HC-KAR

NC: 2026:KHC:62769
CRL.A No. 1875 of 2016

CNR: KAHC010526062016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1875 OF 2016 (A)

BETWEEN:

STATE OF KARNATAKA
BY VENUR POLICE STATION,
REP BY SPP HIGH COURT BUILDING,
BENGALURU - 560 001

...APPELLANT

(BY SRI. K.NAGESHWARAPPA, HCGP)

AND:

SRI. SATHISHA
AGED ABOUT 28 YEARS,
S/O BABU POOJARY,
R/AT HENNALA HOUSLE,
HIREBANDARY VILLAGE,
PUTTUR, DAKSIHNA KANNADA - 574 201

...RESPONDENT

(BY SRI. KETHAN KUMAR, ADVOCATE)

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LAKSHMINARAYAN N
Location: High Court of
Karnataka

THIS CRL.A IS FILED UNDER SECTION 378(1) & (3) OF CR.P.C PRAYING TO a) GRANT LEAVE TO APPEAL AGAINST THE JUDGEMENT AND ORDER OF ACQUITAL DATED 08.07.2016 PASSED IN C.C.NO.1001/2013 ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC, BELTHANGADY ACQUITTING THE RESPONDENT-ACCSED OF THE OFFENCE PUNISHABLE UNDER SECTIONS 279, 304(A) OF IPC; AND ETC

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

CNR: KAHC010526062016

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The State has preferred this appeal against the Judgment of Acquittal dated 08.07.2016 passed in C.C.No.1001/2013 by the Addl. Civil Judge and JMFC, Belthangady (for short, 'the trial Court').

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

3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Venur Circle submitted charge sheet against the accused for the offence under Sections 279, 304A of IPC and Section 134(a) of IMV Act. It is alleged by the prosecution that, on 30.07.2013 at about 12:45 pm in a place called Hosangadi village of Belthangady Taluk, Moodabidire-Venur State-Highway Road, opposite to Hosangadi Panchayath, the accused being the driver of Bus bearing Reg.No.KA-19-D-859, drove the same in a high speed, rash and negligent manner so as to endanger

human life by driving on extreme right side of the road. Thus, the accused has committed the alleged offence under Sections 279 and 304A of IPC. Further, it is alleged that after the accident, the accused failed to secure medical attention for the injured person, thus he has committed the offence punishable under Section 134(a) (187) of IMV Act.

4. After filing the charge sheet, case was registered, accused enlarged on bail. The substance of plea was recorded. Accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, prosecution has examined in all, 8 witnesses as PWs.1 to 8 and 16 documents were marked as Exs.P1 to P16. 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 adduced the

evidence of DW1-Accused Sathisha. However, no documents got marked on behalf of accused.

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

7. The learned HCGP, Sri K Nageshwarappa would submit that the impugned judgment of acquittal is not sustainable under law. The trial Court has not properly appreciated the evidence on record in accordance with law and facts. In his evidence PW1, who is the eye-witness and complainant, has clearly deposed that he was proceeding towards his shop on two-wheeler. He witnessed the accident at 100 feet distance and respondent drove the vehicle in a very rash and negligent manner and he took his bus to the extreme right side and dashed it to the opposite vehicle.

8. The post-mortem report reveals that the deceased died due to multi organ damage resulting from a road traffic accident. The same was not considered by the trial Judge. DW1 denied any negligence on his part and he alleged that the negligence was on the part of the deceased while overtaking a rickshaw. He also stated that he assisted the deceased by accompanying him to the hospital, which shows that the accused was present at the spot. However, the trial Court has not considered this. On all these grounds, it is sought for allowing this appeal.

9. As against this, the learned counsel for the respondent Sri Kethan Kumar would submit that, PWs.1, 2, 3 and 5 are the eye-witnesses. Out of them, PWs.2, 3 and 5 have deposed that they went to the spot only after the accident. Therefore, it is clear that they are not the eye-witnesses to the alleged incident.

10. PW3 has not fully supported to the case of the prosecution. That, there is no cogent and convincing

evidence by the prosecution. The trial Court has properly appreciated the evidence on record in accordance with law and facts and passed the impugned judgment of acquittal and accordingly, sought for dismissal of the appeal.

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

(1) Whether the State has made out grounds to interfere with the judgment of acquittal?

(2) What order?

12. My answer to the above points as under:

Point No.1: In Negative.

Point No.2: As per final order.

Regarding Point No.1:

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 possible view which could have been taken on the basis of the evidence 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.

14. I have examined the materials placed before this Court. This case arises out of the complaint filed by PW1-Complainant as per Ex.P1. Same reads as under:

> "ವಿಷಯಃ ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಗುಣಪಾಲ್ ಜೈನ್ (62) ರವರು ವಾಹನ ಅಪಘಾತದಿಂದ ಮೃತಪಟ್ಟ ಬಗ್ಗೆ.
>
> ನಾನು ಮೇಲ್ಕಾಣಿಸಿದ ವಿಳಾಸದಲ್ಲಿ ತಂದೆ-ತಾಯಿ, ಹೆಂಡತಿ-ಮಕ್ಕಳೊಂದಿಗೆ ವಾಸವಾಗಿರುವುದು. ನಾನು ಕೃಷಿಕನಾಗಿರುತ್ತೇನೆ. ನಾನು ಪಡ್ಡಂದಡ್ಕದಲ್ಲಿ ಒಂದು

ಅಂಗಡಿಯನ್ನು ಹೊಂದಿರುತ್ತೇನೆ. ಅಂಗಡಿಯಲ್ಲಿ ಹೆಚ್ಚಾಗಿ ನನ್ನ ತಂದೆಯವರು ಇರುತ್ತಾರೆ. ಕೆಲವೊಂದು ಬಾರಿ ಅಂಗಡಿಯಲ್ಲಿ ನಾನೂ ಇರುತ್ತೇನೆ.

ಈ ದಿನ ದಿನಾಂಕ 30.07.2013 ರಂದು ನಾನು ಅಂಗಡಿಗೆ ಪಡ್ಡಂದಡ್ಕಕ್ಕೆ ಹೋಗಬೇಕೆಂದು ಮನೆಯಿಂದ ಸುಮಾರು 12.40 ಗಂಟೆ ಸಮಯಕ್ಕೆ ನನ್ನ ಬಾಬ್ತು ದ್ವಿಚಕ್ರ ವಾಹನದಲ್ಲಿ ಕುಳಿತು ಹೊರಟು ಪಡ್ಡಂದಡ್ಕಕ್ಕೆ ಮೂಡಬಿದ್ರೆ ವೇಣೂರು ಡಾಮಾರು ರಸ್ತೆಯಲ್ಲಿ ಹೋಗುತ್ತಾ ನನ್ನ ಮುಂದಿನಿಂದ ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಗುಣಪಾಲ್ ಜೈನ್‌ರವರು ಅವರ ಬಾಬ್ತು ಇನ್ನೋವ ಕಾರ್ ನಂ.ಕೆ.ಎ.21-ಎಂ-4295ನೇದನ್ನು ಚಲಾಯಿಸಿಕೊಂಡು ವೇಣೂರು ಕಡೆಗೆ ಹೋಗುತ್ತಿದ್ದರು. ನಾವು ಮುಂದಕ್ಕೆ ಹೋಗುತ್ತಾ ಕಾರು ಹೊಸಂಗಡಿ ಗ್ರಾ. ಪಂಚಾಯತ್ ಕಛೇರಿಯ ಮುಂಭಾಗ ಡಾಮಾರು ರಸ್ತೆಯಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದಂತೆಯೇ ಕಾರಿನ ಹಿಂಭಾಗದಲ್ಲಿ ದ್ವಿಚಕ್ರ ವಾಹನದಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದ ನಾನು ನೋಡುತ್ತಿದ್ದಂತೆಯೇ 12.45 ಗಂಟೆ ಸುಮಾರಿಗೆ ವೇಣೂರು ಕಡೆಯಿಂದ ಅತೀ ವೇಗ ಹಾಗೂ ಅಜಾಗರೂಕತೆಯಿಂದ ಮೂಡಬಿದ್ರೆ ಕಡೆಗೆ ಚಲಾಯಿಸಿಕೊಂಡು ಬರುತ್ತಿದ್ದ ಡಿವೈನ್ ಮರ್ಸಿ ಬಸ್ ನಂ.ಸಿ.ಕೆ.ಎ.19-ಡಿ-859ನೇದನ್ನು ಅದರ ಚಾಲಕ ಸತೀಶ ಎಂಬಾತನು ರಸ್ತೆಯ ತೀರ ಬಲಕ್ಕೆ ಚಲಾಯಿಸಿ ಕಾರು ಕೆ.ಎ.21-ಎಂ-4295 ನೇದಕ್ಕೆ ಡಿಕ್ಕಿ ಹೊಡೆದ ಪರಿಣಾಮ ಕಾರು ಹಿಂದಕ್ಕೆ ಸರಿದು ಮಣ್ಣು ದಿಣ್ಣೆಯ ಮೇಲೆ ನಿಂತಿತು. ಡಿಕ್ಕಿ ಹೊಡೆದದ್ದನ್ನು ನೋಡಿದ ನಾನು ನನ್ನ ದ್ವಿಚಕ್ರ ವಾಹನವನ್ನು ನಿಲ್ಲಿಸಿ ಸ್ಥಳಕ್ಕೆ ಹೋಗಿ ನೋಡಿದಾಗ ಗಾಯಗೊಂಡು ರಕ್ತಸ್ರಾವ ಆಗುತ್ತಿದ್ದು, ಆ ಕೂಡಲೆ ಶಬ್ದ ಕೇಳಿ ಸ್ಥಳಕ್ಕೆ ಬಂದ ಸತೀಶ್ ಕುಮಾರ್ ಮತ್ತು ಕೇಶವರವರು ಸೇರಿ ಗಾಯಗೊಂಡಿದ್ದ ನನ್ನ ಚಿಕ್ಕಪ್ಪನನ್ನು ಕಾರಿನಿಂದ ಹೊರಕ್ಕೆ ತೆಗೆದು ಒಂದು ವಾಹನದಲ್ಲಿ ಚಿಕಿತ್ಸೆಗೆಂದು ಮೂಡಬಿದ್ರೆ ಆಳ್ವಾಸ್ ಆಸ್ಪತ್ರೆಗೆ ಸಾಗಿಸಿದೆವು. ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಗುಣಪಾಲ್ ಜೈನ್‌ರವರಿಗೆ ತಲೆಯ ಬಲಭಾಗಕ್ಕೆ ಗಂಭೀರವಾದ ಗಾಯವಾಗಿತ್ತು. ಚಿಕಿತ್ಸೆಗೆಂದು ಆಸ್ಪತ್ರೆಗೆ ತಂದಾಗ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಪರೀಕ್ಷಿಸಿದ ವೈದ್ಯರು ಮಧ್ಯಾಹ್ನ 1.30 ಗಂಟೆಗೆ ಮೃತಪಟ್ಟಿರುವುದಾಗಿ ತಿಳಿಸಿದರು.

ಈ ಮರಣಕ್ಕೆ ಕಾರಣವೇನೆಂದರೆ ಗುಣಪಾಲ್ ಜೈನ್‌ರವರು ಅವರ ಬಾಬ್ತು ಕಾರು ಕೆ.ಎ.21-ಎಂ-4295 ನೇದನ್ನು ಅವರು ಮೂಡಬಿದ್ರೆ ಕಡೆಯಿಂದ ವೇಣೂರು ಕಡೆಗೆ ರಾಜ್ಯ ಹೆದ್ದಾರಿ ರಸ್ತೆಯಲ್ಲಿ ಚಲಾಯಿಸಿಕೊಂಡು ಹೋಗುತ್ತಾ 12.45 ಗಂಟೆಗೆ ಹೊಸಂಗಡಿ ಗ್ರಾಮ ಪಂಚಾಯತ್ ಕಛೇರಿ ಎದುರು ತಲುಪಿದಾಗ ಎದುರುಗಡೆಯಿಂದ ಅಂದರೆ ವೇಣೂರು ಕಡೆಯಿಂದ ಮೂಡಬಿದ್ರೆ ಕಡೆಗೆ ಬಸ್ ಡಿವೈನ್ ಮರ್ಸಿ ಕೆ.ಎ.19-ಡಿ-859 ನೇದರ ಚಾಲಕ ಸತೀಶ್ ಎಂಬಾತನು ಅತೀ ವೇಗ ಹಾಗೂ

ಅಜಾಗರೂಕತೆಯಿಂದ ರಸ್ತೆಯ ತೀರ ಬಲಭಾಗಕ್ಕೆ ಚಲಾಯಿಸಿ ಕಾರು ಕೆ.ಎ.21-ಎಂ-4295 ನೇದಕ್ಕೆ ಡಿಕ್ಕಿ ಹೊಡೆಸಿದ ಪರಿಣಾಮ ತಲೆಯ ಬಲಭಾಗಕ್ಕೆ ಉಂಟಾದ ಗಂಭೀರ ಗಾಯದಿಂದ ಮೃತಪಟ್ಟದ್ದಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಬಸ್ ಕೆ.ಎ.19-ಡಿ-859 ನೇದರ ಚಾಲಕ ಸತೀಶನು ಡಿಕ್ಕಿ ಹೊಡೆಸಿದ ಬಳಿಕ ಡಿಕ್ಕಿಯಾದ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ತಿಳಿಸದೇ ಗಾಯಾಳುವನ್ನು ಚಿಕಿತ್ಸೆಗೆ ಆಸ್ಪತ್ರೆಗೂ ಸಾಗಿಸದೇ ಸ್ಥಳದಿಂದ ಪರಾರಿಯಾಗಿದ್ದು ಸದ್ರಿ ಚಾಲಕನ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ."

15. PW1-A Sharmith Kumar, has deposed in his evidence that on 30-7-2013 at about 12:40 pm when he was going to his shop situated at Paddandhatka on his bike, he saw his unlce Gunapal Jain driving his Innova car bearing No.KA 21 M 4295 in front of his bike. When he reached Parinje Gram Panchayath, the Bus bearing No.KA 19 D 859 driven in a rash manner on extreme right, dashed to Innova car. Immediately, he along with CW4, CW5 and general public went to the spot and saw his uncle Gunapal Jain with grievous injuries. He secured Gunapal Jain out from the car and took him to Alvas Hospital for treatment, but he was reported dead at 1:30 PM. He also identified the accused before the court and also deposed about

lodging the complaint and also witnessing the complainant before the Court.

16. PW2-Sathish Kumar has deposed in his evidence that, on 30-7-2013 he left his office for lunch at 12:30 pm and at about 12:45 pm he witnessed the Divine Mercy Bus bearing No. KA 19 D 859 driven in rash and negligent manner, dashed to the Innova car No. KA 21 N 4295 and due to the impact, the driver Gunapal Jain sustained injuries. Immediately, he along with CW1 and CW5 took the deceased Gunapal Jain to Alvas Hospital, but he was reported dead. He also identified the accused before the court. But he deposed that he heard the sound of accident, but has not witnessed the accident.

17. PW3-Keshava who is one of the eye-witnesses, has deposed in his evidence that on 30-7-2013 at about 12:45 pm he witnessed the Divine Mercy Bus bearing No.KA 19 D 859 driven in rash and negligent manner and dashed the Innova car no. KA 21 N 4295. Immediately, he approached

the spot and found the injuries on Gunapal Jain. Immediately, he along with CW1 and CW4 took the Gunapal Jain to Alvas Hospital in Tata Sumo jeep, but he was reported dead. He also identified the accused before the court. But he deposed that he heard the sound of accident and then he went to the spot. This witness is treated as partly hostile witness and cross-examined by the Public Prosecutor.

18. PW4-Sharath Jain, another eye-witness has deposed in his evidence that on 30-7-2013 when he along with his friend CW7-Prashanth Hegde were on the way to Moodabidire, witnessed the Divine Mercy Bus bearing No. KA 19 D 859 driven in rash and negligent manner and dashed the Innova car No. KA 21 N 4295. Immediately, he along with CW7 reached the spot and found the injured was Gunapal Jain. Immediately, he along with CW7 assisted the CW1, CW4 and CW5 in sending the deceased Gunapal Jain to Alvas Hospital. He also identified the accused before the court. He also deposed about the

preparation of mahazar and sketch and he also about seizure of vehicles involved in the accident.

19. PW5-Prashanth Hegde, the another eye-witness has deposed that on 30-7-2013 when he along with his friend CW6-Sharath Jain B.G were on the way to Moodabidire, have witnessed the Divine Mercy Bus bearing no. KA 19 D 859 driven in rash and negligent manner on extreme right side and dashed the Innova car no. KA 21 N 4295. He along with CW6 reached the spot and found the injured was Gunapal Jain. He along with CW6 assisted CW1, CW4 and CW5 secured Gunapal Jain out of the car and sent him to Alvas Hospital. He also deposed that, before he could reach the spot, the driver of bus had fled away from the spot. This witness has been treated as hostile witness with the permission of Court and cross-examined by the prosecution.

20. PW7-Sudhath Jain another mahazar witness has deposed as to the mahazar conducted by the Police and also preparation of sketch.

21. PW8-Abdul Khader, PSI and PW9-Bhaskar Rai, CPI, have deposed as to their respective investigation.

22. On careful examination of the entire evidence on record, the trial Court has appreciated the evidence on record in Paragraphs 30 to 40 of the judgment. Same reads as hereunder:

> ***"30**. On conclusion of the prosecution evidence, the defence adduced his evidence as DW1, but not produced any document or marked in support of his case. He deposed that on 30-7-2013 he drove the bus towards Moodabidre and it was heavy rain. So he drove the bus slowly. When he reached Hosangady Gram Panchayath, the Innova car overtook the Rikshaw and dashed the bus and he immediately approached the car and found the driver injured. He secured out and took him to Alvas hospital for treatment. He left key in the bus and the people gathered at spot have moved the bus. The police*

secured him to station and thereby prayed to acquit him from the case.

***31**. In his cross examination he has admitted about 20 to 30 passengers being in bus. He deposed about he giving information of accident to Venoor police station. he also admitted that he alone has not accompanied the injured to hospital, but he along with other persons had accompanied the injured to hospital. He also admitted that, about the defence/grounds taken in chief examination is for the first time. He also admitted that he has given the complaint against the driver of Innova car and that he has not produced the copy of complaint to court.*

***32.** In this case, the PW1 is the eye witness and complainant and the person who assisted the deceased Gunapal Jain in taking to hospital. The PW2 and PW3 are also the eye witnesses who witnessed the accident and the persons who have assisted in taking Gunapal Jain to Hosptial. PW4 is the eye witness and a person who also assisted in sending Gunapal Jain to hospital and the person who shown the spot to the police. Likewise, PW5 is also another eyewitness who witnessed the accident and the person who assisted in taking care of deceased Gunapal Jain to hospital. Pw6 & Pw7 are the mahazar witnesses. Pw8 the PSI who registered the case and*

Pw9 CPI who investigated the case and filed charge sheet against the accused.

33. *In the case on hand though the accident and death is not disputed, but the prosecution has to prove the rash and negligent act on the part of the accused beyond all reasonable doubts, because in order to attract ingredients of alleged offences there must be direct nexus between the death and the alleged rash and negligent act on the part of the accused.*

34. *The prosecution has examined all the eye witnesses in support of its case. No doubt, all the witnesses have narrated about the occurrence of accident, but on gathering their evidence it goes to show there are lot of omissions and contradictory evidence between these witnesses. Now coming to the evidence of PW2 who is said to be eye witness, though deposed about the accident, but he clearly admitted that he has not witnessed the accident and only on hearing sound he reached the spot and found the injured. Though the prosecution has treated the witness partly hostile and cross examined him and took the admission of witnessing the accident, but again during in the course of cross examination by defence side, the witness clearly admitted about he hearing the sound of accident and then he reaching*

the spot. So the evidence of this witness goes to show about he not witnessing the accident, but only after hearing the sound of accident, he reaching the spot. So when he has not witnessed the accident, so certainly he would not be able to depose the rash and negligent manner of driving. No doubt, the witness has deposed about he witnessing the bus at a distance of 100 meters, but again he has not specifically made it clear about the manner of driving and its speed at a particular distance. Likewise, the another eye witness the PW3 also clearly deposed about he not witnessing the accident, but only after hearing the sound of accident he reached the spot. Again this witness was treated partly hostile and in the cross examination by APP got admitted about he witnessing the accident and also he witnessing the accused as a driver of the bus. Though this witness not whispered about he witnessing the accident or witnessing the accused or getting the name of accused at the time of accident in his evidence, but in cross examination by APP, he admits all these aspects and supports the prosecution case. But again during the course of cross examination by defence side, he again reverts and admits about he not witnessing the accident and he reaching the spot after 10 minutes only on hearing the sound of accident. He also clearly admits about he not

witnessing the accused at the spot on he reaching the spot. So again this witness is not particular about witnessing the accident. No doubt, the witness not witnessing the accused at the spot alone shall not support the defence case, but the omissions would certainly would support the defence case. Because, it is not the case of accused that he was not the driver of the bus on the alleged day. That apart, as per the reply issued towards the notice u/s 133 of IMV Act, it clearly goes to show the accused was the driver of the bus at the time of accident. But as stated supra, the omission so far he giving the statement before the police about he witnessing the accident and identifying the accused and his appearance at the spot makes much importance. Likewise the PW4 who is also the eye witness who has specifically admitted about he not witnessing the vehicles coming on the opposite direction as he was behind the bus. He also clearly admitted about he not knowing as to how the accident was occurred. Again the PW5 the another eye witness who also has admitted about he not witnessing the accused at the spot. Even this witness was treated partly hostile and was permitted to cross examine the witness and again the witness admitted about he witnessing the accused at spot. The PW1 who is material witness has admitted about he witnessing the bus at about 100 feet at a distance

and he reached the spot immediately after the accident by stopping his bike at 60 to 70 feet at a distance from the spot. Was this witness able to witness the accident from the said distance. Admittedly all the eye witnesses are related or interested witnesses in one way or other. As per the PW1, the deceased is his uncle. Deceased is well known to PW2. He belongs to same community of pw4 and well known to PW3 & PW5. As per the evidence of prosecution side, there were many people's gathered at the spot. Shops were adjacent and passengers of the bus were present. Any of the said persons could have made as a witness to the case. This is one aspect.

***35**. Now coming further, the PW1 has deposed that immediately after the accident he went to the spot and after securing the injured from the car, they took the injured in Tata Sumo jeep. Like wise the PW3 also deposed about taking the injured in Tata Sumo jeep. But contradictorily the PW2 who is also one of the eye witness and the person who assisted and accompanied in taking the injured to the hospital has deposed about they taking the injured in a autoriskaw till 3 km and then shifting in 108 ambulance. Again contradictorily the PW4 deposed about sending the injured in Omni car to hospital.*

Admittedly, the pw1 to PW4 are all the eye witness and who accompanied the injured to hospital except PW4. When the witnesses are contradictorily deposing to each other, then which version is believable creates reasonable doubt. Certainly their presence at spot creates doubts.

***36**. The accused has taken a defence that, the accident was occurred due to the negligence of deceased while overtaking a rickshaw and he also assisted the deceased by accompanying to the hospital. Admittedly, the charges is leveled against the accused for the offence punishable u/s 134(A) of IMV Act for not assisting medical treatment to deceased Gunapal Jain. Though the accused has taken the defence of he assisting in taking care of treatment to deceased, but no sufficient evidence is placed on record to appreciate his defence. Though the PW3 & PW5 have deposed about they not witnessing the accused in the bus immediately after the accident and they were treated as hostile to that effect and admitted the accused presence at spot, but the said evidence is suffice to hold that the accused was not at the spot after the occurrence of accident. No evidence is forthcoming to come to conclusion about the presence of accused at spot. Admittedly, it was the bounded duty of the accused*

to give the assistance to deceased in giving the medical treatment admittedly not forth coming.

***37**. So far the Mahazar is concerned, the pw6 the mahazar witness has clearly admitted about he not knowing the contents of the documents on which he signed. Likewise, the PW4 the person who showed the spot to police and signed the mahazar has deposed about the preparation of mahazar was between 1:30 to 2:00pm which is again contradictory. Because, the mahazar is prepared 6:15 to 7:15 pm. Nodoubt, this witnesses have contrarily deposed, but the PW7 the another mahazar witness has clearly supported the prosecution case by narrating the preparation of mahzar and sketch. It was pointed about even this witness being the interested witness as he has admitted about the deceased being the owner of the building where he is working. But the I.O. the pw9 has clearly narrated about the preparation of mahzar and preparation of sketch. Nothing worth was elicited from the I.O to discredit the presence of mahzar witness and also the preparation of mahzar and sketch. So even though the other mahazar witness have not supported the drawing of mahazar and sketch, but relying on the evidence of I.O, it could be said the mahazar and sketch is proved. Again coming*

further the involvement of vehicle is not in dispute, but the rash and negligent act on part of the accused is required to be proved.

***38**. It is pertinent to note that only the involvement of the vehicle is not the criteria to bring home the guilt of the accused for the alleged offences. No doubt the mahazar is proved but in the case in hand, there is no strong and positive evidence on record from the independent witnesses about the rash and negligent driving of the accused to cause the alleged accident. In such circumstances it is very difficult to effectively assess the evidence on record. Now coming to the evidence of Pw8, it pertains about the receiving the complaint and its registration. The evidence of Pw9 pertains to the investigation process and of filing the chargesheet and much discussion is not necessary so far these witnesses are concerned.*

***39**. Learned APP has relied upon the decision report in ILR 2004 KAR 689 Borayya V/s State Police, ILR 2004 KAR 1456 Eshwar V/s State of Karnataka, ILR 1999 KAR 1498 State by Bidadi Police Station V/s S. B. Marigowda, 2014(1) Crimes 550(P&H)Kashmir Singh V/s State of Punjab & 2006(1)Crimes 291(SC) State of Andra Pradesh V/s Rayappa and others. It was the argument of learned APP that any slight discrepancy in evidence of prosecution shall not be*

the sole ground to discredit their evidence and that the immediately reaching the spot by hearing the sound is sufficient to prove his presence at spot and also the witnesses cannot be rejected only considering they are interested witness to case and prayed to convict the accused on relying the decision refereed above. Admittedly, the decision reported in ILR 2004 KAR 689 wherein lordship has held that any slight discrepancy in evidence of the village witness shall not be the sole ground to discredit their evidence , but in the case on hand it cannot be treated the witnesses are not well versed with day to day activities. All the witnesses are educated and they know the importance of their evidence. So certainly, the decision relied by APP will be of no help for prosecution. Now coming to decision reported in ILR 2004 KAR 1456 wherein the lordship has convicted the accused for he driving his vehicle in a rash and negligent manner on extreme right direction. But in case in hand, no witness has specifically deposed about the accused driving his vehicle on extreme right side. Again in ILR 1999 KAR 1498 wherein lordship has held that when the witness heard a sound and turned back and saw the body dragging is sufficient to hold the rash and negligent driving for causing accident. But the facts and circumstance narrated in the said case is

different to the case in hand. The witnesses are not particular about their presence at spot, because they have given their evidence contradictorily to their statements. So again this decision would also in no way helps the prosecution case. In the decision reported in 2014(1) Crimes 550(P&H), the accused had denied the driving the vehicle involved in the accident. In the said case, he had disputed his identity. But in case in hand, the accused has not disputed his presence at spot or of driving his vehicle. It is his defence that the accident was not caused due to his fault. In the decision of 2016(1) Crimes 219(SC) the lordship has held that testimony of witness otherwise inspiring the confidence cannot be discarded on ground that he being a relation of deceased was an interested witness. Certainly the prosecution witness were interested witnesses and no one where independent witnesses. Certainly, their evidence creates doubt about their presence at spot. So looking the evidence on record it could be said that the decision relied by learned APP would no way helps its case.

***40**. In case of Section 279 and 304A of IPC, the prosecution has to prove that the driver of the vehicle has driven his vehicle in rash and negligent manner in public road. But in the present case on*

hand there is no material evidence before the court to prove the ingredients of Section 279 and 304A of IPC. On gathering the evidence on record, it could be said that the prosecution has failed to prove the alleged ingredients of Section 279 and 304A of IPC, but has proved the offence punishable u/s 134(A) of IMV Act. Hence, the prosecution has failed to prove the offences u/s 279, 304(A) of IPC alleged against the accused, but proved the offence punishable u/s 134(A) of IMV Act. Therefore taking in to consideration of above discussion narrated above, I hold that in absence of strong and cogent evidence from the independent witnesses to corroborate the accused guilt, the burden of doubt is required to be given to the accused so far section 279, 304(A) of IPC.

40.. Wherefore looking from the discussion narrated above I come to a conclusion that the prosecution has failed to prove its case beyond the shadow of doubts so as to bring home the guilt of the accused for the offences punishable u/s 279, 304(A) of IPC. In the result benefit of doubt is to be given to the accused for the offence punishable u/s 279, 304(A) of IPC and shall be acquitted for the alleged offences and shall be convicted for the offence punishable u/s 134(A) of IMV Act Hence, I answer point No.1 and 2 in the negative and point No.3 in the affirmative."

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

Regarding Point No.2

24. For the aforestated reasons and discussions, I proceed to pass the following:

O R D E R

Appeal is **dismissed**.

Sd/-
(G BASAVARAJA)
JUDGE

DHA
List No.: 1 Sl No.: 69