



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE V SRISHANANDA**

**CRIMINAL REVISION PETITION NO. 1008 OF 2014**

**BETWEEN:**

SRI VEERAPPA SHARANAPPA SOBAGINA  
S/O SHARANAPPA,  
AGED ABOUT 38 YEARS,  
R/AT NEAR VEERABHADRESHWARA TEMPLE,  
SUDI VILLAGE, RONA TQ DISTRICT:GADAG,  
STATE:KARNATAKA.

...PETITIONER

(BY SRI CHANDRASHEKHAR.C, ADVOCATE)

**AND:**

STATE OF KARNATAKA  
REPRESENTED BY PUBLIC PROSECUTOR,  
(UPPINANGADY P.S)-575 201.

...RESPONDENT

(BY SRI H.S.SHANKAR, HCGP)

  
Digitally  
signed by R  
MANJUNATHA  
Location:  
HIGH COURT  
OF  
KARNATAKA

THIS CRL.RP IS FILED U/S.397 CR.P.C PRAYING TO SET ASIDE THE PETITIONER MAY KINDLY BE ACQUITTED FROM THE CHARGES FRAMED AGAINST HIM, JUDGMENT ORDER REGARDING SENTENCE DTD.27.10.2012 PASSED BY THE ADDL. CIVIL JUDGE & JMFC, PUTTUR IN C.C.NO.1740/2009, CONFIRMED BY THE ORDER DTD 29.09.2014, PASSED BY THE COURT OF V-ADDL.DIST. AND SESSIONS JUDGE, D.K., MANGALORE, SITTING AT PUTTUR, D.K., IN CRL.A.NO.311/2012.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

1. Heard Sri Chandrashekhar C.Chansapur, learned counsel for the petitioner and learned High Court Government Pleader for the respondent/State.

2. This revision petition is filed with the following prayer:

*"Therefore the petitioner prays that the judgment and order regarding sentence dated 27-10-2012, passed by the Civil Judge and J.M.F.C, Puttur in C.C. No. 1740/2009, confirmed by the order dated 29-09-2014, passed by the Court of V Addl District and Sessions Judge, D.K. Mangalore, Sitting at Puttur, D.K, in Criminal Appeal No.311/2012, may kindly be set aside and the petitioner may kindly be acquitted from the charges framed against him in the ends of justice and equity."*

3. Brief facts of the case are as under:

Revision petitioner is the accused who faced the charges for the offences punishable under Sections 279, 337, 338 and 304-A IPC. The revision petitioner being the driver of KSRTC bus, on 19.07.200 at about 12.15 p.m., at Dhaddalpalke of Kaukrady village, Puttur Taluk on Kokkada Periyashanthi Public road, was driving the bus bearing registration No.KA-01-F-8417



from Dharmastala towards Bengaluru side. He drove the said bus in a rash and negligent manner and dashed against a Maruthi Omni Car bearing registration No.K.A.06-M-6097, which was parked in the opposite direction and thereby the inmates of the car suffered injuries and four of the inmates died and others sustained injuries.

4. A complaint came to be lodged. After thorough investigation charge sheet was filed. Petitioner pleaded not guilty and therefore, trial was held.

5. In order to prove the case of the prosecution case, prosecution proceeded to examine seven witnesses comprising of complainant and other injured witnesses and relied on thirty three documents. Defence relied on a news paper cutting as Ex.D.1. On conclusion of the recording of evidence, accused statement as contemplated under Section 313 of Cr.P.C., was recorded. Accused denied all the incriminatory materials in the statement as is contemplated under Section 313 (5) Cr.P.C., and did not choose to place any defence evidence on record.



6. Thereafter, the learned Trial Magistrate heard the parties and passed an order of conviction granting six months simple imprisonment for the offence under Section 304-A of IPC and for other offences the learned Trial Magistrate imposed the fine.

7. Being aggrieved by the order passed by the learned Trial Judge, accused preferred an appeal before the District Court in Crl.A.No.311/2012. Learned District Judge after securing the records and hearing the parties, dismissed the appeal on merits.

8. Challenging the orders passed by the learned Trial Magistrate and learned District Judge, present revision petition is filed on the following grounds:

- *The orders passed by the courts below are contrary to law, facts, circumstances of the case, and the evidence on record and if these orders are not set aside it will occasion a failure of justice and cause irreparable hardship to the petitioner.*
- *The decisions of the courts below are wholly illegal, capricious and not sustainable either in law or on facts and as such the same are liable to be set aside.*



- *The Courts below erred in holding that the prosecution has proved the charges against the accused for the offence punishable under Section 279, 337, 338 and 304(A) of the Indian Penal Code.*
- *The courts below had committed an error in misreading the evidence on record and it ought to have held that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubts and the petitioner /accused is entitled to benefit of doubts.*
- *The courts below had also committed an error in convicting the accused- petitioner merely on the basis of the evidence of the PW2 and PW3, who are related and interested and whose evidence are unreliable. The courts below ought to have rejected their evidence as unnatural, artificial and contradictory and unsafe to believe. The courts below ought to have held that even in the evidence of these witnesses no offences alleged against the petitioners have been made ought and as such the courts below ought to have acquitted the petitioner from the charges framed against him.*
- *The courts below failed to take notice of the fact that the P.W.1 has deposed that, due to the negligence of Maruthi Omni accident has taken place and this important fact has not been considered by the court below. Pw 2 and 3 in their witnesses have only stated that the vehicle in question was driven by the petitioner in high speed and PW 2 and 3 have stated in the evidence that, the accident took place only because of overtaking the lorry by the petitioner and*



*the said fact has been introduced first time in their evidence and there is no reference of the same in the prosecution case and there is no evidence on their part that the vehicle was driven by the petitioner rashly and negligently as to endanger human life and as such courts below ought to have held that the bare statement by eye witnesses that the vehicle was being driven in a high speed and as there is no evidence to prove the fact of rash and negligence on the part of the driver of the vehicle, will not sufficient to convict the petitioner for the offences punishable under Section 279, 337, 338 and 304 A of I.P.C.*

- *The courts below having observed and believed upon the evidence of PW 2 and Pw3 and those witness are the interesting witness and the court below have not considered the evidence of PW1 and the said witness is independent witness and he clearly deposed that, due to the act of the driver of Maruthi Omni accident has taken place. The court below has failed to appreciate the statement of the petitioner i.e., as there was rain and due to the same breaks were not functioned properly and the petitioner applied the breaks in-time because of the wrong side of the Maruthi Omni accident took place and there were more number of persons were traveling in the Maruthi Omni and exceed the capacity of the Maruthi Omni and due to over exceed of persons were traveling in the Maruthi Omni accident has taken place and this important fact has not believed by the court below. The petitioner has also taken a*



*contention that, as there was raining 20 feet far away vehicles were not visible properly and the prosecution has failed to give evidence that, what was the distance of vehicles when they seen each others and even PW1 who has given evidence as PW1 has not deposed any thing about the distance between the vehicle before accident and prosecution has also not produced any material witness or the oral witness about the same. Hence the court below ought to have acquitted the petitioner as there was no evidence of the precaution to prove the accident because of the negligence on the part of the petitioner and prosecution has failed to prove behind all reasonable doubts. The order passed by the courts below without properly considering the evidence and material on record is wholly illegal and not sustainable in law.*

- *The courts below also committed an error in relying on the evidence of the P.W 2 and 3 even without considering the fact of the contradiction and improvements made by them in their evidence and as such the court below ought to not to have relied on the evidence of these witnesses, which are artificial and unsafe to believe.*
- *The courts below also failed to take notice of the fact of the necessary ingredient of an offence punishable under Section 279, 337, 338 and 304(A) of I.P.C has not been made out against the petitioner by any of the witnesses and as such the courts below ought to have acquitted the petitioner from the charges framed against him.*



- *The courts below also failed to take notice of the fact the prosecution witnesses have improved their versions and there is also material omissions and these omissions and improvements will go to the root of the prosecution case and as such the trial court committed an error in convicting the petitioner only on the basis of the such an unreliable evidence which is liable to be set aside.*
- *The Courts below also relied on the evidence of PW 1 to PW 7, and failed to take note that there is full of contradiction in their evidence and the trial court erred in relying on the inadmissible and contradictory evidence.*
- *The Courts below ought to have held that no person can be convicted merely on the basis of surmises and conjectures and ought to have acquitted the petitioner /accused.*
- *The learned District Judge has also too mechanically confirmed the order of the learned Magistrate and as such the order passed by the courts below are not sustainable in law. The courts below failed to take notice of the fact the entire burden was upon the prosecution to prove the guilt of the accused beyond reasonable grounds, and on the failure of the prosecution the accused is entitled for the benefit of doubt, and when the evidence adduced by the prosecution is not sufficient to hold the accused guilty, the courts below ought to have acquitted the accused from the charges framed against him.*
- *Both the courts below committed an error in not considering the fact that there is discrepancy in the*





*evidence of the prosecution witnesses regarding the manner in which the accident has taken place and these discrepancies goes to the root of the prosecution story and also creates the doubt about the rash and negligence of the accused and the manner in which the accident has taken place, as such the courts below ought to have given the benefit of doubt to the accused-petitioner.*

- *The learned Sessions Judge committed an error in holding that and the prosecution has proved the case against the accused beyond reasonable doubt. The learned Session Judge failed to take notice of the fact that the session court being the last court for appreciating the evidence on record, ought to have re appreciated the evidence, independently, and the order passed by the learned Session Judge, too mechanically without properly appreciating the evidence and without considering the various grounds urged by the appellant, is wholly illegal and requires to be set aside. The order of the learned Session Judge is also too perfunctory and without looking to the records properly as such the order of the learned Session Judge, is wholly illegal and requires to be set aside.*
- *The Courts below ought to extended the benefit of Probation of Offenders Act, as the petitioner /accused is the only earning member of the family and his imprisonment would create great hardship and loss to his family member of there was no any past record of the accused having committed any offence.*



- *The order passed by the lower appellate court is also too perfunctory and the lower appellate court ought to have re-appreciated the entire evidence on record to come to conclusion that whether the order of the trial court are correct or not.*
- *The order of conviction and sentence passed by the courts below without considering the provisions of the Probation of offenders Act are wholly illegal and requires to be set aside; the courts below ought to have extended the benefit of the Probation of Offenders Act to the petitioner and ought to have released him on probation of good conduct.*
- *Even otherwise viewed from any angle, the conviction and order of sentence passed by the courts below are wholly illegal, capricious and as such liable to be set aside."*

9. Sri Chandrashekar C Chanasapur, learned counsel for the petitioner, reiterating the grounds urged in the revision petition, vehemently contended that the spot sketch clearly shows that the vehicle was parked on the wrong side and having regard to the inclination on the curve of the road, the petitioner could not spot the vehicle and therefore, the accident has occurred, resulting in the inmates of the car sustaining injuries and four persons losing their life and therefore, the



petitioner cannot be held responsible for the alleged accident and sought for allowing the revision petition.

10. Alternatively, the learned counsel contended that the petitioner is suffering from advance stage of cancer and therefore, the sentence need to be set aside by ordering the additional fine amount and sought for allowing the revision.

11. Per contra, learned High Court Government Pleader opposes the grounds by contending that the prosecution has established its case by examining the injured/eye witnesses and absolutely there is no contra evidence placed on record by the accused and therefore, sought for dismissal of the revision petition.

12. He also contended that the trial Magistrate has granted only six months imprisonment for the offence punishable under Section 304-A IPC and therefore, the sentence is just and proper and does not require any interference by this Court in this revision and sought for dismissal of the revision petition in toto.



13. In view of the rival contentions, following points would arise for consideration:

1. Whether the finding recorded by the Trial Magistrate that the accused is guilty of the offences punishable under Section 279, 337, 338 and 304-A of IPC and confirmed by the learned District Judge in Crl.A.311/2012, is suffering from legal infirmity, patent factual defect, error of jurisdiction and perversity and thus calls for interference?
2. What order?

14. Regarding Point No.1:-This Court perused the material on record meticulously in the light of arguments put forth on behalf of the parties. The accident has occurred in the broad daylight. Absolutely, there is no explanation offered by the accused/revision petitioner for the accident by stepping into the witness box or at least facing his submissions with regard to the incident as is contemplated under Section 313 (5) Cr.P.C.

15. The prosecution has examined injured/eyewitnesses. As could be seen from the prosecution



case, the Maruthi Omni was parked on the opposite side. The petitioner being the driver of the bus, has driven the bus on the wrong side and dashed against the parked Omni car, whereby car got damaged and inmates suffered severe injuries and also four of the inmates lost their life due to the impact of the accident.

16. Absolutely, there is no enmity or animosity possessed by the prosecution witnesses or the Investigation Officer to falsely implicate the petitioner in the incident. For the reasons best known to the petitioner, he did not step into the witness box or examined any of the inmates of the bus or at least the conductor who was on duty in the bus, so as to probabalise the theory that there was a curve on the road and the vehicle was parked on the wrong side whereby the petitioner could not spot the vehicle and accident has occurred.

17. Under such circumstances, recording of the finding that accused/petitioner is guilty of the offences alleged against him by the Trial Court and confirmed by the First Appellate Court, in the considered opinion of this Court does not suffer from any legal infirmity or perversity or patent factual defect.



No error of jurisdiction is pleaded on behalf of the revision petitioner. In view of the same, this Court is of the considered opinion that the point No.1 is to be answered in Negative and accordingly it is answered.

18. Regarding Point No.2:- The learned counsel for the petitioner has pleaded that there is a mitigating circumstance for setting aside the sentence of six months imprisonment or at least reduction of sentence on the ground that the revision petitioner inasmuch as the revision petitioner is suffering from cancer.

19. Taking note of the principles of law enunciated in the case of State of Punjab v. Saurabh Bakshi, reported in (2015) 5 Supreme Court Cases 182, this Court is of the considered opinion that the petitioner does not require any mercy to be shown. However, since the State has not preferred any revision petition, seeking enhancement of the sentence insofar as the State is concerned, the sentence has become final.



20. Taking note of the fact that the petitioner is in the advanced stage of the cancer, this Court is of the considered opinion that reducing the sentence by two months would meet the ends of justice.

Accordingly, following order is passed:

ORDER

- i. Revision petition is allowed in part.
- ii. While maintaining the conviction of the accused, the sentence of imprisonment ordered by the Trial Magistrate, confirmed by the First Appellate Court of six months simple imprisonment for the offence punishable under Section 304-A IPC is reduced to four months simple imprisonment.
- iii. Rest of the sentence stands unaltered.
- iv. Petitioner shall surrender before the Trial Court for serving the sentence on or before 31.07.2023.

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

MR