

IN THE COURT OF PRL., DISTRICT & SESSIONS JUDGE
AT HAVERI

PRESENT: **Smt.S.H.Renukadevi, B.Sc. LL.B.**
 Prl., District & Sessions Judge,
 Haveri.

DATED THIS THE 29th DAY OF JANUARY 2020.

Crl.Appeal No.76/2019

APPELLANT: Rajaksab @ Abdul Rajaksab S/o Kasimsab,
(Accused) Age: 28 years, Occ: Driver,
 R/o Davanagere.

(By Sri. C.H. Gudagur, Advocate)

-Vs-

RESPONDENT: The State of Karnataka,
 Represented by the learned Public Prosecutor
 Haveri; Smt.Saroja G.Koodalagimath.

J U D G M E N T

 This appeal is preferred against the judgment of conviction and sentence passed in C.C.No.7/2019 dt.08.04.2019 by the Prl., Senior Civil Judge and C.J.M., Haveri. The appellant was accused and he was tried for the offence punishable U/Ss.279 and 304(A) of IPC.

2) The learned trial judge has held that appellant/accused is guilty of the offence U/Ss.279 and 304(A) of IPC and sentenced him as follows;

- He has sentenced him to undergo simple imprisonment for 3 months and fine of Rs.1,000/- and in default of payment of fine, S.I. for eight days for the offence punishable U/S.279 of IPC, and
- He has sentenced him to undergo S.I. for one year and to pay a fine of Rs.5,000/- and in default of payment of fine, S.I. for 3 months for the offence punishable U/S.304(A) of IPC.

3) In brief, the case of prosecution, is as follows:

On 22.02.2009 at 3.00 A.M., on NH-4 Road /Haveri-Shiggaon road; particularly on Varada bridge about 3.00 A.M., appellant/accused being the driver of the Lorry bearing Regn.No.KA-08/3609 and drove the same in a rash and negligent manner and dashed to the left-side parked lorry bearing Regn.No.MH-12/UA-8977 from back side. Consequently, cleaner of his lorry by name Saddam Hussain died on the spot. Moreover, another driver of the lorry by name

Bheemappa Kanagara has sustained grievous injuries. Moreover, nine she buffaloes which were carrying in the lorry, also died. Hence, appellant/accused has been charge sheeted for the offences noted supra.

4) Appellant/accused has pleaded not guilty before trial court and so, in order to establish its case, the prosecution has got examined 8 witnesses and also got exhibited 30 documents. Thereafter, statement U/S.313 of Cr.P.C. was recorded by explaining the incriminating circumstances appearing in the evidence of prosecution witnesses and the appellant/accused has denied all those circumstances and defence evidence has not been led.

5) After hearing both side, and considering the evidence on record; both oral and documentary, the learned trial judge has convicted the appellant/accused and passed the sentence as noted earlier.

6) Aggrieved appellant/accused, has questioned the legality of conviction and sentence in this appeal and thereby, prays for setting aside the same and consequently, his acquittal.

7) Heard both side.

8) The following points would arise for my determination;

- 1. Whether the learned trial judge has properly appreciated the evidence on record; both oral and documentary ?*
- 2. Whether the judgment of trial court calls for interference of this court ?*
- 3. To what order ?*

9) My findings on the above points are as under;

1. In the Affirmative,
2. Partly in the Affirmative, and
3. As per final order

for the following:

REASONS

10) **POINT Nos.1 and 2:-** For the sake of convenience, these two points taken up together for answering.

11) Case of the prosecution runs as under;

On 22.02.2009 at 3.00 A.M., on NH-4 Road /Haveri-Shiggaon road; particularly on Varada bridge about 3.00 A.M., appellant/accused being the driver of the Lorry bearing

Regn.No.KA-08/3609 and drove the same in a rash and negligent manner and dashed to the left-side parked lorry bearing Regn.No.MH-12/UA-8977 from back side. Consequently, cleaner of his lorry by name Saddam Hussain died on the spot. Moreover, another driver of the lorry by name Bheemappa Kanagara has sustained grievous injuries. Moreover, nine she buffaloes which were carrying in the lorry, also died. Hence, he has committed the offence punishable U/Ss.279, 338 and 304(A) of IPC.

12) In order to prove its case, the prosecution has examined in all 8 witnesses. According to the case of prosecution, PW.1 A.M. Ajamattulla and P.W.8 - Gudensab are the Panchs to the Spot and inquest Mahazar, PW.2 Imamsab is the driver of the lorry bearing Regn.No.MH-12/UA-8977, PW.3 Basappa Bheemappa Kanagar is also injured in the incident, PW.4 Sadik S/o Abdulmunaf is one of the inmates of the lorry, PW.6 - Abdulmunaf Moulasab is the Owner of the offending lorry, PW.5 P. Venkataramana Raddi is the IMV Inspector, PW.7 - M.G. Pampapati is the Investigating Officer. The prosecution has also got exhibited the six Photographs, Inquest Mahazar, Spot

mahazar, P.M.Report, Information/complaint, statement of PW.3, IMV report, police notice, Reply to the notice, 9-PM report of She buffaloes, Wound certificate of accused, Wound certificate of PW-4, PM report, Hand sketch, Police notice, Reply to the notice, Indemnity bond, 9-PM report of she buffaloes, as Exs.P.1 to 30 respectively.

13) In order to prove the alleged accident against the appellant-accused, primarily, the prosecution has to prove that appellant/accused was the driver of the Lorry bearing Regn.No.KA-08/3609 at the time of alleged accident. Secondly, it has to prove that the accident in question took place due to rash and negligent driving of the said lorry by him.

14) PW.4 Sadik and PW.3 Basappa Bheemappa Kanagar who were the inmates of lorry bearing Regn.No. KA-08/3609, have identified the accused before the trial court that the accused was the driver of the offending vehicle at the time of alleged accident. Besides, owner of the vehicle PW.6/ Abdulmunaf Moulasab has deposed before the trial court that the accident took place while the appellant/accused was driving the vehicle

and it was brought to his knowledge by the police. Moreover, defence is not disputing this fact. We know, admission is the best piece of evidence. Hence, it is clear that the prosecution has proved the identity of appellant/accused as the driver of the motor vehicle involved in the accident.

15) Admittedly, another vehicle/lorry bearing Regn.No. MH-12/AU8977 is stationary vehicle in the instant case at the time of accident. Against this backdrop, let us consider the secondary point. Evidence of the PW.4/Sadik reveals; “Accident took place due to rash and negligent driving of the accused. In spite of caution given by him, his driver/accused drove the vehicle in a rash and negligent manner with high speed, this was the cause for the accident”. Another inmate/PW.3/Basappa Bheemappa Kanagar though does not support the prosecution case, it does not help the accused. Evidence of said PW.4 who is the son of owner of the vehicle is sufficient to hold that accused is guilty for the offence punishable U/S 279 of IPC. Besides, hostility of the informant/PW.1 who is the driver of the stationary lorry, does not take away the prosecution case. Against this backdrop, let

us consider the spot Mahazar Ex.P.8. According to the case of prosecution, investigating Officer having received the complaint, visited the spot on 22.02.2010 and drawn the Mahazar as per Ex.P.8 in the presence of Puncts. On perusal of recitals of Ex.P.8, it is crystal clear that the road is 30ft width at the spot of accident, offending vehicle dashed stationary vehicle and thereby its frontal side was damaged and stationary vehicle's back side was damaged. This picture clearly indicates that the accident was due to rash and negligent driving of the lorry by the applicant/accused.

16) Let us consider the reports of IMV. Inspector of Motor Vehicles has been examined in this case to say as to where exactly vehicle was stopped after the accident and what is the reason for this accident. According to this report, two vehicles have been inspected at the spot of accident itself. Ex.P.11 report reveals the following damage to the lorry bearing Regn.No MH-12/AU-8977;

- 1) Front-left body and mudguard damaged.
- 2) Front-left bumper damaged.
- 3) Rare right body damaged.

- 4) Rare right tail lamp damaged.
- 5) Rare bumper damaged, and
- 6) Rare left bottom tyre flatted.

Ex.P.11 report also reveals the following damage to the lorry bearing Regn.No MH-12/AU-8977;

- 1) Front Wind-screen glass damaged
- 2) Front left body and door damaged,
- 3) Front axle dis-located from its fixture.
- 4) Front left tyre damaged
- 5) Front left head-light damaged.

According to this report and evidence of IMV Inspector/PW.5, this accident was not due to any mechanical defect of the vehicles. Consequently, this report also points out the appellant/accused.

17) In the instant case, accident and consequential death of one Saddam Husen, and injuries to PW.3/Basappa Bheemappa Kanagar is an admitted fact. So discussion on the inquest report/Ex.P.7 and P.M.Report/Ex.P.25, and also wound certificate of PW.3 is not required. Moreover, death of nine she buffaloes is not in dispute and so discussion on concerned Inquest report

and PM reports is not necessary. Besides, evidence of the Investigating Officer/PW.7 is very formal in nature, and discussion on his evidence is also not required.

18) In view of my observations in the preceding paras, I am of the opinion that the prosecution has proved its case before the trial court by placing clear, cogent and consistent evidence. So, I hold that the trial court has properly appreciated the evidence on record and recorded its finding.

19) The trial Court has sentenced the appellant/accused to undergo simple imprisonment for 3 months and fine of Rs.1,000/- and in default of payment of fine, S.I. for eight days for the offence punishable U/S.279 of IPC. For the offence punishable U/S.279 of IPC, sentence of imprisonment is not mandatory. So, sentence passed by the trial court can be modified, if sentence of fine is confirmed, it meets the ends of justice.

20) The trial Court has sentenced the appellant/accused to undergo simple imprisonment for 1 year and fine of Rs.5,000/- and in default of payment of fine, S.I. for 3 months for the

offence punishable U/S.304(A) of IPC. For the offence punishable U/S.304(A) of IPC, sentence of imprisonment is mandatory. It is submission of learned Counsel appearing for appellant/accused that the appellant/accused is aged about 37 years, he is driver by occupation, he is married having wife and children, and is the bread earning member of the family and so, lenient view may be taken while imposing the sentence. So, sentence passed by the trial court can be modified. Accordingly, sentence of fine is confirmed and sentence of imprisonment is reduced to six months, and it meets the ends of justice. Accordingly, I answer Point No.1 in the **Affirmative**, and Point No.2 **Partly in the Affirmative**.

21) **POINT No.3**:- In view of my findings recorded on points No.1 and 2, I proceed to pass the following order;

O R D E R

*The appeal is hereby allowed in part.
Consequently, the impugned sentence of
imprisonment of the trial court in
C.C.No.7/2019 (old CC.No. 395/2010)
dt.08.04.2019 by the Prl., Senior Civil*

Judge and CJM, Haveri is modified for the offence punishable U/Ss. 279 and 304(A) of IPC.

Appellant/accused has been convicted S.I. for 3 months and to pay a fine of Rs.1,000/- and in default of payment of fine, S.I. for eight days for the offence punishable U/S.279 of IPC by the trial court. Now, sentence of imprisonment has been cancelled by this Court.

Appellant/accused has been convicted S.I. for one year and to pay a fine of Rs.5,000/- and in default of payment of fine, S.I. for 3 months for the offence punishable U/S.304(A) of IPC by the trial court. Now, sentence of imprisonment has been modified and reduced to six months.

Office is required to send entire record of the trial court along with copy of this judgment to the trial court for appropriate action.

*(Dictated to stenographer on on-line computer, typed by her, corrected by me and then pronounced in open Court, on this the **29th day of January, 2020**)*

(S.H.RENUKADEVI)
Prl., District and Sessions Judge,
Haveri.

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Judgment pronounced in the
open court vide separate order:

ORDER

*The appeal is hereby allowed in part.
Consequently, the impugned sentence of
imprisonment of the trial court in
C.C.No.7/2019 (old CC.No. 395/2010)
dt.08.04.2019 by the Prl., Senior Civil
Judge and CJM, Haveri is modified for the
offence punishable U/Ss. 279 and 304(A)
of IPC.*

Appellant/accused has been convicted S.I. for 3 months and to pay a fine of Rs.1,000/- and in default of payment of fine, S.I. for eight days for the offence punishable U/S.279 of IPC by the trial court. Now, sentence of imprisonment has been cancelled by this Court.

Appellant/accused has been convicted S.I. for one year and to pay a fine of Rs.5,000/- and in default of payment of fine, S.I. for 3 months for the offence punishable U/S.304(A) of IPC by the trial court. Now, sentence of imprisonment has been modified and reduced to six months.

Office is required to send entire record of the trial court along with copy of this judgment to the trial court for appropriate action.

**Prl., District and Sessions Judge,
Haveri.**