

KAKB720001172017



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Presented on : 14-03-2017  
Registered on : 14-03-2017  
Decided on : 09-03-2026  
Duration : 8 years 11 months 26 days

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.**  
**SEDAM**

**C.C.No.32/2017**

**Dated this the 09<sup>th</sup> day of March-2026**

**Present: Sri. BALU**  
**B.A. L.L.B,**  
**Civil Judge & JMFC., Sedam.**

|  |   |
|--|---|
| <b>Complainant</b>                           | The State Represented by<br>Sedam Police Station.<br><br><b>(By A.P.P.)</b>   |
| <b>-- Versus --</b>                          |   |
| <b>Accused</b>                               | Basappa S/o Malappa Badepoor,<br>Age: 42 years, Occ: Driver work,<br>R/o Hosakeri.<br><br><b>(By Sri. S.M., Advocate)</b> |
| Date of commission<br>of offence             | 28.11.2016  |
| Date of report of<br>offence                 | 29.11.2016  |
| Name of the<br>Complainant                   | Sri. Sharanbassu S/o Amarappa Itagi   |
| Date of starting of<br>recording of evidence | 29.11.2021  |
| Date of closing of                           | 09.04.2025  |



|                       |   |
|-----------------------|---|
| recording of evidence |   |
| Offence complained of | U/Sec.279, 304(A) of IPC and U/sec.187 of IMV Act |
| State represented by  | Asst. Public Prosecutor                           |
| Accused defense by    | By Sri. S.M., Advocate                            |
| Opinion of judge      | As per final order                                |

**Sd/-  
(Balu)  
C.J. & J.M.F.C.,  
Sedam**

### **J U D G M E N T**

The CPI Sedam has submitted charge sheet against the accused for the offence punishable U/Section 279, 304(A) of Indian Penal Code (For short IPC) R/w 187 of Indian Motor Vehicles Act (In short for IMV).

#### **2. The brief facts of the prosecution case is as under;**

The Criminal Law has been set into motion based on the First Information Statement of Sharabassu S/o Amarappa Itagi. The averments made in the First Information Statement discloses that, on 28-11-2016 at about 08-30 PM on the boundary of village Handarki at Ganterwari the deceased Yallappa S/o Suresh Sheer was proceeding on the motor cycle No.KA.33/J-2042 in front of Hitachi under the light of said vehicle at that time the Accused came from opposite side by driving his Tipper No.KA-32/C-5379



in rash and negligent manner and dashed the deceased Yallappa who was proceeding on motor cycle, due to which he sustained grievous injury on his head, shoulder and right knee and also minor injuries on different parts of the body and succumbed to the death on the spot. Thereafter, the Accused elighted his Tipper in the adjacent land and fled from the spot. Thereafter, the informant went to the police station and lodged First Information Statement. Based on the said information, a case in Crime No.328/2016 came to be registered against the accused for the offences under section 279, 304-A of IPC and Under Section 187 of IMV Act

**3.** The investigating officer after completion of investigation filed the charge sheet against the accused for the offence punishable U/sec. 279, 304(A) of IPC and U/sec.187 of IMV act.

**4.** After filing the charge-sheet cognizance is taken for the aforesaid offences as there are sufficient of material against the accused, after due service of summons, accused appeared through his counsel and obtained bail. Thereafter, prosecution papers are supplied to the accused as per Sec.207 of Code of Criminal Procedure. Substance of Accusations has been read over and explained to the accused in his vernacular. Accused pleaded no guilty and claims to be tried. Therefore, case is posted for prosecution evidence.

**5.** In order to prove the guilt of the accused, prosecution has examined 6 witnesses as PW.1 to PW.6 and got marked



Ex.P.1 to 11 documents along with its sub-markings. The accused has been examined under Sec.313 of Cr.P.C. The accused has denied all the incriminating circumstances appearing in the prosecution case and submitted no defence evidence.

6. Heard, arguments of Learned Assistant Public Prosecutor for state and so also heard arguments Learned Advocate for accused.

7. After going through the evidence on record and documents marked in this case and so also on hearing of arguments of both side the following points that would arise for the consideration of this court are as under,

### **POINTS**

1. Whether the prosecution proves beyond all reasonable doubt that, on 28-11-2016 at about 08-30 PM on the boundary of village Handarki at Ganterwari the deceased Yallappa S/o Suresh Sheer was proceeding on the motor cycle No.KA.33/J-2042 in front of Hitachi under the light of said vehicle at that time the Accused came from opposite side by driving his Tipper No.KA-32/C-5379 in rash and negligent manner and dashed the deceased Yallappa who was proceeding on motor cycle in rash and negligent manner so as endanger to human life and safety and thereby he committed an offence punishable U/Sec.279 IPC?
2. Whether the prosecution proves beyond all reasonable doubt that, due to aforesaid



accident, deceased Yallappa S/o Suresh Sheer sustained grievous injuries and succumbed to death on the spot and thereby the accused committed an offence punishable U/Sec.304(A) IPC?

3. Whether prosecution proves beyond all reasonable doubt that, on the aforesaid date and time after accident the accused being driver of Tipper bearing Reg.No.KA-32-C/5379 fled from the spot without giving first aid treatment and informing police thereby committed an offence punishable U/sec.187 of IMV act?

4. What order?

8. My answers to the above points are as under

Point No.1 to 3 : In the Negative.

Point No.4 : As per final order  
for the following.

### **REASONS**

9. **Points No.1 to 4:-** All these points are taken up together for common discussion to avoid repetition of facts and for better appreciation of evidence.

10. It is the fundamental principle of criminal jurisprudence that prosecution has to prove its case beyond all reasonable doubt. In order to prove the case, the prosecution got examined PW.1 to PW.6 and got marked Ex.P.1 to Ex.P.11 documents along with its sub-markings.



11. PW.1 Sharanbassu S/o Amarappa Itagi is the informant , PW-2 Chandrashekar S/o Malanna Yadrami and PW-3 Basavaraj S/o Shankreppa are the witnesses, PW-4 Vijaykumar S/o Tannamallayyath is the pancha witness, PW-5 Santosh Rathod and PW-6 P.V. Salimath are the investigating officers. Ex.P.1 is the First Information Statement, Ex.P-2 is the inquest panchanama, Ex.P-3 is the spot panchamama, Ex.P-4 to 7 are the photos, Ex.P-8 is the First Information report, Ex.P-9 is the Idemnity bond, Ex.P-10 is the MVA report and Ex.P-11 is the post mortem report.

**I). EVIDENCE LET IN BY THE PROSECUTION IN RESPECT OF DEATH OF DECEASED IN A ROAD ACCIDENT:**

12. In order to prove that deceased Yalappa S/o Suresh Sheer died on account of injuries sustained in a road accident, the prosecution has examined PW.1 to 3 and got marked Ex.P.2 inquest panchanama and Ex.P.11 Postmortem Report of deceased Yalappa S/o Suresh Sheer. Firstly, I draw my attention to the testimony of PW.1 and he in his examination in chief deposed what he stated in the first information statement. Now let me examine the testimony of PW-2 and 3. The PW-2 and 3 deposed that the deceased Yalappa S/o Suresh Sheer is died in the road accident.

13. PW.6 Panchakshari Veerayya Salimath, the investigating officer in his examination in chief deposed that, on 29-11-2016 he visited the Government hospital Sedam and conducted the inquest panchanama on deceased Yalappa S/o



Suresh Sheer in the presence of CW-2 and 3 as per Ex.P-2. Further he deposed that on 22-12-2016 he received post mortem report of deceased Yalappa as per Ex.P-11. It is to be noted that, nothing has been suggested by the accused to PW.1 to 3 in respect of death of Yalappa S/o Suresh Sheer, that the deceased not died on account of the injuries sustained in a road accident. Ex.P.11 postmortem report reveals that, deceased Yalappa S/o Suresh Sheer died due to polytrauma as a result of RTA. As such, it could be concluded that the prosecution has ably proved that the deceased Yalappa S/o Suresh Sheer died on account of injuries sustained in the road accident in aid of PW.1 to 3 and Ex.P.11 postmortem report.

## II. DRIVER ON WHEELS

14. In order to prove that the accused was driving the Tipper bearing No.KA-32-C-5379 on the alleged date of incident/accident the prosecution has examined PW.1 to 3. PW-1 in his examination in chief deposed that accident occurred on the account of the fault of the driver of Tipper and he has identified the accused at Police station. PW-2 and 3 also in their examination in chief deposed that the accident occurred on the account of fault of the driver of Tipper and also identified his name as Basavaraj. It is to be noted that, the accused has not denied he was driving the aforesaid Tipper on the alleged date of incident. Notably, it is suggested by Accused by PW-1 ಹಿಚಾಚಿ ಹಾಗೂ ಟಿಪ್ಪರ ವಾಹನ ಒಂದೇ ಕಂಪನಿಯಲ್ಲಿ ಕೆಲಸಮಾಡುತ್ತಿವೆಯಾ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಕಚ್ಚಾ ದಾರಿಯಲಿ ದ್ವಿಚಕ್ರ ವಾಹನ ಸ್ವಿಡಾಗಿ ಓಡುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಹಿಚಾಚಿ ವಾಹನ ಸಹ ಅಷ್ಟೊಂದು ಸ್ವಿಡಾಗಿ



ಹೋಗುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಅದೇ ರೀತಿ ಟಿಪ್ಪರ ವಾಹನವು ಸ್ವಿಡಾಗಿ ಹೋಗಲು ಆಗುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಿಲ್ಲ. Further, it is suggested by counsel for accused to PW-2 ಕಚ್ಚಾ ರಸ್ತೆಯಲ್ಲಿ ವಾಹನಗಳು ಸ್ವಿಡಾಗಿ ಹೋಗುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಿಲ್ಲ. The aforesaid suggestion put-forth by the accused to PW-1 and 2 makes it clear that accused was driving the aforesaid Tipper on the alleged dated of incident/accident. As such, it could to be concluded the prosecution has ably proved that the accused was driving the aforesaid Tipper on the alleged date of incident/accident.

### **III. SPOT PANCHANAMA/SEIZURE PANCHANAMA**

**15.** In order to prove the place of occurrence/Ex.P.3 spot panchanama and seizure panchanama, the prosecution has examined PW-4 Vijaykumar S/o Channamallayya Math and PW-6 Panchakshari Veerayya Salimath. PW-4 Vijaykumar in his examination in chief identified his signature at Ex.P-3 spot panchanama/seizure panchanama and deposed during the course of cross examination by learned APP that he participated in the panchanama on 30-11-2016 in the morning 09-00 AM to 10-00 AM in view of accident took place near the land of Hanumanth Dasar situated at Handarki village and seized one motorcycle belongs to Honda Shine company from the spot and one Tipper. Further, he identified the photographs as per the Ex.P-4 to 7 in respect of alleged Tipper and motorcycle. PW-6 Panchakshary Veerayya Shalimath in his examination in chief deposed on 30-11-2016 he visited the incident spot and drawn the Ex.P-3 panchanama in the presence of CW-2 and 3 and seized one Tipper bearing No.KA-32/C-5379 and motor cycle No.KA-



33/J-2042. Further, he identified the photographs of the said vehicles which are marked as Ex.P-4 to 7.

**16.** It is to be noted that it is the case of the prosecution that PW.6, the investigating officer has seized the Tipper and motorcycle involved in the accident under Ex.P.3 seizure panchanama and to prove the same, the prosecution has examined PW.4 who is the seizure pancha to Ex.P.3. PW-4 deposed that the police have seized the aforesaid vehicles in his presence from the spot. Ex.P-3 seizure panchanam discloses that, the investigating officer has seized the Tipper bearing KA-32-C-5379 and motorcycle bearing No.KA-32/J-2042 in the presence of CW-2 and 3. Further, it is worth mention here that the accused have not disputed about the seizure of vehicles involved in the accident. Therefore, it can be easily concluded that, the prosecution has succeed to prove the seizure of aforesaid vehicles.

**IV) EVIDENCE LET IN BY THE PROSECUTION IN RESPECT OF RASH AND NEGLIGENT DRIVING BY THE ACCUSED.**

**17.** As discussed above accused has not disputed that he was not driving the Tipper bearing No.KA-32/C-5379 on the alleged date of incident/accident, in such an event, the only question that is to be ascertained and determined is that whether the accused was driving the aforesaid Tipper in a rash and negligent manner and was responsible for the death of deceased Yalappa S/o Suresh Sheer. At this juncture, I find it appropriate



to Court the ruling reported in **2012 AIR SCW** 4659 decided between **Ravi Kapur Vs. State of Rajasthan**, wherein the Hon'ble Apex Court held that:

*“A person who drives on the road is held responsible for the act as well as the result, and that, it may not always be possible to determine with reference to the speed of the vehicle whether the person was driving rashly or negligently and that, even, if one is driving the vehicle at a low speed, but recklessly and negligently, it would amount to rash and negligent driving within the meaning of Sec.279 of IPC.*

*Further the Hon'ble Apex Court at para No.10 also held that, rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in the light of attending circumstances”.*

*At para NO.11, the Hon'ble Apex Court held that, 'Negligence' means omission to do something which a reasonable and prudent person guided by the consideration which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do and held that, whether there exists negligence perse or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court.*

**18.** In the light of the principle laid down above, a careful scrutiny of the oral testimony let in by the prosecution, it reveals



that, the only material witnesses to the incident/accident are PW.1 Sharanbasu S/o Amarappa, PW.2 Chandrashekhar S/o Mallanna Yadrami, PW-3 Basavaraj S/o Shankreppa. PW.1 Sharanbasu in his examination in chief almost deposed what has been stated in the Ex.P-1 first information statement and he has deposed accident occurred on account of the fault of the driver of the Tipper. PW-2 Chandrashekar has also reiterated almost what has been stated by PW-1.

**19.** It is to be noted that PW-3 Basavaraj has not identified the accused. PW-3 has not supported to the case of prosecution. Though, the learned APP cross examined him by treating hostile witness nothing worth is elicited from his mouth so as to prove the rash and negligent driving by the accused on the alleged date of incident/accident. Further, during the course of cross examination he denied the suggestion that the accused was driving the aforesaid Tipper in rash and negligent manner and due to which the said incident/accident took place. As the accused has not disputed that he was not driving the aforesaid tipper on the alleged date of incident/accident, even though PW-3 has not identified the accused before the Court, the same is up non consequence.

**20.** It is to be noted that PW-1 during the course of cross examination by learned counsel for accused deposed that he was at Sindagi when he came to know about the said accident which is situated about 80 k.m from the incident spot. Apart from this PW-2 during the course of cross examination deposed that he was



at Yadgir at the time of incident/accident which is situated at 35 k.m from the spot. PW-3 is not supported to the case of prosecution as stated supra.

**21.** On perusal of entire evidence let in the by the prosecution it clearly shows that non of the witness were present on the spot when the accident is took place. Before advertng to the merits of the case, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused in question with the offences and prosecution rests it case solely on circumstantial evidence. Hon'ble Supreme Court of India in Catena of decisions consistently held that when a case rest upon circumstantial evidence such evidence must satisfy the following tests:

1. *The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
2. *Those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;*
3. *The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else;*
4. *The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that, of the*



*guilt of the accused and such evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence. ( SEE Arun Bhanudas Pawar V/s State of Maharashtra- [ (2008) 11 SCC 232 ]*

**22.** It is also well settled legal principle that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proven circumstances must be consistent only with hypothesis of the guilt of the accused and totally inconsistent with his innocence.

**23.** The facts of the present case required to be assessed in the backdrop of these well-settled legal principles. Prosecution case is entirely rests on circumstantial evidence. As already noted, in case of circumstantial evidence, prosecution has to establish with cogent and clinching evidence all relevant chain of events so as to bring home the guilt of the accused.

**24.** The CW-4 being the only eyewitness to the prosecution case has not examined by the prosecution because the presence of this witness is not secure inspite of best endeavor made by this Court. Therefore, the non examining this witness is seriously fatal to the case of prosecution.



**25.** Presence of CW-4 and 6 witnesses could not be secured inspite of issuance of summons for several times. In this context it is relevant to place reliance on the decision of **Hon'ble High Court of Karnataka reported in 1998 (3) Karnataka Law Journal 128 (State of Karnataka V/s Krishna @ Challakili and another)**, which reads as under:

“ As far as the production of evidence is concerned, the Investigating Officers shall be specifically informed that it is their personal responsibility for which they will be held personally accountable if the requisite evidence such as property, documentary evidence etc., is not forthcoming before the Court. More importantly, it will have to be clearly brought to the notice of the Police that they will have to be particularly vigilant with regard to the service of summons and warrants on the accused persons as case after case has been failing on specious plea that the witnesses have not been produced. All necessary steps must be taken to ensure the full particulars and whereabouts of the witnesses and whenever they are required to be produce before a Court, summons or warrants will have to be executed on a time bound basis and without any false or dishonest excuses being made. It has almost become a joke for the Courts to have to put up with thousands of false endorsements from the Police who do not even lift their little finger for the service of summons and executing the warrants. The supervisory Officers shall therefore ensure that stringent direction should be issued to put a stop to this malpractice.”

**26.** Same view is reiterated in subsequent decision of **Hon'ble High Court of Karnataka reported in 1998 (3) K.L.J. 274**



**(State of Karnataka V/s Ravi and antoher)**, which reads as under:

“ (B) CRIMINAL PROCEDURE CODE, 1973, Section 482 –Criminal trial- Inordinate delay in conclusion of-Non-production of evidence resulting in acquittal of accused and failure of justice- Such default by prosecution give rise to suspicion that default was deliberate to help the accused to escape conviction-Such cases should be looked into and appropriate action taken against persons found responsible”

**27.** In the light of principles emerging from the above-referred decisions, the Investigating Agency has failed to produce the witnesses inspite of best endeavor made by the Court. Further, the CW.2, 8 and 9 given up by learned APP. Therefore, Court has no option except to give benefit of doubt to the accused. PW.5 & 6 being the investigating officer they have deposed about duty done by them during the course of investigation. Therefore there testimony can not be form a base for conviction.

**28.** Apart from PW-1 and 2 being the only material witness have deposed that they were not present on the alleged date of incident/accident on the spot. Therefore, on the basis of PW-1 and 2 it cannot be concluded that the accused was driving the Tipper in rash and negligent manner as on the alleged date of incident/accident. Though, by producing Ex.P-2 and 11 documents prosecution has established that the deceased Yallappa S/o Suresh Sheer died in the road accident, but it cannot be said that he died on account of the part of the accused. Further, it is to be noticed that the investigating officer filed



charge sheet filed against the accused for the offence punishable under section 187 of IMV act, but there is no evidence let in by the prosecution to prove this offence. Except oral testimony of PW-1 to 3. As discussed above the entire case of prosecution is rest upon the circumstantial evidence therefore, the testimony of PW-1 to 3 is not reliable to convict the accused. Therefore, it could be concluded that the prosecution has totally failed in establishing the guilt of the accused. As such benefit of doubt is extended to the accused and he is entitled for acquittal. Hence, I answer point No.1 to 3 in **Negative**.

**29. Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following:

**ORDER**

In exercise of power conferred U/sec., 255(1) of Code of Criminal Procedure the accused is acquitted for the alleged offences punishable U/Sec. 279, 304(A) of IPC and under section 187 of IMV Act.

Bail bond and surety bonds stands cancelled after completion of appeal period.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the 09<sup>th</sup> day of March-2026).

**Sd/-  
(Balu)  
C.J. & JMFC., Sedam**



**ANNEXURE**

**List of the witnesses examined on behalf of the Prosecution:-**

|      |   |                                    |
|------|---|------------------------------------|
| PW.1 | : | Sharnubasu S/o Amarappa Itagi      |
| PW.2 | : | Chandrashekar S/o Malanna Yadrami  |
| PW.3 | : | Basavaraj S/o Shankrappa Itagi     |
| PW.4 | : | Vijaykumar S/o Channamalayya Math  |
| PW.5 | : | Santosh Rathod S/o Shankar Rathod  |
| PW.6 | : | Panchakshari S/o Veerayya Salimath |

**List of the witnesses examined on behalf of the Accused:-**

-NIL-

**List of the documents marked on behalf of Prosecution**

|                |   |                             |
|----------------|---|-----------------------------|
| Ex.P.1         | : | First Information Statement |
| Ex.P.1(a)      | : | Signature of PW-1           |
| Ex.P-2         | : | Panchanama                  |
| Ex.P.2(a)      | : | Signature of PW-4           |
| Ex.P.2(b)&(c): | : | Signature of PW-6           |
| Ex.P-3         | : | Seizure panchamama          |
| Ex.P.3(a)      | : | Signature of PW-4           |
| Ex.P.3(b)      | : | Signature of PW-6           |
| Ex.P.4 to 7:   | : | Photos                      |
| Ex.P.4(a)      | : | Signature of PW-6           |
| Ex.P.8         | : | First Information Statement |
| Ex.P.9         | : | Indemnity bond              |
| Ex.P.9(a)      | : | Signature of PW-6           |
| Ex.P-10        | : | IMV report                  |
| Ex.P.10(a)     | : | Signature of PW-6           |
| Ex.P-11        | : | Post mortem report          |
| Ex.P.11(a)     | : | Signature of PW-6           |

**List of the witnesses examined on behalf of Court:-**

- NIL -

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**List of the documents marked on behalf accused:-**

- NIL -

**Sd/-  
(Balu)  
C.J. & JMFC., Sedam**

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