

R Santosh vs State Of Karnataka on 12 January, 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY 2021

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL REVISION PETITION NO.1 OF 2015

BETWEEN:

R SANTOSH
S/O RAJU,
AGED ABOUT 29 YEARS,
LAGGERE MAIN ROAD
ANANTHAKSHYA NAGAR,
BENGALURU - 560 039.

...PETITIONER

(BY SRI. G. DESU REDDY, ADVOCATE FOR
SRI. A N RADHA KRISHNA, ADVOCATE)

AND:

STATE OF KARNATAKA
BY K R PURA TRAFFIC POLICE,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING
BENGALURU - 560 001.

....RESPONDENT

THIS CRL.RP FILED U/S. 397 AND 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND

SENTENCE PASSED BY THE P.O., MMTC-VI, BANGALORE CITY
IN C.C.NO.952/2011, DATED 30.12.2013 AND CONFIRMED IN
CRL.A.NO.55/14 ON THE FILE OF THE P.O., FTC-XIV,
BENGALURU CITY, DATED:13.11.14 AND ACQUIT THE PETR.

2

THIS CRL.RP COMING ON FOR HEARING THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

Heard Sri. G. Desu Reddy, learned counsel for the revision petitioner and the learned High Court Government Pleader on behalf of the State Public Prosecutor.

2. This revision petition is filed by the accused challenging the order passed in C.C.No.952/2011 on the file of Metropolitan Magistrate Traffic Court-VI, Bengaluru City dated 30th December 2013 whereby the accused came to be convicted for the offence under [Sections 279](#) and [304\(A\)](#) of IPC and [Sections 3\(1\)](#) r/w 181 of IMV Act and sentenced to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for one month and for the offence under [Section 304\(A\)](#) of IPC, simple imprisonment for one year and fine of Rs.1,000/- in default, sentence of simple imprisonment of one month and for the offence under [Section 3\(1\)](#) r/w 180 of IMV Act to pay fine of Rs.500/- in default to undergo simple imprisonment for 30 days, which came to be confirmed in Crl.A.No.55/2014 on the file of Fast Tract Court-XIV, Bengaluru City by its judgment dated 13th November 2014.

3. Brief facts which are necessary for the disposal of the revision petition are as under:

A complaint came to be filed in Cr.No.123/11 for the offences punishable under [Sections 279](#), [304\(A\)](#) of IPC and 3(1) r/w 181 of IMV Act wherein it is contended that on 13.09.2011 at about 10 a.m. within the jurisdiction of K.R.Puram Traffic Police Station, Sri. R. Santhosh (hereinafter referred to as revision petitioner - accused) was driving the lorry bearing No.MED 3419 in a rash and negligent manner, without driving license and near R.M.Nagar Bridge at Kasturinagar Junction, dashed against a motor cycle bearing No.KA-53-R-8222 whereby motor cyclist fell down and the wheel of the lorry ran over his head resulting in grievous injuries and ultimately he succumbed to the injuries.

Police investigated the matter in detail and filed charge-sheet against the driver of the lorry for the aforesaid offences. Presence of the accused was secured before the Trial Court after taking cognizance of the case and plea was recorded. The accused pleaded not guilty. As such trial was held. In order to establish the case of the prosecution, prosecution examined 7 witnesses

and relied on 10 documentary evidence which were exhibited and marked as Ex.P1 to Ex.P10. On conclusion of the recording of prosecution evidence, statement of the accused as contemplated under [Section 313](#) of Cr.P.C. was recorded wherein accused denied all the incriminatory materials that were put to him. Accused did not choose to lead any evidence. Learned Magistrate after hearing the parties and on cumulative consideration of the oral and documentary evidence on record, convicted the accused as cited supra. Being aggrieved by the said judgment of the learned Magistrate, accused filed an appeal in CrI.A.55/2014 on the file of Fast Track Court -XIV, Bengaluru City.

Learned Judge in the First Appellate Court secured records and after hearing the parties in detail, confirmed the judgment of the Trial Court. It is those judgments which are subject-matter of this revision petition.

4. Learned counsel for the revision petitioner - accused, Sri. G. Desu Reddy vehemently contended that both courts have misdirected themselves in not properly appreciating the material on record and wrongly convicted the accused and sought for allowing the revision petitioner. Sri. Reddy further points out that the complainant himself is not examined and alleged eye-witness who is examined as PW-2 has stated in the examination-in-chief that the accident has taken place on 11.09.2011 whereas in FIR it is mentioned that incident has occurred on 13.09.2011.

He further contends that the investigating agency has not properly conducted the investigation and the materials on record clearly establish that the lorry was not at all involved in the accident and police have concocted the material documents so as to help the complainant. He also pointed out that the discrepancy pointed out in the cross-examination of the prosecution witness is totally ignored by the Trial Court while passing the order of conviction and therefore sought for allowing the revision. On the question of sentence, Sri. Reddy contended that the sentence as ordered by the Trial Court is excessive and is not proportionate to the offence alleged against the accused persons and sought for allowing the revision petition.

5. Per contra, learned High Court Government Pleader representing the State Public Prosecutor, argued that both the courts have rightly convicted the accused and the order of sentence is also proportionate and thus sought for dismissal of the revision petition.

6. In view of the rival contentions, the following points arise for consideration:

- 1) Whether the revision petitioner makes out an error apparent on record in reaching the finding by the Trial Court confirmed by the First Appellate Court that the accused is responsible for the accidental death of Sri. M. Susheelkumar on 13.09.2011 in the road traffic accident?
- 2) Whether the sentence passed by both the courts is excessive?

This court answers the above points in the negative for the following reasons:

7. In the case on hand, the charge-sheet came to be filed against the driver of the lorry who is the accused who, admittedly, did not possess driving license. The incident has occurred as is

alleged in the complaint. No doubt, complainant is not examined in the case. But it is settled principle of law that non-examination of the complainant in a matter of this nature would not be fatal to the case of the prosecution inasmuch as the complainant has only set the criminal law in motion.

8. The material evidence available on record is in the form of oral testimony of PWs.2 and 3 along with spot sketch and panchanama. Those materials clearly establish the incident as is contended in the complaint. No doubt PW-2 has stated in his examination-in-chief while narrating the date of incident has stated that accident has occurred on 11.09.2011. But the same is explained in the impugned judgment by the learned Magistrate which is relied on by the learned High Court Government Pleader to the effect that after lapse of sufficient time, PW-2 came to be examined before the court which has resulted in mentioning the wrong date of accident. Merely mentioning the date of accident as 11.09.2011, in the considered opinion of this court, in the totality of the circumstances, would not be fatal to the prosecution evidence inasmuch as other documentary evidence available on record would clearly establish that accident in fact has occurred on 13.09.2011.

9. It is pertinent to note that this aspect of the matter is not even suggested by the accused while recorded the accused statement. In the accused statement, accused goes to the extent of denying the very accident itself.

10. Further, PWs.2 and 3 are the independent witnesses who did not nurture any enmity or animosity against the accused so as to tender false evidence against the accused. Ex.P3 is the statement given by the Supervisor of the lorry and in that it has been clearly mentioned that as on the date of accident, accused was driving the offending lorry. All these aspects of the matter have been taken note of by the learned Magistrate while convicting the accused and rightly re-appreciated by the first Appellate Court.

11. No proper explanation is forthcoming on record to reach a conclusion than that of the learned Magistrate.

12. In this regard this court places its reliance on the judgment of the Hon'ble Apex Court in the case of RAVI KAPUR VS. STATE OF RAJASTHAN reported in (2012) 9 SCC 284 wherein it has been held as under:

"39. It is true that the prosecution is required to prove its case beyond reasonable doubt but the provisions of [Section 313](#) Cr.P.C. are not a mere formality or purposeless. They have a dual purpose to discharge, firstly, that the entire material parts of the incriminating evidence should be put to the accused in accordance with law and, secondly, to provide an opportunity to the accused to explain his conduct or his version of the case. To provide this opportunity to the accused is the mandatory duty of the Court. If the accused deliberately fails to avail this opportunity, then the consequences in law have to follow, particularly when it would be expected of the accused in the normal course of conduct to disclose certain facts which may be within his personal knowledge and have a bearing on the case."

12. By applying the above principles of law on the case on hand, it was incumbent on the part of the accused to lead defence evidence or at least file written statement as to his version of the incident so as to facilitate the learned Magistrate to take a proper view of the matter. In the absence of any such material placed by the accused, this court is of the considered opinion that the finding reached by the learned Magistrate in holding that accused is responsible for the accidental death of Sri. Susheelkumar is perfectly justified.

13. This court meticulously perused the judgment of the First Appellate Court in CrI.A.No. 55/2014. The learned Judge in the First Appellate Court not only confirmed the judgment of the Trial Court but also supplemented the reasons to uphold the findings recorded by the Trial Court.

15. Further, the decisions relied on by the accused in the case of PRADEEP KUMAR VS. STATE OF HARYANA; NACHIMUTHU VS. STATE BY THE INSPECTOR OF POLICE AND TUKARAM SITARAM GORE VS. STATE were considered by the First Appellate Court in its proper perspective and assigned proper reasons as to how the case laws relied on by the accused before the First Appellate Court is not applicable to the case on hand.

16. This court being the court of revision, having limited jurisdiction, is of the considered opinion that the revision petitioner is unable to make out any error apparent on record so as to annul the judgment of the Trial Court which was confirmed by the First Appellate Court.

17. Insofar as sentence is concerned, it is settled principle of law that matter of this nature is to be dealt with stern hands as is held by the Hon'ble Apex Court in the case of State of Punjab Vs. Saurabh Bakshi, reported in (2015) 5 SCC 182 it has been held as under:

"8. It is submitted by Mr.Madhukar that when the prosecution had been able to establish the charges levelled against the respondent and both the trial court and the appellate court had maintained the sentence there was no justification on the part of the High Court to reduce the sentence to the period already undergone solely on the basis that the respondent had paid some compensation. It is his further submission that keeping in view the gravity of the offence that two deaths had occurred the High Court should have kept itself alive to the nature of the crime and should have been well advised not to interfere with the quantum of sentence. He has commended us to the decisions in [State of Punjab v. Balwinder Singh](#) [(2012) 2 SCC 182:(2012)1 SCC(Cri) 706] and [Guru Basavaraj Vs. State of Karnataka](#) [(2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972]."

18. By applying the above principles of law on the case on hand, sentence as ordered by the learned Magistrate which is confirmed by the First Appellate Court do not require any interference at the hands of this court especially in the absence of any mitigating factors placed by the accused. Accordingly, the above points are answered in the negative and following order is passed:

ORDER The revision petition is devoid of merit and is hereby dismissed.

Accused is directed to surrender before the learned Magistrate for serving the sentence as ordered.