

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2130 OF 2009

SURESH

...APPELLANT(S)

VERSUS

THE 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 in Criminal Revision No.374 of 2007, dated 15.07.2008. By the impugned judgment and order, the High Court has partly allowed the Criminal Revision and has confirmed the order of conviction and sentence for the offences punishable under Sections 337 and 338 of the Indian Penal Code, 1860 (for short, "the IPC"). The High Court has further confirmed the order of conviction but set aside the order of sentence for the offence punishable under Section 279 of the IPC, and has set aside the order of conviction and sentence passed for the offence punishable under Section 187 of the Motor Vehicles Act, 1988 (for short, "the MV Act").

2. The brief facts of the prosecution case are that on 31.03.2003 at about 9:00 p.m. the appellant was driving a

bus in a rash and negligent manner and dashed the bus against a road side tree. As a result of the accident, the passengers traveling in the bus sustained injuries. After the accident the appellant did not take steps to provide medical aid to the injured passengers and did not inform the police about the accident. A First Information Report was registered on the instance of an injured passenger.

3. After the completion of the investigation, chargesheet was filed against the appellant for the offences punishable under Sections 279, 337 and 338 of the IPC read with Section 187 of the MV Act. Thereafter, the appellant appeared before the Trial Court and after both sides were heard, charges were framed. 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 19 witnesses and presented 5 documents. After the completion of prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (for short, "the Code"). The appellant would submit that the accident was caused due to the mechanical

defect of the bus, and one witness was examined in defense evidence to prove the same.

5. Upon examination of the evidence on record, by its judgment and order dated 27.08.2005, the Trial Court convicted the appellant for the offences punishable under Sections 279, 337 and 338 of the IPC and Section 187 of the MV Act. The Trial Court sentenced the appellant to undergo simple imprisonment for a period of three months for the offence punishable under Section 279 of the IPC, to undergo simple imprisonment for a period of one month for the offence punishable under Section 337 of the IPC, to undergo simple imprisonment for a period of three months for the offence punishable under Section 338 of the IPC, and also to pay a fine of Rs.500/-, and in default to undergo simple imprisonment for fifteen days for the offence punishable under Section 187 of the MV Act.

6. Being aggrieved by the said judgment and order passed by the Trial Court, the appellant preferred an appeal before the First Appellate Court. The First Appellate Court allowed the appeal on the ground that the substance of the accusations were not explained to the accused properly. Accordingly, the First Appellate Court remanded

the matter to the Trial Court for re-trial after framing the substance of the accusation afresh and to record evidence or additional evidence if necessary.

7. The Trial Court framed the substance of the accusation afresh as per the directions of the First Appellate Court. After carefully perusing the material on record, the Trial Court was of the opinion that fresh evidence and additional evidence was not necessary in the instant case as the prosecution had examined all witnesses except one, who was dropped with the consent of the appellant. Accordingly, the case was finally heard. Upon careful examination of the evidence on record, the Trial Court held that the evidence of the prosecution witnesses including the eye-witnesses who were passengers in the bus, the doctor who examined the wounded passengers and the motor vehicle inspector proved the guilt of the accused beyond reasonable doubt.

8. By its judgment and order dated 21.08.2006, the Trial Court convicted the appellant for the offences punishable under Sections 279, 337 and 338 of the IPC and Section 187 of the MV Act. The Trial Court sentenced the appellant to undergo simple imprisonment for a period of three months for the offence punishable under Section 279

of the IPC, to undergo simple imprisonment for a period of one month for the offence punishable under Section 337 of the IPC, to undergo simple imprisonment for a period of three months for the offence punishable under Section 338 of the IPC, and also to undergo simple imprisonment for a period of fifteen days for the offence punishable under Section 187 of the MV Act.

9. Being aggrieved by the said judgment and order passed by the Trial Court, the appellant once again carried the matter in appeal before the First Appellate Court. The appellant would submit before the First Appellate Court that the Trial Court had failed to appreciate that the accident occurred on a busy road and therefore it was not possible for the appellant to have driven the bus in a rash and negligent manner. The appellant would further submit that the prosecution had failed to record fresh or additional evidence before the Trial Court as directed by the First Appellate Court, and that the Trial Court had not properly appreciated the evidence on record and the evidence of the defense witness.

10. The First Appellate Court held that while remanding the matter, the First Appellate Court had given discretion to the Trial Court to record fresh evidence or

additional evidence if necessary. The Trial Court had not considered it necessary to record fresh or additional evidence and hence the same was not necessary. On a careful scrutiny of the entire oral and documentary evidence on record, the First Appellate Court confirmed the order of conviction and sentence passed by the Trial Court.

11. Being aggrieved by the said judgment and order passed by the Appellate Court, the appellant preferred a Criminal Revision Petition before the High Court. The High Court has not found any glaring errors committed by the Courts below in appreciation of the evidence, and in that view of the matter the High Court has held that it could not re-appreciate the evidence to arrive at its own conclusion. Accordingly, the High Court has confirmed the order of conviction and sentence passed by the Courts below for the offences punishable under Sections 337 and 338 of the IPC.

12. Further, while confirming the order of conviction passed by the Courts below for the offence punishable under Section 279 of the IPC, the High Court has set aside the order of sentence on the ground that the offence punishable under Section 279 of the IPC was a

minor offence and therefore, when the appellant was sentenced for the major offences punishable under Sections 337 and 338 of the IPC, there was no need to sentence the appellant for the minor offence under Section 279 of the IPC.

13. However, so far as the conviction for the offence under Section 187 of the MV Act is concerned, the High Court has held that the prosecution witnesses did not depose before the Trial Court that there was no mob fury and that the appellant was in a position to take all reasonable steps to secure medical attention for the injured passengers. Further, there was no evidence on record to show that the appellant had failed to give information to the police officers on demand. In that view of the matter, the High Court has set aside the orders passed by the Courts below for the offence punishable under Section 187 of the MV Act.

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

15. We have heard the learned counsels appearing for the parties to the *lis*.

16. The learned counsel for the appellant would assail the judgment and order passed by the High Court and submit that while remanding the matter to the Trial Court for re-trial, the First Appellate Court had directed the Trial Court to record fresh evidence or additional evidence, however the same had not been done. The learned counsel for the appellant would further submit that the High Court has set aside the order of conviction and sentence for the offence punishable under Section 279 of the IPC and in that view of the matter the conviction under Sections 337 and 338 of the IPC should also be set aside. The learned counsel would rely upon the judgment of this Court in *Basappa v. State of Karnataka (2014) 5 SCC 154* wherein it was observed:

"The High Court itself having acquitted the appellant under Section 187 of the MV Act on the ground of no evidence, whether it was possible to hold him guilty under Sections 279 and 304-A IPC is itself a seriously doubtful question."

17. The learned counsel for the appellant would also submit that the bus was being driven on a busy road and therefore it was not possible for the appellant to be driving in a rash and negligent manner. He would further submit that the accident was caused due to the mechanical

defect of the bus, and this was proved by the evidence of the defense witness.

18. *Per contra*, the learned counsel appearing for the respondent-State would support the order of conviction and sentence passed by the High Court. The learned counsel would submit that the First Appellate Court had given discretion to the Trial Court to record fresh or additional evidence, and the Trial Court did not consider it necessary to do so, and that this point has been sufficiently dealt with by the Courts below. The learned counsel for the respondent-State would also submit that the High Court had confirmed the conviction and only set aside the sentence for the offence punishable under Section 279 of the IPC, and therefore this contention of the appellant was without merit.

19. We do not find any merit in the contentions raised by the learned counsel for the appellant. The contentions raised by the learned counsel for the appellant have been dealt with sufficiently by the well reasoned orders of the Courts below. The submission of the learned counsel for the appellant that the High Court has set aside the conviction for the offence punishable under Section 279 of the IPC is incorrect, and the High Court has confirmed

the conviction and only set aside the sentence for the offence on the ground that the appellant has been convicted and sentenced for the major offences punishable under Sections 337 and 338 of the IPC.

20. After going through the judgment and order passed by the High Court and the Courts below and the submissions of the learned counsels, we are of the considered opinion that there is no infirmity in the well reasoned judgment and order passed by the High Court which requires our interference.

21. The appeal, being devoid of any merit, deserves to be dismissed and is accordingly dismissed.

22. The concerned authorities are directed to take the appellant into custody forthwith to serve out the remaining period of sentence, if not already served.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 08, 2015.

ITEM NO.33

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(s). 2130/2009

SURESH

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date : 08/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr.Sharanagouda Patil, Adv.
M/s S-legal Associates,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 dismissed, in terms of the signed order.

The concerned authorities are directed to take the
appellant into custody forthwith to serve out the remaining
period of sentence, if not already served.

(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar