Guru Basavaraj @ Benne Settappa vs State Of Karnataka on 29 August, 2012

Equivalent citations: 2012 AIR SCW 4822, 2012 (8) SCC 734, 2012 CRI. L. J. 4474, AIR 2012 SC (CRIMINAL) 1586, 2012 (4) AIR JHAR R 468, 2012 (4) AIR KAR R 468, 2012 (8) SCALE 47, (2012) 118 ALLINDCAS 71 (SC), 2013 (1) SCC (CRI) 972, (2013) 2 KANT LJ 544, (2013) 1 ACJ 216, (2012) 3 UC 1849, (2013) 1 MH LJ (CRI) 28, (2012) 4 TAC 723, (2012) 4 CURCRIR 34, (2012) 3 ACC 782, (2012) 79 ALLCRIC 314, (2012) 53 OCR 514, (2012) 8 SCALE 47, (2012) 3 DLT(CRL) 937, (2012) 4 ALLCRILR 23, (2012) 4 CRIMES 21, (2012) 2 ALD(CRL) 982

Author: Dipak Misra

Bench: Dipak Misra, K. S. Radhakrishnan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1325 OF 2012
(Arising out of S.L.P. (Criminal) No. 9132 of 2011

Guru Basavaraj @ Benne Settappa ... Appellant

Versus

State of Karnataka ... Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. In this appeal preferred by special leave under Article 136 of the Constitution of India, the assail is to the judgment and order dated 21.06.2011 in Criminal Revision Petition No. 2284 of 2009 passed by the High Court of Karnataka Circuit Bench at Dharwad whereby the High court has concurred with the judgment of conviction and order of sentence passed by the learned Addl. Sessions Judge, Hospet in Criminal Appeal No. 58 of 2008 wherein the appellate court had set aside the sentence under Section 279 of the Indian Penal Code, 1860 (for short "the IPC") and affirmed the conviction and sentence for offences punishable under Sections 337, 338 and 304 A of the IPC as passed by the Judicial Magistrate First Class, Hospet.

3. The broad essential facts leading to the trial of the accused- appellant (hereinafter referred to as 'the accused') are that on 25.03.2006, about 10.15 a.m., the accused-driver was driving an unregistered new tractor on National Highway No. 13 at bypass road near the open well of one Golya Naik. The tractor turned turtle towards the left side and caused simple injuries to many people who were sitting inside the trailer of the tractor and grievous injuries to three persons. Injured Kotraiah succumbed to the injuries sustained in the accident. Be it noted, all the injured persons were travelling along with their goods in the trailer of the said tractor.

4. After the accident took place, the concerned police sub-inspector (PSI) reached the spot, recorded the statement of the injured persons and after returning to the police station registered an FIR and thereafter proceeded to the spot, prepared the sketch map, seized the vehicle in question and sent the dead body for post-mortem. After completing the investigation, he placed the charge-sheet before the Competent Court for the offences punishable under Sections 279, 337, 338 and 304-A of the IPC read with Section 187 of the Motor Vehicles Act, 1988.

5. The prosecution, in order to substantiate the allegations, examined 10 witnesses and got a number of documents marked as exhibits P-1 to P-24.

6. The accused, in his statement under Section 313 Cr.P.C., denied the incriminating material brought against him and took the stand that the accident occurred due to mechanical failure and not because of rash and negligent driving. However, he chose not to adduce any evidence.

7. The learned Magistrate acquitted the accused of the offence under Section 187 of the 1988 Act and convicted him for the offences punishable under Sections 279, 337, 338 and 304-A of the IPC and sentenced him to pay a certain sum as fine and, in default of payment of the same, to undergo simple imprisonment for a specific period in respect of the offences under Sections 279 and 337 and Section 338 of the IPC As far as the offence under Section 304-A of the IPC is concerned, the learned Magistrate imposed the sentence of simple imprisonment of six months and to pay a fine of Rs. 2000/- and, in default, to suffer simple imprisonment of 45 days.

8. On an appeal being preferred assailing the conviction and sentence, the learned appellate Judge basically posed two questions, namely, whether the findings recorded by the trial court are erroneous and whether the sentence passed by the trial court required to be interfered with in appeal. After analysing the evidence, the appellate court came to hold that it had been proven beyond doubt that the accused being the driver of a newly purchased unregistered tractor not only overloaded tamarind bags on the old trailer but also allowed 22 passengers to travel on the loaded trailer and due to his negligence, the trailer got detached from the tractor as a consequence of which it turned turtle by the side of the road. That apart, after detachment of the trailer, the tractor moved up to 30 feet which clearly reflected that the tractor was in high speed.

9. The learned appellate Judge concurred with the view of the learned Magistrate that the accident had not occurred due to mechanical defect but there was rash and negligence on the part of the accused and the same had been established by the unimpeachable evidence of independent witnesses. Because of the aforesaid view, he answered the first question in the negative. As far as the

second question is concerned, he sustained the conviction in respect of all the offences but set aside the sentence imposed for the offence punishable under Section 279 of the IPC.

10. Questioning the legal sustainability of the conviction, it is submitted by Mr. S. N. Bhat, learned counsel for the appellant, that all the courts have fallen into grave error by expressing the opinion that the accident had not occurred due to mechanical failure, namely, due to non- functioning of the hydraulic system in a proper manner, and such an expression of opinion vividly exposits perversity of approach. It is further urged by him that when the appellant has been acquitted of the offence punishable under Section 279 of the IPC, he could not have been punished in respect of the rest of the offences. The last limb of submission of Mr. Bhatt is that at the time of the accident, the appellant was 22 years of age and, in the meantime, his marriage has taken place and, therefore, the same should be regarded as acceptable mitigating factors and the substantive sentence should be restricted to the period already undergone in custody and the quantum of fine be enhanced.

11. Ms. Vishruti Vijay, learned counsel for the State, per contra, contended that the analysis of the evidence made by the learned Magistrate as well as by the appellate court are absolutely flawless and the concurrence thereof by the High Court, in no manner, can be stated to be perverse. It is put forth by him that there is ample evidence on record that the incident took place due to rash and negligent act on the part of the appellant and the said finding, being appositely founded on the material on record, does not warrant any interference by this Court. Commenting on the submission that the appellant has been acquitted under Section 279 of the IPC and hence, he deserves to be acquitted in respect of the other offences, it is propounded by Ms. Vishruti Vijay that on a studied perusal of the judgment of the learned appellate Judge, it is quite clear that he has maintained the conviction and not imposed a separate sentence under Section 279 of the IPC and, for that reason, he has set aside the sentence but not the conviction. The learned counsel further submitted that regard being had to the careless, negligent and callous attitude that has been exhibited by the drivers who are expected to be professionals, the rate of road accidents that has extremely gone high and further, in the case at hand, when so many people have been injured, some have sustained grievous injuries and a life has been lost, lenient delineation would be an anathema to the concept of adequate punishment.

12. First, we shall deal with the facet of rash and negligent driving of the driver. The learned counsel for the appellant has submitted that the vehicle turned turtle due to mechanical failure i.e. non-functioning of the hydraulic system in a proper manner. To appreciate the said submission, we have carefully perused the material brought on record and the analysis made by the courts below. On a careful scrutiny of the same, we find that all the courts have placed reliance on independent witnesses as well as the testimony of PW-10, the Motor Vehicle Inspector. The manner in which the accident occurred due to detachment of the trailer from the tractor and the distance to which the tractor moved vividly reveals that the vehicle in question was driven recklessly at a high speed. The plea of mechanical failure as put forth by the accused was not even suggested to the Inspector. What is sought to be emphasised before this Court is that PW-3 has deposed that the accident occurred due to mechanical failure. The trial court as well as the High Court has not accepted the testimony of PW- 3 as he is only an agriculturist while the other technical experts including the Motor Vehicle Inspector have deposed about the rash and negligent driving. Analysing the evidence in entirety, the learned trial judge as well as the appellate judge has returned the finding as regards the rash and

negligent driving. The appellate court, on further scrutiny, has found that the evidence on record clearly shows that the driver has taken the vehicle to the left side of the road and, in the process, he moved away from the main road to the 'kachcha' road and thereby the link between the tractor and the trailer got detached. The High Court has opined that the accused has not taken care to see that the speed of the tractor was within limit so that the trailer could not be detached. In our considered view, the analysis of the factual score in this regard cannot be regarded to be perverse and, therefore, not liable to be unsettled by this Court.

13. The next limb of submission of the learned counsel for the appellant is that when he has been acquitted under Section 279 of the IPC, he cannot be punished in respect of the other offences as the allegation of rash and negligent act cannot be treated to have been proven. The aforesaid submission, on a first blush, may look quite attractive, but on a deeper scrutiny of the judgment passed by the appellate court, it melts into total insignificance. The learned appellate judge, after due appreciation of the evidence on record as expected of an appellate court, has come to the conclusion that the accused was driving the vehicle in a rash and negligent manner. After ascribing some reason, he has thought it apposite that a separate sentence should not be imposed under Section 279 of the IPC, and, accordingly, he has set aside the sentence awarded by the trial court. It is apposite to state here that there is a distinction between conviction and sentence. A conviction is the proof of the offence committed by an accused. It is the proof of guilt of the offence. The punishment component is the sentence. In Rama Narang v. Ramesh Narang and others[1], a three-Judge Bench of this Court, after referring to Section 354 of the Code of Criminal Procedure, has stated that every judgment referred to in Section 353 of the Code, shall, inter alia, specify the offence of which the accused is convicted and the punishment to which he is sentenced. This Court, while dealing with the power of the High Court under Section 389(1) of the Code, has observed that ordinarily an order of conviction by itself is not capable of execution under the Code, but it is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. It has been further stated that in certain situations, the order of conviction can be executable in the sense that it may incur a disqualification. We have referred to the aforesaid authority only to highlight that there is a distinction between a conviction and a sentence. In the instant case, as the judgment of the appellate court would show, the view has been expressed that a separate sentence under Section 279 of the IPC is not necessary and, accordingly, the said sentence has been set aside. The reading of the entire judgment makes it graphically clear that the conviction under Section 279 of the IPC has not been annulled. It is noticeable that the rash and negligent driving by the accused that resulted in the causation of injuries to the persons travelling in the trailer has been proved. There is no cavil that some have been seriously injured and one person who was grievously injured breathed his last. Thus, the submission of the learned counsel for the appellant that he has been acquitted of the offence under Section 279 of the IPC does not deserve acceptance, and, accordingly, we, unhesitatingly, repel the same.

14. The last plank of submission of Mr. Bhat is that the accused- appellant was a young man of 22 years at the time of the occurrence and in the meantime, he has entered into wedlock and, therefore, maintaining of substantive sentence would be inapposite, and in fitness of things, it should be restricted to the period already undergone and the amount of fine may be enhanced with the

stipulation that it shall be paid as compensation to the victims of the accident.

15. The aforesaid submission, in our considered opinion, requires a careful and cautious examination. What is basically sought to be argued on behalf of the appellant is that there are mitigating circumstances warranting lenient treatment. As we perceive, two aspects, namely, (i) the age of the accused at the time of the accident; and (ii) his present marital status, have been highlighted as mitigating factors. Before we dwell upon whether these two aspects should be regarded as extenuating factors to reduce the sentence in a crime of this nature in the present social context, we think it apt to refer to certain authorities in the field.

16. In State of Karnataka v. Krishna alias Raju[2], while dealing with the concept of adequate punishment in relation to an offence under Section 304-A of the IPC, the Court stated that considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal justice dispensation system. It need be hardly pointed out that the imposition of a sentence of fine of Rs. 250 on the driver of a Motor Vehicle for an offence under Section 304-A of the IPC and that too without any extenuating or mitigating circumstance is bound to shock the conscience of any one and will unmistakably leave the impression that the trial was a mockery of justice. Thereafter, this Court enhanced the sentence to six months rigorous imprisonment with fine of Rs. 1000 and, in default, to undergo rigorous imprisonment for two months.

17. In Sevaka Perumal and another v. State of Tamil Nadu[3], it has been emphasized that undue sympathy resulting in imposition of inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.

18. In Jashubha Bharatsinh Gohil and Ors. v. State of Gujarat[4], the Court, adverting to the new challenges of sentencing, opined that the courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence.

19. In Dalbir Singh v. State of Haryana[5], this Court expressed thus:

> "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."

20. In State of Karnataka v. Sharanappa Basanagouda Aregoudar[6], it has been ruled that if the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrong-doers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to the larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system.

21. In State of M.P. v. Saleem alias Chamaru and Anr.[7], it has been ruled that the object should be to protect society and the avowed object of law is achieved by imposing appropriate sentence to deter the criminal. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

22. Yet again in B. Nagabhushanam V. State of Karnataka[8], the Court, taking note of the fact that the vehicle was being driven rashly and negligently, opined that six months' simple imprisonment and a direction to the appellant to pay a fine of Rs. 1,000/- for commission of the offence punishable under Section 304-A and simple imprisonment for one month and to pay a fine of Rs. 500/- for the offence punishable under Section 279 of the Indian Penal Code cannot be said to be shocking.

23. Recently, in State of Punjab v. Balwinder Singh and Ors.[9], this Court while dealing with the concept of sentencing, has stated thus:

> "While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court".

24. In Alister Anthony Pareira v. State of Maharashtra[10], 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.

25. In State TR. P.S. Lodhi Colony, New Delhi v. Sanjeev Nanda[11], one of us (K.S. Radhakrishnan, J.), in his separate opinion, pertaining to the conception of adequate sentencing, has expressed thus:

> "Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence."

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.

27. Recently, this Court in Rattiram & Ors. v. State of M.P. Through Inspector of Police[12], though in a different context, has stated that criminal jurisprudence, with the passage of time, has laid

emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victim's right is protected.

28. We may note with profit that an appropriate punishment works as an eye-opener for the persons who are not careful while driving vehicles on the road and exhibit a careless attitude possibly harbouring the notion that they would be shown indulgence or lives of others are like "flies to the wanton boys". They totally forget that the lives of many are in their hands, and the sublimity of safety of a human being is given an indecent burial by their rash and negligent act.

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.[13], 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."

30. In view of the aforesaid, we have to weigh whether the submission advanced by the learned counsel for the appellant as regards the mitigating factors deserves acceptance. Compassion is being sought on the ground of young age and mercy is being invoked on the foundation of solemnization of marriage. The date of occurrence is in the month of March, 2006. The scars on the collective cannot be said to have been forgotten. Weighing the individual difficulty as against the social order, collective conscience and the duty of the Court, we are disposed to think that the substantive sentence affirmed by the High Court does not warrant any interference and, accordingly, we concur with the same.

31. Consequently, the appeal, being devoid of any substance, stands dismissed.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

August 29, 2012.

---

[1] (1995) 2 SCC 513
[2] (1987) 1 SCC 538
[3] (1991) 3 SCC 471
[4] (1994) 4 SCC 353
[5] (2000) 5 SCC 82
[6] (2002) 3 SCC 738
[7] (2005) 5 SCC 554
[8] (2008) 5 SCC 730
[9] (2012) 2 SCC 182
[10] (2012) 2 SCC 648
[11] 2012 (7) SCALE 120
[12] AIR 2012 SCW 1772
[13] AIR 2008 SC 2314