few numbers of speed breakers on the road. Further, PW-6 himself being a driver of a motorcar has stated in his cross-examination that in such a traffic area with speed breakers on the road and traffic signals on the road, the vehicles will normally move slowly. By the said statements of these witnesses that there were speed breakers and also a traffic signal near the place of accident, by itself cannot be taken that rash or negligent driving in the said area was not possible. By the word 'rash driving' it cannot be automatically imagined that the vehicle alleged to be rash in its driving should also necessarily be coupled with high speed. The Hon'ble Supreme Court in *Ravi Kapur Vs. State of Rajasthan*

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reported in (2012) 9 SCC 284 while dealing as to what constitutes a negligence relied upon *Halsbury's laws of England* (4th edition) vol. 34, para 1 (p.3) and has observed as below:

'1. General Principles of the law of negligence – Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as

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being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.'

In the very same Judgment, the Hon'ble Apex Court was also pleased to rely upon its previous Judgment in *Mohd. Aynuddin v. State of A.P.* reported in (2000) 7 SCC 72 wherein it was observed as below :

‘9. *A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.’*

10. From the above observation made by the Hon'ble Apex Court, it is clear that, to constitute a rash

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and negligent driving it is not necessary that the offending vehicle must have always exceeded its speed limit or over speeded. Failure to exercise the required care and caution expected to be taken by a driver in a circumstance, in which he was driving would constitute a negligent driving. An act of driving done without due care and caution though not coupled with high speed still results into a rash driving. Therefore, in the instant case merely because there was said to be few speed breakers on the road and traffic signal near the spot of the accident, by itself cannot be deduced that there was no rash and negligent driving on the part of the driver of the offending vehicle.

11. Thirdly, regarding the place of accident it was also the argument of the learned counsel that the place of the accident as stated in the evidence of the alleged eye-witnesses since varies, the same cannot be believed. A perusal of the deposition of PW-2, PW-3 and PW-6 coupled with the scene of offence panchanama at Ex.P-14, which scene of offence panchanama is

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supported by the evidence of PW-5, go to show that PW-2 has stated that the accident has occurred in front of Gateway Bar Hotel. PW-3 and PW-6 also have shown the place of accident as in front of Gateway Bar Hotel. However, Ex.P-14 the spot panchanama mentions the place of accident as the one in front of Iyyangar Bekary. Further PW-3 in his cross-examination has stated that the accident place can also be called as 'in front of Egg Rice Shop'. It has come in the evidence that these places 'Gateway Bar Hotel', 'Iyyangar Bekary' and one more Bekary by name 'Vinayak Bekary' are all located in a close vicinity in and around the place of accident. The evidence of PW-3 in the cross-examination that, Gateway Bar Hotel is situated opposite to Egg Rice Shop also shows that these buildings are located in a common place, side by side or opposite to each other. Therefore, merely because only one shop is mentioned as the place of the accident in the panchanama, it will not take away the fact that the other shop or the Hotel stated by the witness is also an identification for the place of the offence when they are

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located in a common place. Therefore, the contention of the learned counsel for the petitioner that, the place of the accident shown by the witnesses differs from each other cannot be accepted.

12. Barring the above, neither any other materials are placed before the Court nor any argument was advanced by the learned counsel for the petitioner to come to the conclusion that the Judgment of conviction and order on sentence passed by the Court below is erroneous or with impropriety or with illegality. On the other hand, as already observed above the evidence of PW-2, PW-3 and PW-6 who are the eye-witnesses to the alleged witnesses has come in consistency whose evidence made in examination-in-chief could not be shaken in their cross-examination. The scene of offence panchanama at Ex.P-4 and the rough sketch at Ex.P-14 further shows that the bicycle rider was on his left side which was 08 feet away from the left side of the road. In such a situation, though the lorry had remaining 28 feet width in the road

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where it would have passed through without touching the bicycle, had failed to do so, rather it hit the bicycle.

The motor vehicle report at Ex.P-3 also shows the damage caused to the minor vehicle. The inquest panchanama at Ex.P-11 coupled with the postmortem report shows that in the accident the deceased Shivanna sustained crush injuries. The doctor has opined that the instantaneous death consequent upon crush injuries to the head was the cause of death of the injured. Thus, the lorry being a heavy vehicle since has dashed to a bicycle from its back side the rider of the same was caught under the rear wheel of the lorry and sustained crush injuries. Thus, the Courts below have rightly held that the prosecution has proved its case beyond reasonable doubt.

Regarding the quantum of sentence also, the Trial Court after considering the circumstance of the case has ordered a proportionate sentence for the offence committed by the accused. Thus, in the said Judgment of conviction and order of sentence of the Trial Court which was confirmed by the

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First Appellate Court, I do not find any illegality or perversity to interfere with. Accordingly, I proceed to pass the following:

ORDER

The Criminal Revision Petition is dismissed as devoid of merits.

**Sd/-
JUDGE**

*Svh/-