Karnataka High Court
Vijaya vs State Of Karnataka By on 15 June, 2021
Author: Dr.H.B.Prabhakara Sastry

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE 2021

BEFORE

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

CRIMINAL REVISION PETITION No.364 OF 2018

BETWEEN:

Vijaya,
S/o. Shivakumar,
Aged about 40 years,
R/o Hannur, Kaudahalli Village,
Koilegal Taluk,
Chamarajanagar District-571 440. .. Petitioner

( By Smt.Archana K.M., Amicus Curiae)

AND:

State of Karnataka
By Station House Officer,
Bangalore City Railway Station,
Bangalore-560 009. .. Respondent

( By Smt. K.P.Yashodha, HCGP )

This Criminal Revision Petition is filed under Section 401 (1) of Cr.P.C. praying to set aside the judgment and conviction of the petitioner passed in C.C.No.550/2006 on 06.06.2015, on the file of Prl.Civil Judge and JMFC, Ramanagara and that of the judgment and conviction passed in Crl.Appeal No.16/2015, dated 05.02.2018, on the file of I Addl.District and Sessions Judge, Ramanagara and acquit the petitioner from the accusation for the offences punishable under Sections 279, 337, 338, 427 and 304A of IPC and to allow the Criminal Revision Petition.



This Criminal Revision Petition having been heard through Video Conferencing Heading and reserved for orders on 10.06.2021, coming on for pronouncement this day, the Court made the following:

ORDER

The present petitioner was tried as accused by the Court of learned Prl.Civil Judge & J.M.F.C., Ramanagara, (hereinafter for brevity referred to as the `trial Court') in C.C.No.550/2006, for the offences punishable under Sections 279. 337. 338. 427, 304A of Indian Penal Code, 1860 (hereinafter for brevity referred to as the `IPC') and was convicted by the judgment of conviction and order on sentence dated 06.06.2015.

Aggrieved by the same, the accused preferred an appeal in Criminal Appeal No.16/2015, before the learned I Addl.District & Sessions Judge, Ramanagara, (hereinafter for brevity referred to as the `Sessions Judge's Court'), which after hearing both side, dismissed the appeal filed by the accused by its judgment dated 05.02.2018. Being aggrieved by the same, the accused has preferred the present revision petition.

2. The summary of the case of the prosecution against the accused was that, on 26.02.2006, at about 5.45 p.m., near Kethohalli Railway Halt Gate, a Tipper Lorry bearing registration Crl.R.P.No.364/2018 No.KA-03-2675, being driven by the accused in a high speed and in a rash and negligent manner, dashed against a moving passenger train bearing No.234, as a result of which accident, the complainant and other passengers in the said train sustained simple and grievous injuries. Though the injured were admitted or treated immediately in the hospitals, but, one among the injured by name Tabarez, son of Nasarulla Shariff, who was admitted to the Government Hospital, Ramanagara, succumbed to the injuries. Thus, the accused was charged for the offences punishable under Sections 279, 337, 338, 427, 304A of IPC.

3. In order to prove the alleged guilt against the accused, the prosecution got examined fifteen witnesses from PW-1 to PW-15 and got marked documents from Exs.P-1 to P-22. Neither any witness was examined nor any documents were marked as exhibits from the side of the accused.

4. After hearing both side, the trial Court by its impugned judgment of conviction and order on sentence dated 06.06.2015, convicted the accused (present petitioner) for the offences punishable under Sections 279, 337, 338, 427, 304A of IPC and sentenced him accordingly.

Crl.R.P.No.364/2018 As observed above, the appeal challenging the said judgment of conviction and order on sentence filed in the learned Sessions Judge's Court in Criminal Appeal No.16/2015, also came to be dismissed. Aggrieved by the same, the petitioner/accused has filed the present petition.

5. The trial Court and the Sessions Judge's Court's records were called for and the same are placed before this Court.

6. In view of the fact that the learned counsel for the petitioner failed to appear before this Court on several dates of hearing, this Court by its detailed order dated 23.03.2021, appointed learned counsel Smt.Archana K.M. as Amicus Curiae for the petitioner. As such, the petitioner is being represented by the learned Amicus Curiae.

7. Heard the arguments of learned Amicus Curiae for the petitioner and the learned High Court Government Pleader for the respondent. Perused the materials placed before this Court including

the trial Court and Sessions Judge's Court's records.

8. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the trial Court.

Crl.R.P.No.364/2018

9. After hearing the learned Amicus Curiae for the petitioner and the learned High Court Government Pleader for the respondent-State, the only point that arise for my consideration in this revision petition is:

> Whether the concurrent finding recorded by the trial Court, as well as the Sessions Judge's Court that the accused committed the alleged offences punishable under Sections 279, 337, 338, 427, 304A of the Indian Penal Code, 1860, warrants any interference at the hands of this Court?

10. It is a case where all the fifteen witnesses examined by the prosecution on its side have one way or the other supported the case of the prosecution. PWs.2, 3, 4, 5, 6, 7, 10, 13 and 15 in their evidence have uniformly stated that as at the time of the accident, they were the passengers going in the train and the accident took place due to the Tipper Lorry coming and dashing to the train. All of them have stated that they sustained injuries in the said accident and were treated in the hospital. Among these witnesses, PW-3, PW-5, PW-6, PW-13 and PW-15 have categorically stated that the accident had taken place due to the fault of the driver of the Tipper Lorry. PW-15 has even identified the accused in the Court stating that he was the driver who was Crl.R.P.No.364/2018 driving the said Tipper Lorry at the time of the accident. PW-2 and PW-8 have stated that the scene of offence panchanama as per Ex.P-15 was drawn in their presence.

11. The evidence of the above injured witnesses and that of mahazar witnesses to the effect that the accident in question had taken place on the date, time and place mentioned in the charge sheet, involving a passenger train and a Tipper Lorry has not been denied or disputed specifically from the accused side. As such, the occurrence of accident, the involvement of the Tipper Lorry bearing registration No.KA-03-2675 and PWs.1, 3, 4, 5, 6, 7, 10, 13 and 15 sustaining injuries in the said accident has remained as not specifically disputed facts.

12. The evidence of PW-9, PW-11 and PW-12, who are the Investigating Officers and the inquest panchanama at Ex.P-1, the wound certificates at Exs.P-2 to P-11 and the post mortem report at Ex.P-12, would further go to corroborate the evidence of the injured witnesses that they were injured in the accident and that one Tabarez who had sustained injuries in the very same accident was succumbed to it while under treatment.

13. Learned Amicus Curiae for the petitioner in her argument though submitted that she would not deny or dispute Crl.R.P.No.364/2018 the occurrence of the accident and the involvement of the passenger train and the Tipper Lorry in the alleged accident, but, contended that the evidence of alleged injured witnesses cannot be believed since none of them have produced any railway tickets

of their journey in the train. She further submitted that since as per Section 2(29) of the Railways Act, 1989 (hereinafter for brevity referred to as `Railways Act'), a passenger means a person travelling with a valid pass or a ticket, these injured persons cannot be considered as passengers in the train.

The said argument of the learned Amicus Curiae for the petitioner is not acceptable, for the reasons that, PW-1 who is the complainant has stated that, as at the time of accident, he was holding a valid ticket, however, he has not handed over the said ticket to the police. His said statement has not been denied from the accused side. PW-3, the another passenger, has stated that, at the time of journey, he had a valid ticket, however, he did not produce the same before the police since the dress he was wearing had torn in the accident. PW-4 also has stated that, since the cloth he was wearing has torn in the accident, he did not know where his journey ticket had fallen.

Crl.R.P.No.364/2018 PWs.5 and 6 have stated that they have produced their journey tickets before the police. With respect to the other injured witnesses, nothing was asked about they not producing their journey tickets in the case. On the other hand, none of these witnesses were suggested by the accused in their cross- examination that they were not travelling in the train at the time of the accident. On the contrary, to PW-1, PW-7, PW-10 and PW-13, suggestions were made from the accused side in their cross-examination suggesting that when the train was moving slowly near Kethohalli gate, these witnesses in an attempt to get down from the train, themselves fell down and sustained injuries, however, those suggestions were not admitted as true by the witnesses. Thus, by making such suggestions, the accused himself has shown that he is not disputing that those witnesses were travelling in the train at the time of accident. Therefore, the mere fact of the prosecution not producing the journey tickets of these injured witnesses would not by itself make their evidence unacceptable. As such, the said argument on the part of the learned Amicus Curiae for the petitioner is not acceptable.

14. The second point of argument of learned Amicus Curiae for the petitioner is that the alleged rash and negligent driving of Crl.R.P.No.364/2018 the Tipper Lorry by its driver is not proved since none of the witnesses have specifically stated as to with what speed the said Tipper Lorry was moving at the time of accident.

Learned High Court Government Pleader in her argument submitted that speed is not the sole criteria to decide that the alleged vehicle was being driven in a rash and negligent manner.

In the instant case, the accused has not denied or disputed that he was the driver of the Tipper Lorry at the time of the accident. As already observed above, PW-15, one of the injured, has identified the accused in the Court as the one who was driving the Tipper Lorry at the time of accident. The said identification made by PW-15 also has not been denied in his cross-examination.

15. The scene of offence panchanama at Ex.P-15, coupled with the rough sketch of the scene of offence panchanama at Ex.P-22 would go to show that accident has not happened when the Tipper Lorry was on the railway track. On the other hand, it shows that, for a slow moving passenger train which was entering the Kethohalli Halt Station, the Tipper Lorry came and dashed to it. Thus, when

for a slow moving train, which is a long train with several coaches and moving on a fixed railway track, Crl.R.P.No.364/2018 a lorry coming and dashing after the engine and some of the coaches have already passed through, that itself would itself go to show that the said lorry was being driven by its driver in a rash and negligent manner. Further, as observed above, several of the injured witnesses and more particularly, PW-3, PW-5, PW- 6, PW-13 and PW-15 have specifically stated that the accident has happened at the fault of the driver of the lorry. Therefore, merely because none of the witnesses have stated as to with what speed the said lorry was moving at the time of the accident, that itself would not prevent from the Court coming to a conclusion that the said lorry was being driven in a rash and negligent manner at the time of the accident.

16. Learned Amicus Curiae for the petitioner also contended that since several of the injured witnesses were travelling on the footboard, there is violation of Section 156 of the Railways Act, as such also, their evidence cannot be accepted. No doubt, few of the prosecution witnesses have stated that at the time of the accident, they were sitting on the footboard or standing near the door of the slow moving train. Section 156 of the Railways Act mentions that, if any passenger or any other person, after being warned by a railway servant to Crl.R.P.No.364/2018 desist, persists in travelling on the roof, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, shall be punishable with imprisonment for a term which may extend to three months, or with fine, which may extend to five hundred rupees, or with both. Thus, travelling on a footboard in a moving train would be an offence under Section 156 of the Railways Act, provided such passenger was duly warned by a railway servant to desist prior to such an act by the passenger.

Firstly, in the instance case, nothing has been elicited from the accused side that any of the injured witnesses who claim to have travelling on the footboard were previously warned by a railway servant to desist.

Secondly, assuming that they were earlier warned, still, committing an offence under Section 156 of the Railways Act by a passenger would not make his evidence in a case for the offences punishable under Sections 279, 337, 338, 427, 304A of IPC as inadmissible. If at all such a passenger who is said to have committed an offence under Section 156 of the Railways Act is required to be prosecuted, the machinery meant for that may take appropriate action against them, but, the same cannot Crl.R.P.No.364/2018 be a defence for the accused in a criminal case where he is charged with the above said offences, including the one under Sections 279, 337, 304A of IPC.

17. Lastly, learned Amicus Curiae for the petitioner also contended that, in the accident, when the train is said to have sustained the damages worth `500/- only, the prosecution case is not believable.

The prosecution has also got marked a document at Ex.P-17, which is shown to be a Certificate issued by the Southern Railway stating that the cost of damage caused to the Loco No.11106 involved in the accident in question was approximately `500/-. The petitioner has failed to show in order to hold that when a vehicle was involved in an accident, it should necessarily sustain certain damages which can be quantified by any particular sum as the cost of the damages. There can be certain

accidents without any damages to a vehicle involved in the accident or the damages may be enormous. It all depends upon the type of the vehicle or vehicles involved in the accident and the circumstances of the case. In the instant case, the Tipper Lorry had sustained major damages as evidenced in the scene of offence panchanama at Ex.P-15 and also IMV report Crl.R.P.No.364/2018 at Ex.P-13. The other vehicle being the passenger train, which is a very heavy Loco with strong fixtures fixed to it cannot be expected that it should also equally sustain damages as that of a Tipper Lorry which dashed against it. Therefore, the said argument of learned Amicus Curiae for the petitioner is not acceptable.

18. Barring the above, learned Amicus Curiae for the petitioner has not made out any other grounds worth considering. On the other hand, as observed above, the evidence led by the prosecution, wherein all the witnesses, who are fifteen in number, have unequivocally supported its case and where all the material witnesses examined by the prosecution as injured witnesses also have supported the case of the prosecution and when panchas (mahazar witnesses) also have supported the case of the prosecution, further the inquest mahazar, wound certificates, post mortem report, IMV report, scene of offence panchanama at Exs.P-1 to P-13 and Ex.P-15 have further corroborated the evidence of the prosecution witnesses, both the trial Court and the Sessions Judge's Court have rightly held the accused guilty of the alleged offences. The Crl.R.P.No.364/2018 said judgment of conviction cannot be termed as suffering with any illegality, impropriety or perversity.

Further, the quantum of sentence ordered for the proven guilt by the trial Court also being proportionate to the gravity of the guilt proved, the same does not warrant any interference at the hands of this Court.

19. Accordingly, I proceed to pass the following:

ORDER The Criminal Revision Petition is dismissed as devoid of merits.

The Court while acknowledging the service rendered by the learned Amicus Curiae for the petitioner- Smt.Archana K.M., recommends honorarium of a sum of not less than `4,000/- to her payable by the Registry.

Registry to transmit a copy of this order to both the trial Court and also to the Sessions Judge's Court along with their respective records forthwith.

Sd/-

JUDGE bk/