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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL REVISION PETITION NO. 600 OF 2017

BETWEEN

S. SANTHOSH S/O LAKSHMANA POOJARI,
AGED ABOUT 27 YEARS,
R/O MARKAL, NIDIVALE VILLAGE,
MUDIGERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 101. ...PETITIONER

(BY SRI GIRISH B. BALADARE, ADVOCATE)

AND:

STATE BY MUDIGERE POLICE
MUDIGERE TALUK
CHIKKAMAGALURU DISTRICT,
REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALURU – 560 001. …RESPONDENT

(BY SRI. DIVAKAR MADDUR M., HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT DATED 14.09.2016 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU IN CRL.A.NO.4/2015 AND THE JUDGMENT DATED 03.11.2014 PASSED BY THE PRINCIPAL CIVIL JUDGE AND J.M.F.C., MUDIGERE IN C.C.NO.307/2011 AND THE PETITIONER TO BE ACQUITTED FOR THE OFFENCE ALLEGED AGAINST HIM.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 16TH APRIL, 2024 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Appellant in Crl.A.No.4/2015 on the file of Principle District and Sessions Court, Chikkamagaluru preferred this appeal challenging the Judgment passed by the said Court dated 14.09.2016 dismissing the appeal.

2. The brief facts of the case of the prosecution are that on 19.04.2011 at about 2.30 p.m. the accused being the driver of ambulance vehicle bearing registration No.KA.18/A.2698 (for short 'Ambulance') drove the said vehicle on Mudigere side, towards Mangaluru side in a rash and negligent manner and at Bidarahalli village, in front of the house of one Riyaz, due to rash and negligent driving of Ambulance he dashed against the Alto car bearing No.KA-30-M-3660. Due to the impact of the said accident, the driver of the car by name Prakash sustained grievous injuries and succumbed to the injuries at the spot and PWs-1 to 3 also had sustained simple as well as grievous injuries.

3. PW-1 lodged the complaint to Mudigere police Station that was registered in Crime No.26/2011 for the offences punishable under Sections 279, 338 and 304(A) of IPC. The matter was investigated by Circle Inspector of Police, Mudigere Circle and submitted charge sheet against the accused/petitioner for the offence punishable under Section 279, 338, 304(A) of IPC, before Principal Civil Judge and JMFC Court, Mudigere (for shot 'trial Court') which was registered in C.C.No.307/2011.

4. The trial Court secured the presence of the accused and supplied copy of the charge sheet and enclosures. It recorded the plea of the accused and accused pleaded not guilty.

5. To prove its case, the prosecution examined PWS.1 to 9 and got marked documents Exs.P1 to P11 and closed its evidence. The trial Court examined the accused under Section 313 of Cr.P.C and accused did not lead defense evidence when called upon.

6. The trial Court after hearing both the parties and appreciating the evidence available on record by it's

Judgment dated 03.11.2014 convicted accused of the offence punishable under Section 279, 338, 304(A) of IPC and sentenced as under:

> *"The accused shall sentence to pay fine of Rs.1,000/- for the offence punishable under Section 279 of IPC. In default of payment of fine the accused shall under go simple imprisonment for a period of 10 days.*
>
> *The accused shall sentence to pay fine of Rs.1,000/- for the offence punishable under Section 338 of IPC. In default of payment of fine the accused shall undergo simple imprisonment for a period of 10 days.*
>
> *The accused shall sentence to undergo simple imprisonment for a period of 6 months and fine of Rs.2,000/- for the offence punishable u/s. 304(a) of IPC. In default of payment of fine the accused shall undergo simple imprisonment for a period of one month."*

7. Being aggrieved by the said judgment, the petitioner has filed Criminal Appeal No.4/2015 before the Court of Principal District and Sessions Judge, Chikkamagaluru. The appellate Court heard the arguments of both the side and on re-appreciating the evidence

available on record, dismissed the appeal by impugned judgment dated 14.09.2016, confirming the judgment passed by the trial Court. Same is challenged in the present Revision.

8. I have heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader.

9. Learned counsel for the petitioner would submit that in the cross-examination, the eye witness have admitted that they did not see on coming ambulance prior to the collusion of the vehicle. It indicates that they were not the eyewitnesses to the incident. The accident had taken place at the curve of the road. The driver of the car had drove the vehicle at the middle of the road, without taking care of the traffic. Moreover the driver of the car had no knowledge of driving; because of his negligence, the accident had taken place. These facts are not at all considered by the trial Court as well as the appellate Court. Therefore, the findings of both the Courts are contrary to the provision of law and erroneous. Therefore,

interference by this Court is required. The trial Court as well as appellate Court have not properly appreciated the evidence of other witnesses. The evidence of injured witnesses creates lot of doubt in the case of the prosecution. They were not considered by the trial Court. Therefore, prayed to set aside the impugned judgment.

10. In the alternative, the learned counsel for the petitioner submits that in any event if the Court finds that accident had taken place due to negligence of driver of the ambulance, this Court may take lenient view while imposing sentence. The alleged accident had taken place during April, 2011. More then 13 years is lapsed. The accused is married person having family responsibility, if he is sentenced to imprisonment as ordered by the trial Court, his entire family would suffer. It is not the intention of the legislature that the accused should be sentenced to jail. The Court can take reformative method while imposing punishment. Instead of imprisonment, fine may be imposed.

11. In support of his submission, he relied on the judgments of Co-ordinate Bench of this Court in the following cases:

- In the case of Hassainar Vs. State of Karnataka in Crl.R.P.No.154/2016.
- In the case of State of Karnataka Vs. A.G. Lokanath in Crl.A.No.564/1999.
- In the case of Maruthi Vs. State in Crl.R.P.No.509/2015.
- In the case of Paul George Vs. State of NCT of Delhi, reported in (2008) 4 SCC 185.

12. He submits that in all of the above said cases, the trial Court as well as appellate Court convicted the accused for the offence punishable under Section 304(A) of IPC and sentenced to imprisonment was imposed. The Co-ordinate Bench of this Court, considering the facts and circumstances of each case, modified the sentence of imprisonment and directed the accused to pay additional fine in lieu of sentence of imprisonment. Same can be applied to the facts of the present case. With these

reasons, learned counsel for the petitioner prays to allow the revision petition.

13. Learned High Court Government Pleader supports the impugned judgment passed by the Court below and further submits that both the Courts below have appreciated and re-appreciated the evidence on record and held that prosecution had proved the guilt of the accused beyond reasonable doubt. Therefore, the trial Court convicted the accused of the alleged offences and it was confirmed by the appellate Court. There are no reasons to interfere with the said findings. Due to negligence driving of the accused, driver of the car sustained injuries and died at the spot and three inmates' sustained simple and grievous injuries. Since it is considered as accident happened without any intention, severe punishment is not prescribed under the law. According to Section 304(A) of IPC, the Court can impose imprisonment, which may extend up to period of two years or fine or with both. The Hon'ble Apex Court in a

catena of judgments held that if prosecution has proved guilt of an accused who has committed an offence punishable under Section 304(A) of IPC, then the accused shall be sentenced to imprisonment to reform him from committing such crime. If the Courts impose nominal punishment for such offences, then it would encourage such offender to commit more of such offences. Therefore, question of imposing only fine do not arise and hence prayed to dismiss the petition.

14. The following question arises for determination:

i. Whether the appellate Judge is justified in confirming conviction of appellant for the alleged offences and whether the said findings are arbitrary, perverse or illegal and interference by this Court is required.

ii. Whether imposing of the fine in lieu of sentence of imprisonment is justifiable?.

15. I have perused the materials on records. PW-1 lodged complaint-Ex.P1 within two hours after the accident. He was inmate of the car, which met with an accident. In Ex.P1, he has stated that driver of the ambulance came in high speed, rash and negligent manner and dashed against the car, due to which along with him other two inmates of the car sustained injuries and driver of the car by name Prakash was dead. During his evidence, he has reiterated the same. He was thoroughly cross-examined by the counsel appearing for the petitioner, but nothing was brought out to disbelieve his evidence. The accused contended that driver of the car had no knowledge of driving and he came on the middle of the road, because of his negligence accident had taken place. The said suggestions were not only denied by PW1, but he replied that "the car was on the extreme left side of the road, but the ambulance came to right side (wrong side) of the road and dashed against the car."

16. PW-1 has stated that accident had taken place after crossing of the curve, on straight road. It was suggested to him that while crossing the curve road vehicle coming from opposite direction could not be seen and he admitted the same. On the basis of the said answer, the counsel for the petitioner is contending that PW-1 admitted that he could not see the on coming ambulance, prior to accident, which clearly shows that driver of car was responsible for the accident. He did not see the on coming ambulance and dashed against it. The said argument is not tenable. According to his evidence, accident had taken place after crossing of the curve. He answered a general question asked in the cross-examination. Normally in steep curve, a vehicle coming from other end of curve cannot be seen, till either of vehicle cross the curve. It was not the suggestion that present accident had taken place near or at the curve. Hence said answer given by him was not this case. It is trite law that evidence has to be read as whole and not in

piece. Therefore, submission of learned counsel for the petitioner is not acceptable.

17. PWs-2 and 3 are inmates of the car. Both of them have also corroborated the evidence of PW-1. In their cross-examination also nothing was brought out to disbelieve their evidence. Suggestions were made to both PWs-2 and 3 that deceased Prakash had no knowledge of driving the car and due to his negligence, the accident had taken place. Both PWs-2 and 3 denied the said suggestions. The said defence appears to be not probable. It is not case of prosecution that deceased had no driving knowledge. He was said to be traveling from Chikkamagaluru to Mangaluru and he had crossed halfway through journey. Hence said suggestion is not probable.

18. PW2 in her cross-examination had stated that she saw the ambulance about 20-22 feet prior to the accident. She had also stated that the road was wide at the spot of the accident. The car was at the extreme left side of the road and a wide road was at right side to pass

through to the ambulance. In spite of that, ambulance came to the wrong side of the road and dashed against the car. Evidence of PW2 clarified that accident was due to sole negligence of driver of ambulance.

19. PW3 was minor at the time of accident aged about 12 years. In his cross-examination, he has stated that he could not see the vehicle coming from the opposite direction since front side seat was coming in the way of viewing vehicles coming from the opposite direction. His evidence will not damage the case of prosecution.

20. PWs-4 and 5 are also eye witnesses to the incident. They also fully supported the case of the prosecution in the examination-in-chief as well as in the cross-examination. Nothing was brought out to disbelieve their evidence in the cross-examination.

21. PW-7 – Motor vehicle inspector, who has inspected both the vehicles and gave report as per Ex.P-9. According to his evidence, accident had not taken place due to mechanical defects of the vehicle. He was

not cross-examined in this regard. It was also not the defence of petitioner that accident had taken place due to mechanical defects of the ambulance.

22. PWs-8 and 9 are Investigating Officer. Both of them have narrated the investigation done by them. Ex.P2 and P11, depicts that place of accident was towards the Northern side of the road. Towards south from spot of accident, there was 14 feet wide road. The ambulance went to wrong side of the road and dashed against the car. It also indicates that driver of the ambulance was negligent in driving the said vehicle.

23. The trial Court has considered all the materials available on record and rightly held that accident was due to rash and negligent driving of ambulance by its driver. It is not in serious dispute that PW2 and 3 had sustained grievous injuries and one Prakash driver of car was dead at the spot. The Wound Certificate and postmortem report corroborates the said fact. The learned appellate Judge re-appreciated material available on record and

concurred with findings of the trial Court. It is well reasoned findings and not calls for interference by this Court in the Revision Petition filed under Section 397 of Cr.P.C.

24. The next question pertains to sentence imposed by the Courts below. The learned advocate for petitioner vehemently submits that accident had taken place during 2011 and more than 13 years are lapsed. Accused/petitioner is aged about 26 years at the time of accident. During pendency of this case, he got married and having children. Considering the time taken in disposal of case and social responsibilities of the accused he may be imposed fine only as sentence. The learned HCGP submits that looking to facts and circumstance of the case, maximum permissible sentence be imposed. He does not deserve any sympathy Courts below already considered the same and imposed reasonably sentence. Hence, prayed to confirm the same.

25. Prosecution has proved beyond reasonable doubt that due to the negligent driving of the ambulance by the petitioner accident had taken place resulting in death of the driver of the car and grievous injuries to all the three inmates of the car. It indicates the speed in which the ambulance might be driven by accused. If such an accused is dealt with by imposing with nominal sentence of fine of few hundred rupees, then it would be injustice to the society as well as victims of accident. It would encourage negligent rider/drivers of vehicle to drive or ride their vehicles in rash and negligent manner without caring for traffic rules or value of human life. Therefore, sentencing him by imposing only a fine is not proper. It is trite law that sentence shall not be too harsh or nominal, but shall be just and reasonable.

26. In the case of ***Guru Basavaraj @ Benne Settappa v. State of Karnataka***[1] the Hon'ble Apex

[1] *(2012) 8 SCC 734*

Court referring to its earlier judgments, extracted the principles of law held in those cases;

> *"**19.** In State of Karnataka v. Krishna [(1987) 1 SCC 538 : 1987 SCC (Cri) 198], while dealing with the concept of adequate punishment in relation to an offence under Section 304-A IPC, the Court stated that: (SCC p. 541, para 7)*
>
> *"7. … Considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal [justice dispensation] system. It need be hardly pointed out that the imposition of a sentence of fine of Rs 250 on the driver of a motor vehicle for an offence under Section 304-A IPC and that too without any extenuating or mitigating circumstance is bound to shock the conscience of anyone and will unmistakably leave the impression that the trial was a mockery of justice."*
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> *Thereafter, this Court enhanced the sentence to six months' rigorous imprisonment with a fine of Rs.1000 and, in default, to undergo rigorous imprisonment for two months.*
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> ***20.** In Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471 : 1991 SCC (Cri) 724] it has been emphasised that undue sympathy resulting in imposition of inadequate sentence would do more*

harm to the justice system and undermine the public confidence in the efficacy of law.

21. *In Jashubha Bharatsinh Gohil v. State of Gujarat [(1994) 4 SCC 353 : 1994 SCC (Cri) 1193] the Court, adverting to the new challenges of sentencing, opined that: (SCC p. 360, para 12)*

"12. *The Courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence."*

27. On the basis of the above said observation, the Hon'ble Apex Court held as under:

"34. *In view of the aforesaid, we have to weigh whether the submission advanced by the learned counsel for the appellant as regards the mitigating factors deserves acceptance. Compassion is being sought on the ground of young age and mercy is being invoked on the foundation of solemnisation of marriage. The date of occurrence is in the month of March 2006. The scars on the collective cannot be said to have been forgotten. Weighing the individual difficulty as against the social order, collective conscience and the duty of the court, we are disposed to think that*

the substantive sentence affirmed by the High Court does not warrant any interference and, accordingly, we concur with the same."

28. The Hon'ble Apex Court confirmed the imposition of sentence of imprisonment passed by the High Court.

29. In the case of ***Alister Anthony Pareira v. State of Maharashtra***[2], the Hon'ble Apex Court relying on the earlier judgment in the case of Dalbir singh Vs. State of Haryana and other judgments observed as under, it is necessary to re-produce the same in this judgment.

"88. In Dalbir Singh [(2000) 5 SCC 82 : 2000 SCC (Cri) 1208] this Court was concerned with a case where the accused was held guilty of the offence under Section 304-A IPC. The Court made the following observations (at pp. 84-85 of the Report): (SCC para 1)

"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further

[2] (2012) 2 SCC 648

escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic."

89. Then while dealing with Section 4 of the Probation of Offenders Act, 1958, it was observed that Section 4 could be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on the probation of good conduct. For application of Section 4 of the Probation of Offenders Act, 1958 to a convict under Section 304-A IPC, the Court stated in para 11 of the Report thus: (Dalbir Singh case [(2000) 5 SCC 82 : 2000 SCC (Cri) 1208] , SCC p. 86)

"11. Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to

an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down."

90. Further, dealing with this aspect, in para 13 of the Report, this Court stated: (Dalbir Singh case [(2000) 5 SCC 82 : 2000 SCC (Cri) 1208] , SCC p. 87)

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even

if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

30. Considering the said facts, the Hon'ble Apex Court held as under:

"97. The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part II IPC undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime. Seven precious human lives were lost by the act of the accused. For an offence like this which has been proved against the appellant, sentence of three years awarded by the High Court is too meager and not adequate but since no appeal has been preferred by the State, we refrain from considering the matter for enhancement. By letting the appellant away on the sentence already undergone ie. two months in a case like this, in our view, would be travesty of justice and

highly unjust, unfair, improper and disproportionate to the gravity of crime. It is true that the appellant has paid compensation of Rs.8,50,000/- but no amount of compensation could relieve the families of victims from the constant agony. As a matter of fact, the High Court had been quite considerate and lenient in awarding to the appellant sentence of three years for an offence under Section 304 Part II IPC where seven persons were killed."

31. In the case of ***State of Punjab v. Saurabh Bakshi***[3]**,** Hon'ble Apex Court has held that:

"***23.*** *In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation.*

[3] (2015) 5 SCC 182

Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, is worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental.

24. *Needless to say, the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial*

Magistrate which has been affirmed by the appellate court should be reduced to six months.

25. *Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilised persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish."*

32. In the above said judgments consistently it is held by Hon'ble Apex Court that in case of accident while imposing punishment for the offence punishable under Section 279, 338 and 304(A) of IPC too much leniency is unwarranted. It is a trite law that sentence should be proportionate to the offence committed by the accused. It should not be too harsh or too nominal. The revision

petitioner due to his negligent driving caused the death of one of the inmate of the car and also caused grievous injury to other three inmates of the car. If only sentence of fine is imposed, then it would be a nominal punishment against the offence committed by him.

32.1 Considering the facts and circumstances of the present case, it is not fit case to give the benefit of Probation of Offenders Act and imposition of nominal fine amount to the accused/revision petitioner.

33. The facts and circumstances of the case relied by learned counsel for the revision petitioner are totally different. In the case of ***Paul George*** (supra), the accused was the driver as well as a constable. The said litigation was pending about 20 years. He was dismissed from the service due to committing the said accident. Considering the facts and circumstances of that case, the Hon'ble Apex court extended the benefit of Section 360 of Cr.P.C., which is on par with provisions of the Probation of Offenders Act. Principle of law laid down in the said judgment does not help the petitioner.

34. The trial Court looking to gravity of offence and facts of the case imposed proper sentence. Neither it is too harsh or nominal. Hence does not call for interference.

35. The Appellate Court re-appreciating the evidence available on record conferred findings of trial Court. There are no errors or illegality in the said Judgment of Court below to interference.

36. For above reasons, this Court pass the following:

ORDER

i) The Revision Petition is ***dismissed***.

ii) The impugned order passed by the learned Principal District and Sessions Judge, Chikkamagaluru in Crl.A.No.4 of 2015 dated 14.09.2016 is confirmed.

iii) The bail bond executed by the revision petitioner stands cancelled.

vi) Forty Five (45) days time from this day is granted to the revision petitioner to

surrender before the Trial Court to undergo the sentence.

v) Registry is directed to send back the Trial Court Records along with copy of this order to the Trial Court.

Sd/-
JUDGE

AG
List No.: 2 Sl No.: 1