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

**DATED THIS THE 26TH DAY OF OCTOBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE VENKATESH NAIK T**

**CRIMINAL REVISION PETITION NO. 784 OF 2015**

**BETWEEN:**

HANUMANTHARAYAPPA,

...PETITIONER
(BY SRI MANJUNATH S. HALAWAR, ADVOCATE)

**AND:**

STATE OF KARNATAKA,
BY KORATEGERE POLICE STATION,
TUMKUR DISTRICT - 572 129.

...RESPONDENT
(BY SRI VINAY MAHADEVAIAH, H.C.G.P.)



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THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 28.3.2014 PASSED BY THE C.J. AND J.M.F.C., KORATAGERE, TUMKUR DIST. IN C.C.NO.2/2013 AND JUDGMENT DATED 01.06.2015 PASSED BY THE IV ADDL. DIST. AND S.J., MADUGIRI, TUMKUR DIST. IN CRL.A.NO.5006/2014 AND CONSEQUENTY BE PLEASED TO ACQUIT THE PETR. OF THE OFFENCES ALLEGED IN THE ABOVE CASE.

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

**ORDER**

Heard learned counsel for the petitioner and learned HCGP for respondent-State.

2. Petitioner has filed this petition under Section 397 of the Code of Criminal Procedure to set aside the judgment of conviction and sentence dated 28.03.2014 passed by the learned Civil Judge and JMFC, Koratagere, in C.C.No.2/2013 and the judgment dated 01.06.2015 passed by the learned IV Additional District and Sessions Judge, Tumkur District sitting at Madhugiri in Criminal Appeal No.5006/2014 and prays to acquit the petitioner for the offence punishable under Section 304-A of IPC.

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

4. The petitioner is Accused No.1 and respondent is complainant/State.

5. Brief facts of the prosecution is as under :-

On 23.07.2012 at 3.45 p.m. at Irakasandra colony in front of a puncture shop at Koratagere-Uridigere road, the deceased Parameshaiah was walking on the road, at that time, accused No.1 being the rider of the Motor Cycle bearing registration No.KA-06-Ea-7647 came in a rash and negligent manner and dashed to Parameshaiah.

6. Thus he sustained injuries on his forehead, right cheek, right elbow, left knee, right shoulder, left wrist joint, left palm and little finger. Hence he was shifted to Government Hospital at Koratagere for treatment and later he was shifted to Government Hospital, Tumkur, further he was referred to NIMHANS, but on the way to NIMHANS Hospital, Bangalore, Parameshaiah succumbed to the injuries. Hence, complainant No.1 lodged complaint.

7. On the basis of the complaint, Koratagere Police have registered a case, investigated the matter and filed charge sheet against accused Nos.1 and 2 for the offences

punishable under Sections 279, 304-A of IPC and Sections 180, 181, 187, 196 of IMV Act.

8. After receipt of the charge-sheet, cognizance was taken by the trial Court under Section 190 (b) of Cr.P.C., recorded plea of the accused and convicted accused No.1 for the offences punishable under Sections 279 & 304-A of IPC and was sentenced in to undergo rigorous imprisonment of six months and to pay a fine of Rs.5,000/- in default he shall undergo simple imprisonment for a period of six months, and accused No.2 convicted for the offence under Section 180, 181, 187 and 196 of IMV Act.

9. Aggrieved by the judgment of conviction and order of sentence passed by the trial Court, accused No.1 preferred an appeal in Crl.A. No.5006/2014 and the first Appellant Court, ie., IV Addl. District and Sessions Judge, Tumkur sitting at Madhugiri, allowed the appeal in part. The judgment of conviction and order of sentence passed by the trial Court in CC No.2/2013 dated 28.03.2014 is

partly set aside. However, the judgment of conviction and order of sentence against accused No.1 is confirmed and sentence against the accused No.2, was set aside.

10. Aggrieved by the impugned judgment of the first Appellate Court, the petitioner has filed this petition.

11. Learned counsel Sri Manjunath S. Halawar, appearing for petitioner submits that the judgment passed by the trial Court as well as first Appellate Court is liable to be set aside. The judgment passed by the trial Court is not in accordance with law and legal evidence. Both the Courts have grossly erred in convicting the petitioner for the aforesaid offences. Learned counsel further submits that at the time of alleged accident deceased Parameshaiah was alcoholic and therefore, accidence in question was occurred due to the fault of deceased Parameshaiah, who lost control and fell down on the road. Learned counsel further submits that there is no clear and corroborative evidence in the testimony of PW2 and PW3. Hence, he prayed to allow the petition.

12. Learned High Court Government Pleader appearing on behalf of respondent - State submits that since the trial Court as well as Appellate Court have given concurrent finding, interference by this Court is not necessary to set aside the judgment of conviction and order of sentence passed against accused No.1. Hence, he prays for dismissal of the revision petition.

13. On perusal of the material available on record, the trial Court relaying on the evidence of PW2 to 7 and Ex.P1 to 11, convicted the petitioner. Further, the trial Court as well as Appellate Court relaying on the evidence of eye witnesses - PW2 - Manjunath and PW3 - Kantharaju, the medical evidence at Ex.P4 - PM examination report, the evidence of spot mahazar witness (CW4 and CW5) and also the Police witnesses, held that accused No.1 caused the accident due to rash and negligent driving resulting in death of deceased Parameshaiah, was proved.

14. As rightly pointed out by the learned HCGP, this petition is being a revision petition against the concurrent findings of the trial Court as well as Appellate Court, the scope of interference on the factual aspect is very limited. The evidence on record shows that the petitioner was not disputing the occurrence of accident. He also not disputing the death of deceased Parameshaiah and his identity before the trial Court. It was his defence that the deceased Parameshaiah abruptly came on road under alcoholic condition and therefore, he is not responsible for causation of the accident.

15. The trial Court as well as Appellate Court have rightly held that Ex.P5 - IMV report and Ex.P9 - rough sketch, do not support the defence theory. Further at the time of accident, accused No.1 was not holding any valid licence to ride the motor cycle and the owner of the motor cycle do not hold any insurance policy to the vehicle in question.

16. The cumulative effect of entire evidence on record leads to the conclusion that the accident was the out come of the rash and negligent driving on the part of the petitioner. Therefore, PW2 - Manjunath and PW3 - Kantharaj, clearly stated about rashness. The trial Court as well as Appellate Court rightly appreciated that if the vehicle of the petitioner traversed abruptly, there could not have been any accident and accident could not have been occurred.

17. Now, the only question that arose for consideration is whether the imposition of sentence is tenable.

18. The learned counsel for petitioner submits that the petitioner has no criminal antecedents nor had any intention to cause the accident and he is the sole bread earner in the family and therefore, a lenient view may be taken.

19. On perusal of the judgement passed by the trial Court as well as Appellate Court, the maximum sentence imposed is six months for the offences punishable under Sections 304-A of IPC. 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 Paras-19, 24, 26 and 29, held as under:

> "*19. In Dalbir Singh v. State of Haryana, this Court expressed thus:*
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> > *"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 304A 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." Thereafter, the Court proceeded to highlight what is expected of a professional driver:*

> *"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."*

*XXX XXX*

*24. In Alister Anthony Pareira v. State of Maharashtra, it has been laid down that sentencing is an important task in relation to criminal justice dispensation system. 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 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.*

*XXX XXX*

*26. 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 tranquility 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) 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.*

*XXX XXX*

*29. 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., it has been held as follows*:-

> *"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."*

20. On perusal of the material available on record in the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing increase in number of accidents, that too without possessing any valid driving licence and insurance policy to the vehicle and also it is noticed that the driver or rider of such vehicle are totally rash and negligent in driving such vehicle in a rash and negligent manner and also driving with youthful adventurous enthusiasm without possession any valid documents, such as, driving licence or insurance policy to such vehicle, as if there are no traffic Rules or no discipline of law has come to the centre stage.

21. Whereas, in the instant case, at the time of accident, the age of accused No.1 was 22 years. It is needless to mention here that there are actions that are deter in imperative depending upon the facts of the case. While looking into the facts and circumstances of the case and the ratio laid down in the case of STATE OF PUNJAB vs SAURABH BAKSHI reported in 2015 (5) SCC 182, wherein the Hon'ble Supreme Court has imposed maximum imprisonment of six months for the offence punishable under Section 304-A of IPC.

22. Further, in view of the ratio laid down in the case of GURU BASAVARAJ @ BENNE SETTAPPA and SAURABH BAKSHI, referred to supra, the minimum imprison of six months atleast is required to be imposed for the offence punishable under Section 304-A of IPC.

23. Having regard to the fact that accused No.1 was aged about 22 years at the time of accident and he has faced the proceedings since 2012 and also the fact that he has no criminal antecedents, considering the factual and

legal facts placed on record, the trial Court as well as Appellate Court have concurrently held that petitioner - accused No.1 is guilty of the offence alleged against him and convicted him with maximum imprisonment for a period of six months. There is no merit in this petition. Hence, I proceed to pass the following Order:

ORDER

(i) The revision petition is dismissed.

(ii) The impugned judgment dated 28.03.2014 passed by the Civil Judge & JMFC, Koratagere in CC No.2/2013 and confirmed by the judgment dated 01.06.2015 by the IV Addl. District and Sessions Judge, Tumkur, sitting at Madhugiri, are hereby confirmed.

(iii) Registry is directed to send back the trial Court records forthwith along with copy of this judgment.

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

NG/VK
List No.: 1 Sl No.: 10