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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.528 OF 2013

BETWEEN:

SRI K. KESHA
S/O DAMODARA SAPALYA
AGED ABOUT 32 YEARS
R/AT KALLEGE SHIVANAGARA,
KABAKA VILLAGE
PUTTUR TALUK, DK-574243

...APPELLANT

(BY SRI. SABAPPA B. MALEGUL, ADV. -
AMICUS CURIAE VIDE ORDER DATED: 23.10.2025.)

AND

STATE OF KARNATAKA
REPRESENTED BY
STATE PUBLIC PROSECTOR
HIGH COURT BUILDINGS,
BANGALORE-560001.

...RESPONDENT

(BY MS. ASMA KAUSER, ADDL SPP.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 23.02.2013 PASSED BY THE II ADDL. DIST. & S.J., D.K., MANGALORE IN CRL.A.NO.161/2009 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 279,337,338 AND 304(A) OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.11.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. This appeal by the appellant is against the judgment dated 23rd February 2013 passed in Criminal Appeal No.161 of 2009 by the II Additional District & Sessions Judge, Dakshina Kannada, Mangalore (for short hereinafter referred to as the "first appellate court"), whereby, the judgment of acquittal dated 07th March 2009 passed in CC No.967 of 2006 by Civil Judge (Sr. Dn.) & JMFC Bantwal (for short hereinafter referred to as the "trial Court"), came to be set aside.

2. For the sake of convenience, the parties herein are referred to as per their ranks before the trial court.

3. Brief facts leading to this appeal are that the Vitla Police submitted the charge-sheet against the accused for the offence punishable under Sections 279, 337, 338 and 304-A of Indian Penal Code. It is alleged by the prosecution that on 16th June 2006, Anil Pinto along with his relatives was proceeding in a car bearing registration No.KA-21/M.2190 from Bondel to Uppinangadi. The car was driven by William Lobo with Robert Pardo and Gerald were also travelling in it. When the car reached near Surikumerupet in Mani Village of Bantwal Taluk, a

bus named "Nandani," bearing registration No. KA-19/AD-9099, driven at high speed and in a rash and negligent manner, attempted to overtake a lorry. While doing so, the bus came onto the wrong side of the road and collided with the car. As a result of the accident, the occupants of the car sustained injuries. Robert sustained grievous head injury and succumbed to the injuries at the spot. At the time of the accident, one Keshava was driving the bus. Immediately thereafter, injured were shifted to Mangala Nursing Home, Mangalore, in an ambulance. After investigation, the Investigating Officer submitted a charge-sheet for the commission of the alleged offences.

4. After filing charge-sheet, cognizance was taken and summons were issued to the accused. In response to summons, accused appeared before the trial court and was enlarged bail. Substance of plea was recorded; accused pleaded not guilty and claimed to be tried. To prove its case, prosecution has examined nine witnesses as PWs1 to 9 and got 15 documents marked as Exhibits P1 to P15. On closure of prosecution side evidence, statement of the accused under section 313 of Code of Criminal Procedure was recorded. Accused has totally denied evidence of prosecution witnesses,

but has not chosen to lead any defence evidence on his behalf. Having heard on both sides, the trial court acquitted the accused. Being aggrieved by the judgment of acquittal, State has preferred appeal before the first appellate court. The first appellate court allowed the appeal by setting aside the judgment of acquittal passed by the trial court. Accused was convicted for the offence punishable under Sections 279, 337, 338 and 304A of Indian Penal Code and was sentenced to undergo simple imprisonment for a period of 1 month and to pay fine of Rs.500/- for the offence punishable under Section 279 of Indian Penal Code, and further sentenced to undergo simple imprisonment for a period of one month and to pay fine of Rs.500/- for offence punishable under Section 337 of Indian Penal Code. The accused was also sentenced to undergo simple imprisonment for a period of six months and to pay fine of Rs.1,000/- for offence punishable under Section 338 of Indian Penal Code and was further sentenced to undergo simple imprisonment for period of one year and to pay fine of Rs.2,000/- for the offence punishable under Section 304A of Indian Penal Code. Being aggrieved by the judgment of conviction and the order on sentence passed by the first appellate court, the Appellant-accused has preferred this appeal.

5. The appeal was filed by a private advocate who was subsequently elevated as the Judge of this court, hence court notice was issued to the appellant. Despite service of notice, the appellant did not appear before the Court. Therefore, Sri Sabappa B. Malegul, learned Advocate, was appointed as Amicus Curiae.

6. Sri Sabappa P. Malegul, learned Amicus Curiae, vehemently submitted two folded arguments: (1) on merits and another on jurisdiction. Primarily, on the judgment of conviction and sentence passed by the first appellate Court, learned Amicus Curiae argued that the same is illegal, unreasonable and arbitrary. He would further submit that the first appellate Court failed to appreciate that there is no direct or circumstantial evidence connecting the appellant with the alleged offence. None of the prosecution witnesses have stated that the accused was driving the bus at the time of the accident and this crucial aspect has been ignored by the first appellate Court. It was further submitted that the first appellate Court erred in relying on the 313 statement of the appellant to hold that the appellant had admitted being the driver of the bus. Mere occurrence of the accident, resulting in one death and grievous injuries to two persons coupled with the complainant's

assertion that the appellant was the driver, cannot by itself, form the basis for conviction. The learned Amicus Curiae also contended that PW1 was in the rear seat of the car, and could not have observed any rash or negligent act. PWs 1 to 4 are interested witnesses and have admitted that they became aware of the accident only after the impact. This material aspect has not been considered by the first appellate Court.

7. It was further argued that PW2, William Lobo, the driver of the car and a crucial witness, however he was not tendered for cross-examination. Therefore, observing the same, the trial Court did not rely upon his evidence; however, this aspect was not taken into consideration by the first appellate Court. It was submitted that PW3-Gerald, though examined as an eye-witness, has not identified the accused as the driver of the offending vehicle, and his evidence does not advance the prosecution case.

8. It was further submitted that, PW4-Dennis Egnatitious Lobo claimed to be an eye-witness to the incident, has deposed that by the time he reached the scene of offence, about hundred people had already gathered and hence, PW4 cannot be considered as an eye-witness. PW1 is the complainant, and PWs2 and 3 are injured witnesses. PW2 was the driver of the

car. PWs1 to 3 were travelling in the car that met with the accident, therefore they are interested witnesses. PW2 was not tendered for cross-examination. Even though the application filed for recalling PW2 for cross-examination was allowed by the Court, PW2 did not appear for cross-examination. PW4, the alleged eye-witness, has not supported the prosecution case and has deposed that PW4 reached the spot only after the accident. Hence, the trial court has rightly acquitted the appellant/accused.

9. Learned Amicus Curiae further submitted that the first appellate court lacked jurisdiction to entertain the appeal under Sections 378, 382 and 386 of Code of Criminal Procedure in view of clause (b) of sub-section (1) of the section 378. As per the said clause, State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court not being an order under clause (a) of the said Section or an order of acquittal passed by the court of Sessions, in revision. If the judgment of acquittal is passed in bailable offences, the District and Sessions Judge has no right to entertain the appeal. The judgment of acquittal, in bailable offences, does not come under clause (a) of sub-section (1) of

section 378 of Code of Criminal Procedure. Hence, the judgment passed by the first appellate Court becomes nullity. On all these grounds, it is sought to allow the appeal.

10. As against this, the learned Additional State Public Prosecutor Ms. Asma Kouser, appearing for the respondent-State, argued in length contending that the judgment of the first appellate court is on merits, just and proper and any interference is unnecessary. Hence sought for dismissal of the appeal.

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

1. Whether appeal lies to the Court of sessions against the judgment of Acquittal by the trial Court in respect of offence punishable under Sections 279, 337, 338 and 304A of Indian Penal Code?
2. Whether the first appellate Court has committed an error in reversing the judgment of acquittal passed by the trial Court?
3. What order?

Regarding Point No.1:

12. I have examined the materials placed before the court and meticulously perused the judgments of trial Court as well as the first appellate court. Before appreciating the facts of the case, it is relevant to mention as to the amended provision of Section 378 of Code of Criminal Procedure, 1973, as substituted by Code of Criminal Procedure (Amendment) Act 2005 (25 of 2005) dated 23rd June, 2005 with effect from 23rd June, 2006 vide SO 923(E) dated 21st June, 2006. In view of amendment, the amended section 378 of Code of Criminal Procedure, 1973, reads as under:

"378 Appeal in case of acquittal.-

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by the Magistrate in respect of cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order

of acquittal passed by the Court of Session in revision.

(ii) in sub-section (2), for the portion beginning with words "the Central Government may" and ending with the words "the order of acquittal", the following shall be substituted, namely:-

"The Central Government, may subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) To the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court (not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision";

(iii) in sub-section (3), for the words "No appeal", the words "No appeal to the High Court" shall be substituted."

13. In view of amendment to Section 378 of Code of Criminal Procedure, if an order of acquittal is passed by the Magistrate in respect of cognizable and non-bailable offence, appeal lies to the Court of Sessions. In all other cases, against the judgment of acquittal passed by the Magistrate, the appeal lies to the High Court. In view of the aforesaid provisions, the State ought to have preferred appeal before the High Court against

the order passed by the trial court, as the alleged offences are bailable in nature.

14. The learned Additional State Public Prosecutor has failed to demonstrate how an appeal against acquittal in respect of bailable offences under Sections 279, 337, 338 and 304-A IPC was maintainable before the Court of Sessions, in view of clause (b) of sub-section (1) of Section 378 Code of Criminal Procedure, such an appeal does not lie.

15. It is well settled that an order passed without jurisdiction is a nullity. Jurisdiction encompasses the authority of a Court over the parties, subject matter, and issues adjudicated. In view of clause (b) Sub-section (1) of Section 378 of Code of Criminal Procedure, an appeal against a judgment of acquittal passed by a Magistrate in a bailable offence, does not lie before the Court of Sessions.

16. At this juncture, it is necessary to mention that Hon'ble Supreme Court, in a catena of decisions, has held that a judgment pronounced without jurisdiction becomes nullity, in other words, void ab-intio. The expression "jurisdiction" may be defined to be the power of a Court to hear and determine a cause to adjudicate and exercise any judicial power in relation

to it. The elements that usually make up competency of the jurisdiction are:

- (1) over persons litigating;
- (2) over the subject matter; and
- (3) over the questions which the court decides.

17. The above principle has been reiterated by the Full Bench of Andhra Pradesh High Court in the case of THE PUBLIC PROSECUTOR, A.P. v. DEVIREDDY NAGI REDDY reported in AIR 1962 AP 479. In that view of the matter, the court of Sessions ought not to have entertained the appeal. As per charge-sheet averments, the incident happened in 2006, the acquittal judgment by the trial court was passed in the year 2009, the State preferred the appeal before wrong forum i.e. sessions court against the acquittal judgment. The Sessions Court order is patently without jurisdiction and the continuation of proceedings would amount to abuse of process of court, as also, the fundamental right of the accused which is embodied in Article 21 of the Constitution of India. State being a *parens patriae* (meaning- the authority regarded as the legal protector of the citizens), ought to have acted in a diligent manner. Jurisdiction cannot be assumed indirectly and even inherent

powers can be exercised to correct jurisdictional excess, to prevent miscarriage of justice.

18. Hence, I answer Point No.1 in the negative.

Regarding Point No.2:

19. Before appreciation of evidence on record, it is necessary to mention as to the recent judgments of the 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.

20. In the case of H D SUNDARA (supra), the Apex Court has summarized the principles governing exercise of appellate jurisdiction while dealing with an appeal against judgment of acquittal under section 378 of Code of Criminal Procedure. The same are as under:

"8. ...8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

8.3. 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;

8.4. 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

8.5. 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."

In the case of BABU SAHEBGOUDA RUDRAGOUDAR AND OTHERS (supra) it is observed that it is beyond the pale of doubt that the scope of 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 within the four corners of the following principles. The same are:

1. That the judgment of acquittal suffers from patent perversity;

2. That the same is based on a misreading/omission to consider material evidence on record; and

3. 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."

21. It has to be borne in mind that the scope of interference by the first appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused, has to be exercised within the four corners of the aforestated principles.

22. As regards burden of proof in offence under Section 304-A of Indian Penal Code is concerned, the Hon'ble Supreme Court, in the case of NANJUNDAPPA AND ANOTHER v. THE STATE OF KARNATAKA reported in 2022 LIVELAW (5) 489, has held that the doctrine of Res Ipsa Loquitur Stricto Sensu would not apply to criminal cases.

23. It is alleged by the prosecution that, Vitla Police submitted charge-sheet against the accused for the offence punishable under sections 279, 337, 338, 304-A of Indian Penal Code. It is alleged by the prosecution that on 16th June 2006, Anil Pinto, along with his relatives, was travelling in a car bearing registration No. KA-21/M-2190 from Bondel to Uppinangadi. The car was being driven by William Lobo, and Robert Pardo

and Gerald were inmates. When the car reached near Surikunerupet of Bantwal Taluk, a bus bearing registration No. KA-19/AD-9099, driven at a high speed and in a rash and negligent manner, attempted to overtake a lorry. In the process, the bus came to the wrong side of the road and dashed against the car. As a result of the accident, the inmates of the car sustained injuries, and Robert, who suffered a grievous head injury, succumbed to the injuries at the spot.

24. To prove the guilt of the accused, the prosecution examined nine witnesses as PWs1 to 9 and marked 15 documents as Exhibits P1 to P15. As per the charge sheet, PW2 is the complainant; PW3 is an injured witness; PW4 is a witness; PW5 is the GPA holder of the RC owner of the bus, but has not been examined by the prosecution; PW6 is the Police Constable who submitted the FIR to the court; PW7 is the owner of the car; and PWs8 and 9 are the investigating officers.

25. PWs1 to 3 deposed in their examination-in-chief and gave a brief account of the manner of the accident. In the cross-examination, PW1 stated that he could not adduce anything about the speed of the lorry and was not tendered for cross-examination. The evidence of PW3 is not helping the prosecution case, as PW3 neither identified the driver of the

vehicle nor could narrate the manner of accident. PW4, in his cross-examination, stated that he went to the spot after hearing the sound of collision and therefore, is not an eye-witness to the incident. PWs3 and 4 have not identified the accused. PW1 has also stated that he cannot say anything regarding the speed of the vehicle. The trial court has rightly observed that PWs1 to 3 are interested witnesses. That apart, the witnesses have not deposed anything regarding negligent act on the part of the accused. Accordingly, the trial court has properly appreciated the evidence on record and in proper perspective. However, the first appellate Court failed to assign cogent reasons for reversing the judgment of acquittal and has mentioned that there is no reason to disbelieve the version of the witnesses, which is not correct and proper in view of the above said decisions of the Hon'ble Supreme Court. On re-appreciation of the evidence and the records, I do not find any legal or factual error in the impugned judgment of acquittal passed by the trial Court. The first appellate court has not assigned proper reasons to reverse the judgment of acquittal. Considering the facts and circumstances of the case and keeping in mind aforesaid judgments of Hon'ble Apex Court, I answer Point No.2 in the affirmative.

Regarding point no.3:

26. For the reasons aforesaid and discussions, I proceed to pass the following:

ORDER

- i. Appeal is allowed;
- ii. The judgment of conviction and order on sentence dated 23rd February, 2013 passed in Criminal Appeal No.161 of 2009 by the II Additional District and Sessions Judge, Dakshina Kannada, Mangalore, is set aside;
- iii. The judgment of acquittal dated 7th March, 2009 in CC No.967 of 2006 passed by the Civil Judge (Sr.Dn.) and JMFC Bantwal, Dakshina Kannada, is confirmed;
- iv. Appellant/Accused is acquitted of the offence punishable under Sections 278, 337, 338 and 304A of Indian Penal Code;
- v. Concerned Court is directed to refund the fine amount, if any deposited by the appellant;

- vi. Registry to send a copy of this judgment along with the trial Court records to the concerned Court;
- vii. Registry is directed to pay an amount of Rs.10,000/- to Sri Sabappa B, Malegul, Amicus Curiae.

**Sd/-
(G BASAVARAJA)
JUDGE**