

IN THE COURT OF CIVIL JUDGE AND JMFC, SAVANUR.

PRESENT : **MARUTHI. K.**

B.A.LL.B.

Civil Judge & JMFC, Savanur.

CC.No. 93/2015.

Dated this day of 29th August 2020.

State by Savanur Police.

.....Complainant.

(By Learned APP)

V/s.

Mahammadsalim S/o Abdulahammad Hulagur,

Age : 26 years, Occ : Driver,

R/o : Kamalabangadi Street,

Tq : Savanur, Dist : Haveri.

.....Accused.

(By Sri. M. S. Mudagal, Advocate.)

Date of offence	16.04.2014
Date of Report	16.04.2014.
Arrest and release of accused	07.05.2015
Name of Complainant	Dhaneshwar S/o Krishnaji Hanchate
Date of Commencement of evidence	10.08.2015
Date of closing evidence	11.09.2017.
Offence complained of	U/Sec.279, 304(A) of IPC and Sec.134 R/w.187 of MV Act.
Opinion of the Judge	Conviction.
State represented by	APP.
Accused represented by	Sri. M. S.Mudagal, Advocate.

JUDGMENT

This case emanates from the final report submitted by CW-14 of Savanur PS against the accused for the alleged offences punishable U/s.279, 304A of IPC & Sec.134 R/w.187 of M.V. Act.

2. Brief facts of the case is as follows :-

The allegations as per the charge sheet is that on 16.04.2014 at about 10.30 A.M. within the limits of Savanur, on Simpigalli Street the accused being a driver of Force Goods vehicle bearing registration No. KA.27/A-4287 drove the same in rash or negligent manner so as to endanger human life, from Bijapur Circle towards Ganesh Temple and dashed to one Darshan from opposite direction who was stood near the house of Mahendrakar and ran over the vehicle on his head due to the accident, he sustained grievous head injuries and died at the spot and then the accused ran away from the spot without informing to police and without admitting the injured to the hospital for treatment and thereby the accused has committed an offences punishable U/s.279, 304A IPC and Sec.134 R/w.187 of M.V. Act.

3. On the basis of said charge sheet this court has taken cognizance of the offence acting U/s.190 (1) (b) of Cr.P.C. and issued the process against the accused. In pursuance of

the court process the accused appeared before this court through his counsel and got enlarged on bail, charge sheet papers copies was supplied to the accused as contemplated U/s.207 of Cr. PC.

4. The accusation was prepared, read over & explained to the accused in the language known to him, for which he pleaded not guilty and claimed to be tried. In order to prove its case the prosecution examined 8 witnesses and relied upon Ex.P.1 to 14.

5. After closure of prosecution evidence when incriminating circumstances has appeared against the accused is read over to the accused in a language known to him he denied the same as false, the statement of accused U/s.313 of Cr.PC is accordingly recorded, accused has not chosen to lead any defence evidence nor he has explained anything.

6. Heard the arguments of learned APP and counsel for accused and perused the oral evidence, documents and material available on record.

7. The points that arisen for my consideration are as follows:-

POINTS

- 1) Whether the prosecution proves beyond reasonable doubt that on 16.04.2014 at about 10.30 A.M. within the limits of Savanur, on Simpigalli Street the accused being a driver of Force Goods vehicle bearing registration No. KA.27/A-4287 drove the same in criminally rash or negligent manner so as to endanger to human life dashed the vehicle to one Darshan and thereby committed an offence punishable U/s.279 of IPC?
- 2) Whether the prosecution further proves that, on the above said date, time & place the accused due to his rash or negligent driving dashed to one Darshan and run over the vehicle on his head, due to the accident he sustained fatal injuries thereby succumb to death and thereby accused has committed an offence punishable U/s.304 (A) of IPC?
- 3) Whether the prosecution further proves that, on the above said date, time & place the accused leave the vehicle on the accident spot and ran away without informing the

police and thereby committed an offence punishable U/s.134 R/w.187 of M. V. Act?

4) What order or sentence?

8. My answers to the above points are as follows:

Point No.1 :- In the affirmative.

Point No.2:- In the affirmative.

Point No.3 :- In the affirmative.

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

:: REASONS ::

9. **Points No. 1 to 3** :- Since points No. 1 to 3 are inter connected with each other, in order to avoid repetition of facts and evidence they are taken together for common discussion. It is pertinent to note that in the instant case the accused who alleged to have driven the Force goods vehicle in a rash or negligent manner & caused the death of one Darshan. Therefore to bring home the guilt of accused, the prosecution must prove that (a) an act was done by the accused that endangered or was likely to endanger life or was likely to cause hurt or physical or mental injury to any other person or property (b) the said act was done with the use of machinery (c) the said act was done rashly or negligently.

10. In order to prove the case against the accused the prosecution has examined as many as 8 witnesses and got marked the documents at Ex.P.1 to P.14. Ex.P.1 Complaint, Ex.P.2 Inquest Panchanama, Ex.P.3 Spot Panchanama, Ex.P.4 PM Report, Ex.P.5 FIR, Ex.P.6 Hand Sketch Map, Ex.P.7 to 11 Photographs, Ex.P.12 Notice issued under Sec.133 of MV Act, Ex.P.13 Reply to the notice, Ex.P.14 MVA Report. PW-1 is the complainant, PW-2 & 5 are the panch witnesses, PW.3 & 4 are the eye witnesses, PW-6 & 7 are the official witnesses and PW-8 is the RTO.

11. In the present case PW-1 by name Daneshwar S/o Krishnaji Hanchate has deposed that, the deceased Darshan Mandre is his sister's son. On 16.04.2014 at 10.30 A.M. he was standing in front of his house at the same time deceased Darshan came on his bicycle and standing in front of the house of one Mahendrakar, forthwith the Mahindra vehicle bearing Reg. No.KA-27/A-4287 came in a high speed from Bijapur Circle on road humps and dashed to the Darshan who is standing on the left side of the road and stopped the vehicle at some distance and ran away. Later he went to the place of incident and found that Darshan sustained head injury and succumbs on the spot. Further stated that, later he went to police station and filed complaint. The complaint is marked at Ex.P.1 and signature at Ex.P.1(a). After that the police came to the spot and

seized the vehicle in front of panchas, then went to hospital. On 22.04.2014 police arrested the accused and he came to know the name of accused is Mahammad Salim S/o Abdulahammad Hulagur and given statement to the police and also identified the accused present before the court. In the cross examination of this witness he has deposed that deceased stood along with bicycle, the height of the said bicycle is about 2 feet. As on the date of accident deceased came from Ganesh Temple towards the house of Mahendrakar and stood left side of the road. He has admitted that except road humps in front of Mahendrakar house there are no any humps on the said road. Further deposed that, one Mahendrakar gathered sand for construction of his house. It is suggested that the sand was scattered on road, but the said suggestion was denied by this witness. It is suggested that accused was proceeding from Bijapur Circle towards Ganesh Temple and the same is admitted by this witness. Further it is suggested that Darshan fall near back wheel due to his negligence, but the same is denied by this witness. Further denied that on that day Darshan ride the bicycle in high speed, near the humps he put the break due to which the cycle skid and fell at the back wheel of the vehicle which is driven by the accused. Further, it is suggested that no complaint has been given, no accident was taken place as contended by PW.1, accused has not committed any offence

but these suggestions are denied by this witness. It is admitted by this witness that, the parents of deceased have filed claim petition before MACT at Haveri. On perusal of deposition of PW-1 it appears that the identification of accused is not disputed. It is also undisputed fact that the accused was driver of the Mahindra/Force goods vehicle as on the date of incident.

12. PW-2 by name Namadev/panch witness has deposed that he know CW.2. The police called them and conducted the mahazar on Simpigalli road and at hospital and then they taken the signature on the documents. Inquest panchanama conducted at the hospital between 2.15 P.M. to 3.15 P.M. The police have conducted the mahazar on Simpigalli road regarding the accident and seized the offending vehicle. Inquest panchanama is got marked at Ex.P.2 and signature at Ex.P.2(a), Spot panchanama at Ex.P.3 and signature at Ex.P.3(a). In the cross-examination of PW.2 it suggested that this witness and one Kalandar Mattur are the stock witness to the prosecution but, the same is denied by this witness. He has deposed that he received summons in two-three cases. He given information at the time of conducting Mahazar regarding the incident where the blood fell and on which wheel blood stained. Further stated that the whitener not applied at Ex.P.3 and not at all corrected. He don't know how much sand fell on

road except these, there is no any admissions by this witness.

13. PW.3 by name Girish/eyewitness has deposed that, on 16.04.2014 at 10.30 A.M. he was standing near the Ganesh Temple of Simpigalli cross. At that time the driver of the Tata Ace goods vehicle drove in a high speed from Bijapur circle towards Ganesh Temple. One boy called Darshan was standing with his bicycle in front of the house of Mahendrakar, forthwith the driver of the Tata Ace Goods vehicle dashed the bicycle and driven the vehicle on the head of Dharshan and ran away from the spot by leaving his vehicle. He went to the spot and found Darshan was died at the spot due to the head injury. This witness deposed that he know the registration number of the offending vehicle and the name of accused, he identified the accused present before the court. In his cross-examination PW.3 deposed that, he stood near Ganesh temple facing towards the offending vehicle. At the time of accident 5 to 6 persons were gathered near the house of Mahendrakar, but he don't know the name of those persons. He deposed that he know the deceased Darshan since from 20 years. Further he deposed that, he don't know who gathered sand. The counsel for accused suggested to PW.3 that no any statement given to police, accused has not drove his vehicle in a rash or negligent manner, in order to help the family of

deceased he deposing false evidence, but all the suggestions were denied by this witness. Except denials nothing is elicited from the mouth of this witness.

14. PW.4 by name Suresh/eye witness has deposed that, on 16.04.2014 at 10.30 A.M. he was walking on Simpigalli road, at that time one Tata Ace vehicle came in high speed from Bijapur circle by jumping humps and dashed to the boy who was coming with his bicycle from the side of Ganesh temple. Due to this the wheels of Tata Ace vehicle ran over on his head forthwith the boy died at the spot. Later, the driver of the vehicle stopped his vehicle at some distance and ran away and he identified accused present before court. In his cross-examination, he deposed that the place of incident is at the distance of 40 ft from his house the road humps is present in front of the house of Mahendrakar, the sand is scattered on some parts of road. Further, it is suggested that if the cycle was rode on sand it will skid the same is admitted by this witness. In further cross-examination, it is suggested regarding situation of shop of this witness and deposing false evidence but, all the suggestions denied by this witness.

15. PW.5 by name Satish/panch witness has deposed that, he know the CW.3. The police called them and conducted Panchanama on 16.04.2014. The first panchama is

conducted at the Government Hospital in between 1.15 P.M. to 1.30 P.M. regarding the accident and dead body. Another panchanama conducted at the accident spot in between 2.15 to 3.00 P.M., hand sketch map drawn, photograph taken and then seized the Tata Ace vehicle. The panchanama got marked at Ex.P.2 & 3 and the signatures at Ex.P.2(b) & 3(b). In his cross-examination PW.5 deposed that, he not given information to write panchanama. On the say of police he put signature on panchanama. Further deposed that, he not recollecting the memory regarding putting signature on hand sketch map. The deceased was his distant relative. Further, it is suggested that in order to help the family of deceased he deposing false evident and the same is denied by this witness.

16. PW.6 & 7 are the Investigation officers, PW.6 deposed that on 16.04.2014 at 11.30 A.M. CW.1 given statement in the form of complaint and it is computerized and the crime is registered under Cr.No.71/2014, then FIR sent to the court. Later, visited to Government Hospital, Savanur and conducted the inquest and spot panchanama and then offending vehicle seized. He recorded the statement of CW.6 to 10. The signature on complaint got marked at Ex.P.1(b), Ex.P.5 FIR, signature on FIR Ex.P.5(b), signature on inquest panchanama Ex.P.2(c), signature on spot panchanama

Ex.P.3(c), Ex.P.6 Hand sketch map, signature on hand sketch map Ex.P.6(a), Ex.P.7 to 11 Photographs. In his cross-examination this witness has deposed that the complaint is computerized by PC No.805. But, his signature is not taken on complaint. It is suggested that no any address is referred to whom the complaint was addressed the same is admitted by this witness. Further deposed that, he was on duty as SHO. The accused was released on bail by the investigation officer. The photographs were obtained at the place of incident. After getting photographs the offending vehicle was taken to station, but not conducted the seizure panchanama, only the vehicle retained. In this case PF was not submitted. At the time of cross-examination it is suggested that on what basis the offending vehicle seized, for that this witness replied for having committing accident the vehicle was seized. Further, he admitted that at the time of panchanama he not shown fall of sand on the road. Ex.P.10 & 11 were confronted to the witness and suggested that was their any body and cycle found, for that he replied no. Further suggested that was their any vehicle at Ex.P.10, for that he replied no. He admitted that he has not shown in panchanama as to on which wheel blood is stained. He was not recovered the parts of offending vehicle. Further admitted that, if the accident occurred on back or front wheel of the vehicle, the driver himself responsible. The bicycle was not seized and

not investigated about the owner of the vehicle. Further, admitted that the panchanama was corrected. In further cross-examination he deposed that he not examined the persons who are present in Ex.P.11 as eyewitnesses and deposed that in the entire record no where it is mentioned as to near which wheel the accident was occurred. In further cross-examination it is suggested that deceased himself fall near the back wheel of the offending vehicle, in order to help the family of deceased false case has been registered against accused, but the same was denied by this witness.

17. PW-7 is the IO deposed that, on 18.04.2014 he issued notice to the owner of the offending vehicle under Motor Vehicle Act, which is got marked at Ex.P.12 and signature at Ex.P.12(a). On the same day he requested RTO, Haveri for the inspection of offending vehicle. Further deposed that on 22.04.2014 the owner of the offending vehicle replied to the notice and produced the accused to the police station. The reply is got marked at Ex.P.13 signature at Ex.P.13(a). The owner of the offending vehicle produced the accused and thereafter followed the arrest procedure and released the accused on bail. He recorded re-statement of CW.1, 6 to 10. Thereafter, he released offending vehicle to the custody of its owner after getting indemnity bond, then he collected the PM report of deceased, IMV report and after completion of the investigation he submitted charge sheet

against the accused. The MVA report is got marked at Ex.P.14 and signature at Ex.P.14(a). He identified the accused present before the court. In his cross-examination he deposed that he not sent bicycle for inspection and not recovered the bicycle. The owner of the vehicle is not shown as witness. Offending vehicle was not seized but it was retained for mechanical inspection. In further cross-examination it is suggested that due to skid of bicycle deceased himself fall near back wheel of offending vehicle, and false charges sheet is filed against accused. But, the same are denied by this witness categorically.

18. PW.8 by name Raviraj Pawar/RTO officer deposed that on 20.03.2014 there was request from Savanur PSI on the same day he visited Savanur Police Station and inspected the offending vehicle bearing Reg.No.KA-27/A-4287 in a stationary condition. On inspection he found damages on right side head light assembly, front fendar, front show panel on offending vehicle. He opined that the accident was not occurred due to mechanical defect. The report is got marked at Ex.P.14 and signature at Ex.P.14(b). During cross-examination this witness has deposed that head light assembly was completely damaged. It is suggested that false IMV report was issued without inspecting the vehicle, but the same is denied by this witness.

19. Over all on keen and careful probing of the ocular and documentary evidence placed before the court it reveals that there was a accident caused by the use of vehicle. As per the admission of PW.1, 4 and 5 they are the distinct relatives of deceased. The counsel for the accused in his oral argument stated that witnesses are interested witnesses and they are not trust worthy. It is no doubt true that PW.1, 4 and 5 are the relatives, but their evidence cannot be vanished simply alleging that they are the interested witnesses. The interest of the said witnesses cannot be considered in the present case on hand unlike the other cases. Since this case is related to rash & negligent act of the accused unlike the other cases. It is also not brought on record that there was hostility between the accused & PW.1, 4 and 5 to disbelieve the version of the witnesses. Therefore, arguments of counsel for accused cannot be considered.

20. The counsel for accused during arguments does submitted that PW.1 is not the eyewitness and submitted that, as per the admission of PW.1 itself, he stood on the road facing towards southern side as such he cannot be considered as eyewitness. But, on perusal of entire materials on record it is stated in complaint as well as in the evidence of PW.1 that, the accused drive his vehicle in a high speed from Bijapur Circle towards Ganesh Temple on

Simpigalli road and dashed to the Darshan who was stood near the house of Mahendrakar on left side of the road. Though PW.1 is cross-examined in length and tried to discredit his oral evidence. But, except denials counsel for accused not fruitful in eliciting worthwhile to the case of defense.

21. PW.2 who is the pancha witness has supported the version of prosecution he deposed regarding conduct of inquest panchanama and spot panchanama on the date of incident. Though during cross-examination counsel for accused tried to elicit worthwhile to the case of defense but, fail to do so. PW.3 & 4 are also the eyewitnesses have deposed that the accused drove his Goods vehicle from Bijapur Circle towards Ganesh Temple in rash and negligent manner and dashed to the Darshan who was stood on the side of road and run over his vehicle on deceased and stopped his vehicle at some distance and ran away from the place of incident. Counsel for accused during argument has submitted that the deceased was aged about 9 years at the time of alleged incident. But, PW.3 deposed during cross-examination that, he know the deceased since 20 years and hence submitted that evidence of PW.3 is not trust worthy. Though, the age of the deceased shown as 9 years at the time of alleged incident, but, in exaggeration PW.3 deposed that he know the deceased since 20 years.

Therefore, reply given by PW.3 at the exaggeration is with respect to acquaintance of the family of deceased. As such arguments advanced by counsel for accused cannot be considered.

22. The counsel for accused during arguments does submitted that the prosecution has not seized offending vehicle from the place of incident and he made reference to the cross-examination of PW.1 & 6 and submitted that PW.6 has admitted in cross-examination that, he has not seized the offending vehicle and not obtained the positive photos at the place of incident and not recovered bicycle which was said to be in possession of deceased at the time of alleged incident. On perusal of material placed on record PW.6, who is the police official has conducted the spot panchanama on 16.04.2014 and same is marked at Ex.P.3. On its perusal, it discloses that the offending vehicle is present near the place of incident and it was stood facing towards Ganesh Temple and PW.6 taken the said vehicle to his possession to conduct vehicle inspection by the RTO. Though the prosecution has not drawn separate seizure mahazar but the same is shown in Ex.P.3 spot panchanama. Moreover, the accused has not disputed the movement of offending vehicle at the place of incident on the date of incident. Sec.100 of Cr.PC envisages the conditions for conducting panchanama with regard to the

incident and Sec.102 of Cr.PC enumerated the seizure of property and production of the same before jurisdictional Magistrate. But, in the present case on hand though the offending vehicle was not seized from separate panchanama, but the same was taken to the possession of IO for the purpose of conducting of vehicle inspection by the RTO and the same was explained in Ex.P.3 spot panchanama. On perusal of Ex.P.11 the offending vehicle is appearing near the place of incident. Moreover, the counsel for accused has not disputed the genuineness of positive photo at the time of it marking. Further, more the accused as admitted the presence of vehicle on the place of incident. But, it is the version of accused that deceased himself fall near back wheel. When the accused himself admitted the presence of vehicle at the place of incident the non-seizure of offending vehicle from separate panchanama by the IO will not cause prejudice to the interest of accused. It is only a lapse on the part of investigation agency. Therefore, arguments urged by the counsel for accused holds no water.

23. Counsel for accused during arguments does submitted that there is a correction in panchanama and the police have not recovered the articles at the time of investigation and find his reference towards cross-examination of PW.2 and 6 and Ex.P.3 and hence, prayed to bestow the benefit of doubt in favour of accused. On perusal of Ex.P.3 it appears

that, some corrections have been done and the same was initialed by PW.6. Though, he admitted the same in cross-examination but, counsel for accused fail to suggest anything further with regard to the corrections. It is further submitted by the counsel for accused that, the offending bicycle was not seized and it was not sent to RTO for inspection. It is pertaining to note that, the rash and negligence act of the accused is to be considered only by the use of machine on public road. In the present case the offending vehicle is the goods vehicle and the same was sent for motor vehicle inspection and the bicycle was not sent to the inspection because it is not run by mechanical process. Though, it was not shown in Ex.P.3 it is the lapse on the part of investigation officer. For that, I relied upon the citation reported in **(2011) 4 SCC 324 between State of UP Vs. Naresh, wherein Hon'ble Supreme Court held that,** *"Non-recovery of crime articles/incriminating articles/other articles. Such a ground not sufficient to discredit prosecution case"*.

24. In (2013) 12 SCC 529 between Karan Singh Vs. State of Hariyana the Hon'ble Supreme Court held that *"Criminal Procedure Code 1973 Sec.155-157 investigation-tainted investigation-defective or illegal investigation effect on prosecution case. Court would not set aside conviction of accused, merely on the ground of tainted investigation.*

Unless lapses made on the part of investigating authorities are such as to cast a reasonable doubt on prosecution case or seriously prejudice defense of accused, complainant cannot be made to suffer for lapse of IO”.

In the present case on hand non-recovery of articles by the IO is the lapse on the part of investigating agency for that the complainant cannot be made to suffer for the lapse of IO. As such arguments urged by the counsel for accused cannot be considered.

25. The accident in question was admitted by the accused. But, it is specific defense of accused that, the deceased while riding the bicycle applied the break on scattered sand on road as a result deceased himself fall near the back wheel of the vehicle which was driven by the accused. It is pertaining to note that, the presence of offending vehicle and accused is not disputed. Except, suggestion in cross-examination the defense counsel has not placed any material to prove his defense. Mere suggestion itself is not a substantial piece of evidence. In order to support his version nothing has been put forth by the accused before this court even in the 313 statement of the accused. The accused has not explained as to how the accident has been occurred and at whose instance the same has been occurred. Except denial the accused not put his defence as to how the accident was occurred.

26. In this regard it is the bounden duty of the accused to explain the facts within his knowledge as per Sec.106 of Indian Evidence Act. In the absence of the material explanation by the accused his defence cannot be taken into consideration. Sec.106 of Indian Evidence Act saddles the burden upon the person who has special knowledge regarding certain facts. It is true that the accused has a right of silence which is confirmed by the Constitution of India. However, the court is helpless, when the accused failed to open his mouth when situation warrants the court to draw adverse inference against the accused. In this regard this court find relevant to the decision reported in **2004 (3) KCCR 1956 between Ishwar Sadeppa Nandennavar vs. State of Karnataka, wherein the Hon'ble High Court of Karnataka held as follows:-**

“On perusal of the evidence led by the prosecution especially that of the complainant driver examined as PW.5 the facts as narrated in the complaint are even substantiated through the evidence other injured passengers of the offending vehicle. It is prima-facie apparent that while the complainant PW.5 was driving the bus, the tempo traveler came from the opposite direction by over taking another truck and dashed against the bus resulting in death of 11 passengers & serious injuries to 17 others the evidence of PW.5 has

been aptly corroborated by the passengers in the bus who have sustained injuries & the investigating officer has further shown from his investigating report & deposition before the court as to the accused petitioner being negligent & rash in driving. As against this prima-facie materials, absolutely no explanation has been offered by the accused while he had the last opportunity of explaining when question U/s.313 of Cr.PC”.

27. As held by the Apex Court in the case of **Rathansing Vs State of Himachapradesh** *“Examination of the accused U/s. 313 of Cr.PC & answers given by the accused to the questions put to him during such examination have a practical utility for the criminal courts. Apart from affording an opportunity to accused to explain the incriminating circumstances, the answer would also help the court in appreciating the entire evidence adduced in the court”*.

28. Further in the case **State of Tamilandu Vs. Rajendra & in the case of Damodar Vs. State of Karnataka**, the Apex Court has emphasized the necessity of some explanation from the accused even in the case where entire case of the prosecution revolve around circumstantial evidence, if the other circumstances are proved by the

prima-facie case by the prosecution. Going a step ahead, in my view in cases of offences like one on hand especially offences of driving of vehicle rashly & negligently the accused driver is required to explain as to how according to him the alleged accident took place. It is common knowledge that the true eye witnesses account in the accident cases is very rare. The collision or killing of a person by driving vehicle takes place in a flash of movement & it is only the victim and the driver of the vehicle who alone will be knowing what exactly happened. The so called eye witnesses impressions given by the other people would be there immediate re-collection as to what happened according to them when the impact took place. In this regard, if one looks into the provision of Sec.106 of Indian Evidence Act, person like driver of a offending vehicle has been called out for having special knowledge of the occurrence. And in my view, if he does not explain the same when he has been given a last opportunity while questioned U/s.313 of Cr.PC. After the prosecution has discharged its burden prima-facie the court are entitled to draw adverse inference against such accused”.

29. As noted earlier, in the present case, except few futile suggestions to PW.1, 3 & 4 complaint and eyewitnesses absolutely I find no ground or explanation forced on the side of accused as to how exactly the incident took place.

Therefore the arguments of the learned counsel for the accused is not sustainable. The accused has not explained how the alleged incident was taken place during his statement. The accused was expected to disclose how actually the accident was occurred. The accused being the eye witness to the incident had special knowledge regarding its occurrence, he failed to explain under what circumstance the accident was occurred and what attempt he has made to avoid the accident. Under the concept of *res-ipsa-loquitur* the above circumstances indexing their finger towards the negligence of the accused. In this regard the hand sketch map is very clear which is marked at Ex.P.6. It is true that the speed is not criteria to assess negligence of driver. Superior Courts again emphasized that for the offence U/s.304-A of IPC the prosecution need not prove the so called culpable negligence. Even an ordinary recklessness resulted in the homicide is sufficient to bring home the guilt of the accused for an offence U/s.304-A of IPC. On the other hand, in the absence of such explanation & on the basis of material produced by the prosecution, I am of the view that the prosecution proved rash and negligent act of accused in driving the offending vehicle and death of deceased.

30. So far as the identification of the accused is not in dispute, the evidence of PW-1 to 8 made it clear that, it was the accused who was driving the offending vehicle on the date of incident. Learned APP relied upon the citation

reported in **2007 (3) Crimes 146 (SC) between Prabhakaran Vs. State of Kerala where in the Hon'ble Supreme Court at Para No.6 & 7 as held that,** *"Indian Penal Code, 1860-Section 304-A - Negligence and rashness are essential elements under Section 304-A a rash act is a negligent act done precipitately - Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused-Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted".*

In the present case on hand the complaint PW.1 and eyewitnesses at PW.3 & 4 have categorically deposed regarding the rash and negligent act of accused in driving offending vehicle at the place of incident and committed an accident to the boy who stood on road and ran over his vehicle on the head of deceased and thereafter, he ran away from the place of incident by leaving offending vehicle

without informing the same to the concerned police. The pancha witness i.e., PW.2 also supports the version of prosecution. The testimony of the eyewitness and complainant is corroborated with the evidence of official witness. Through there are some lapse on the part of investigating agency, they are not the sole basis to acquit the accused. Therefore, the prosecution has successfully proved the guilt against the accused beyond all reasonable doubt. Hence, I answered the **point No.1 to 3 in the Affirmative.**

31. Point No.4 :- In the light of the above discussions and for the foregoing reasons, I proceed to pass the following,

: ORDER :

Acting U/s.255(2) of Cr.PC. The accused is hereby held guilty for the offences punishable U/s.279, 304(A) of IPC & Sec. 134 R/w Sec.187 of M.V. Act.

To hear on sentence

I have heard the convict regarding sentence. I have considered the applicability of benefits of the Probation of Offenders Act. So far as quantum of sentence is concerned. This case is tried

as summons case and there is no need to hear the accused before passing sentence. The provisions of PO Act cannot be invoked in accident cases. Bearing in mind the galloping trend in road accident in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offences U/Sec.304(A) of IPC as attracting the benevolent provisions of Sec.4 of Probations of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. For that it is relevant to quote decisions rendered by Apex Court in Dalbir Singh Vs. State of Haryana reported in AIR 2000 SC 1677. Therefore, I am not inclined to give the benefit of Probation of Offenders Act.

Sentence

Convict is sentenced to under go simple imprisonment for a period of

2 months and to pay the fine of Rs.1,000/- for the offence punishable U/Sec.279 of IPC. In default he shall undergo simple imprisonment for a period of 1 month.

Convict is hereby, further sentence to under go simple imprisonment for a period of 6 months and to pay a fine of Rs.5,000/-. In default he shall under go simple imprisonment for a period of 3 months for the offences punishable U/Sec.304(A) of IPC.

Further convict is sentenced to under go simple imprisonment of 2 months and to pay the fine of Rs.500/- for the offence punishable U/Sec.134 R/W Sec.187 of M.V. Act. In default he shall under go simple imprisonment for a period of 30 days.

Bail bonds and surety bonds executed by accused shall stands cancelled.

During the investigation IO released the offending vehicle to the interim custody of its owner, the same is hereby made absolute.

Office is directed to supply free copy of the judgment to the convict as contemplated U/Sec.363(1) of Cr.P.C.

(Dictated to the Stenographer, directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 29th August 2020)

(SRI. MARUTHI. K.)
Civil Judge and JMFC
Savanur.

: ANNEXURES :

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION:

PW-1 : Daneshwar S/o Krishnaji Hanchate
PW-2 : Namadev S/o Mahadevappa Rashinakar
PW-3 : Girish S/o Mallappa Mudagal
PW-4 : Suresh S/o Bavanappa Hanchate
PW-5 : Satish S/o Bavanappa Hanchate
PW-6 : Guddappa S/o Basavanneppa Milli
PW-7 : Shivanand S/o Shreemanth Walikar
PW-8 : Raviraj S/o Jnaneshwar Pawar

LIST OF DOCUMENTS MARKED FOR THE PROSECUTION :

Ex.P-1 : Complaint
Ex.P-1(a) : Signature of PW.1
Ex.P-1(b) : Signature of PW.6

- Ex.P-2 : Inquest panchanama
- Ex.P-2(a) : Signature of PW.2
- Ex.P-2(b) : Signature of PW.5
- Ex.P-2(c) : Signature of PW.6
- Ex.P-3 : Spot Panchanama
- Ex.P-3(a) : Signature of PW.2
- Ex.P-3(b) : Signature of PW.5
- Ex.P-3(c) : Signature of PW.6
- Ex.P-4 : Postmortem Report
- Ex.P-5 : F.I.R.
- Ex.P-5(a) : Signature of PW.6
- Ex.P-6 : Hand sketch map
- Ex.P-6(a) : Signature of PW.6
- Ex.P-7 to 11: Photographs
- Ex.P-12 : Notice issued U/Sec.133 of MV Act
- Ex.P-12(a) : Signature of PW.7
- Ex.P-13 : Reply to notice
- Ex.P-13(a) : Signature of PW.7
- Ex.P-14 : Motor Vehicle Accident Report
- Ex.P-14(a) : Signature of PW.7
- Ex.P-14(b) : Signature of PW.8

LIST OF M.Os MARKED FOR THE PROSECUTION :

- Nil -

LIST OF WITNESSES EXAMINED FOR THE ACCUSED :

- Nil -

LIST OF DOCUMENTS MARKED FOR THE ACCUSED :

- Nil -

(SRI. MARUTHI. K.)
Civil Judge and JMFC,
Savanur.

