State Of Karnataka vs Sharanappa Basanagouda Aregoudar on 21 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1529, 2002 AIR SCW 1413, 2002 AIR - KANT. H. C. R. 990, (2002) 2 JCR 126 (SC), 2002 (4) SRJ 540, (2002) 3 JT 243 (SC), 2002 (3) JT 243, 2002 (2) SLT 659, 2002 (3) SCALE 83, 2002 (3) SCC 738, 2002 CALCRILR 539, 2002 SCC(CRI) 704, 2002 CRILR(SC MAH GUJ) 364, (2002) 2 CRIMES 30, (2002) 2 ALLCRILR 489, (2002) 2 EASTCRIC 113, (2002) MAD LJ(CRI) 537, (2002) 3 MAHLR 622, (2002) 2 RAJ CRI C 479, (2002) 2 RECCRIR 271, (2002) 2 SCJ 587, (2002) 2 CURCRIR 33, (2002) 2 TAC 340, (2002) 2 SUPREME 500, (2002) 2 ALLCRIR 1104, (2002) 3 SCALE 83, (2002) 1 UC 616, (2002) 45 ALLCRIC 39, (2002) 2 CAL HN 186, (2002) 3 CHANDCRIC 208, 2002 (1) ANDHLT(CRI) 328 SC, (2002) 1 ANDHLT(CRI) 328

Author: K.G. Balakrishnan

Bench: R.P. Sethi, K.G. Balakrishnan

CASE NO.:
Appeal (crl.) 407 of 2002

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
SHARANAPPA BASANAGOUDA AREGOUDAR

DATE OF JUDGMENT: 21/03/2002

BENCH:
R.P. Sethi & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Leave granted.

This appeal is preferred by the State of Karnataka against sentence imposed on the respondent on the ground of its inadequacy. The respondent was found guilty of offences punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code. The trial Magistrate imposed a sentence of six months' imprisonment on the respondent for the offence punishable under Section 304A IPC. No separate sentence was awarded for offences punishable under Sections 279, 337 & 338 IPC. The respondent filed an appeal against his conviction and sentence, but the appellate court declined to interfere therewith. The respondent thereafter filed a Revision before the High Court and by the impugned judgment the learned Single Judge confirmed the conviction of the respondent on the three counts, but as regards the offence punishable under Section 304A, the sentence was reduced to payment of a fine of Rs.5,000/- and in default thereof, the respondent was to undergo simple imprisonment for three months. The learned Judge had chosen to impose a sentence for the offence under Section 337 IPC with a fine of Rs.500/-, in default to simple imprisonment for 15 days; and for the offence under Section 338 IPC with a fine of Rs.550/-, in default to simple imprisonment for 15 days. No separate sentence was awarded for the offence punishable under Section 279 IPC.

We heard learned counsel on both sides. Learned counsel for the appellant-State contended that this is a case where the respondent was found guilty of rash and negligent driving which resulted in the death of four persons and injury to one person. The learned Single Judge, it was submitted, was unduly lenient by awarding a light sentence to the respondent. It was submitted that this has caused a serious miscarriage of justice and, therefore, the impugned judgment be altered by awarding appropriate sentence on the respondent.

For the purpose of this case, we would very briefly narrate the facts.

One Dr. Venkatesh Kanakareddy, along with members of his family proceeded to Mysore in a car from his native village Mahalingapur on 3.8.1991 to visit his son who was studying there. PW-2, who was working as a Compounder in his nursing home, also accompanied Dr. Venkatesh Kanakareddy. They spent the night of 3.8.1991 at Mysore and at 8.00 PM on 4.8.1991 left Mysore. By about 7.30 AM on the next day, i.e. 5.8.1991, they reached a place called Todas Cross near Hubli. The car driven by Dr. Venkatesh had a head-on collision with a mini lorry No. KA 25-1040 driven by the respondent-accused. As a result of the collision, the right front wheel of the car burst and the driver of the car lost control of the vehicle and it dashed against a nearby tree. Dr. Venkatesh Kanakareddy, his wife and another occupant of the car died on the spot and one person was injured. The injured was removed to the nearby hospital, but he also succumbed to his injuries later on. The trial Magistrate and the appellate court found the respondent guilty of offences punishable under Sections 279, 337, 338 and 304A IPC based on the evidence adduced by the prosecution. In Revision, the learned Single Judge of the High Court also confirmed the conviction of the respondent, but modified the sentence, for which the reasons recorded in paragraph 2 of his judgment are as under:

> "From the evidence, it is apparent that due to bursting of the front tyre, the car went to right side of the road and that is how the collision took place. While to this extent the petitioner could be said to be innocent and while that aspect of innocence could certainly influence the decision relating to sentence, I am of the opinion that the

> accident having taken place at 7.00 a.m., with no other vehicles being on the road and when it is as wide a road as of 40 feet width totally, the negligence on the part of the petitioner lies in the fact that he did not make any efforts to avoid the collision. It is for this reason that I would conclude that the petitioner has rightly been convicted of the offences. However, in the circumstances, this is not a case wherein the petitioner should be sent to jail as has been done by the learned Magistrate and as affirmed by the learned Sessions Judge."

It may be noted here that the respondent had raised a plea before the learned Magistrate as well as before the appellate court that the accident might have occurred due to the bursting of the right front tyre of the car as a result of which the car went to the right side of the road and dashed against the lorry. But this plea was not accepted by the trial court as well as the appellate court. A suggestion to this effect was put to the Motor Vehicles Inspector who had examined the vehicle after the accident. However, the Inspector also declined the suggestion that the accident might have occurred as a result of bursting of the tyre and he opined that the tyre would have burst due to the collision between the two vehicles. The possibility of the car having gone to the extreme right side is also ruled out by the evidence. The observation made by the Revisional court is not based on the evidence on record.

We are of the view that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the court below. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. 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 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.

In the facts and circumstances of this case, we are inclined to interfere with the judgment of the learned Single Judge and hold that the respondent is liable to undergo the sentence imposed by the trial Magistrate and affirmed by the appellate court. Consequently, we direct that for the offence punishable under Section 304A, the respondent be taken into custody to undergo a simple imprisonment for six months. As regards offences under Section 279, 337 and 338 IPC, no separate sentence has been awarded by the trial Magistrate. The direction of the trial Magistrate is maintained.

The appeal would stand allowed accordingly.

J [R.P. Sethi] J [K.G. Balakrishnan] March 21, 2002.