

KACD220041902021



Presented on : 30.12.2021
Registered on : 30.12.2021
Decided on : 06.05.2026
Duration : 04 years, 04 months, 07 days

**IN THE COURT OF ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT: CHALLAKERE**

Present: **Sri. PUNITH. B.R.**
B.A., L.L.B.,
Addl. Civil Judge and JMFC., Challakere.

Dated on the 6th day of May 2026

Criminal Case No.3049/2021

COMPLAINANT :

The State by Nayakanahatti Police Station.

(By Assistant Public Prosecutor)

V/S

ACCUSED :

Dadapeer.P S/o Tailor Peer Sab,
aged about 37 years, Owner of Motorcycle
Bearing Reg. No.KA-16-D-3834,
R/o Nelagethanahatti village, Challakere Taluk,
Chitradurga District.

(By Sri.D.J.R., Advocate)

1. Date of Offence : 09.07.2021
2. Arrest of the accused : Enlarged on bail
3. Name of the Informant : Boraiah
4. Date of opening of evidence : 23.05.2024
5. Date of closure of evidence : 30.01.2026
6. Offences complained of : Sec. 279 and 304(A) of IPC
7. Opinion of the Judge : Accused found not guilty

J U D G M E N T

The Circle Inspector of Thalag Circle has filed final report against the accused for the offences punishable U/s 279 and 304(A) of IPC.

2. The brief case of the prosecution is that :

On 09.07.2021, at approximately 10.15 p.m., on the Kunabevu–Nelagethanahatti Road, in front of the house of Nelagethana Channaiah, within the jurisdiction of Nayakanahatti Police Station, the accused was driving an Ashoka Leyland goods vehicle bearing Registration No. KA-16-D-3834 in a rash and negligent manner, proceeding from Nayakanahatti towards Chitradurga. As a result of the said driving, Sushmitha, who was seated in the rear portion of the vehicle, lost her balance, fell down and sustained grievous injuries. She was initially taken to Nayakanahatti Hospital and later, at about 12.00 noon, shifted to

Chitradurga Hospital for higher treatment, where she succumbed to her injuries. Accordingly, the final report was filed against the accused for the alleged offences

3. After taking cognizance, plea of the accused was recorded and he pleaded not guilty and claimed to be tried. Prosecution had enlisted 18 witnesses, out of them 7 witnesses were examined as Pws.1 to 7 and got marked Ex.P.1 to 23. The statement of accused U/s.313 of Cr.P.C was recorded and the accused denied all the incriminating materials forthcoming against him in total. CW.9 the alleged witness died during proceedings before he was examined.

4. Heard the learned APP and learned counsel for the accused.

5. The following are the points which arise for my consideration;

1) Whether the prosecution proves beyond all reasonable doubt that on 09.07.2021 at about 10.15 p.m., on the Kunabevu - Nelagethanahatti tar road, passing through in front of house of Nelagethana Channaiah within the limits of Nayakanahatti police station, the accused rode the Ashoka Leyland goods vehicle bearing Reg. No.KA-16-D-3834 in rash and negligent manner endangering human life

and thereby committed an offence punishable U/Sec.279 of IPC?

2) Whether the prosecution proves beyond all reasonable doubt that on above said date, place and time, the accused riding the vehicle in rash and negligent manner endangering human life and lost balance, due to which the vehicle fell upside down and in the accident Sushmitha sustained grievous injuries and succumbed to said injuries and thereby committed an offence punishable U/s 304 (A) of IPC?

3) What Order?

6. After going through the records and hearing the parties, the above points are answered as below:

Point Nos.1 & 2 : In the negative

Point No.3 : As per final order for the following:-

REASONS

7. **POINTS NO.1 and 2:** Both Points are inter-related to each other and they are taken together for consideration to avoid repetition of facts and discussion. The prosecution in order to prove its case got examined in all 7 witnesses, got marked twenty 23 exhibits.

8. PW.1/CW.1 is the complainant witness. PW-1 states that he does not know CW-7 and CW-8. He deposes that his

daughter, Sushmitha, died in an accident. On 09.07.2021, between 10:00 and 10.15 a.m., he, his father, CW-9, and the accused were travelling in a TATA Ace vehicle bearing registration No. KA-16-D-3834, belonging to the accused, towards Chitradurga. Near Hirekere Kaluve on the Nelagethalahatti–Kunabevu road, the accused allegedly drove the vehicle in a rash and negligent manner. PW-1 and his daughter were seated in the rear portion of the vehicle. Due to the manner of driving, his daughter lost balance, fell down, and sustained a fatal neck injury. She was initially taken to Nayakanahatti Hospital and later, at about 12:00 noon, shifted to Chitradurga Hospital for higher treatment, where she succumbed to her injuries. PW-1 identifies his signature on Ex.P-1 (complaint) and states that it was written by CW-10. He also identifies his signatures on Ex.P-2 (mahazar) and Ex.P-3 (spot sketch), but states that he signed them at the police station on 09.07.2021. He further identifies himself in Exs. P-4 to P-11 (photographs). He denies that the police recorded any further statement from him.

At cross examination by learned APP treating him as partly hostile PW-1 admits that Ex.P-2 mahazar was conducted at the place of the accident in the presence of Cws.7 and 8, and that the vehicle bearing No. KA-16-D-3832 was seized at that time. He further admits that his signature, as well as the signatures of Cws.7 and 8, were obtained on the mahazar, and that Exs.P-4 to P-11

photographs were taken during the said proceedings. He also admits that he gave a further statement to the police on 19.07.2021.

At cross examination by learned counsel for accused PW-1 admits that he has studied up to the 10th standard and is capable of reading and writing Kannada. He states that he had no difficulty in writing the complaint himself, but does not know who instructed the writing of the complaint. He further states that, although his daughter was sitting in the vehicle at the time of the accident, this fact is not mentioned in the complaint. He claims that he does not remember CW-10 writing the complaint and that he signed it without reading it, as he was in shock due to the accident. He states that he did not instruct his daughter not to stand in the vehicle. PW-1 gives inconsistent statements regarding events on 09.07.2021. He initially states that he took his daughter to the hospital on a motorcycle at 10.00 a.m., then says that this fact is not mentioned in the complaint, and later states that it is mentioned. He further contradicts himself by stating that he did not go to the hospital and that his son-in-law took her instead. He maintains that his daughter died at about 12.00 noon at Chitradurga Hospital.

He deposes that the post-mortem was conducted on the same day until 6:00 p.m., and that he remained at the district hospital throughout the procedure. However, he also states that at

about 4:00 p.m. on the same day, he went to the police station, lodged the complaint, and then returned to the hospital for the post-mortem. PW-1 admits that he has no personal knowledge regarding the preparation of the mahazar and is unable to state the boundaries of the mahazar spot. When it was suggested that no vehicle was seized under the mahazar, he states that he does not know. When it was suggested that Ex.P-3 (spot sketch) was not prepared in his presence, he states that he does not know and further admits that he does not know where Ex.P-3 was prepared.

9. CW.7/PW.2 is the mahazar witness of Ex.P.2. PW-2 deposes that he knows Cws.1 and 8. He identifies his signatures on Ex.P-2 (mahazar) and Ex.P-3 (spot sketch), stating that he signed them at Hirekere Kaval village when the police conducted the mahazar in connection with the accident. However, he states that he does not know the contents of the said documents. He further deposes that he is unaware whether any vehicle was seized under the said mahazar. According to him, at the time of the mahazar, Cws.1 and 8 were present, and the spot was shown by CW-1. He is unable to state whether Cws.1 and 8 have signed Exs.P-2 and P-3. He identifies himself in Exs.P-4 to P-6 (photographs).

During cross-examination by the learned APP, treating him as partly hostile, PW-2 admits that the mahazar was conducted on

10.07.2021. However, when it was suggested that the police seized the vehicle and that Cws.1 and 8 signed Exs.P-2 and P-3, he states that he does not know. In cross-examination by the learned counsel for the accused, PW-2 admits that he cannot state the exact date, month, year, or time of Ex.P-2. He further states that he does not know why the vehicle was parked at the spot by the police.

10. CW 8/PW 3 is the mahazar witness. PW-3 deposes that he knows Cws.1 and 7. He identifies his signatures on Ex.P-2 (mahazar) and Ex. P-3 (spot sketch), stating that he signed them at Hirekere Kaval village road when the police conducted the mahazar in respect of the accident. He states that he does not know the contents of these documents and is unaware whether any vehicle was seized under the mahazar. He further deposes that Cws.1 and 7 were present at the time, and that the place of occurrence was shown by CW-1. He is unable to state whether Cws.1 and 7 have signed Exs. P-2 and P-3. He identifies himself in Exs. P-4 to P-6 (photographs).

During cross-examination by the learned APP, treating him as partly hostile, PW-3 admits that the mahazar was conducted on 10.07.2021. However, when it was suggested that the police seized the vehicle and that Cws.1 and 7 signed Exs. P-2 and P-3, he states that he does not know. In cross-examination by the learned counsel

for the accused, PW-3 deposes that on 10.07.2021, between 12.00 and 12.30 p.m., the police came to the spot, though he cannot state the exact time. He states that he does not know how many persons signed Ex.P-2, but admits that he and CW-7 have signed it. However, he further states that he did not actually see CW-7 signing Ex. P-2.

11. CW.10/PW 4 is the scribe of complaint. PW-4 identifies his signature on Ex.P-1 (complaint) and states that he wrote the complaint as dictated by CW-1. He deposes that he has no personal knowledge of the contents of the complaint and that he has not given any statement before the police.

During cross-examination by the learned APP, treating him as hostile, PW-4 admits the suggestion that the complaint pertains to an incident dated 09.07.2021, wherein CW-1 and his daughter were travelling in a vehicle bearing No. KA-16-D-3834, and that due to the rash and negligent driving of the accused, Sushmitha, who was standing in the vehicle, lost balance, fell, sustained injuries, and succumbed to them. However, he denies the suggestion that CW-1 informed him that Sushmitha was first treated at Nayakanahatti Hospital and later admitted to Chitradurga Hospital, where she died on 09.07.2021, or that the accident occurred due to the fault of the accused. He further denies having given any statement to the police.

In cross-examination by the learned counsel for the accused, PW-4 admits that he has no personal knowledge of the incident. He states that CW-1 is his relative and that he wrote the complaint at his request. He further admits that he has no knowledge regarding whose fault caused the accident, the vehicle involved, or the identity of its driver.

12. CW.18/PW.5 is the investigating officer. He deposes about receiving case file from Cw 16 and continuing with investigation. He deposes that he received Ex.P.13 post mortem report of deceased Sushmitha and incorporated same in case file. He deposes about receiving Ex.P14 IMV report of vehicle involved in accident and incorporating the same in case file. He also deposes about completing investigation and filing of final report against the accused. At cross examination by learned counsel for accused apart from denial of suggestion nothing pertinent is elicited.

13. CW.16/PW.6 is the investigating officer. He deposes about receiving Ex.P.1 complaint from CW.1 and registered FIR Ex.P.16. He deposes of deputing CW.15 for inquest. He deposes about conduct of Ex P.2 mahazar in presence of Cws. 7 and 8 in place shown by CW.1 on 10.07.2021 from 12.15 to 1.00 pm and obtained their signatures and deposes about preparing sketch and

identifies Ex.P.4 to 10 photos as taken during mahazar. Further he deposes about transferring case file to Cw 17.

At cross examination by learned counsel for accused he admits that no written notices were issued to Cws.7 and 8 inviting them as mahazar witness. Then all the suggestions are denied.

14. CW.17/PW.7 is the investigating officer. He deposes about receiving case file from CW.16 and continuing investigation. He deposes about recording statements of Cws.13 and 14, sending requisition to RTO for inspection of vehicle involved in accident. He deposes that on surrendering of accused, after arrest procedure the accused was released on bail and surety. He deposes that Ex.P.11 is the photo showing the identification of accused by CW.1. He deposes that at that time further statements of Cws.1 and 9 were taken. He deposes after accused stating that he is the owner of vehicle involved in accident Ex.P.7 notice u/s 133 of IMV act was issued, Ex.P.18 answer from him was obtained and after executing Ex.P.19 indemnity bond the said vehicle was released.

At cross examination by learned counsel for accused he admits that he cannot exactly say how many members were travelling in vehicle at the time of accident. All other suggestions are denied

ANALYSIS AND EVALUATION OF EVIDENCE.

15. In the background of the above depositions of the prosecution witnesses, it is necessary to examine the veracity and credibility of the those witnesses on the touch stone of the cross examination by the Defence.

16. At the outset, the prosecution heavily relies upon the testimony of PW-1, who is both the complainant and projected eyewitness. While PW-1, in his examination-in-chief, attributes the cause of the accident to the alleged rash and negligent driving of the accused, a closer scrutiny of his cross-examination reveals substantial infirmities which strike at the root of his credibility.

17. PW-1 admits that he is educated up to 10th standard and is capable of reading and writing Kannada, yet he states that he signed the complaint (Ex. P-1) without reading its contents and is unaware as to who instructed its writing. This admission assumes significance in light of the fact that material particulars regarding the manner of accident are either absent or not clearly articulated in the complaint. Further, PW-1 gives contradictory versions regarding the immediate aftermath of the incident—at one stage stating that he himself shifted the injured to the hospital on a motorcycle, later stating that such fact is not mentioned in the complaint, and ultimately asserting that he did not go to the hospital at all and that

his son-in-law shifted the deceased. Such mutually destructive statements render his testimony unreliable.

18. Additionally, PW-1's version regarding his presence during the post-mortem and his visit to the police station is inherently inconsistent. He claims to have remained in the hospital throughout the post-mortem till 6:00 p.m., yet simultaneously deposes that he went to the police station at about 4:00 p.m. to lodge the complaint and thereafter returned to the hospital. This contradiction casts serious doubt on the veracity of his version. His evidence regarding the preparation of the mahazar and spot sketch is equally uncertain. While he initially states that he signed Ex.P-2 and Ex.P-3 at the police station, he later admits, when treated partly hostile, that the mahazar was conducted at the spot. He further admits lack of knowledge about the boundaries of the spot and the preparation of the sketch. These inconsistencies cumulatively diminish the evidentiary value of PW-1's testimony, making it unsafe to rely upon for proving rash and negligent driving.

19. A further material contradiction, which goes to the root of the prosecution case on the aspect of rashness and negligence, relates to the position of the deceased at the time of the incident. In the complaint (Ex. P-1), it is specifically stated that the deceased girl was standing in the vehicle when the accident occurred. However, in

his examination-in-chief before the Court, PW-1 gives an altogether different version by deposing that the deceased was sitting in the rear portion of the vehicle. This is not a minor discrepancy but a fundamental contradiction touching upon the very manner in which the incident is alleged to have occurred.

20. The significance of this inconsistency becomes more pronounced in the light of the further admission elicited from PW-1 during cross-examination, wherein he states that he did not instruct the deceased to sit down in the vehicle. This admission probabilizes the defence suggestion that the deceased may, in fact, have been standing at the relevant time, as originally stated in the complaint. If that be so, the possibility of the deceased losing balance on her own, particularly in a goods vehicle like a TATA Ace, cannot be ruled out.

21. Thus, the prosecution is faced with two mutually inconsistent versions emanating from its own principal witness: one indicating that the deceased was standing (as per Ex. P-1), and the other that she was sitting (as per chief-examination). The prosecution has failed to reconcile this contradiction or to place any cogent evidence to conclusively establish the actual position of the deceased at the time of the accident.

22. This inconsistency assumes critical importance because the position of the victim directly bears upon the question of causation and negligence. If the deceased was standing in a moving vehicle, particularly without any precaution, the fall could well be attributed to her own imbalance rather than to any rash or negligent act of the driver. In the absence of clear and consistent evidence on this aspect, it would be unsafe to attribute criminal negligence to the accused.

23. Therefore, this material contradiction in the evidence of PW-1 not only undermines his credibility but also creates a reasonable doubt regarding the manner of occurrence of the accident, thereby weakening the prosecution case on the essential ingredient of rash and negligent driving.

24. Turning to the evidence of PW-2 and PW-3, who are cited as mahazar witnesses to Ex. P-2 and Ex. P-3, their testimonies do not lend any substantive support to the prosecution case. Both witnesses admit their signatures on the mahazar and the spot sketch; however, they categorically state that they do not know the contents of the said documents. They are unable to depose as to whether any vehicle was seized in their presence. PW-2 goes to the extent of stating that he cannot mention the date, time, or even the purpose of the mahazar, and is unaware as to why the vehicle was

parked at the spot. PW-3 similarly expresses ignorance regarding the number of persons who signed the mahazar and admits that he did not see CW-7 signing the document, though both are shown as witnesses. Their evidence thus remains purely formal and does not establish either the manner of occurrence or the alleged seizure of the vehicle. The partial hostility of these witnesses further weakens the prosecution case. Consequently, Ex. P-2 and Ex. P-3 cannot be said to have been proved in accordance with law so as to corroborate the prosecution version regarding the scene of occurrence or the manner of accident.

25. The testimony of PW-4, the scribe of the complaint, also fails to advance the prosecution case. Though he admits that he wrote Ex. P-1 and identifies his signature, he clearly states that he wrote it at the instance of PW-1, who is his relative, and that he has no personal knowledge of the incident. Importantly, he does not support the prosecution regarding the cause of the accident or the alleged negligence of the accused. While he admits certain suggestions put by the learned APP during cross-examination, he simultaneously denies material aspects such as the sequence of treatment and the attribution of fault to the accused. This renders his testimony unreliable and casts doubt on the authenticity and voluntariness of the complaint itself.

26. Coming to the evidence of the Investigating Officers, Pws.5 to 7, their depositions are largely confined to procedural aspects of the investigation. PW-6, who conducted the initial investigation, admits in cross-examination that no written notice was issued to secure the presence of Cws.7 and 8 as mahazar witnesses. This omission assumes importance as it affects the credibility and transparency of the mahazar proceedings. PW-7, who continued the investigation, admits that he cannot state how many persons were travelling in the vehicle at the time of the accident, which is a crucial fact in a case involving alleged negligence arising out of passenger conduct. The inability of the Investigating Officer to clarify such a fundamental aspect creates a gap in the prosecution case. PW-5, being the officer who filed the charge sheet, merely speaks about receipt of reports and completion of investigation, and his evidence is formal in nature. None of the Investigating Officers have deposed to any direct material establishing rash or negligent driving by the accused.

27. With regard to the documentary evidence, Ex.P-1 (complaint) is rendered doubtful in view of the inconsistent and unreliable testimony of Pws.1 and 4. Ex.P-2 (mahazar) and Ex.P-3 (spot sketch) are not satisfactorily proved through independent and reliable witnesses, as Pws.2 and 3 have failed to support their contents. The photographs (Exs. P-4 to P-11), though identified by

the witnesses, merely depict the scene and do not establish the manner of driving or the negligence of the accused. The post-mortem report (Ex.P-13) establishes the cause of death, namely the injuries sustained by the deceased, but does not attribute the same to any rash or negligent act. Similarly, the IMV report (Ex. P-14) only speaks to the mechanical condition of the vehicle and does not indicate any circumstance suggestive of negligent driving. The others are not much helpful.

28. It is a settled principle of criminal law that the prosecution must prove its case beyond reasonable doubt. In offences involving rash and negligent driving, the prosecution has to establish not only that an accident occurred, but also that such accident was the direct result of a rash or negligent act of the accused. "Rashness" implies a reckless act done with disregard to consequences, while "negligence" means failure to take reasonable care expected of a prudent person. Therefore, there must be clear and convincing evidence showing the manner of driving, such as excessive speed, loss of control, or any specific act indicating disregard for safety.

29. In the present case, the evidence of the main witness, PW-1, is not reliable due to major contradictions and inconsistencies. His version is not consistent with the complaint,

especially regarding the position of the deceased. The possibility that the deceased was standing in the vehicle and lost balance on her own cannot be ruled out. The other witnesses, particularly PW-2 and PW-3, do not support the prosecution case in any meaningful way. The scribe of the complaint (PW-4) also does not confirm the allegations. The investigation also suffers from certain lapses, and the documentary evidence does not prove rashness or negligence.

30. It is also important to note that when a person travels in a goods vehicle, especially in a standing position without proper support, there is always a risk of losing balance. If such a possibility exists, and the prosecution fails to rule it out, the benefit of doubt must go to the accused. Therefore, this Court finds that the prosecution has failed to prove that the accused acted in a rash or negligent manner. The evidence on record does not show any specific act or conduct on the part of the accused which can be termed as rash or negligent. The case rests on assumptions rather than proof.

31. In criminal law, suspicion, however strong, cannot take the place of proof. When the evidence gives rise to doubt, the accused is entitled to benefit of such doubt. Accordingly, this Court holds that the prosecution has failed to prove the ingredients of the offences punishable under Sections 279 and 304A IPC beyond

reasonable doubt. Therefore, accused is entitled to the benefit of doubt and answers point Nos.1 and 2 in Negative.

32. **POINT No.3:** In view of the findings of point Nos.1 and 2, I proceed to pass the following:

ORDER

Acting U/Sec.255(1) of Cr.P.C. the accused is acquitted of the offences punishable U/Sec.279 and 304(A) IPC.

Bail bonds of the accused shall stand canceled.

The bail bond and surety bond executed U/Sec.437(A) of Cr.P.C shall be continued for a period of six months or till issuance of notice in respect of any appeal [if preferred] against the present judgment.

(Dictated to the Stenographer, directly on Computer and typed by him. The same is corrected and then pronounced by me in the open Court on this the **6th day of May 2026**)

(PUNITH B.R.)
Addl. Civil Judge & JMFC.,
Challakere.

ANNEXURE

1. List of witnesses examined for prosecution:

PW-1	-	Boraiah
PW-2	-	Ningaraja
PW-3	-	Sanna Boraiah

PW-4	-	Keshava
PW-5	-	Prabhakara Yallappa
PW-6	-	Mahesh Lakshmana
PW-7	-	Nalavagalu Manjunatha

2. List of documents on behalf of prosecution:

Ex.P1	-	Complaint
Ex.P1(a to c)	-	Signatures
Ex.P2	-	Spot Mahazar
Ex.P2(a to d)	-	Signatures
Ex.P3	-	Sketch
Ex.P3(a to d)	-	Signatures
Ex.P4 to 11	-	Photographs
Ex.P12	-	Inquest mahazar
Ex.P13	-	Postmortem Report
Ex.P13(a)	-	Signature
Ex.P14	-	IMV Report
Ex.P14(a)	-	Signature
Ex.P15	-	Statement of P.W.4
Ex.P16	-	FIR
Ex.P16(a)	-	Signature
Ex.P17	-	Notice U/Sec.133 IMV Act
Ex.P17(a)	-	Signatures
Ex.P18	-	Reply Notice
Ex.P18(a)	-	Signature
Ex.P19	-	Indemnity bond
Ex.P19(a)	-	Signature
Ex.P20 to 23	-	Photos
Ex.P21(a)	-	Signature

Ex.P23(a) - Signature

3. List of witnesses examined for accused:

Nil

4. List of documents on behalf of accused:

Nil

5. List of Material Objects:

Nil

Addl. Civil Judge and JMFC.,
Challakere.