HC-KAR

NC: 2026:KHC:63733
CRL.A No. 373 of 2016

CNR: KAHC010241182016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 373 OF 2016 (A)

BETWEEN:

1. STATE OF KARNATAKA
   BY KADABA POLICE STATION,
   PUTTUR, DAKSHINA KANNADA,
   REPRESENTED BY SPP,
   HIGH COURT BUILDING,
   BANGALORE - 574 221.

...APPELLANT

(BY SRI. K. NAGESHWARAPPA, HCGP.)

AND:

1. VINOD GANESH NAIK
   AGED ABOUT 33 YEARS,
   KOTE HOUSE, BADA VILLAGE,
   JESTAPURA, KUMTA TALUK,
   KARAWARA DISTRICT - 581343.

...RESPONDENT

(BY SRI. M K VENKATARAMANA.,ADVOCATE)

Digitally signed by LAKSHMINARAYAN N
Location: High Court of Karnataka

CRL.A. FILED U/S.378(1) AND (3) CR.P.C BY THE STATE P.P. FOR THE APPELLANT/STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 09.12.2015 PASSED BY THE ADDL. CIVIL JUDGE AND JMFC, PUTTUR, D.K., IN C.C.NO.1778/2013, THEREBY ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 279,338 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

ORAL JUDGMENT

1. The State has preferred this appeal against the judgment of acquittal passed by the Additional Civil Judge and JMFC, Puttur, D.K. in CC No.1778/2013 dated 09.12.2015.

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.

3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Puttur Town Police Station, Rural Circle, has laid charge-sheet against the accused for the offence under Section 279, 338 and 304A of IPC. It is alleged by the prosecution that on 08.02.2013 at 11:00 a.m., the accused being the driver of Tipper Lorry bearing Registration No.KA-35/A-1836, drove the same on Kaaniyuru-Savannoor Public Road in a rash and negligent manner so as to endanger human life and dashed the said

lorry against the motor bike bearing registration No. KA-21/Q-991, which came from opposite direction near Kudmaaru of Puttur Taluk and further, proceeded and dashed against the pedestrians Ganesha and Mahesha who were proceeding on mud road by the side of asphalt road. As a result of this accident, the pedestrian Mahesha sustained grievous hurt and Ashok Bhandari the pillion rider of the bike and one Ganesha pedestrian, succumbed to the injuries sustained in the accident. Thus, the accused has committed the alleged offences.

4. The accused appeared before the trial Court and enlarged on bail. Plea was recorded. The accused pleaded not guilty and claimed to be tried.

5. To prove the case, prosecution has examined 11 witnesses as PWs 1 to 11, 23 documents were marked as Exhibits P1 to P23. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. Accused has totally denied the evidence of

prosecution witnesses and he has not adduced any evidence on his behalf. However, he has submitted written-statement under Section 313 of Cr.P.C. Having heard the arguments on both sides, trial Court has acquitted the accused. Being aggrieved by this judgment of acquittal, the State has preferred this appeal.

6. The learned HCGP, Sri K.Nageshwarappa would submit that the impugned judgment of acquittal recorded by the trial Court is contrary to law and facts of the case and evidence on record. Hence, the same is liable to be set aside. The reasons assigned by the Court below while passing the impugned judgment of acquittal of the charged offence are erroneous and improper. Hence, it has reached a wrong conclusion resulting in substantial miscarriage of justice. The learned Magistrate has not properly appreciated the evidence of PWs.1 to 3 who are the direct eye-witnesses to the incident who categorically deposed that the offending lorry was being driven by the accused in a rash and negligent manner and dashed to a

motor bike which was going on the left side of the road and thereafter dashed to the pedestrians who were walking on the left side of the road. Inspite of that, the trial Court acquitted the accused on erroneous grounds by extending the benefit of doubt.

7. Further, the learned Magistrate has failed to appreciate the evidence of PWs.1 to 3 to the facts of the case, who have strongly supported the case of the prosecution. But the learned Magistrate has relied upon minor discrepancies and acquitted the accused which is not just and correct. The Hon'ble Supreme Court in a series of judgments held that the court should not stick to minor discrepancies. But it should consider the overall evidence of witnesses and exhibits relied on by the prosecution, but in spite, the learned Magistrate failed to consider the important aspects like accused involved in the accident and all the witnesses have identified the accused, so also, the spot where accident took place, is not disputed. Accident, and the time of accident and is

admitted by the accused, the vehicles involved in the accident also not disputed. Under these circumstances, what needs to be considered is, whether PWs.1 to 3 were present at the spot or not? and whether they are the direct eye-witnesses or not? PWs.1 to 3 have fully supported the case of the prosecution. Hence the prosecution had proved its case beyond reasonable doubt. In spite of the same, the learned Magistrate failed to consider and acquitted the accused on erroneous grounds, which calls for interference by this Hon'ble Court.

8. He would further submit that the learned Magistrate has mis-read the whole facts of the case like rash and negligent driving is the main cause for causing an accident. In the instant case the learned Magistrate has failed to appreciate that no precautionary measure was taken by the accused to avoid the accident, nor he has taken any specific defence in his 313 statement. Hence the prosecution prima facie established the fact that the

accused was driving the offending vehicle in a rash and negligent manner.

9. The learned Magistrate has manifestly, unjustly and reasonably ignored the evidence and misread the material evidence and documents. The learned Magistrate has not raised proper probabilities and inferences on the basis of evidence on record. Hence, the judgment of acquittal is not proper. On all these grounds, sought for allowing this appeal.

10. As against this, learned counsel for the respondent would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts. Absolutely, there are no grounds to interfere with the impugned judgment of acquittal and sought for dismissal of this appeal.

11. Having heard the arguments on both sides and on perusal of materials, the following points would arise for my consideration:

1. Whether the State has made out grounds to interfere with the impugned judgment of acquittal?

2. What order?

Regarding Point No.1:

12. I have examined the materials placed before this Court.

13. Before appreciation of evidence on record, it is 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 SAHEBGOUDA RUDRAGOUDAR 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 plausible view which could have been taken on the basis of the evidence on record; if the view taken is a plausible 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.

14. In the case on hand, the prosecution has examined 11 witnesses as PWs 1 to 11, and 23 documents were marked as Exhibits P1 to P23. The accused has submitted his written-statement under Section 313 of Cr.P.C in which, it is stated as under:

"ನಾನು ಪಿರ್ಯಾದಿಯಲ್ಲಿ ಆರೋಪಿಸಿದಂತಹಾ ಯಾವುದೇ ಆರೋಪ ಮಾಡಿಲ್ಲ ನನ್ನಮೇಲೆ ಮಾಡಿದ ಆರೋಪ ಮಿಥ್ಯಾರೋಪ ಆಗಿರುತ್ತದೆ. ಮತ್ತು ನಿರಾಧಾರವಾದದ್ದು. ಮೇಲಿನ ಆಪಘಾತವು ನಿ.ಡಿ.1ರಲ್ಲಿರುವ ಛಾಯಚಿತ್ರದಲ್ಲಿ ಕಾಣಿಸಿದ ಹಾಗೆ ಆಗದೆ.

ಪಿ.ಡಬ್ಲ್ಯು 2 ಮಹೇಶ್ ಎಂಬವರು ತನ್ನ ಬಾಬ್ತು ಮೋಟಾರು ಬೈಕ್‌ನಲ್ಲಿ ಅಶೋಕ ಭಂಡಾರಿ ಮತ್ತು ಗಣೇಶ್‌ರನ್ನು ಹಿಂಬದಿ ಸವಾರನಾಗಿ ಕೂರಿಸಿಕೊಂಡು ಸವಣೂರು ಕಡೆಯಿಂದ ಕಾಣಿಯೂರು ಕಡೆಗೆ ಅತಿ ವೇಗ ಅಜಾಗೂರುಕತೆಯಿಂದ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಎದುರಿನಿಂದ ನಿಧಾನವಾಗಿ ರಸ್ತೆಯ ಎಡ ಬದಿಯ ಅಂಚಿನಲ್ಲಿ ನಾನು ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದ ಲಾರಿಗೆ ಡಿಕ್ಕಿ ಹೊಡೆದದ್ದು, ನನ್ನ ತಪ್ಪಿನಿಂದ ಯಾವುದೇ ಅಪಘಾತವಾಗಿರುವುದಿಲ್ಲ. ಸದ್ರಿ

ಸಮಯ ಹೊನ್ನಪ್ಪ ಗೌಡ, ಮಹೇಶ ಮತ್ತು ಗಣೇಶ ರಸ್ತೆಯಲ್ಲಿ ನಡೆದುಕೊಂಡು ಹೋಗುತ್ತಿರಲಿಲ್ಲ.

ಮಹೇಶ ಎಂಬವರು ಮೋಟಾರು ಬೈಕ್‌ನ ಆರ್.ಸಿ.ಮಾಲಕರಾಗಿದ್ದು ಅವರಿಗೆ ಬೈಕ್ ಚಾಲನೆ ಮಾಡಲು D.L ಇಲ್ಲದ ಕಾರಣ ಅವರ ತಮ್ಮ ನವೀನನ್ನು ಬೈಕ್ ಚಾಲಕನನ್ನಾಗಿ ಮಾಡಿ ಮಹೇಶನನ್ನು ಪಾದಚಾರಿಯಾಗಿ ಪೋಲಿಸರೊಂದಿಗೆ ಶಾಮೀಲಾಗಿ ಹೊನ್ನಪ್ಪ ಗೌಡರಿಂದ ಒಂದು ಸುಳ್ಳು ಪಿರ್ಯಾದಿ ಕೊಡಿಸಿ ನನ್ನ ಮೇಲೆ ಸುಳ್ಳು ಪ್ರಕರಣವನ್ನು ಮಾಡಿರುತ್ತಾರೆ.

ನಾನು ಈಗ K.S.R.T.C ಮಂಗಳೂರು III ಡಿಪೋದಲ್ಲಿ ಚಾಲಕ ಕಂ ನಿರ್ವಾಹಕ ವೃತ್ತಿ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ.

ಆದುದರಿಂದ ಯಾವುದೇ ತಪ್ಪು ಮಾಡದ ನಿರ್ದೋಷಿಯಾದ ನನ್ನನ್ನು ಆರೋಪದಿಂದ ನಿರಪರಾಧಿ ಎಂದು ಘೋಷಿಸಿ ಮುಕ್ತರನ್ನಾಗಿಸಬೇಕೆಂದು ಬೇಡಿಕೆ."

15. Exhibits D1 to D3 are also marked. On careful examination of the entire evidence of the prosecution witnesses, the trial Court at paragraph Nos.18 to 20 has observed as under:

"18. Considering the entire evidence of PW1 to 6, none of them deposed what was the speed of the lorry and also the prosecution has not proved the exact place of accident. The IMV Inspector also examined as PW7. He has deposed that the accident was not occurred due to any mechanical defect. PW9 Neelayya who recorded the statement of pW1 in hospital and PW10 who registered the crime in this case. They have stated about their procedural part of work. Considering the entire evidence of PW1 to 3 no sufficient evidence is forthcoming to prove the rashness on the part of the accused. All the eyewitnesses and injured stated the lorry was coming in

speed. But the legal principle of law is mere speed itself is not always the criteria to convict the accused. However place of the accident and the speed must be proved to show that the accused was rashness at the time of accident. No eyewitnesses have stated how much speed he was at the relevant time of accident. In the present case the eyewitnesses are not given the cogent and consistent evidence with regard to the negligent act of the accused. As per the prosecution the accused has driven his lorry to the extreme right side to his direction by crossing the middle of the road. But considering the evidence of PW1 to 6 the eyewitness and signatory to spot and eye sketch , their evidence is contradictory with respect to the place of accident. The eyewitnesses and injured says offending lorry hit to the bike which was proceeding in moderate speed in left side to its direction. First the lorry hit to the bike, then it proceeded and hit to the pedestrians who were proceeding on mud road. The eye sketch and spot mahazar does not disclose the first place of accident where the lorry hit the bike and 2nd place where it hit to the pedestrian, whether on the right side of Savanoor Kaniyoor road or on the left side of that road. The evidence of eyewitnesses is quite contrary to the documents relied by the prosecution.

19. On this contradictory and inconsistent evidence I have carefully gone through the evidence of investigating officer. His evidence plays prominent role in deciding this case because he is the person who visited the spot and drawn the Ex.P10 spot mahazar and Ex.P11

scene of offence. He did not found any drag marks or blood spot in the place of accident. He has given description in his cross-examination that in the place of accident there was six feet of tar road was in existence to the two wheeler to its left side and also 12 feet of mud road after that tar road. As per the rider of the bike Naveena says he was riding his bike on the extreme edge of his direction. The investigating officer did not found any blood spots in the place of accident. Though Ex.D1 and D2 is denied by the Investigating officer, it was admitted by the eyewitnesses and the rider of the bike. Ex.D2 the photographs relied by the accused discloses the lorry was extreme left side to his direction and bike was under the lorry which goes to show that the Ex.P10 and P11 are quite contrary to the place of accident and also the Ex.P10 and P11 fails to prove the place of accident and the place where the lorry hit to the pedestrian. Here in this case the prosecution claims that at first lorry hit to the bike, then it was further proceeded to right side and hit to the pedestrian who were proceeding in the mud road. If so the investigating officer has not mentioned the distance between the first place of accident and 2nd place of accident either in the sketch or in the spot mahazar and also he failed prove to what extent the accused driven his lorry to the right side crossing his limit. These things has not proved by the prosecution. As per the ratio laid down in the aforesaid decision negligent means failure on the part of the party to exercise is reasonable care, which is imposed by law, then it comes under criminal liability. To bring home the guilt of the accused the prosecution must

prove the accused came right side after crossing his limit in the road at the place of accident. Though Ex.P11 reveals that there was sufficient space to the accused to pass , further it shows the distance from the edge of Kaniyoor road and place of accident is 8 feet and also existence of mud road, the evidence of eyewitnesses falsifies this fact and case of the defence is more probable because some of the eye witnesses says that they found injured Ganesh and Ashok Bhandary lying on the tar road. AS per the case of prosecution Ganesh is a pedestrian who was proceeding on mud road. Then how could it possible for him to fell on tar road near the pillion rider of the bike Ashok Bhandary, if he is a pedestrian.

20. To prove the guilt of the accused the prosecution must prove the rash and negligent act of the accused, since the accident is admitted. Here in this case as stated supra speed alone is not the criteria to prove the rash or negligent act of the accused. However no one stated what was the speed of the accused at the relevant time of accident. Further to prove the negligent the prosecution has failed to bring on record, that the accused came to wrong side i.e. right side to his direction crossing his limit in the road, and violated the traffic rules, which was root cause for the accident. Considering the inconsistency and contradictory evidence of eyewitness and documents relied by the prosecution failure on the part of the Investigating officer to brought on record the two exact places where the lorry hit to the bike and pedestrians, and to show exactly to what an extent the

accused proceeded towards wrong side of the road, exceeding his limit, and to show the distance between the first hit to the bike and 2nd hit to the pedestrians, it is highly difficult to held that the accused was negligent in his driving at the time of accident. Though the injured pedestrians stated that they were going one by one on the left side of the road, it is not forthcoming at what distance they were proceeding from one another, to whom the lorry hit first etc are not explained before the court.. Considering the failure on the part of the prosecution to prove the accused has contravened the traffic rules and caused for the accident and also admission on the part of the eyewitnesses with respect to D2 photo which discloses that every reasonable care has taken by the accused driver to avoid the accident, the evidence of prosecution creates doubt with regard to the manner of accident explained by them. Since the prosecution failed to discharge the doubt, the benefit of doubt should go in favour of the accused. As such my findings to the above points in the NEGATVE."

16. On re-appreciation/re-examination and re-consideration of the entire evidence on record, I do not find any legal or factual error in the judgment of acquittal passed by the trial Court. Considering the facts and circumstances of the case and keeping in mind the aforesaid decisions, I answer point No.1 in the ***Negative.***

Regarding point No.2:

17. For the foregoing reasons and discussions, I proceed to pass the following:

ORDER

Appeal is ***dismissed***.

Registry is directed to send the copy of this judgment along with TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

KBM
List No.: 1 Sl No.: 47