

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 18th day of July 2011

: B E F O R E :

HON'BLE MR.JUSTICE : V.JAGANNATHAN

CRIMINAL REVISION PETITION No. 957 / 2010

BETWEEN :

Shameer,
S/o Ibrahim, Aged about 43 years,
R/a Palakunda Village, Medihala Post,
Kolar district.

...Petitioner

(By Sri A.N.Radhakrishna, Advocate.)

A N D :

State of Karnataka,
By K.R.Pura (Traffic) Police Station,
rept. by the State Public Prosecutor,
High Court Buildings, Bangalore.

...Respondent

(By Sri G.N.Srinivasa Reddy, H.C.G.P.)

Criminal Revision Petition filed under Section 397 of the Cr.P.C. praying to set aside the judgment and order of conviction and sentence dated 27.5.2009 passed by the Addl. C.J.M., Bangalore District, Bangalore, in C.C.No. 2096/2008 and confirmed by the order dated 8.6.2010 passed by the I/C I Addl. District & Sessions Judge, Bangalore (R) District, Bangalore, in CrI.A.No. 36/2009 and acquit the petitioner-accused.

This petition coming on for hearing this day, the court made the following :

ORDER

This Criminal Revision Petition is by the accused, who has been convicted by the trial court in respect of the offences punishable under Sections 279 and 304-A of the I.P.C. read with Sections 134(a)(b) and 187 of the I.M.V.Act and being sentenced to one year imprisonment. The said judgment, being confirmed by the lower appellate court, the accused has come up before this court.

2. The case of the prosecution in short is that, on 25.9.2007 at about 6.00 p.m., the accused-petitioner drove his lorry bearing registration No. CAS-1128 in a rash and negligent manner and caused an accident near S.B. Weigh Bridge on White Field Road as he took turn from the left side without giving any signal and in the process dashed to the motor cycle bearing registration No. TN-24-X-6248 in which one Chandramouli was



travelling and the said Chandramouli died at the spot and one Jayaram sustained grievous injuries and he also succumbed to the injuries after two days of the accident.

3. Based on the complaint lodged by P.W.1 Narayanamurthy as per Ex.P-1, a case was registered by P.W.8 Nagesh and after sending the F.I.R. to the court as per Ex.P-10, the investigation proceeded which also included collecting the P.M. report of the deceased and also I.M.V. report and, on completion of the investigation, charge sheet was filed.

4. Following the accused pleading not guilty, the trial court called upon the prosecution to prove its case and, in turn, eight witnesses were examined on behalf of the prosecution and Exs.P-1 to P-11 were marked. The accused statement was recorded and no evidence was placed by the accused. The learned trial judge, after evidence appreciation, accepted the prosecution evidence as establishing the case against the petitioner and accordingly, the petitioner was convicted and



sentenced as aforesaid. The lower appellate court put its stamp of approval by dismissing the appeal preferred by the petitioner.

5. I have heard learned counsel Shri A.N.Radhakrishna for the petitioner and learned Government Pleader for the respondent-State Shri Srinivasa Reddy and perused the entire material on record and the reasons given by the courts below.

6. The submission of the learned counsel for the petitioner is that, a careful examination of the evidence on record would go to show that the prosecution had failed to establish its case and in this connection, he referred to the contents of the complaint according to which, the lorry, while taking U turn as there was a median, dashed to the motor cycle in which the deceased was travelling. Whereas the sketch map Ex.P-11 does not show any U turn being present at the spot and even the center median is not bifurcated by any U turn. On the other hand, the center median runs straight. Therefore, the entire theory put forward



by the prosecution is falsified by the contents of Ex.P-11 itself.

7. Secondly it is argued that the witnesses do not say that the lorry dashed to the motor cycle but, on the other hand, the evidence is that, the motor cycle in which the deceased was travelling, came in contact with the left rear wheel of the lorry and this itself shows that the lorry had passed almost and at that point of time, the motor cycle touched the rear wheel of the lorry. As no damage was found to the front side of the lorry or the middle portion of the lorry and there being only blood stains on the left rear wheel, all these evidence do not go to show that the lorry dashed to the motor cycle but, on the other hand, it was the motor cycle that came in contact with the rear left wheel of the lorry.

8. The further submission made is that, no witness has spoken to the effect that the lorry was driven in a rash and negligent manner, except saying that the lorry was going at a high speed. The witnesses for the prosecution do not speak consistently as to how the



accident occurred because, according to P.W.4, the accident happened when the lorry tried to take over a car, whereas, the other witnesses do not speak about this aspect. Therefore, the evidence, when carefully scrutinized, would not indicate that it was the lorry driver who had dashed to the motor cycle but, in all probability, it was the motor cycle which came in contact with the rear left wheel of the lorry on account of which the rider and the pillion rider fell down and run over by the left rear wheel of the lorry. As such, both the courts below failed to appreciate the evidence in proper perspective and relying on an order passed by this court in CrI.R.P.No. 478/2004, it is contended that, merely because a person died in the accident, that itself cannot lead to the inference that the driver of the lorry was at fault. As such, the orders passed by the courts below be set aside and the petitioner be acquitted.

9. On the other hand, the learned Government Pleader supported the judgments of the courts below and contended that the evidence on record clearly



establishes the fact of the lorry having hit the motor cycle leading to the death of one person at the spot and injuries being caused to the another person, who later succumbed to the injuries. Moreover, no defence evidence was placed by the accused.

10. Having thus heard both sides, whether the judgments of the courts below can be sustained in the face of the evidence on record is the point to be considered.

11. The complaint Ex.P-1 mentions that the accident occurred when the lorry driven by the petitioner was trying to take a left turn near the median and in the process, the lorry hit the motor cycle No. TN-24-X-6248, when the middle portion of the lorry came in contact with the motor cycle. The evidence of P.W.1 is that, when he was travelling along with C.W.2 in a two wheeler, he saw deceased Chandramouli and Jayaram proceeding in front of him and there was U turn and the lorry came from the hind side and took over the vehicle of P.W.1 and then, the vehicle in which the deceased



was travelling was caught under the wheel of the lorry. In the cross-examination, he has stated that a Maruthi Car had stopped near the Weigh Bridge. The witness does not know whether the accident happened due to the presence of the car.

12. P.W.2 also deposes to the effect that, there was a turn and there was a car near the turn and the lorry came and caused the accident. This witness does not say that the lorry had dashed to the motor cycle in which Chandramouli was travelling.

13. P.W.3, another eye-witness, simply says that the lorry touched the two wheeler on which Chandramouli and Jayaram were travelling. P.W.4 deposes to the effect that a car was found stopped in the front and the lorry, while trying to overtake the car, touched the two wheeler.

14. The aforesaid evidence will have to be seen in the light of the sketch map of the scene of offence i.e., Ex.P-11. Ex.P-11 reveals that the center median runs



straight and there is no U turn anywhere near the center median. The direction from which the lorry came has also been indicated in the sketch map and so also the direction from which the motor cycle came. Thus, the complaint averment that there was an U turn and, while trying to take the U turn from the left side, the lorry hit the motor cycle is, therefore, not established in view of Ex.P-11.

15. Even to hold that the lorry had dashed against the motor cycle, the evidence of the witnesses does not give that indication because, all of them say that the motor cycle touched the lorry. The point of contact is said to be the left rear wheel of the lorry. The I.M.V. report, which has been produced and marked as Ex.P-9 does not indicate any scratch or damage to the middle portion of the lorry but, all that it says is that, the left side rear wheel had blood stains on both the wheels and, as far as the motor cycle is concerned, the head lamp shield had scratches and rubbing marks. Since the point of contact with the lorry is on the left side rear



wheel and the head light of the motor cycle has been found to have been damaged, the entire evidence on record, taken as a whole, does give the impression that the motor cycle came in contact with the left rear wheel of the lorry, when the lorry had almost passed the motor cycle.

16. Since the prosecution case that the lorry took left turn near the U turn is not established as there is no U turn to be seen in Ex.P-11, and the witnesses also not deposing to the effect that the lorry had actually dashed to the motor cycle, the evidence on the whole, therefore, does not lead to the one and the only conclusion that the accident had occurred only on account of the rash and negligent driving on the part of the lorry driver. In fact, no witness speaks to the rash and negligent driving of the lorry by the petitioner, except P.W.1 mentioning about the speed of the vehicle.

17. Under the above circumstances, both the courts below were in error in not properly appreciating the evidence on record and the findings recorded cannot be



sustained in law. Merely because the accident led to the death of two persons, that itself cannot be a ground to take the view that the driver of the lorry was responsible for the accident when the prosecution had failed to show that the act of the lorry driver was the immediate cause for the accident. The decision referred to by the petitioner's counsel i.e., CrL.R.P. No. 478/2004, disposed of on 3.1.2006 by a learned Single Judge of this court, applies to the present case.

18. For the aforesaid reasons, the judgments of the courts below convicting the petitioner cannot be sustained in law and consequently, the conviction and sentence passed against the petitioner stands set aside and the petitioner is acquitted of the offences alleged against him by giving him the benefit of doubt.

The petition stands allowed in the above terms. The fine amount, if any, paid by the petitioner be returned him.

Sd/-
JUDGE

ckc/-