IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MARCH, 2017

BEFORE

**THE HON'BLE MR.JUSTICE B. A. PATIL**

CRIMINAL REVISION PETITION No.2534/2011

**Between**:
Ramulu S/o Sangappa Murthy,
Age about 56 Years,
Occ: Driver,
R/o Village Dharmapur,
Tq. & Dist. Bidar.

... Revision Petitioner

(By Sri. K.M. Ghate, Advocate)

**And:**

State Through
Sub-Inspector of Police,
Bagdal Police Station,
Tq. & Dist. Bidar.
Represented by State Public Prosecutor.

... Respondent

(By Sri. P.S.Patil, HCGP)

This Revision Petition is filed under Section 397 R/w 401 of Cr.P.C., praying to pass an order setting aside the order of conviction passed by the trial Court in CC No.286/2006 and first appellate Court in Crl. Appeal No.59/2008 dated 30th August 2008 and 16th March 2011 respectively by allowing the revision petition.

This Crl.R.P. having been heard, reserved for Orders and coming on for pronouncement of order this day, the Court made the following: -

**ORDER**

The present revision petition has been filed by the accused-petitioner assailing the judgment of conviction and sentence in criminal appeal No.59/2008 dated 16.3.2011 passed by Addl. District and Sessions Judge, Bidar whereunder the judgment of conviction and sentence passed by Prl. JMFC Court, Bidar in C.C No.286/2006 dated 30.08.2008 has been confirmed under sections 279, 304-A of IPC and under Sec. 187 of M.V. Act.

2. The gist of the allegation as per the complaint are that on 17.5.2006 at about 11.15 AM near Manahalli Bus-stand the driver of the Tractor bearing Reg.No.KA-38-T1947 and trolley No.38-166 drove the same rashly and negligently and dashed to the son of the complainant, as a result of the same he

fell down and sustained injuries, thereafter succumbed to the injuries. After investigation the charge sheet was came to be filed. Thereafter the trial was held and accused was held guilty. Being aggrieved by such order he preferred the appeal No.59/2008, there also the same was confirmed, as such the accused-petitioner is before this Court.

3. Heard the learned counsel for the accused/petitioner and the High Court Government Pleader.

4. The main grounds urged by the learned counsel for the petitioner are that, though there is no evidence to prove that the accused has not driven the tractor-trailer rashly and negligently, the trial Court on the basis of the evidence of interested witness has wrongly convicted the accused-appellant. He would also contend that the admissions improvements, omissions made by the witnesses have not been taken into

consideration while convicting the accused. He would further contend that the witnesses have admitted that the width of the road is 30 feet both the sides, shops are there, the house of the complainant is at a distance of 10 yards. There is also autorickshaw parking, Maxicab parking and it was a busy road, question of the driver of the tractor driving rashly and negligently does not arise at all. He would also contend that the trial Court without application of mind has passed the impugned order. He would further contend that on the date of accident the vehicle in question was engaged with Shivashakti Sugar Mills Baganoor. Under such circumstances question of involving of the said vehicle in the the accident also disputed. This aspect has not been considered by the trial Court. On these grounds he prayed for allowing the appeal by setting aside the impugned order.

5. Per contra the learned High Court Government pleader would contend by supporting the judgment and order passed by both the Courts. He would further contend that eyewitnesses have categorically deposed about the rash and negligent act of the accused/petitioner. The accident in question has happened due to rash and negligent act of the accused. He further contend that no illegality or perversity is found in the approach adopted by the trial Court as well as the 1st appellate Court. He further contends that the prosecution has proved guilt of the accused beyond all reasonable doubt and the defence of the accused does not probabilise in any manner. He would also contend that though the owner of the vehicle was came to be examined, but he has not deposed that the tractor in question has been entrusted to the Shivashakti Sugar Mills, Bhangoor from 31-1-2006 to 31-5-2006. On these grounds he prayed dismissal of the petition.

6. On perusal of the records, PW 1 is the complainant by reiterating the contents of the complaint he has deposed that the driver of the Tractor drove the same rashly and negligently and caused the accident and as such his son died on the spot. Though, this witness has been cross-examined, nothing has been elicited so as to disbelieve his evidence. P.W.2 and 3 are the spot mahazar panchas. P.W.2 has deposed about the conducting of the spot mahazar as per EX.P-2. P.W.3 has turned hostile. P.W.4 is a seizure mahazar pancha to Ex.P-2. He has not supported the case of prosecution. P.W.5 is the eyewitness, he has deposed that on 17.5.2006 at about 11:00 AM a tractor came and hit against the son of C.W.1 on the cornor of the road and due to the injuries he died. He has also further deposed that the accused who is before the court was driving the tractor on the date of accident. P.W.6 is also an eyewitness, he has also reiterated the evidence of P.W.5. During the course of cross-

examination nothing has been elicited so as to discard their evidence. P.W.7 is also an eyewitness, in front of his shop the accident has taken place and he has also reiterated the evidence of P.W.5 and 6. So also P.W.8 and 9 are eyewitnesses they have reiterated the evidence of P.W.7. During the course of cross-examination nothing is elicited. P.W.10 is the owner of the tractor he has deposed that the accused was the driver of the tractor and he came to know that the tractor has met with accident. This witness has not been cross-examined. P.W.11 is the Police Constable who carried the FIR to the Court. P.W.12 is the Police Inspector, he investigated the case and filed the charge-sheet against the accused.

7. On careful consideration of the evidence which has been led before the trial Court, all the eyewitnesses have consistently stated about the rash and negligent act of the accused. Even they have

consistently deposed that the accused was the driver of the Tractor in question and he was driving the said Tractor at that time rashly and negligently. Though the learned counsel for the accused-appellant would contend that the place of the incident is thickly populated and it is near the bus-stand and traffic vehicles were there, but merely because that the traffic was there and it is surrounded by shops and the taxi's stand that does not mean that the accused was not driving the said tractor rashly and negligently.

8. Be that as it may, the conduct of the accused after the accident is also indicates that he was rash and negligent. The prosecution papers indicates that after the accident accused did not stop the tractor and fled away from the place of incident without attending to the injured and taking him to hospital, thereafter informing the same to police. If really, he was not rash and negligent, he could not have behaved in

the way he has done. It also contribute to hold that he was rash and negligent at the time of accident.

9. It is the specific case of the prosecution that when the deceased boy was crossing the road the driver of the Tractor dashed to the boy and as a result of the said injuries he succumbed to the said injuries. When a small boy of 3 years was crossing the road the accused-petitioner ought to have taken the care as that of an ordinary prudent man, if he fails to do so it itself amounts to rash and negligent act of the accused. In this behalf also the contention of the learned counsel for appellant does not hold any water.

10. The next contention of the learned counsel for the appellant is that the said Tractor has been engaged with Shivashakti Sugar Mills, Bhangoor and the said vehicle has not met with an accident. In this behalf the owner of the tractor was came to be examined as P.W.10 before the trial Court. He has categorically

stated that the accused was the driver of the tractor since from the date of permit and he further deposed that he came to know that the tractor has met with accident. In his evidence he has not deposed that the said tractor in question has been engaged with Shivashakti Sugar Mills, Bhagnoor. If really the said vehicle has been engaged with the said mill, definitely it would be within the knowledge of the owner and he would be party to said agreement and he would have definitely deposed before the Court about the said fact. By going through the records it appears that patently a false plea has been taken by the accused appellant only to overcome the conviction.

11. Another contention of the learned counsel for the appellant is that all witnesses are interested witnesses and they are the relatives of P.W.1. It is well established principles of law that merely because the witnesses are relatives thereby their evidence cannot be

discarded but the only precaution is their evidence has to be scrutinized very carefully. On careful consideration of the evidence no such material has been brought by the accused-appellant so as to come to the conclusion that only with an intention help the complainant they are deposing falsely. Be that as it may, during the course of cross- examination nothing has been elicited why the witnesses are deposing against the accused appellant. Looking from any angle the said contention does not hold any water. The next contention taken up by the learned counsel for the appellant is that there are material improvements, omissions and contradictions in the evidence of the prosecution. I have carefully gone through the evidence of all the witnesses, there are no such material improvements, omissions and contradictions. Be that as it may, even the material contradictions and omissions have not been put into the mouth of the witnesses and thereafter the same has not been brought to the notice

of the investigation officer in his evidence. Under such circumstances, the omissions and improvements will not come to the aid of the accused. There will be some minor contradictions and improvements, but they will not be going to the root of the case so as to discard the evidence of the prosecution witnesses.

12. It is the contention of learned counsel for the accused/petitioner is that a separate sentence ought not to have been passed u/s 279 of IPC. By going through the records, it indicates that the trial Court has convicted the accused/petitioner on both the counts. So far as the imprisonment of sentence for the offence punishable u/s 279 of IPC is concerned, the approach adopted by the trial Court as well as the 1st appellate Court is incorrect. The offence punishable u/s 279 of IPC though it is independent when accused is also charge-sheeted u/s 304-A of IPC, then in that event an offence u/s 279 of IPC virtually merges with the main

offence punishable u/s 304-A of IPC. In that light it is not advisable to sentence the accused on both these counts. It has been held in a decision reported in the case of ***Gurubasavaraj @ Bennishettappa .vs. State of Karnataka, reported in (2012) 8 Supreme Court Cases Page 734,*** as under;

> ***"E. Penal Code, 1860-Ss. 53, 279 and 304-A*** *- Sentences and conviction-Distinction between - Separate sentence under S. 279 not found necessary-Held, this did not imply that there was no conviction under S. 279-Criminal Procedure Code, 1973-Ss.353, 354 and 389-Conviction and sentence - Relationship-Offences established under numerous provisions of law - Separate sentence not imposed under a particular section-Held, this did not imply that there was no conviction thereunder.*

13. Keeping in view the above aspect the sentence of imprisonment for the offence punishable u/s 279 of IPC is liable to be set aside.

14. Though the learned counsel for the petitioner would contend that the witnesses have not specifically stated the speed of the vehicle but while considering the rash and negligent act, the speed is not the criteria, it is the act of the accused which has to be taken into consideration. When the witnesses have categorically stated that the alleged accident has taken place because of the rash and negligent act of the accused, then under such circumstances the contention of the learned counsel for the petitioner does not hold any water.

15. The learned counsel for the accused/petitioner would submit that accused is the sole earning member and he has got a family to be nourished by him. The accident in question has taken place during 2006. If he is convicted and detained in jail, it is going to cause untold inconvenience and hardship, as such he requested to take a lenient view.

16. As per the principle enunciated by the Hon'ble Apex Court in a case of ***State of Karnataka .Vs. Krishnappa @ Madhugiri reported in AIR 1987 SC 867,*** no fly bite sentence for the offence punishable u/s 304-A of IPC should be awarded and a minimum sentence of six months to be imposed. The ratio in the above decision enumerates about minimum sentence, but it is the duty of the Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime as held in the decision reported in case of ***Akram Khan V/s State of West Bengal, reported in 2012(1) CRIMES 5 (SC),*** as under;

*"In Mulla and another v/s State of Uttar Pradesh (2010) 3 SCC 508, after considering various earlier decisions, this Court held as under:-*

> *67. It is settled legal position that the punishment must fit the crime. It is the duty of the Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime."*

17. Keeping in view the above proposition of law, on perusal of the entire records, it appears that the accused is now aged about 61/62 years the accident in question is taken place in the year 2006. He may be having some liabilities and commitments, keeping in view the above said facts and circumstances if the sentence is reduced to one year for the offence punishable under Sec. 304-A of IPC and to pay a fine of

Rs.2000/- in default, he has to under simple imprisonment for one month would meet the ends of justice. Keeping in view the above said facts and circumstances I pass the following:

**ORDER.**

Accordingly the Criminal Revision Petition is allowed in part.

The judgment and sentence passed by the trial Court and confirmed by the 1st appellate Court is modified. The sentence of imprisonment passed against the accused/petitioner for the offence punishable u/s 279 of IPC is set aside and the judgment of sentence passed by the trial Court for the offence u/s 304-A of IPC is reduced to one year and the fine has been increased to Rs.2000/- and in default to undergo S.I. for one month so far as the sentence passed u/s 187 of M.V. Act is confirmed.

Petitioner is entitled for set off as per section 428 of Cr.P.C. The Trial Court is directed to issue modified conviction warrant to the jail authorities forthwith.

Registry is directed to send the copy of this order to trial Court forthwith and free copy of the order be furnished to the petitioner or to his counsel.

**Sd/-**
**JUDGE**

BL