

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 881 OF 2007

SHIDDANAGOUDA

.. APPELLANT (S)

VERSUS

STATE OF KARNATAKA

.. RESPONDENT (S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Revision Petition No. 1261 of 2004, dated 15.11.2006. By the impugned judgment and order the High Court has confirmed the order of conviction but modified the sentence passed by the Courts below for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 (for short, "the IPC").

2. The brief facts of the prosecution case are that on 02.08.2000 at about 8:45 a.m. the appellant

was driving a bus rashly and negligently when the bus collided with a motorcycle resulting in the death of two persons seated on the motorcycle. A passenger on the bus lodged a complaint before the police and a First Information Report was registered under Sections 279 and 304-A of the IPC. Upon the completion of investigation, a chargesheet was filed before the Trial Court.

3. Thereafter, the appellant appeared before the Trial Court and after both sides were heard, charges were framed against the appellant for the offences punishable under Sections 279 and 304-A of the IPC. The charges were read over and explained to the appellant who pleaded not guilty. Accordingly, the case was committed to Trial.

4. In order to substantiate the charges framed against the appellant, the prosecution examined 11 witnesses, including the complainant and other

passengers of the bus who were eye-witnesses to the incident, and presented 10 documents and 11 material objects. After the completion of prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Code"). No evidence was led in defense of the appellant.

5. The appellant would submit in his defense that the motorcycle driven by the deceased was coming on a katcha portion of the road and because the forest department had stored firewood on that portion of the road, the motorcycle suddenly came on to the main road and dashed against the bus being driven by the appellant. The Trial Court did not find any merit in the submissions of the appellant and held that the oral and documentary evidence on record proved the case of the prosecution beyond reasonable doubt. Accordingly, the Trial Court

convicted the appellant for the offence punishable under Section 304-A of the IPC and sentenced him to undergo simple imprisonment for a period of one year. Further, the Trial Court convicted the appellant for the offence punishable under Section 279 of the IPC and sentenced him to pay a fine of Rs.1,000/-, and in default to undergo simple imprisonment for a period of three months.

6. Being aggrieved by the said order passed by the Trial Court, the appellant carried the matter in appeal before the Additional Sessions Judge at Shimoga. By its judgment and order dated 08.04.2004, the Additional Sessions Judge confirmed the order of conviction and sentence passed by the Trial Court for the offence punishable under Section 304-A and order of conviction for the offence punishable under Section 279 of the IPC but set aside the order of sentence for the offence punishable under Section 279 of the IPC.

7. Being aggrieved by the said judgment and order passed by the Additional Sessions Judge, the appellant preferred a Criminal Revision before the High Court. Upon considering the entire evidence on record and also the submissions of the parties, the High Court confirmed the order of conviction passed by the Courts below for the offences punishable under Sections 279 and 304-A of the IPC but modified the sentence to simple imprisonment for a period of six months, along with payment of fine of Rs.2,000/-, and in default simple imprisonment for a period of three months.

8. Being aggrieved by the said judgment and order passed by the High Court, the appellant is before us in this appeal.

9. We have heard the learned counsel for the parties to the *lis*.

10. The learned counsel for the appellant would assail the judgment and order passed by the High Court and submit that the prosecution had failed to establish either culpable rashness or criminal negligence on the part of the appellant, and that there was negligence on part of the motorcycle driver which led to the accident. Apart from arguing on merits of the case, the learned counsel for the appellant would submit that the appellant is HIV positive, and is being treated for the same, and in that view of the matter the sentence ought to be reduced.

11. *Per contra*, the learned counsel appearing for the respondent-State would support the order of conviction passed by the High Court. However, the learned counsel appearing for the respondent-State would not seriously dispute the submissions of the learned counsel for the appellant relating to the reduction of sentence.

12. After going through the judgment and order passed by the High Court as well as the Courts below, we are of the considered opinion that the well reasoned order of conviction passed by the High Court for the offences under Sections 279 and 304-A of the IPC needs no interference.

13. However, it has come on record that the appellant is HIV positive and is being treated for HIV and advanced AIDS. A Medical certificate issued by a competent doctor dated 17.03.2007 states that the doctor is of the opinion that the appellant requires Anti-Retroviral Treatment, and that it is essential that the Treatment be provided continuously for the management of the disease. It must be noted that no minimum sentence is prescribed under Sections 279 and 304-A of the IPC. Keeping these aspects of the matter in view, while confirming the conviction for the offences punishable under Sections 279 and 304-A of the IPC,

we modify the sentence to the period already undergone.

14. The appeal is disposed of accordingly. The bail bonds of the appellant, if any, are discharged.

15. The order passed by us shall not be treated as precedent in any other case.

.....CJI.
[H.L. DATTU]

.....J.
[V. GOPALA GOWDA]

.....J.
[AMITAVA ROY]

NEW DELHI,
SEPTEMBER 02, 2015.

ITEM NO.11

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 881/2007

SHIDDANGOUDA

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With interim relief and office report)

Date : 02/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Mihir Samgon, Adv.
Ms. Amritananda, Adv.
Ms. Rukhsana Choudhury, Adv.

For Respondent(s) Ms. Anitha Shenoy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order. The bail bonds of the appellant, if any, are discharged.

The order passed in this appeal shall not be treated as precedent in any other case.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]