

KADW050002232022



Presented on : 25-01-2022
Registered on : 25-01-2022
Decided on : 26-02-2024
Duration : 2 years, 1 months,
1 days.

**IN THE COURT OF THE IV ADDL.SENIOR CIVIL JUDGE &
JMFC AT DHARWAD.**

PRESENT:- SRI.AMOL JAYKUMAR HIRIKUDE
B.A., LL.B.
IV Addl. Sr.Civil Judge and JMFC
Dharwad.

Dated this the 26th day of February 2024.

C.C.No.43/2022

Complainant : Dharwad Rural Police station

(By L/d. Senior APP)

-Vs-

Accused : Irappa S/o Yallappa Hanchinal
Age :32 years, Occ:Labourer,
R/o: Saundatti road, near Muraghamath,
Tq & Dist:Dharwad.

(R/by Sri.P.B.K, Adv)

Date of offence : 15.06.2021

Date of report of offence : 17.06.2021

Name of the complainant : Irappa S/o Shivappa Manikatti.
Offence complained of : **Sec.279, 337, 304A of IPC and Section 146 R/w 196 of MV Act.**
Date of recording of evidence : 27.06.2022.
Date of closing of evidence : 13.02.2024.
Opinion of the Judge : Accused is not found guilty.

:-J U D G M E N T:-

On the basis of the charge sheet submitted by the Dharwad Rural Police, this case has been registered against the accused for the offences punishable **under Section 279, 337, 304(A) of Indian Penal Code and Section 146 R/w 196 of MV Act.**

2. The case of the prosecution is that, on 15.06.2021 at about 4.00 pm., within the jurisdiction of Dharwad Rural police station on Dharwad-Savadatti road, near Hadibasavanna temple, the accused as a rider was proceeding on his uninsured Honda Activa motorcycle bearing Regn.No.KA-25/ER-5689 along with pillion rider from Dharwad side towards Karadigudda

side in a rash and negligent manner and in a high speed and at that time, suddenly one dog came across him and therefore, he lost control over his motorcycle and due to skid of the motorcycle, he fell down from the motorcycle along with pillion rider and thereby caused accident and due to the said accident, the rider/accused had sustained injuries and pillion rider had sustained grievous injuries and pillion rider died while on treatment.

3. Therefore, on the basis of the first information lodged by CW.1 Irappa Shivappa Manikatti, the Dharwad Rural police have registered a case against the accused for the offences punishable **under Section 279, 337, 304(A) of IPC and Section 146 R/w 196 of MV Act** and filed charge sheet against him for the said offences.

4. After filing charge sheet, Court took cognizance of the offences against the accused and issued summons to the accused. He appeared and got enlarged himself on bail. The copies of the prosecution papers were furnished

to the accused as required **under Sec.207 of Cr.P.C.** Thereafter, after hearing both side, the accusation for offences punishable under **Section 279, 337, 304(A) of IPC and Section 146 R/w 196 of MV Act** were came to be framed and read over and explained to accused. He pleaded not guilty and claimed to be tried and hence, the matter was posted for evidence of the prosecution.

5. In order to prove the guilt of the accused, the prosecution has examined **PW.1 to PW.9** and got marked **22** documents as **Ex.P1 to Ex.P22**.

6. The statement of accused as required under Section 313 of Cr.PC is recorded. The accused did not choose to lead evidence on his behalf.

7. Heard the arguments of learned APP and learned counsel for the accused.

8. Now the following points arise for my consideration:

1.	Whether the prosecution proves beyond all reasonable doubt that, on 15.06.2021 at about 4.00 pm., within the jurisdiction of Dharwad Rural police station on Dharwad-Savadatti road, near Hadibasavanna temple, the accused as a rider was proceeding on his uninsured Honda Activa motorcycle bearing Regn.No.KA-25/ER-5689 along with pillion rider from Dharwad side towards Karadigudda side in a rash and negligent manner and in a high speed and at that time, suddenly one dog came across him and therefore, he lost control over his motorcycle and due to skid of the motorcycle, he fell down from the motorcycle along with pillion rider and thereby caused accident and due to the said accident, the rider/accused had sustained injuries and pillion rider had sustained grievous injuries and pillion rider died while on treatment and thereby the accused has committed the offences punishable U/s 279, 337 and 304A of Indian Penal Code and section 146 R/w section 196 of MV Act ?
2.	What order ?

9. My answer to the above points are as follows:

Point No.1:	In the Negative.
Point No.2 :	As per final order, for the following:

REASONS

10. **Point No.1:-** In order to bring home the guilt of the accused with respect to occurring of the said accident mentioned in this case and causing injuries to himself and causing death of pillion rider namely Mahantesh Shivappa Manikatti due to the rash and negligent riding of the accused, the prosecution has examined 9 witnesses as **PW.1 to 9**. The PW.1 is the complainant of this case. PW.2 & 3 are the inquest panchanama witnesses. PW.4 & 5 are the spot mahazar witnesses. PW.6 is the alleged eye witness. PW.7 & 9 are the Investigating officers. PW.8 is the doctor, who treated the accused.

11. The PW.1 is the complainant of this case, he deposed that the deceased Mahantesh Shivappa Manikatti is his brother. The said Mahantesh was

proceeding as a pillion rider along with the accused on a motorcycle which was being rode by the accused. He deposed to have informed by CW.6 that his brother has met with an accident. He further deposed that the accident was occurred due to the sudden arrival of dog on the road when the accused and brother of PW.1 were proceeding on their motorcycle and they fell down and in the said accident, the brother of PW.1 died. The PW.1 has further deposed that he lodged complaint as per Ex.P1, but he further deposed that he has lodged complaint stating that the accident took place due to the sudden intrusion of dog on the road. Further, he denied the suggestion put to him by the learned APP that, the accident took place due to the speedy and rash and negligent riding of the accused.

12. The rash and negligence on the part of the accused in riding the said motorcycle has to be proved by examining any of the eye witnesses of the accident. In this regard the prosecution has examined CW.6 as PW.6.

The PW.6 is none other than the relative of deceased Mahantesh, he though deposed about the factum of death of the said Mahantesh in the accident, but he further deposed that he did not see the accident in person and he heard it from others. Though the learned APP cross examined PW.6 suggesting him that he saw the accident, but the said suggestions have been denied by PW.6. Though the learned APP Cross examined PW.1 and 6 at length, but nothing worth was elicited from their cross examination so as to support the case of the prosecution.

13. As stated above, the rash and negligence on the part of the accused has to be proved by examining the eye witnesses to the incident, but the sole alleged eye witness of the accident, did not support the case of the prosecution. Even the complainant also did not depose anything about the rash and negligence on the part of the accused in riding his motorcycle and occurring of the said accident due to the rash and negligent riding of the

motorcycle by the accused. Therefore under such circumstances, when the death of the said Mahantesh Shivappa Manikatti is not in dispute and when the accident is not in dispute, under such circumstance, the evidence of PW.2 and 3 inquest panchanama witnesses and the evidence of PW.4 & 5 ie., spot mahazar witnesses do not become much important to discuss in bringing home the guilt of the accused or otherwise.

14. The PW.7 is the police witness, who deposed about release of motorcycle bearing Reng.No.KA-25/ER-5689 in favour of the owner.

15. The PW.8 is the doctor, who treated the accused, who deposed of having given treatment to accused on the date of accident. It is pertinent to mention here that the accused has not disputed that he also sustained injuries in the said accident.

16. The PW.9 is the IO of this case, who deposed that on 17.06.2021 he registered the case against

accused on the basis of the complaint lodged by CW.1 as per Ex.P1. But, it is pertinent to mention here that the PW.1/CW.1 has deposed in his evidence that he did not mention anything about the rash and negligence of accused in riding the said motorcycle and thereby causing the said accident. Though the IO has further deposed about the other aspects of investigation and the recording of the statement of CW.6 eye witness as per Ex.P9 about the accident, but it is pertinent to mention here that the CW.6/PW.6 has deposed that he did not see the accident and did not give statement before the police as per Ex.P9. Therefore the evidence of PW.1 and 6 is not in-consonance with the evidence of IO ie., PW.9. The IO has not deposed anything about the reason for turning hostile of the PW.1 and 6 to the case of the prosecution. Therefore, as there is no any evidence on record which could attribute the rash and negligence on the part of the accused in riding his motorcycle on the date of accident and therefore it can be said that the accident is caused due to the sudden intrusion of the dog on the road and

stopping of the motorcycle was beyond the reasonable control of accused and that cannot be said as the accused was riding his motorcycle on that day in a rash and negligent manner. Hence, for the above stated reasons, it can be said that, the prosecution has failed to bring home the guilt of the accused. Hence for the above stated reasons I have answered **Point No.1 "in Negative"**.

17. **Point No.2** :- For the reasons stated while discussing point No.1, I proceed to pass the following:-

ORDER

Acting U/s 255(1) of Cr.P.C the accused is acquitted of the offences punishable under Section 279 and 337, 304(A) of Indian Penal Code and Section 146 R/w 196 of MV Act.

The bail bonds and surety bonds of accused and his surety shall stands

**cancelled except the bonds executed in
compliance of section 437-A of Cr.P.C.**

(Dictated to the stenographer directly on computer, corrected and then pronounced by me
in the open court on 26th day of February 2024)

(Amol Jaykumar Hirikude)
IV Addl.Sr.Civil Judge & JMFC.,
Dharwad.

A N N E X U R E

WITNESSES EXAMINED FOR COMPLAINANT: -

PW1: Irappa Shivappa Manikatti.
PW2: Santosh Basavaraj Kamatagi.
PW3: Shivakumar Gangadharayya Hiremath.
PW4: Nagappa Ningappa Ganiger.
PW5: Mallikarjun Irappa Gaddi.
PW6: Manjuanth Basappa Gonnagar.
PW7: S.S.Dharwad.
PW8: Vishwanath Mahabaleshwar Patil.
PW9: Shridhar Vasanth Satare.

DOCUMENTS MARKED FOR COMPLAINANT: -

Ex.P.1: Complaint.
Ex.P.1(a) : Signature of PW.1.
Ex.P.2: Inquest panchanama.
Ex.P.2(a) : Signature of PW.2.
Ex.P.2(b) : Signature of PW.3.
Ex.P.2(c) : Signature of PW.9.
Ex.P.3 : Photo of deceased.

Ex.P.3(a) : Signature of PW.9.

Ex.P.4: Spot panchanama.

Ex.P.4(a) : Signature of PW.4.

Ex.P.4(b) : Signature of PW.5.

Ex.P.4(c) : Signature of PW.6.

Ex.P.4(d) : Signature of PW.9.

Ex.P.5 : Map.

Ex.P.5(a) : Signature of PW.4.

Ex.P.5(b) : Signature of PW.5.

Ex.P.5(c) : Signature of PW.6.

Ex.P.5(d) : Signature of PW.9.

Ex.P.6 : Photo of spot of accident.

Ex.P.6(a) : Signature of PW.9.

Ex.P.7 : Vehicle seizure panchanama.

Ex.P.7(a) : Signature of PW.4.

Ex.P.7(b) : Signature of PW.5.

Ex.P.7(c) : Signature of PW.9.

Ex.P.8 : Photo of Activa Honda vehicle.

Ex.P.9 : Statement of PW.6.

Ex.P.10 to 12: Photos of Activa Honda vehicle.

Ex.P.13 : Wound certificate of accused.

Ex.P.14 : Postmortem report.

Ex.P.15 : MV report.

Ex.P.16 : FIR.

Ex.P.17 : Certificate U/s 65(B) of Indian Evidence Act.

Ex.P.18 : Letter to RTO, Dharwad.

Ex.P.19 : Notice U/s 41(A) of Cr.PC.

Ex.P.20 : Police notice U/s 133 of MV Act.

Ex.P.21 : Reply to notice.

Ex.P.22 : Letter to Doctor of District Hospital, Dharwad.

WITNESSES EXAMINED FOR DEFENCE:-

N I L

DOCUMENTS MARKED FOR DEFENCE:-

N I L

MATERIAL OBJECTS MARKED FOR PROSECUTION :

N I L

(Amol Jaykumar Hirikude)
IV Addl.Sr.Civil Judge & JMFC.,
Dharwad.

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For Judgment

26-02-2024

(Judgment pronounced in the open Court vide separate Judgment)

ORDER

Acting U/s 255(1) of Cr.P.C the accused is acquitted of the offences punishable under Section 279 and 337, 304(A) of Indian Penal Code and Section 146 R/w 196 of MV Act.

The bail bonds and surety bonds of accused and his surety shall stands cancelled except the bonds executed in compliance of section 437-A of Cr.P.C.

(Amol Jaykumar Hirikude)
IV Addl.Sr.Civil Judge & JMFC.,
Dharwad.