

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated this the 01st day of December, 2020

C.C. No.216/2010

Complainant : The State by H.D.Kote P.S.
(By Learned A.P.P.)

-Vs-

Accused : Alex
S/o T.L.Raju,
Aged about 25 years,
R/at Thgadiyal House,
Jadkal post, Kundapura Taluk,
Udupi District.

(By N.Sathish Gowda., Advocate)

Date of the Commission of offence	16.02.2010
Offences Compliance of	U.Sec.279/338/304(A) of IPC R/w Sec. 134(A) & (B) of IMV Act
Name of the Complainant	J.K.Doddsiddappachar
Date of filing of charge sheet	09.07.2010
Date of recording evidence	17.02.2016
Date of pronouncement of Judgment	01.12.2020
Opinion of the Judge	Acquittal

J U D G M E N T

On the accusation of rash and negligent driving which resulted in death of a motorcyclist Sh. Kariyappachar and grievous injuries

to pillion rider Siddachar, Sh.Alex (hereinafter referred to as the 'accused') was sent up to face trial for committing offences punishable under [Section 279/338/304 A IPC and 134\(A\)/134\(B\) IMV Act](#).

Brief facts as unfolded during the trial

2. The matrix of the facts as unfolded during the trial is that on 16.02.2010, at around 04.00 pm, at Mysore-Manandawadi road, near pura village, HD Kote, accused while driving a car (make Mercedes Benz) bearing registration number MH-14-P-5454 (hereinafter referred to as the 'offending vehicle') in a rash and negligent manner, tried to overtake a unknown lorry. In the said endeavor of overtaking, accused struck his car against the moving motorcycle bearing registration number KA-45-J-4967 causing an accident resulting in death of a motorcyclist Kariyappachar (hereinafter referred to as 'the deceased') and grievous injuries to pillion rider Siddachar. After causing the accident, the accused did not attend the deceased or intimate the fact of accident to the concerned police. The complainant took the deceased and injured Siddachar to nearby Government hospital where deceased was declared brought dead by Dr Sanath Kumar (CW23). Information about the accident was received and recorded at PS. After receiving the DD call, SI Shivanna (CW26) reached the spot and learned that deceased and injured Siddachar have already been taken to the hospital. The offending vehicle as well as the accidental motorcycle were found stationed at the spot.

3 The prosecution's case proceeds further that information about the arrival of deceased at the Government hospital was received and IO/SI (CW26) took this DD entry and reached the spot. On receiving this

information, IO/SI (CW26-Shivanna) reached the hospital where the injured and complainant met them. Complainant accompanied the IO to the spot where his statement (Ex P1) was recorded. On the basis of the complaint (Ex.P1), FIR no 60/10 was registered at PS HD Kote. Necessary investigation was carried out and documentation was done at the spot. The dead body of deceased was identified by his relative Mangalamma (PW5) and post-mortem was conducted by doctor Sanath Kumar who gave report (Ex P9). Libu (Cw20) carried out the mechanical inspection of the offending vehicle as well as accidental motorcycle and car. Dr.Vishwanath Kumar treated the injured and issued wound certificate vide Ex.P11. On completion of investigation, charge sheet was put to the Court. The copies of the charge sheet were supplied to the accused and notice under [Section 279/338/304 A IPC and 134\(A\)/134\(B\) IMV Act](#) was framed against him to which he pleaded 'not guilty' and claimed trial.

Witnesses examined

4. In order to substantiate the charges against accused, nine witnesses were examined by prosecution.

Complainant PW1 Dodda Siddapaji Char stated that he came known that the accused being the driver of the Mercedes Benz has caused accident to his bother in law Kariyappachar and PW4-Siddachar on 17.10.2010 at about 4.00 P.m., He immediately rushed to the spot and shifted the injured to the Government hospital where deceased was declared brought dead by Dr Sanath Kumar (CW23). He identified the complaint as Ex.P1.

Punch Witnesses to Spot Panchanamma (Ex.P2) PW2 Umesh and PW3 Somasekhar turned hostile and not supported the case of prosecution.

Eyewitness/injured PW4 Siddachar (pillion rider) mentioned that accident occurred when accused was trying to overtake the unknown vehicle.

Eyewitnesses PW5 Mangalamma, PW6 Subash and PW7 Govindaraju turned hostile and deposed that they had not witnessed the accident in question.

Owner of offending vehicle PW9 Lebu Joseph (Registered owner of offending vehicle) mentioned that accused was driving the offending vehicle at the relevant time.

PW8 Inspector C.Malik (Investigating Officer) justified the investigation carried out by him..

5. Accused in his statement under Section 313 Cr. PC admitted the accident as well as injuries sustained by deceased and injured PW5. He stated that although he was driving the offending vehicle but he was not rash or negligent. It is his version that deceased was trying to overtake an auto rickshaw which was going ahead of the offending vehicle and while doing so, he struck against the side of auto rickshaw and lost balance. He mentioned that deceased and injured PW5 sustained injuries after falling on the road and there was no contact between the offending vehicle and motorcycle. No defence witness has been examined.

Arguments

6. I have heard the Ld. APP for State and Ld. Defence Counsel and carefully gone through the entire material available on record.

7. Ld. APP has contended that prosecution has proved its case to the hilt. He contended that testimony of the eye witnesses is fully convincing and there is no reason to doubt his version. He argued that evidence on record has established that accused was driving the offending vehicle in a rash and negligent manner and accident was the direct outcome of his said driving.

8. On the other hand, Ld. Defence Counsel has argued that testimony of eye witness is not reliable. He has challenged his testimony on the ground that it contains various contradictions. He has further contended that there is nothing on record to establish that accused was driving the offending vehicle in a rash or negligent manner. Ld counsel has contended that even if the prosecution's case is taken at it's best, still, the charge of negligent driving is not substantiated. He has mentioned that accident resulted due to circumstances which were beyond the control of the accused and it could not have been averted by any human intervention.

Brief reasons for the decision

9. I have considered the entire evidence in the light of aforesaid contentions.

10. In order to establish the charges under [Section 279/338/304 A IPC](#), the prosecution has to establish in the first place that accused was driving the offending vehicle in rash and negligent manner. Secondly, it has to establish that the said act or the said negligence on the part of accused

has resulted in an accident and thirdly, it has to establish that the said accident has resulted in the death of the victim. The proximity between the alleged negligence and the death of the victim is to be established by leading cogent evidence.

11. Let us peruse the record to see whether these facts in issue have been proved. The accident and the resultant death of the deceased are not in dispute. The accused in his statement recorded under Section 313 Cr PC admitted that he was driving the offending vehicle. He has also admitted the accident but stated that he was not at fault. The post mortem report of the deceased is on record. The authenticity of the said report has not been disputed. Kariyappachar was declared brought dead at Government hospital and his death resulted after he sustained multiple injuries. It is not even the defence raised by the accused that deceased died due to any other cause except due to the injuries received by him and similar is the fate of injuries sustained by PW5. In such circumstances, the only aspect which remains to be seen is whether the accused was driving the offending vehicle in a rash or negligent manner? In case, the answer from the record comes in affirmative, then, it is also to be seen whether there is a close proximity between the rash and negligent driving of the accused and resultant death of Kariyappachar and grievous injuries to PW5-Siddachar?

12. In order to establish rash and negligent driving of the accused, the prosecution has heavily relied upon the testimony of the eye witnesses PW5 Mangalamma, PW6 Subash and PW7 Govindaraju and injured PW5-Siddachar. During their testimony, the alleged eyewitness/ PW5 to PW6 turned hostile and deposed that they had not witnessed the accident in question. They were declared hostile by the prosecution and were

cross examined by Ld.APP for the state. In their cross examination at the instance of the state, the witnesses/ PW5 to PW6 somersaulted and deposed contrary to their statements recorded by the IO u/s 161 [Cr.P.C.](#) They failed to utter even single statements in their deposition which could prove the fact that the accused was the one, who was driving the offending vehicle and that too, in a rash and negligent manner. Siddachar (PW4). Let us peruse his statement. Siddachar gave an account of the manner in which accident resulted. He mentioned that accused came driving the offending vehicle from the side of Hand post and he was going towards Madapur. It is his version that accused tried to overtake a unknown vehicle and in the said endeavour, he struck against the motorcyclist resulting in an accident. He mentioned that accused ran away from the spot. He and deceased were shifted to Government hospital where motorcyclist was declared brought dead. Ld defence counsel has attacked the testimony of this eyewitness on the ground that it contains material discrepancies and contradictions. He has argued that eye witness has not deposed anything about rash and negligent driving of the accused apart from stating that he was trying to overtake the unknown vehicle.

13. The sustain of injuries by this witness in the accident has not been disputed by defence. On appreciation of the record, I am of the considered opinion that the arguments raised by defence are well founded. Siddachar (PW4) stated in his cross-examination that offending vehicle was ahead of motorcyclist at the time of the actual impact. He has not mentioned anything about the speed of offending vehicle. He also remained silent about the width of the road on which the accident took place. It is the argument of defence that even if the prosecution's

case is taken at its best, still, the charges under [Section 279/338/304 A](#) IPC have not been established. This line of argument advanced by the defence is not without substance. The facts deposed by the eye witness does not establish beyond reasonable doubt that accused was driving the offending vehicle in a rash or negligent manner.

14. Negligence and rashness are mandatory elements of an offence under [section 279](#) or 338 or 304 A [IPC](#). Culpable negligence lies in the failure to exercise reasonable and proper care and caution incumbent upon a person in a given set of circumstances. Whereas rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that they will not. A rash and negligent act is a reckless act which means 'regardless' or heedless of the possible harmful consequences of one's acts. The question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case.

15. In the judgment titled as "Rathnashalvan Vs State of Karnataka reported as 2007 (3) SCC 474 AIR 2007 SC 1064" the Hon'ble Supreme Court held:

"Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. 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"

16. Judicial precedents have also described a 'rash and negligent ' as a ' reckless ' act. In the judgment titled as "Kuldeep Singh State of FIR no. 142/04 10/14 Himachal Pradesh" reported as 2008 CRI L J 3932 (SC) the Hon'ble Supreme Court quoted R.V.Caldwell (1981) 1 AII ER 961, wherein it has been observed that:

" Nevertheless, to decide whether someone has been ' reckless ' whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility: nor, if the risk of the harmful consequences was so light that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one for the most grave)...."

17. Adverting to the fact of the present case, although Siddachar has mentioned that accident occurred when accused was trying to overtake the unknown vehicle but the said deposition in itself does not establish rash and negligent driving of accused. In order to prove charges under [Section 279/338/304](#) A IPC, rash and negligent driving must be exhibited and proved on record. The record must demonstrate how the driving of the accused can be categorised as rash or negligent. It cannot be deemed that rash and negligent driving stands established merely because accident has been caused while the accused was trying to overtake the motorcyclist. There is no scope of raising any presumption about rash and negligent driving merely because accident has resulted in death of a person. There must be some impeccable evidence to establish rash and negligence driving of an accused. The eye witness/injured has neither mentioned the speed of the offending vehicle nor stated whether accused was overtaking the unknown vehicle from left or right side. These factors are very relevant to arrive at any finding about rash and negligent driving of the accused. It has not been mentioned by him that which side of the offending vehicle hit the motorcyclist. In the absence of the same it cannot be said that accused was driving the offending vehicle in wrong lane. The accused cannot possibly be convicted without any legal substantive evidence as the evidence is the essential element in the criminal proceedings notwithstanding the seriousness of the allegations levelled against the accused because criminal proceedings requires strict proof of guilt. The observation of the Hon'ble High Court of Punjab and Haryana in *Zora Singh Vs State of Punjab*, 2010 2 RCR (Criminal) 396 aptly summarises the fate of the present trial. The High Court observed that it is the evidence on the basis of which the decision of criminal court is based and is the requirement of criminal justice.

Otherwise, in the absence of the same, the courts have no option but to record an order of acquittal howsoever painful the same may be.

18. In view of the discussions made in aforesaid paras, I have reached a conclusion that prosecution has failed to prove the charges beyond reasonable doubt. The testimony of eyewitness/injured Siddachar is insufficient to establish that accused was driving the offending vehicle in a rash and negligent manner. The site plan also does not depict the negligence of the accused. In the site plan, the place where the accident took place has been shown as point A while the place where the accidental motorcycle was found lying has been shown as point 'D'. Neither the width of the road nor the distance between the point 'A' and the corner of the road has been depicted. It is a cardinal principle of criminal law that charge against the accused must be established beyond reasonable doubt. The prosecution must do so by leading cogent evidence. On the other hand, it is called upon the accused to give a defence which is probable and believable. In the absence of any concrete evidence about rash and negligent driving of an accused, the defence put forward by him shall ordinarily be accepted unless it is totally improbable or unbelievable. The accused has mentioned that motorcyclist lost balance after his motorcycle struck against an auto rickshaw moving ahead of the offending vehicle. He has stated that due to the said reason, motorcyclist fell on the road and sustained injuries. This defence raised by him cannot be rejected as improbable or unbelievable.

19. In view of the discussions made in the above said paras, I have reached at a conclusion that material on record is not adequate to conclude that accused was driving the offending vehicle in a rash and

negligent manner. This is a fit case where the accused should be granted the benefit of doubt. The accused Alex stands acquitted of the charges under [Section 279/338/304 A IPC](#) and [134\(A\)/134\(B\) IMV Act](#) and on the ground of benefit of doubt. Consequently, I proceed to pass the following;

ORDER

In exercise of power vested with this court U/Sec 255(1) of Criminal Procedure Code, it is ordered that accused is acquitted for the offence punishable U/sec.279/338/304(A) IPC and 134 (A) & (B) IMV Act.

The accused is hereby set at liberty.

His bail bond shall be in force for 6 months in view of amended provision under Sec.437 (A) of Cr.P.C.

The interim release of the Hero Honda Splendor plus bearing Reg.No.KA-45-J-4967 and Mercedes Benz bearing Reg.No.MH-14-P-5454 to the custody of applicants seized in P.F.No.34/2010 are hereby made as absolute after the expiry of appeal period.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 1st day of December, 2020.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

ANNEXURE**I. LIST OF WITNESSES EXAMINED FOR AND ON BEHALF OF THE PROSECUTION:**

PW-1	: J.K.Doddasiddachar
PW-2	: Umesh
PW-3	: Somashekar
PW-4	: Siddachari
PW-5	: Mangalamma
PW-6	: Subhash H.M
PW-7	: Govindaraju
PW-8	: Malik.C
PW-9	: Libu Joseph

II. LIST OF DOCUMENTS EXHIBITED FOR AND ON BEHALF OF THE PROSECUTION:

Exhibit P.1	: Complaint
Exhibit P.1 (a)	: Signature of PW1
Exhibit P.2	: Mahazar
Exhibit P.2 (a)	: Signature of PW1
Exhibit P.2 (b)	: Signature of PW2
Exhibit P.2 (c)	: Signature of PW3
Exhibit P.3	: Photos
Exhibit P.3 (a)	: Negative
Exhibit P.4 to 6	: Photos
Exhibit P.7	: Statement of PW7
Exhibit P.8	: inquest report
Exhibit P.8 (a)	: Signature of witness
Exhibit P.9	: P.M.report
Exhibit P.9 (a)	: Signature of witness
Exhibit P.10	: Motor vehicles accident report
Exhibit P.11	: Wound certificate
Exhibit P.12	: Statement of PW9

III. LIST OF MATERIAL OBJECTS MARKED FOR AND ON BEHALF OF THE PROSECUTION:-

-NIL-

IV. LIST OF WITNESSES EXAMINED AND DOCUMENTS
EXHIBITS FOR AND ON BEHALF OF THE ACCUSED:-

-NIL-

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote