



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH
DATED THIS THE 29TH DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY**

**CRIMINAL REVISION PETITION NO. 200045 OF 2019
(397(Cr.PC)/438(BNSS))**

BETWEEN:

GOPAL S/O RUDRAYYA DODDAMANI,
NOW AGED: 43 YEARS, OCC: DRIVER,
R/O. BASAVA NAGAR, KALABURAGI

...PETITIONER

(BY SMT. RAJESHWARI JAMADAR AND
SMT. HEMA L. KULAKARNI, ADVOCATES)

AND:

THE STATE THROUGH
ADDL. TRAFFIC POLICE STATION, KALABURAGI,
BY THE ADDL. S.P.P.,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585105.

...RESPONDENT

(BY SRI VEERANAGOUDA MALIPATIL, HCGP)

THIS CRL.RP IS FILED U/S 397 R/W SEC. 401 OF CR.P.C
PRAYING TO, SET ASIDE THE JUDGMENT AND ORDER
DATED:24.04.2019 OF III ADDITIONAL DISTRICT & SESSIONS
JUDGE, KALABURAGI IN CRL.A.NO.6/2016 AND FURTHER BE
PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF
CONVICTION DATED:26.12.2015 OF I ADDITIONAL CIVIL
JUDGE & JMFC, KALABURAGI IN C.C.NO.3690/2011, FOR THE
OFFENCES PUNISHABLE U/SEC. 279, 304(A), OF IPC AND 187
OF IMV ACT AND FURTHER BE PLEASED TO ACQUIT THE
PETITIONER OF ALL THE CHARGES FOR WHICH HE WAS
CONVICTED.

Digitally signed by
SHIVAKUMAR
HIREMATH
Location: HIGH
COURT OF
KARNATAKA



THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. This Criminal Revision Petition under Section 397 read with Section 401 of Cr.P.C. is filed by the accused assailing the judgment and order of conviction and sentence dated 29.12.2015 passed by the Court of I Addl. Civil Judge and JMFC, Kalaburgi, in CC No.3690/2011 and the judgment and order dated 24.04.2019 passed in CrI.A.No.6/2016 by the Court of III Addl. District and Sessions Judge, Kalaburagi.

2. Accused was charge sheeted by Additional Traffic Police, Kalaburagi, for the offences punishable under Sections 279, 304(A) of IPC and Section 187 of Indian Motor Vehicles Act, 1988. The allegation against the accused is that on 20.05.2010 at about 05.00 p.m. in the evening, the accused, who was the driver of the road roller bearing registration No.AP-29/BD-1959 was driving the said vehicle in reverse direction in a rash and negligent manner and as a result, minor children of defacto complainant/Ramesh, who were riding their play bicycle on the



road which was under repair, came under the wheels of the offending vehicle and died. Accused had pleaded not guilty before the Trial Court and claimed to be tried. During the course of trial, prosecution had examined nine witnesses as PW1 to PW9 and got marked nine documents as Ex.P1 to P9. No defence evidence was lead on behalf of the accused nor was any document got marked in support of the defence. The Trial Court after hearing both sides vide impugned judgment and order of conviction and sentence dated 29.12.2015 convicted the accused for the offences punishable under Sections 279, 304 (A) of IPC and for the offence punishable under Section 187 of the Indian Motor Vehicles Act, 1988 and sentenced him to pay fine of Rs.1,000/- for the offence punishable under Section 279 of IPC and in default to undergo simple imprisonment for a period of one month, for the offence punishable under Section 304(A) of IPC sentenced him to undergo simple imprisonment for a period of two years and to pay fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of three months and further sentenced him to pay fine of Rs.1,000/- for the offence punishable under Section 187 of the M. V. Act and in default, to



undergo simple imprisonment for a period of one month. The said judgment and order of conviction and sentence was unsuccessfully challenged by the petitioner/accused before the III Addl. District and Sessions Judge, Kalaburagi in Crl.A.No.6/2016 which was dismissed by judgment and order dated 24.04.2019. Therefore, accused is before this Court.

3. Learned counsel for the accused/petitioner submits that the Trial Court and the Appellate Court have erred in convicting the accused for the charge sheeted offences. The material on record do not show that accused was driving the offending vehicle in a rash and negligent manner. Undisputedly, road in which the accident in question had taken place was under repair and the children had strayed to the said road while playing and as a result, there was an accident. The Trial Court and the Appellate Court have failed to appreciate that accident in question had taken place as a result of negligence by the children and their parents, who had allowed the children to play in the under repair road. She submits that the sentence imposed on the accused by the Trial Court and the Appellate Court is harsh and disproportionate. Accordingly, she prays to allow the petition.



4. Per contra, learned HCGP has opposed the prayer made in the petition and submits that two minor children have died in the road traffic accident which was caused as a result of the rash and negligent driving of the offending vehicle by the petitioner. Since the deceased are children, it cannot be said that there was contributory negligence. Considering the fact that two minor children have died in the road traffic accident, the Trial Court was justified in sentencing the petitioner for a period of two years for the offence punishable under Section 304 (A) of IPC. Accordingly, he prays to dismiss the petition.

5. The prosecution in order to prove its case has examined nine witnesses and got marked nine documents in the present case. PW1 – Ramesh, is the father of the victim children, who have died in the accident. PW2 and PW3 are the panchas to the inquest panchanama/Ex.P2 and both these witnesses have not supported the case of the prosecution and therefore, they were treated as hostile witnesses.

6. PW4, PW5 and PW6 are said to be the eye witnesses to the accident in question and PW7 is the Manager of the Company to which the contract of road repair was awarded.



PW8 is the Police Sub-Inspector, who had received the complaint and registered the FIR in the present case. PW9, Circle Inspector of Police is the Investigation Officer in the present case, who has filed the charge sheet against accused after completing the investigation. Ex.P1 is the original of the complaint and Ex.P2 and P4 are the inquest panchanama of the deceased children. Ex.P3 is the spot panchanama and Ex.P5 and P6 are the Post Mortem Report of the deceased children. Ex.P7 is the M.V. Report and Ex.P8 is the Indemnity Bond. Ex.P9 is the copy of the FIR registered in the present case.

7. PW1, who is the father of the victim children has stated that on the date of incident when he was in the tea shop owned by his wife, his minor children Mamatha and Akshay were playing outside. The road in front of the tea shop was under repair and the road roller, which was driven by accused dashed against the children, who were playing on the road and as a result, his daughter Mamatha died at the spot and son Akshay, who suffered grievous injuries to his legs was immediately shifted in an auto to Hospital but he succumbed to the injuries in the Hospital. He has identified the accused as the driver of the offending vehicle and his complaint submitted to the police



was marked as Ex.P1. A reading of the deposition of this witness reveals that he was inside the tea shop when the accident in question had taken place and he had not actually seen the accident. PW4 and PW6 are the brothers of wife of PW1. These witnesses have stated that when they were near the tea shop of PW1, the minor children of PW1 were playing on the road under repair and they were riding their play bicycle. At that time, offending vehicle road roller, which was driven in the reverse direction by accused in a rash and negligent manner dashed against the play bicycle of the children and as a result, children fell down on the road and they came under the wheels of the offending vehicle.

8. PW5 is another independent eye witness, who also has spoken about the manner in which the accident in question has taken place. The deposition of PW4 to PW6 corroborates with each other and is consistent with regard to the manner in which the accident in question had taken place. All these witnesses have stated that when they were in front of the tea shop of PW1, they saw the children playing on the road, riding their play bicycle and they also saw the accused driving the offending vehicle in a reverse direction in a rash and negligent



manner and though they raised a cry, accused did not hear them and after the accident in question took place, accused immediately stopped his vehicle and ran away from the spot. The Trial Court as well as the Appellate Court having appreciated the oral and documentary evidence available on record, therefore, have rightly convicted the petitioner/accused for the alleged offences and I do not see any irregularity or illegality committed by the Trial Court and the Appellate Court while convicting the petitioner/accused for the charge sheeted offences.

9. Insofar as sentence passed by the Trial Court as against the petitioner/accused for the charge sheeted offences is concerned, the material on record would go to show that the accident in question had taken place on the road which was under repair. The tea shop of PW1 and his wife is at a distance of about 100 meters from the spot of accident. The deceased children of PW1 were playing on the road under repair and they had come under the wheels of the road roller which was undisputedly driven by the accused in a reverse direction. Rare wheel of the road roller is much bigger in size and the driver of the road roller, in normal circumstances, will not be in a



position to see the other side of the rare wheel when he is seated on the seat of the road roller. Though PW1, who is the father of the deceased children and PW4 and PW6, who are the maternal uncles of the deceased children were very much present near the tea shop and the said witnesses had seen the children playing on the road which was under repair, they had not bothered to call back the children, who were playing on the road which was under repair and on the other hand, they had allowed the children to play on the road under repair. PW4 and PW6 have stated that they had seen the children playing on the road under repair and they also had seen the accused driving the offending vehicle in a reverse direction which was coming towards the playing children and though they raised a cry, accused did not hear them and as a result, the accident in question had taken place. From the aforesaid, it appears that accused was not in a position to see the children, who were playing on the road under repair when he was driving the offending vehicle in a reverse direction. Undisputedly, offending vehicle was being used for the purpose of road repair and while the road repair work is under progress, in normal circumstances, road roller is not driven in a high speed.



Therefore, it cannot be said that the accident in question had taken place solely because of the negligence of the accused and on the other hand, it appears that there was contributory negligence on the part of the parents and relatives of the deceased minor children, who had not taken sufficient care inspite of seeing that the minor children were playing in play bicycle on a road which was under repair. The material on record would also go to show that petitioner/accused is a married man having family and children. The accident is of the year 2011 and almost 14 years have lapsed from the date of accident. Under the circumstances, I am of the pinion that if the sentence imposed by the Trial Court on the accused/petitioner is modified, the same would serve the ends of justice. Accordingly, the following:-

ORDER

- (i) Criminal Revision Petition is partly allowed.
- (ii) The judgment and order of conviction dated 29.12.2015 passed by the Court of I Addl. Civil Judge and JMFC, Kalaburgi, in CC No.3690/2011, confirmed by the Court of III Addl. District and Sessions Judge, Kalaburagi in



Crl.A.No.6/2016 by judgment and order dated 24.04.2019 is hereby confirmed.

- (iii) However, the order on sentence dated 29.12.2015 passed by the Trial Court and confirmed by the Appellate Court against the petitioner/accused for the offence punishable under Section 304(A) of IPC is modified, while the said order of sentence passed against the petitioner/accused for the offence punishable under Section 279 of IPC and for the offence punishable under Section 187 of M.V. Act is hereby confirmed.
- (iv) For the offence punishable under Section 304(A) of IPC, accused/petitioner is sentenced to undergo simple imprisonment for a period of six months and to pay fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of two months.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE