

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 1168 OF 2019

(397(Cr.PC) / 438(BNSS))

BETWEEN:

P. SHANKAR
S/O PERUMAL,
AGED ABOUT 42 YEARS,
DRIVER OF LORRY,
BEARING NO.TN-52/A-8314,
R/O KUNNATUR POST,
UTTANGARAI TALUK,
KRISHNAGIRI DISTRICT,
TAMIL NADU-635001.

...PETITIONER

(BY SRI. K.GURUDHATTA, ADVOCATE)

AND:

STATE BY
TURUVANUR POLICE,
CPI, CHITRADURGA,
REPRESENTED BY ITS SPP,
HIGH COURT BUILDING,
BENGALURU-560001.

...RESPONDENT

(BY SRI. G.S.NAGHARISH, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT PASSED BY THE LEARNED PRL.DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN CRL.A.NO.86/2014 DATED 11.07.2019 AND OF THE LEARNED I ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, CHITRADURGA IN C.C.NO.883/2013 DATED 11.04.2014 AND PLEASED TO ACQUIT THE PETITIONER OF THE OFFENCE LEVELED AGAINST HIM UNDER SECTIONS 279 AND 304A OF THE IPC.

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by
NAGARATHNA
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Location: High
Court of
Karnataka



THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 11-08-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV ORDER

Heard Sri.K.Gurudatta, learned counsel for the petitioner and Sri.G.S.Nagharish, learned High Court Government Pleader for respondent-State.

2. The petitioner has filed this petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973, (for short, "Cr.P.C") praying to set aside the judgment of conviction and order on sentence dated 11.04.2014 passed by the learned I Additional Senior Civil Judge and JMFC, Chitradurga in C.C.No.883/2013 and judgment dated 11.07.2019 passed by the learned Principal District and Sessions Judge, Chitradurga in Crl.A.No.86/2014 for the offence under Sections 279 and 304A of Indian Penal Code, 1860, (for short, "IPC") and prays to acquit the petitioner for the aforesaid offences.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The

petitioner is the accused and the respondent is complainant/State.

4. The case of the prosecution is that, one B.K.Nagaraj (PW1) had lodged complaint alleging that, on 01.06.2013 after finishing his work, he was returning to his village and when he was riding his motorcycle bearing registration No.KA-17-EJ-4651 on NH-13 road around 4.30 p.m., when he reached at Bogalahatti, within the limits of Chitradurga Rural Police Station, the petitioner/accused No.1, being the driver of lorry bearing Registration No.TN-52/A-8314, drove the same from Chitradurga towards Hospet, in a rash and negligent manner, with high speed, dashed against Maruti Omni Car bearing Registration No.KA-16/M-2526, which was driven by accused No.2(Now deceased) in a rash and negligent manner with high speed. The inmates of Car viz. accused No.2 (driver of the Maruti Omni Car), his wife, Smt. Shobha and there two sons, K.B.Tejas and K.B.Rajesh sustained severe injuries and died on the spot. Hence, on the same day at 5.30 p.m., PW1 lodged complaint vide Ex.P1. Hence, the case has been registered and the investigation officer investigated the matter and filed the charge sheet for the aforesaid offences.

5. Soon after receipt of the charge sheet, the trial Court took cognizance, recorded plea and ultimately convicted the petitioner for the offence punishable under Sections 279 and 304A of IPC and sentenced him to undergo simple imprisonment for one year with fine and with default sentence.

6. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred Crl.A.No.86/2014 before the First Appellate Court, in turn, the First Appellate Court dismissed the appeal and confirmed the judgment of conviction and order of sentence passed by the trial Court.

7. Aggrieved by the concurrent findings passed by the trial Court as well as the First Appellate Court, the accused preferred this revision petition.

8. The learned counsel for the petitioner contended that the Courts below failed to appreciate the evidence of P.Ws.1 to 3 properly and overlooked material contradictions and improvements in their testimony. The earliest complaint at Ex.P1 and the FIR do not contain any allegation that the lorry overtook the motorcycle of P.W.1 and, after travelling about 150 feet, collided with the Maruti Omni. It is contended that

the introduction of this version subsequently, amounts to a material improvement which affects the credibility of the prosecution witnesses.

9. It is further contended that the presence of P.W.2 at the scene is doubtful, as neither the complaint nor the FIR refers to his having accompanied P.W.1 on the motorcycle. The evidence of P.Ws.1 and 2 was also required to be scrutinised with caution, as they were acquainted with the deceased and were working in commission agent establishments at the APMC Yard.

10. The learned counsel also pointed out material inconsistencies in the evidence of P.W.3 regarding the manner of the accident. According to his earlier statement, the Maruti Omni was driven rashly and overtook him before colliding with the lorry, whereas before the Court he gave a different version regarding the speed and movement of the Maruti Omni. It is contended that the evidence of P.Ws.1 to 3 does not satisfactorily establish that they actually witnessed the collision.

11. It is contended that the trial Court relied on spot mahazar (Ex.P13) and the IMV report (Ex.P12). It is contended that the accident occurred on a curved road having sufficient

width and that the Maruti Omni had struck the right corner of the lorry. The greater damage caused to the Maruti Omni was relied upon to contend that its driver may have been driving rashly and negligently. According to the petitioner, the Courts below failed to consider the possibility of contributory or sole negligence on the part of the Maruti Omni driver.

12. Further, the identity of the petitioner as the driver of the lorry was also seriously disputed. It is contended that P.Ws.1 and 2 had allegedly seen the driver only from behind while he was leaving the spot and, therefore, in the absence of a test identification parade or other reliable identification evidence, the prosecution failed to establish beyond reasonable doubt that the petitioner was the person driving the lorry at the relevant time.

13. It is further contended that the prosecution failed to establish rash and negligent driving beyond reasonable doubt. The mere occurrence of an accident or the damage caused to the vehicles, by itself, cannot establish criminal negligence. The evidence of P.W.4 regarding the preparation of the spot mahazar was also challenged, as he stated that his signature was obtained at the police station. The failure to examine

independent eyewitnesses, despite the alleged presence of several persons at the spot, was also urged as a circumstance creating doubt.

14. It is contended that, on the cumulative effect of these contradictions, improvements, doubtful presence and credibility of the eyewitnesses, failure to establish the identity of the driver, and failure to prove rash and negligent driving, the learned counsel submitted that the prosecution case is doubtful and that the petitioner is entitled to the benefit of doubt. It is therefore prayed that the judgments of conviction and sentence passed by the Courts below liable to be set aside.

15. Sri.G.S.Nagharish, learned High Court Government Pleader contended that the trial Court as well as the First Appellate Court have given concurrent findings, therefore, interference of this Court is not necessary in order to set aside the judgment of conviction and order on sentence passed against the accused. Hence, he justified the judgment of the trial Court as well as the First Appellate Court and prays to dismiss the petition.

16. On perusal of the material available on record, the trial Court relied on the evidence of PW.1 to PW3, who are an

eyewitnesses to the incident. According to PW1, who is an eyewitness to the incident has stated that, he saw the accident on 01.06.2013 at 4.30 p.m., near Avalenahalli gate, on NH-13, at that time, the lorry in question was proceeding from Chitradurga towards Hospet and a Maruti Omni Car came from Hospet towards Chitradurga, both vehicles came in high speed. At that time, the driver of lorry while overtaking the motorcycle of PW1, dashed to the Maruti Omni Car. As a result, three inmates of the Maruti Omni Car died at the spot and another injured died in the hospital, thus, he lodged the complaint.

17. According to PW2, who is also an eyewitness to the incident and pillion rider of PW1, in his evidence has stated that, on 01.06.2013 at 4.30 p.m., near Avalenahalli gate, on NH-13, he saw the lorry in question, it was proceeding from Chitradurga towards Hospet, in a rash and negligent manner and a Maruti Omni Car came from Hospet towards Chitradurga, both vehicles came in high speed. At that time, the driver of lorry while overtaking the motorcycle of PW1, dashed to the Maruti Omni Car. As a result, three inmates of the Maruti Omni Car died at the spot and another injured died in the hospital, thus, PW1 lodged the complaint. Hence, PW2 reiterated the oral testimony of PW1 and corroborated his testimony.

18. According to PW3, he was proceeding in his TVS XL motorcycle from Gowdagere village to his village called Surenahalli, when he reached Avalenahalli gate, on NH-13, on 01.06.2013 at 4.30 p.m., at that time, the lorry in question was proceeding from Chitradurga towards Hospet and a Maruti Omni Car came from Hospet towards Chitradurga, Maruti Omni Car came slowly. At that time, the driver of lorry dashed to the Maruti Omni Car. As a result, three inmates of the Maruti Omni Car died at the spot and another injured died in the hospital. Hence, PW3 also reiterated the oral testimony of PW1 and PW2 and corroborated their testimony with regard to manner of accident and the death of four persons.

19. Further, PW.1 and PW.2 have categorically stated that due to rash and negligent driving by the driver of the lorry, the accident in question occurred. Therefore, the oral testimony of PW.1 to PW.3 corroborates the medical evidence i.e., Post Mortem Examination Reports as per Ex.P7 to P10. On perusal of the evidence of PW.6-C. Dharman, who is the owner of the lorry, he has categorically stated that on the date of accident, accused P.Shankar was the driver of the lorry and he caused the accident.

20. On perusal of the sketch drawn at the scene of offence, it is evident that there is a curve and that the lorry moved to the extreme right side of the road and thereby, causing the accident. As per the contents of Ex.P2 - spot mahazar and Ex.P13 - spot sketch, there is no reference to any tire marks to substantiate that, the driver of lorry had applied brakes before causing the accident. The testimony of PW1 to PW3 corroborate the same aspect that, the driver of lorry was driving the vehicle in negligent manner. Hence, it is just and necessary to analyse Section 279 of Indian Penal Code, 1860.

"279. Rash driving or riding on a public way.—

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

21. To secure a conviction under Sections 279 and 304A IPC, the prosecution must prove specific essential ingredients.

a). The prosecution must prove that the accused was the driver of lorry at the time of the incident.

b). The prosecution must prove that the accident occurred on a public road or public way.

c). The prosecution must prove that the lorry was driven with recklessness ("rashness"—doing an act knowing it is dangerous without intending harm) or lack of due care ("negligence"—failing to exercise standard precaution).

d). The prosecution must prove that due to rash/negligent act of the driver of the lorry accident occurred and as a result thereof four inmates of the Maruti Omni Car died.

22. The trial Court as well as the First Appellate Court have rightly held that Ex.P.12 IMV report and Ex.P.13 sketch, do not support the defence therein. Further, at the time of the accident, the accused deviated his lorry towards right side of the road and the reasons for deviation also not stated in his 313 statement. The perusal of entire evidence on record reveals that the accident was outcome of rash and negligent driving on the part of the petitioner/driver of lorry. Therefore, PW.1 to PW3 clearly stated about the rashness on the part of the petitioner, the trial Court and the First Appellate Court have rightly appreciated that if the vehicle of the petitioner had not

taken towards the right side, the accident would not have occurred.

23. As rightly pointed out by the learned HCJP, this petition is being filed against the concurrent findings of the trial Court as well as the First Appellate Court, as such, the scope of interference on the factual aspects is very limited. The evidence on record shows that the petitioner has not disputed the occurrence of the accident. He has also not disputed the four deaths and he has not disputed his identity before the trial Court. It was his defense that the driver of Maruti Omni Car also came in a rash and negligent manner and dashed to the lorry, thereby he contributed the negligence. The further defence of the accused is that, PW1 to PW3 are interested witnesses and planted by the Investigating Officer, in order to help the family of deceased and therefore, he is not responsible for the accident.

24. The contention that the driver of the Maruthi Car also contributed to the negligence is concerned, to substantiate this contention, the accused did not enter the witness box and no document is placed on record. Under criminal law, contributory negligence by the driver of the opposite vehicle is

not a valid defence. The Court has to evaluate only whether the rash or negligent act of the accused was the proximate (direct) cause of the death. If the accused driver was driving at an excessive speed, he cannot escape criminal liability by claiming that the other person could have avoided the accident. Therefore, contributory negligence cannot be presumed merely because two vehicles collided. It must be proved by clear and cogent evidence.

25. Insofar as, the contention of accused with regard to PW1 to PW3 being interested witnesses is concerned, PW1, though the brother of the deceased, PW2 and PW3 are independent eyewitnesses. They are natural eyewitnesses who were present at the scene of the crime. Being a relative or friend does not make witness a liar, rather, it may help in bringing out the truth and ensuring justice. Their testimony is cogent, consistent, and fully supported by medical evidence and the evidence of the Investigating Officer.

26. The scope of revision refers to the limited authority of a higher Court to review the judgments of the trial Court and the First Appellate Court, focusing on correcting errors of jurisdiction or gross legal or factual flaws rather than re-

examining the merits of the case. This power is exercised sparingly and is intended to set right a patent defect, and not to function as an automatic second appeal. The specific grounds and limitations vary between civil and criminal proceedings. Revision can address situations where the decision is grossly erroneous, not supported by evidence, or where relevant evidence has been ignored. Therefore, the revision is not a fresh trial, and there is a bar on re-examining the evidence and substituting the revision Court's own findings for those recorded by the Courts below.

27. The Hon'ble Apex Court in the case of **MUNNA DEVI v. STATE OF RAJASTHAN AND ANOTHER** reported in **(2001) 9 SCC 631** while discussing the scope of Section 397 of the Cr.P.C. held at paragraph No.3 as under:

"3. xxx xxx xxx. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first

information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

28. The Hon'ble Apex Court in the case of **STATE OF TAMIL NADU v. R. SOUNDIRARASU AND OTHERS** reported in **(2023) 6 SCC 768** at paragraph No.79 held as under:

"79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

29. Further, the Hon'ble Apex Court in the case of **STATE OF MAHARASHTRA v. SUJAY MANGESH**

POYAREKAR reported in **(2008) 9 SCC 475** at paragraph No.16 held as under:

"16. xxx xxx xxx. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal."

30. This Court is aware that while exercising jurisdiction under Section 397 CrPC, that too, when there are concurrent findings, the scope of interference in the orders of the courts below is very limited. However, Section 397 of CrPC itself states that on examining the records of the trial Court and the first appellate Court, if the Revisional Court is satisfied that there is any incorrectness, illegality or impropriety in the findings, sentence or order passed by such courts or irregularity in the proceedings of such courts, the Revisional Court may suspend sentence or may reverse the said order or judgment. The same principle is reiterated in **Dulichand v. Delhi Administration** reported in **AIR 1975 SC 1960** and **State of Karnataka v. Appa Balu Ingale** reported in **AIR 1993 SC 1126**.

31. The learned counsel for the petitioner vehemently contended that, considering the age of petitioner, who is aged about 50 years, sole bread earner in the family and the fact that the matter is of the year 2013, and the petitioner has no criminal antecedents nor had any intention to cause the accident, thus a lenient view be taken by this Court by imposing fine only and set aside the sentence passed by the Courts below. The learned HCGP contended that, there were four deaths in the accident, due to the act of the accused and hence, a lenient view cannot be taken in the matter.

32. Now, the only question that arises for the consideration of this Court is:-

"Whether imposition of sentence is tenable?"

33. In the instant case, the maximum sentence imposed by the trial court for the offence under section 304A IPC is one year. While dealing with the question "whether it is desirable to impose minimal or negligible sentence in a case of offence punishable under Section 304-A of IPC", the Hon'ble Supreme Court in the case of **GURU BASAVARAJ @ BENNE SETTAPPA vs STATE OF KARNATAKA** reported in **2012(8) SCC 734** at at Paragraph Nos.22, 23, 28, 30 and 33, held as under:

"22. *In Dalbir Singh v. State of Haryana, this Court expressed thus: (SCC p. 87, para 13)*

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence."

23. *Thereafter, the Court proceeded to highlight what is expected of a professional driver (Dalbir Singh case, SCC p. 87, para 13)*

"13. xxx xxx xxx A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be

convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

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28. *In Alister Anthony Pareira v. State of Maharashtra [(2012) 2 SCC 648], it has been laid down that sentencing is an important task in relation to criminal justice dispensation system.*

"84. xxx xxx xxx One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind

the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

It has been further opined that: (Alister Anthony Pereira case, SCC p.674, para 85)

"85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, the proportion between crime and punishment bears the most relevant influence in the determination of sentencing the crime-doer. The court has to take into consideration all aspects including the social interest and [conscience] of the society for award of appropriate sentence."

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30. *From the aforesaid authorities, it is luminous that this Court has expressed its concern on imposition of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. That apart, the concern has been to impose adequate sentence for the offence punishable under Section 304-A of the IPC. It is worthy to note that in certain circumstances, the mitigating factors have been taken into consideration but the said aspect is dependent on the facts of each case. As the trend of authorities would show, the proficiency in professional driving is emphasized upon and deviation therefrom that results in rash and negligent driving and causes accident has been condemned. In a motor*

accident, when a number of people sustain injuries and a death occurs, it creates a stir in the society; sense of fear prevails all around. The negligence of one shatters the tranquillity of the collective. When such an accident occurs, it has the effect potentiality of making victims in many a layer and creating a concavity in the social fabric. The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect. It has its impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether. Grant of compensation under Section 357(3) CrPC with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence.

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33. *There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored. In *Siriya alias Shri Lal v. State of M.P.*, [(2008) 8 SCC 72] it has been held as follows:-*

"13. '7. xxx xxx xxx Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be – as it should be – a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be'."

34. On perusal of the material available on record, in the instant case, the factum of rash or negligent driving has been established. Further, in view of the ratio laid down in the case of **GURU BASAVARAJ @ BENNE SETTAPPA**, wherein the Hon'ble Supreme Court has imposed maximum imprisonment of six months for the offence punishable under Section 304-A of IPC and having regard to the facts and circumstances of the case, considering the fact that the trial Court as well as First Appellate Court have imposed sentence of

one year against the accused, the same has to be reduced to six months. Hence, I proceed to pass the following:-

ORDER

- i. The Criminal Revision Petition is ***allowed in part.***
- ii. The judgment of conviction dated 11.04.2014 passed in C.C.No.883/2013 by the learned I Additional Senior Civil Judge and JMFC, Chitradurga, and confirmed in Crl.A.No.86/2014 dated 11.07.2019 by the learned Principal District and Sessions Judge, Chitradurga, is hereby modified, however, insofar as order on sentence is concerned, the imprisonment of one year is reduced to six months.

In view of the disposal of the revision petition, pending interlocutory applications, if any, shall stand dismissed.

Registry is directed to send the records to the trial court with a copy of this order, forthwith.

Sd/-
(VENKATESH NAIK T)
JUDGE

AM