



CNR: KAHC010427632015

NC: 2026:KHC:52228
CRL.A No. 1172 of 2015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 1172 OF 2015 (A)**

BETWEEN:

1. STATE BY BAJPE POLICE STATION
MANGALURU-574142

...APPELLANT

(BY SRI. K. NAGESHWARAPPA, HCGP)

AND:

1. NAGARAJ,
S/O MAHADEVA POOJARY,
AGED ABOUT 28 YEARS,
OCC: NIL,
R/O ALANDURU, YADTHARE VILLAGE,
KUNDAPUR, UDUPI DISTRICT-576201.

...RESPONDENT

(BY SRI. S.S. HAVERI, ADV.)

CRL.A. FILED U/S.378(1) AND (3) CR.P.C BY THE S.P.P. AND ADV. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 04.07.2015 IN C.C.NO.887/2014 PASSED BY THE JMFC(II COURT), MANGALURU, ACQUITTING THE RESPONDENT FOR THE OFFENCES P/U/S 279,337 AND 304-A OF IPC AND ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA



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ORAL JUDGMENT

1. The State has preferred this appeal against the judgment of acquittal dated 04.07.2015 passed in CC.No.887 for 2014 by the JMFC (II Court), Mangaluru (for short, 'the trial Court').
2. For the sake of convenience, the parties herein are referred to as per their rank before the trial Court.
3. Brief facts leading to this appeal are that, the Police Inspector, Bajpe Police Station, submitted the charge sheet against the accused for the offences punishable under Sections 279, 337 and 304A IPC. It is alleged by the prosecution that on 18.08.2013 at about 16.10 hours, on Moodabidri-Mangaluru road (National Highway 169), near Banglegudde Cross, near Polali gate accused being the driver of the car bearing No.KA-20-P-6438 drove the same towards Mangaluru in a rash and negligent manner so as to endanger to human life, and dashed to motorcycles bearing registration Nos.KA-19-EE-9643 and KA-19-EH-



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6514, coming from opposite direction, respectively driven by Praveen Kumar (C.W-1) and Rohit (C.W-3), resulting in simple injuries to the pillion rider (C.W-2) of motorcycle bearing No.KA-19-EE-9643 and C.W-3 and death of Deepak, pillion rider of motorcycle bearing No.KA-19-EH-6514. Thus, the accused has committed the alleged offences. The accused was enlarged on bail. The substance of plea was recorded. Accused pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused, in all, 12 witnesses were examined as PW1 to PW12. 20 documents were marked as Exs.P1 to P20.

5. On closure of prosecution side evidence, statement of the accused under Section 313 of Cr.P.C. was recorded. Accused has totally denied the evidence of prosecution witnesses. However, he did not choose to lead any defence evidence on his behalf. However, during the course of



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cross-examination of prosecution witnesses, Ex.D1 is marked.

6. Having heard the arguments on both sides, the trial Court has acquitted the accused. Being aggrieved by the judgment of acquittal, the State has preferred this appeal.

7. The learned HCGP Sri Nageshwarappa K, would submit that the impugned judgment and order of acquittal recorded by the Magistrate is contrary to law, facts and evidence are record. The PW1 to PW3 who are the eye-witnesses in their examination-in-chief, have consistently deposed that on 18.08.2013, themselves and deceased Deepak were proceeding on two motorcycles and car bearing Reg.No.KA-20-P-6438 was coming from opposite direction and dashed to their motorcycles. Further, they have deposed that the offending vehicle was driven in a rash and negligent manner. Accident took place only because of rash and negligent driving of the offending vehicle. Though the witnesses were cross-examined at



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length by the defence, nothing was elicited from the mouth of PW1 to PW3. In spite, the trial Court held that PW1 to PW3 have not given categorical statement and held that PW1 to PW3 have not spoken anything about the accident and acquitted the accused, on erroneous grounds. The trial Court recorded a categorical finding about the accident that PW11-Motor Vehicle Inspector during cross-examination, stated that, there were damage to wind-shield of car and Photographs at Ex.P4 and MV Report at Ex.P18 shows that bumper of the car has been dislocated. Hence, the prosecution, beyond reasonable doubt, proved that the accident has taken place solely due to rash and negligent driving of the car by the accused. That apart, the fact that injured and the deceased were immediately shifted to a Clinic in Kaikamba junction, thereafter they were shifted to Mangalore nursing home. This fact of admission of deceased and PW1 to PW3 to Mangalore nursing home is evident from the wound certificates at Exs.P9 to P11. PW1 to PW3 are the direct eye-witnesses to



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the incident. However, the trial Court has failed to appreciate the evidence on record in accordance with law and facts and sought for allowing the appeal.

8. Despite service of notice, no representation made on behalf respondent. Hence, arguments on behalf of the respond, is taken as nil.

9. Having heard the arguments of learned HCGP and on perusal of the entire materials placed before this Court, the following points would arise for my consideration:

- (1) *Whether the State has made out any grounds to allow the appeal?*
- (2) *What order?*

10. My answer to the above points as under:

- (1) *Negative*
- (2) *As per final order.*

Regarding Point No.1:

11. I have gone through the materials placed before this Court. Before appreciation of evidence on record, it is



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necessary to mention as to the judgments of the Hon'ble Apex Court in the case of CONSTABLE 907 SURENDRA SINGH AND ANOTHER v. STATE OF UTTARAKHAND reported in (2025)5 SCC 433; BABU SAHEBGOWDA RUDRAGOWDAR AND OTHERS v. STATE OF KARNATAKA reported in (2024)8 SCC 149; CHANDRAPPA v. STATE OF KARNATAKA reported in (2007)4 SCC 415; and H.D. SUNDARA v. STATE OF KARNATAKA reported in (2023)9 SCC 581. The principles governing exercise of appellate jurisdiction while dealing with an appeal against judgment of acquittal under section 378 of Code of Criminal Procedure are, the acquittal of the accused further strengthens the presumption of innocence; the appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence; the appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence



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on record; if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible. The interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised only if the judgment of acquittal suffers from patent perversity; the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

12. In the case on hand, PW1 to PW3 have consistently deposed during examination-in-chief that, on 18.08.2013, they and deceased Deepak were coming on motor two



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motorcycles and car bearing Reg.No.KA-20-P-6438 coming from opposite direction, dashed to their motorcycles. However, PW1 to PW3 were unable to say who was driving the car at the time of accident. They have not identified the accused before the Court. To that extent, prosecution declared them as hostile witnesses and cross-examined them with the permission of the Court. During cross-examination, PW1 has stated that accused was driving the car at the time of accident. The trial Court has observed that there are two inconsistent and contrary statements of same witnesses, make the witnesses unworthy of credit and unreliable. Further, the trial Court has observed that during cross-examination of PW2 and PW3, prosecution has elucidated anything which would establish the identity of the accused. Further, the trial Court has observed that PW8 admittedly is not the owner of the offending car. He was the Power of Attorney Holder of the car who was authorized by the owner to get seized or released from the police station. Owner of the car is one Vasant Padiyar, who



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is junior uncle of PW8. Owner of the car has not been examined by the prosecution. Section 133 of M V Act 1988 calls obligation on the owner of the motorcycle on demand of any police officer to give all the information regarding the name and address of the driver of the motorcycle. In the current case, PW8 is not the owner of the offending car. Therefore, he is not a competent person under the law to furnish details of the driver of the car. According to the trial Court, the prosecution has failed to prove the alleged fact that the accused was driving the car at the time of accident.

13. Further, in Paragraphs 18 to 25, the trial Court has observed as under:

"18. Upon going through the evidence of P.W-1 to 3, though their testimonies would throw light on the fact of road traffic accident on the given date, time and place; manner in which the accident had taken place; the vehicles involved therein; and the injuries sustained by P.W-2 and 3 and death of Deepak, neither their testimonies nor the testimony of P.W-8 would help the prosecution to prove that on the given date, time and place, accused was driving the car involved in



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the accident. Other witnesses examined by the prosecution being the mahazar witnesses, medical officers, M.V. Inspector and the police officials, their testimonies would hardly come to the aid of the prosecution to prove the identity of the accused.

19. It is true that the M.V. Inspector (P.W-11) during cross examination stated that there were damages to rear glass of the car. One of the photographs at Ex.P-4 and M.V. Report at Ex.P-18 shows that the rear bumper of the car has been dislocated. On this count alone, one cannot jump to the conclusion that no head-on collusion between the vehicles. One of the defenses of the accused is that the accident had taken place due to rash and negligent driving of motorcycle bearing No.KA-19-EE-9643 by P.W-1. It is his defense that said motorcycle dashed the car from the rear side and it was the cause for the accident. If the contention of the accused is taken to be true, then the question that arises is what is cause for the damages on the front portion of the car. Report at Ex.P-18 shows that car had multiple damages. As per Ex.P-18, there were damages to wind-screen glass, front right end of the bumper and the dented bonnet. Had really the motorcycle/s dashed the car from the rear side, as contended by the accused; damages to the front portion of the car would not caused. Therefore, this line of defense will not inspire the confidence of the Court to arrive at the conclusion that the accident had taken place due to motorcycle hitting the car from the rear side.



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20. It is an admitted fact that riders of both motorcycles were proceeding towards Mangaluru. Naturally, they were proceeding on their left-hand side. The accused is contending that the car was also proceeding towards Mangaluru. He has not substantiated his defense that the car was also proceeding towards Mangaluru. On the contrary, P.W-1 to 3 have categorically stated that the car was proceeding towards Moodabidri. It is evident from the spot sketch (Ex.P-3) that the spot of the accident is right-hand side of the road leading to Moodabidri. As per traffic rules, unless the circumstances warrant, a driver of a motor-vehicle is expected to proceed on his left-hand side. Such being the case, what made the driver of the car to go towards his extreme right-hand side of the road? This goes to show that the driver of the car omitted to take reasonable care while he was driving the car on the curvy road and thereby he has acted negligently.

21. P.W-7 is Police Head Constable, who has deposed that on 19.08.2013 at about 12:00 Noon P.W-1 came to the Police Station and orally lodged First Information Statement, which he has reduced into writing as per Ex.P-1. After registering the case for the offence punishable under Section 279, 337 and 338 of IPC (As on the date of lodging of Ex.P-1 deceased Deepak was alive), he has dispatched FIR (Ex.P-12) to the Court. During cross examination, at the first instance P.W-8 has stated that he has received medical intimation from Mangala Nursing Home. Later, he has volunteered that P.W-1 brought the medical intimation. He



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has stated that prior to recording of Ex.P-1, P.W-1 did not give statement to anybody. On the contrary, P.W-1 stated that, while returning from the hospital, Bajpe Police arrived to the spot. He gave statement to them and thereafter he had been to the hospital. He has further stated that the Hospital had intimated the accident to Kadri Police, who upon receipt of information came to the hospital and that he gave statement to them. In the light of material contradiction, testimony of P.W-7 that, prior to lodging of Ex.P-1, P.W-1 did not give statement to anybody cannot be believed.

22. It is further elicited during cross examination of P.W-1 and 2 that, including those two, initially, all the injured were taken to clinic in Kaikamba Junction. Thereafter, they were taken to Mangalore Nursing Home. Factum of admission of the deceased, P.W-2 and 3 to Mangalore Nursing Home is evident from the wound certificates produced at Ex.P-9 to 11. It is elicited through P.W-1 that Bajpe Police Station is about 5 to 6 Kms. away from the place of accident. Having stated that P.W-1 gave information to Bajpe police at the spot on the very day of accident, in all probability, the complainant police had the information of accident on the very day of accident. But, for the reasons best known to the police, they have neither chosen to visit the spot nor registered the case. On the contrary, the police waited for arrival of P.W-1 to the police station to lodge Ex.P1.

23. P.W-6, the medical officer who treated the injured stated that there is practice of giving intimation to the police



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whenever an injured admitted to the hospital. Moreover, Ex.P-13 to 15 being the intimations to the police, in the absence of evidence to the contrary, version spoken to by P.W-7 that the medical intimations are carried by P.W-1 to the police station cannot be accepted.

24. It is significant to note that, as per the version of P.W-7 though P.W-1 lodged Ex.P-1 on 19.08.2013 at 12:00 Noon and that case is registered on the very day, FIR (Ex.P-12) reached the Court on 20.08.2013 at 11:00 AM. In other words, after registration of case, there is a delay of about 23 hours in dispatching FIR to the Court. Prosecution has not at all made an attempt to explain the inordinate delay in dispatching FIR to the Court. Therefore, adverse inference has to be drawn against the prosecution. Having suggested to P.W-2 and 3 that the accused rushed to spot and that he had attended the injured, no reason has been assigned by the prosecution for not arresting him soon after the registration of the case. I.O. has not offered any explanation on this aspect. On the contrary, he has stated that he has arrested the accused on 21.08.2013 on his voluntary surrender, whereas, prosecution's own document at Ex.P-17 shows that P.W-8 furnished information of the accused on 29.08.2013. If really the I.O. arrested the accused on 21.08.2013 he had no necessity to issue notice under Section 133 of M.V. Act calling upon P.W-8 to furnish information of the driver of the offending car. All these circumstances coupled with the ambiguity appearing in Ex.P-5, Ex.P-6 and Ex.D-1, reasonable doubt arises in the mind of



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the Court with regard to involvement of the accused in the instant case.

25. On detailed discussion of ocular evidence on record, though the accident; negligent act of the driver of the offending car; the injuries sustained by P.W-2 and 3; and the death of Praveen in the said accident is proved, proof of these facts alone is not sufficient to hold the accused guilty unless the prosecution establishes the fact that the accused was driving the offending car at the time of accident. Therefore, even if the accident and other facts are proved, accused cannot be held guilty. Testimonies of the injured/P.W-1 to 3 will not help the prosecution to establish the alleged fact that the accused was driving the offending car at the time of accident. They are the best witnesses to speak about identity of the accused. Though, they have spoken about the accident and the manner, in which the accident had taken place, they have declined to identify the accused. In the absence of corroborative evidence, inconsistent and shaky version of P.W-1 regarding identity of the accused cannot be based to record a finding that at the time of accident accused was driving the offending car. Therefore, notwithstanding the fact that the prosecution has proved the accident, death of Praveen and injuries to P.W-2 and 3, in the absence of convincing and cogent evidence to establish the identity of the accused, this Court cannot held the accused guilty. Therefore, I am of the considered opinion that the prosecution failed to prove beyond all reasonable doubt the charges against the accused for the offences



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punishable under Sections 279, 337 and 304-A of IPC. In the result, I answer Point No.1 to 3 in the Negative .

14. On careful examination of entire evidence on record, I do not find any legal or factual error committed by the trial Court. Considering the facts and circumstances of the case and keeping in mind the aforesaid decisions of the Hon'ble Supreme Court, I proceed to pass the following:

ORDER

Appeal is **dismissed**.

**Sd/-
(G BASAVARAJA)
JUDGE**

DHA
LIST NO.: 1 SL NO.: 64