Karnataka Civil Judge (Mains) 2022

Law Paper III · compulsory paper

Framing of charges and writing of Judgment in Criminal Case · Date: 08.10.2022 · Time: 2.30 PM to 5.30 PM · Maximum Marks: 100

1. Frame proper plea in the following case. 07 Marks

Towards the repayment of Rs.3,25,000/- borrowed from the complainant, accused had issued a cheque bearing No.8765432 dated 20.06.2017 drawn on Kotak Mahindra Bank Ltd, M.G.Road Branch, Bengaluru, in favour of the complainant. When the complainant presented the said cheque for encashment at the above Bank, it was returned with an endorsement "Funds insufficient" on 16.08.2017. The complainant issued a legal notice on 29.08.2017 calling upon the accused to pay the cheque amount. Inspite of service of notice, accused neither replied to the said notice nor paid the cheque amount. Hence, the complainant filed the complaint before Additional Chief Metropolitan Magistrate Court, Mayo Hall, Bengaluru.

2. Frame appropriate charge for the Trial of accused on the basis of the following charge sheet material. 18 Marks

It was stated in the charge sheet that the accused No.1 is the husband and accused No.2 is the mother in law of the complainant and the marriage between the complainant and accused No.1 was solemnized on 12.09.2018 at Gajanoor and after the marriage, they were residing together in the house of accused at Bijjavalli, Thirthahalli Taluk, within the jurisdiction of Thirthahalli Police station. Few months after marriage, accused No.1 and 2 started ill treating the complainant by picking up the quarrel with her for silly reasons, inflicted cruelty on her and gave her physical and mental torture by demanding the dowry and on 07.01.2019 at about 11.30 AM in their house at Bijjavalli, accused No.1 and 2, with common intention, picked up the quarrel with complainant and abused her in filthy language and assaulted her with hands on all over her body, causing fracture on her left shoulder and posed threat to her with dire consequences and drove her out of their house and told the complainant not to enter their house again without bringing the dowry amount of Rupees two lakhs. With these allegations, Thirthahalli Police have filed the charge sheet against the accused No. 1 and 2.

3. Write a judgment of CONVICTION in the following case by giving valid and cogent reasons assuming rival contentions and documents of the prosecution from the facts and evidence narrated below. (Provision of law, which have been kept blank, shall be stated in the judgment) 75 Marks

Facts of the Case:

That on 20.01.2010 at about 03.30 p.m. on Udyavara bridge at Udyavara, on Udupi-Mangalore National Highway, accused, being the driver of a Private bus bearing Registration Number KA-20-M-7187, by driving the same in a rash and negligent manner, dashed to a motor bike, which was coming from the opposite direction, due to which, one Sundara, who was riding the motor bike, sustained fatal injuries and died at the spot and CW2-Harish, who was the pillion rider in the bike, sustained grievous injuries and accused ran away from the spot after the accident and failed to provide medical treatment to injured CW.2 and also failed to intimate the jurisdictional police about the accident.

On the basis of the complaint lodged by CW1, Udupi Rural Police have registered a First Information Report in Crime No.27/2010 and the Investigating Officer proceeded to the spot, drawn the spot

mahazar and prepared the sketch of the accident spot and recorded the statement of witness and after obtaining the wound certificate of CW2 and post mortem report, inquest report and Motor Vehicles Inspector's report and after completion investigation, CW12 filed the charge sheet by alleging that the accused has committed the offences punishable under Sections _____ and _____ of Indian Penal Code and Section _____ of the Motor Vehicles Act, 1988.

The court took the cognizance of the case and accused appeared before the court was enlarged on bail. A copy of the charge sheet and its enclosures were furnished to the accused. Plea of the accused was recorded and accused pleaded not guilty and claimed to be tried.

To prove the guilt of the accused, prosecution let in following evidence before the court.

CW1 - Sridhar:

CW1, who was examined as PW1, deposed that on 20.01.2010 at about 03.30 p.m. when CW2 and Sundara were going towards Udupi in a motor bike, on Udyavara Bridge, accused, being a driver of a Private bus, by driving the same in a rash and negligent manner, dashed the bus to the bike, due to which, Sundara died at the spot and CW2 sustained grievous injuries. PW1 further deposed that he was coming in a car behind them and after reaching the spot, he took the injured CW2 and body of deceased Sundara to the Udupi District Hospital and thereafter lodged a complaint before the Udupi Rural Police as per Ex.P1. PW1 further deposed that on the next day of the accident, police came to the spot and drawn a mahazar as per Ex.P2 and seized the bike and bus involved in the accident.

During the course of his cross examination, PW1 admitted that he was not an eye witness to the accident and he reached the spot about 10 minutes after the accident. PW1 further deposed during the course of his cross examination that when he reached the spot many people gathered there. PW1 further said that bike was fully damaged and front portion of the bus was also damaged. PW1 admitted that there are steep curves on the road before Udyavara Bridge while coming from Udupi, due to which, vehicles cannot be driven in high speed. PW1 denied the suggestion that due to the high speed riding of motor bike by deceased Sundara, he dashed the motor bike to the bus coming from opposite direction. PW1 also denied the suggestion that accused is not responsible for the cause of accident.

CW2 - Harish:

CW2, who was examined as PW2, deposed that on 20.01.2010 at about 3.30 p.m. when he and Sundara were going towards Udupi in their bike, on Udyavara Bridge, a Private Bus coming from opposite direction dashed to their bike, due to which, he sustained fracture on his right leg and Sundara died at the spot. PW2 further deposed that initially he was admitted to District Hospital Udupi and thereafter he was shifted to K.M.C. Hospital, Manipal for further treatment. PW.2 further deposed that the accident was due to the rash and negligent driving of the private bus by this accused.

PW2, during the course of his cross examination, admitted that they were coming back to Udupi after attending a function at Padubidri. PW2 denied that deceased Sundara has consumed alcohol at the said function and he was riding the motor bike in high speed. PW2 admitted that width of the road at the accident spot is very narrow and there are many curves on the road before the Udyavara bridge. PW2 denied the suggestion that Sundara lost control over the motor bike and himself dashed his motor bike to the Private bus by riding the same in high speed. PW2 denied the suggestion that the accused is not responsible for the cause of accident.

CW3 - Davananda:

CW3, who was examined as PW3 deposed that, on 20.01.2010 at about 3.30 p.m. he and CW4 were going to Mangalore in a Private bus driven by this accused. PW3 further deposed that when the bus was going slowly on the Udyavara Bridge, a motor bike coming in a high speed from opposite direction, dashed to the Private bus and rider sustained fatal injuries and died at the spot and pillion rider sustained some injuries.

PW3 was treated as hostile witness by the learned Assistant Public Prosecutor and cross examined. During the course of his cross examination by learned Assistant Public Prosecutor, PW3 denied the suggestion that the accident was due to rash and negligent driving of Private bus by the accused.

CW6 - Raghu:

CW6, who was examined as PW4, deposed that during the month of January 2010 at about 3.00 p.m. when he was going in his car towards Udupi from Katapadi, Sundara and CW2 were going in a motor bike in front of his car at the distance of about 150 meters. PW4 further deposed that on Udyavara bridge, a Private bus coming from Udupi in a rash and negligent manner and in high speed dashed to the motor bike in which Sundara and CW2 were going, due to which, Sundara fell on the road, sustained fatal injuries and died at the spot and CW2 sustained grievous injuries. PW4 further deposed that on the next day of the accident, police came to the spot, drawn a mahazar as per Ex.P2 and prepared the sketch of the spot as per Ex.P.3 and seized the bus and motor bike involved in the accident.

PW4, during the cross of his cross examination, deposed that there are curves on the road before Udyavara bridge and width of the road is narrow. PW4 further deposed that he is the relative of deceased Sundara and both of them have attended a function at Padubidri on that day. PW4 denied the suggestion that deceased Sundara has consumed alcohol at the said function. PW4 also denied the suggestion that deceased Sundara was talking over the mobile phone at the time of accident and lost control over his motor bike and he himself dashed his motor bike to the Private bus. PW4 denied the suggestion that the accident was not due to the rash and negligent driving of Private bus by the accused. PW4 also denied the suggestion that police have not visited to the spot and not drawn any mahazar in his presence. PW4 denied that he has put the signature for the mahazar at the police station and since deceased Sundara is his relative, he is deposing falsely to help his family members to get the compensation.

CW12 - Vijay Kumar:

CW12, who was examined as PW5, deposed that he was working as an Inspector of Police in Udupi Rural Police Station during the year 2009 to 2011. PW5 further deposed that on 20.01.2010 at about 6.00 p.m. when he was in the police station CW1 appeared before him and lodged a complaint as per Ex.P1, on the basis of which, he has registered a FIR in Crime No.27/2010 as per Ex.P8. PW5 further deposed that on the next day, he visited the spot, drawn a mahazar as per Ex.P2 and prepared sketch of the spot as per Ex.P3 and seized the bus and motor bike involved in the accident. PW5 further deposed that he has recorded the statement of CW2 and CW4 to 6. PW5 further deposed that he visited the Government Hospital Udupi and conducted the inquest on the dead body of deceased Sundara as per Ex.P4. PW5 further deposed that he arrested the accused and released him on bail and after obtaining the wound certificate of CW2 as per Ex.P.5 and post mortem report as per Ex.P.6 and

IMV report as per Ex.P.7 and after completion of investigation, he filed the charge sheet against the accused.

PW5, during the course of his cross-examination, deposed that when he reached the spot, many people have gathered there. PW.5 admitted that he has not recorded the statements of all those persons. PW.5 denied the suggestions that the witnesses have not given any statement before him and he has prepared their statement for convenience of this case. PW.5 denied the suggestion that he has prepared the mahazar and spot sketch at the police station and obtained the signatures the witnesses. PW.5 admitted that, there were steep curves on the road before the Udyavara bridge as shown in the Ex.P.3 sketch and width of the road on the Udyavara bridge is quite narrow. PW.5 also admitted that two heavy vehicles can not be driven at a time on the bridge. PW5 denied the suggestion that in order to facilitate the legal heirs of deceased Sundara to get the compensation, he filed false charge sheet against the accused, though after visiting the spot and conducting investigation, he came to know that the accident was due to the fault of deceased Sundara.

STATEMENT OF THE ACCUSED UNDER SECTION 313 OF CODE OF CRIMINAL PROCEDURE

All the incriminating evidence appearing against the accused was read over to him and accused denied them as false and stated that he was driving the Private bus on the Udyavara bridge slowly and rider of the bike coming from the opposite direction was talking over the mobile phone and riding it in a high speed and failed to control the bike and dashed to his bus. The accused further stated that he was not responsible for the cause of accident.

HIGHLIGHTS OF THE ARGUMENTS FOR THE PROSECUTION

> The learned Assistant Public Prosecutor argued that there is no dispute about the occurrence of the accident and identity of the accused as the driver of the offending Private bus.

> The inquest report, post mortem report, IMV report and wound certificate of CW2 were all marked with consent, as the accused has not disputed the death of deceased Sundara due to the accident and injury sustained by CW2.

> Only disputed question is about cause of accident. In order to prove that the accident was due to the rash and negligent driving of Private bus by this accused, there is evidence of PW1, 2 and 4. Their evidence is corroborated with spot mahazar as per Ex.P2 and sketch as per Ex.P3.

> Even though PW1, 2 and 4 were cross examined by the learned counsel for the accused, no material aspects were brought out from their cross examination to disbelieve their oral testimony.

> The evidence let in by the prosecution is free from any infirmities and would establish the case of the prosecution beyond all reasonable doubt. Therefore, the learned Assistant Public Prosecutor prayed to convict the accused.

HIGHLIGHTS OF THE ARGUMENTS FOR THE ACCUSED

> The learned counsel for the accused argued that evidence let in by the prosecution is full of material contradictions, variations and discrepancies.

> The witnesses who have supported the prosecution are relatives and interested witness. Therefore, their oral testimony cannot be considered to convict the accused.

> Though independent witnesses were available the Investigating Officer has secured only the friends and relatives of deceased Sundara as witness.

> Spot sketch and evidence of prosecution witnesses proves that there are steep curves on the road from Udupi before Udyavara bridge, due to which, bus can not be driven in high speed at the accident spot.

> Prosecution witnesses also admitted that width of the road on the Udyavara bridge is also narrow and two heavy vehicles can not be driven at a time.

> On all these grounds, learned counsel for the accused prayed for acquitting the accused by extending the benefit of doubt to him.

De Facto IAS