

IN THE COURT OF PRL. SENIOR CIVIL JUDGE AND JMFC
AT SRIRANGAPATANA

Present

Smt. G.S.Praseela Kumari, B.A.L, L.L.B.
Prl.Senior Civil Judge & JMFC
Srirangapatana.

Dated: This the 12th day of April 2018

C.C. No.1/2018

COMPLAINANT : State by Srirangapattana police
(By Asst. Public Prosecutor)

-VS-

ACCUSED :Vasar Men Almog s/o Alexndar,
Aged about 22 years,
Juyis by caste, Retired from Army,
Ex -service Man, Algaman No.67,
R/at Israel Country.
Pass Port No.23346548
(By Sri.T.S.Madhusudhana,Adv.,)

1	Date of commencement of offence	06.12.2017
2	Date of report of offence	06.12.2017
3	Arrest of the accused	09.12.2017
4	Name of the complainant	Srinivasa.C
5	Date of recording of evidence	17.01.2018
6	Date of closing of evidence	09.02.2018
7	Offences complained of	U/s 279 & 304(A) of I.P.C and U/s.181 of IMV Act.
8	Opinion of the Judge	Convicted.

J U D G E M E N T

The Circle Inspector of Police, Srirangapatna Police Circle, has filed this charge sheet against the accused for the offences punishable under section 279 and 304(A) of I.P.C. and under section 181 of IMV Act.

2. The case of the prosecution in brief is that:

On 06.12.2017 at about 6.45 p.m. on Mysore – Bangalore highway, in front of Sri.Shambhulingeshwara Tea and Panipuri stall, near Kodishettipura village, Srirangapatna taluk, the accused being the rider of Royal En-field Bike bearing Reg.No.HR-26-BQ-3932 rode the same at high speed in a rash and negligent manner from Bangalore towards Mysore and dashed to one deceased Nanjegowda who was crossing the road, as a result of accident the deceased Nanjegowda sustained grievous injuries to his head, hands and legs due to accidental injuries who died on the spot and the accused has no Indian valid and effective driving license to ride the same at the material time of accident

3. It is further case of the prosecution that immediately after the accident PW.2 Srinivasa who is said to be one of the eye witness of the accident has lodged Ex.P.2 first information statement before the Srirangapatana Police Station, on the basis of which the Srirangapatana Police have registered a case against the accused in Crime No.320/17 for the offences punishable under section 279 and 304(A) of I.P.C and sec.181 of

IMV Act. PW.6 PSI of Srirangapatana Police Station who has registered the first information report, on 07.12.2017 has visited the mortuary of Government Hospital, Srirangapatana at about 8.00 a.m. to 10.00 a.m. and drawn Ex.P.8 inquest mahazar on the body of deceased and recorded the statements of relative of the deceased. On the same day the body of deceased Nanjegowda was subjected to postmortem at Government Hospital, Srirangapatana. On 07.12.2017 PW.7 the Circle Inspector of Police, Srirangapatana has to further investigation. PW.7 then CPI has drawn Ex.P.3 spot mahazar of place of occurrence and recovered the offending bike from the place of occurrence and also drawn Ex.P.3(b) rough sketch of place of occurrence. Ex.P.4 and 5 are the photographs of place of occurrence. Ex.P.6 and 7 are the photographs of the motor bike rode by the accused. On the same day PW.7 send a memo to the IMV authority for mechanical examination of the vehicle involved in the accident. On 09.12.2017 the accused was arrested and produced before the court. PW.7 has recorded the statement of CW.2 and 3. On 07.12.2017 the vehicle involved in the accident was mechanically inspected by PW.5, IMV inspector who has given Ex.P.10 report to the effect that the accident has not occurred due to the mechanical defects of the vehicles involved in the accident. Ex.P.9 is the postmortem report of the deceased Nanjegowda. The Investigating officer after recording the statements of the

witnesses and after obtaining the Ex.P.10 IMV and Ex.P.9 P.M. report of the deceased and after completion of the investigation has filed the present charge sheet against the accused.

4. After filing of the charge sheet, this court has taken the cognizance of the offences mentioned in the charge sheet. Accused appeared before the court and got enlarged on bail. Prosecution papers were furnished to the accused as required under section 207 of Cr.P.C. Accusation was framed, read over and explained to the accused. Accused pleaded not guilty of the accusation leveled against him and stood for trial.

5. In proof of its case, prosecution has got examined 7 witnesses and tendered Ex.P.1 to 12 documents in evidence and Ex.P.8 inquest mahazar was marked with consent of the defense.

6. After prosecution evidence, the statement of the accused as required u/sec. 313 of Cr.P.C. was recorded with reference to the incriminating evidence found against the accused. Accused has denied the said incriminating evidence. On the other hand the accused got examined himself as DW.1 and got marked Ex.D.1.

7. The points that arises for my consideration are: -

1. Whether the prosecution proves beyond all reasonable doubt that on 06.12.2017 at about 6.45 p.m. on Mysore – Bangalore highway, in front of Sri.Shambhu lingeshwara Tea and Panipuri stall, near

Kodishettipura village, Srirangapatna taluk, the accused being the rider of Royal En-field Bike bearing Reg.No.HR-26-BQ-3932 rode the same at high speed in a rash and negligent manner from Bangalore towards Mysore and dashed to one deceased Nanjegowda who was crossing the road thereby the accused has committed the offence punishable under section 279 of I.P.C?.

2. Whether the prosecution proves beyond all reasonable doubt that on the above said date, time and place as a result of accident the deceased Nanjegowda sustained grievous injuries to his head, hands and legs due to accidental injuries he died on the spot thereby the accused committed the offence punishable under section 304(A) of I.P.C?
 3. Whether the prosecution proves beyond all reasonable doubt that on the above said date, time and place the accused has no Indian valid and effective driving license to ride the same at the material time of accident thereby the accused committed the offence punishable under section 181 of I.M.V Act?
 4. What order?
8. Heard learned APP and learned counsel for accused.

Perused the available materials on record.

9. My findings on the above points are as follows:-

Point No. 1 : In the Affirmative.

Point No. 2 : In the Affirmative.

Point No. 3 : In the Affirmative.

Point No. 4 : As per the final order,

For the following ;

REASONS

10. **Point No.1 and 2:-** Since these two points are inter related with each other I have taken up them together for common discussion under the one head in order to avoid repetition of facts and circumstances of the case.

11. To prove the accusation leveled against the accused, prosecution has led the following evidences;

12. The prosecution has got examined PW.1 Ratnamma as one of the eye witness to the accident. PW.1 has not supported the prosecution case and turned hostile to the prosecution case by deposing that she was not an eye witness. According to her she is running Shambhulingeshwara Prasanna Tea Stall on 06.12.2017. She rushed to the spot where the accident occurred in which accident deceased Nanjegowda sustained injuries and gave water, but she categorically stated that she came to the place of occurrence after the accident had occurred. Since PW.1 has given evidence stating that she was not an eye witness of the accident she was treated as hostile witness by the prosecution and cross-examined PW.1. PW.1 in her cross-examination by the prosecution has denied the contents of Ex.P.1 her alleged statement said to have been recorded by the police about her

presence at the place of occurrence when the alleged accident took place.

13. Prosecution has got examined PW.2 the first informant as well as eye witness and pancha witness of the accident. PW.2 in his evidence has deposed that on 06.12.2017 at about 6.45 p.m. along with CW.2 to 4 had tea at tea shop belongs to CW.1 at Kodishettipura village. By that time the rider of the Royal Enfield Bike bearing Reg.No.3932 has ride by the accused from the side of Bangalore and dashed to the Nanjegowda as a result of which Nanjegowda fell down and sustained injuries. That he has attended the injured, but injured died at the spot itself. PW.2 has further deposed that after the accident he has lodged the complaint as per Ex.P.2, the first information statement before the police. PW.1 in his evidence has identified the accused as the rider of the offending bike which has caused the accident. PW.2 further deposed that the accident has occurred due to the rash and negligent driving of the accident who has rode the bike at high speed and failed to control the bike and dashed the bike to the deceased resulted into accident. PW.2 in his further evidence has further deposed that he was present at the place of occurrence, when police have drawn Ex.P.3 spot mahazar and he has attested the same. PW.2 in his evidence has identified Ex.P.4 and 5 as the photograph of the place of occurrence and Ex.P.6 and 7 as the photograph of the offending bike. PW.2 has further deposed that

he is capable to identify the accused and also the offending bike. When PW.2 entered into the witness box the accused also present and the witness identified the accused and further deposed that the accused who was present before the court ride the bike on the date of accident.

14. Prosecution has got examined PW.3 by name Honnegowda as eye witness of the accident. In his evidence PW.3 has deposed that on 06.12.2017 in the evening time he had tea at Shambhulingeshwara tea stall run by CW.1 along with CW.3 and 4, nearby Kodishettipura village, on Mysore – Bangalore highway. PW.3 further deposed that near the tea stall the rider of the speeding bike has rode from the side of the Bangalore and dashed to the deceased as a result of which deceased Nanjegowda fell down and sustained injuries, then died at the spot. Immediately he rushed to the spot after heard the voice of the accident and attend the injured deceased as well as the injured bike rider. PW.3 further deposed that the rider of the bike rode the vehicle with hight speed. Immediately he rushed to the spot and attended the injured both deceased and the rider of the bike. PW.3 has further deposed that the rider of the bike sustained injuries and bleeding from his face and due to the pain of the hand. According to PW.3 the bike also got damaged. Deceased Nanjegowda died at the spot. PW.3 has further deposed that after 15 minutes from the time of the accident, the police officials visited the spot and

shifted the injured rider of the motor bike to the hospital. PW.3 in his evidence has further deposed that after the accident the police officials visited the place of occurrence and when police have drawn Ex.P.3 spot mahazar and he has attested the same along with CW.1 and 3 the panch witnesses. According to him he has also attested the spot mahazar. PW.3 in his evidence has identified Ex.P.4 and 5 as the photographs of the place of occurrence and Ex.P.6 and 7 as the photographs of the offending bike. PW.3 has further deposed that he is capable to identify the accused and also the offending bike. When PW.3 entered into the witness box the accused also present and the witness identified the accused and further deposed that the accused who was present before the court ride the bike on the date of accident.

15. Prosecution has got examined PW.4 the doctor who has conducted the postmortem of the deceased Nanjegowda. In his chief examination PW.4 has deposed that on 07.12.2017 at about 10.30 a.m. conducted the postmortem of deceased Nanjegowda who met with an road traffic accident. On examination of the deceased Nanjegowda he found that due to severe haemorrhage and shock and due to grievous injury to vital organ, left lung, heart and brain and left leg vessels, death occurred. PW.4 has identified the postmortem report at Ex.P.9 and also his signature.

16. Prosecution has got examined PW.5 Sadrulla Shareef the IMV inspector who has given evidence stating that on 07.12.2017

on the request of the PSI of Srirangapatana Rural Police Station he has mechanically inspected the bike bearing Reg.No.HR-26-BQ-3932 Royal Enfield at the premises of the Srirangapatana Rural Police Station on the history of road traffic accident. On the mechanical examination of the bike he found that front wheel guard, right side rear view mirror, head light damaged. PW.5 in his evidence has further deposed that he has tested the bike in stationary conditions and found that the brake system of the bike is intact. PW.5 further deposed that in his opinion the accident has not occurred due to mechanical defects of the vehicle involved in the accident and he has issued Ex.P.10 IMV report to the effect.

17. Prosecution has got examined PW.6 the PSI of Srirangapatana Rural Police Station as one of the Investigating Officer of the present case. PW.6 has given evidence stating that on 06.12.2017 at about 8.30 p.m. he has received a Ex.P.2 first information statement and registered a case against the accused in crime No.320/2017 for the offences punishable under section 279 and 304(A) of I.P.C and prepared Ex.P.11 the first information report. PW.6 has further deposed in his evidence that on 07.12.2017 in between 8.00 a.m. to 10.00 a.m. in the presence of CW.4 to 6 he has conducted inquest mahazar as per Ex.P.8 on the body of deceased Nanjegowda at the mortuary of Government Hospital, Srirangapatana and recorded the statement of CW.4 to 6. He has further stated that he has handed over the entire

record to CW.14 for further investigation by considering the seriousness of the offences alleged against the accused. Further he has deposed that on 08.12.2017 requested the RTO at Mandya with respect to the validity of the driving license of the accused for the reason that the accused is the resident of Israil. PW.6 identified the requisition at Ex.P.12.

18. Prosecution has got examined PW.7 then CPI of Srirangapatana Circle Police Station, who has given evidence with respect to the mahazar drawn by him. He has further deposed that on the same day he has visited the place of occurrence and identification of the place of occurrence by the 1st informant i.e., CW.1, he has drawn Ex.P.3 spot mahazar in the presence of pancha witnesses i.e., CW.2 and 3 and from the place of occurrence recovered the offending bike bearing Reg.No.HR-26-BQ-3932 and obtained the signature of the panchas at Ex.P.3, he identified the mahazar as well as sketch and his signature. He has further deposed that recorded the statement of CW.4 and one witness Prakasha on 07.12.2017 itself PW.7 sent memo to the RTO official for inspection of the offending bike. He has further deposed that on 08.12.2017 he has received the IMV report as per Ex.P.10. He has further deposed that he has also obtained the report from the RTO with respect to the validity of the driving license of the accused who is the resident of Israel as per Ex.P.12 (b). He has also further stated that he has received a postmortem

report as per Ex.P.9. PW.7 has further deposed that on 09.12.2017 at about 1.00 p.m. the accused appeared before him along with his counsel he has arrested the accused and also seized Visa and passport and then produced before the concerned jurisdictional magistrate with remand application and also obtained order from the concerned jurisdictional magistrate to retain visa and passport till the disposal of the case. According to him he has also recorded the statement of CW.2 and 3 who are eye witnesses to the accident. Further PW.7 has deposed that after obtaining the IMV report as per Ex.P.10 and P.M. report as per Ex.p.9 of the deceased and filing of the charge sheet against the accused. He has further deposed that he is capable of identifying the accused who was arrested by him. Further he identified the accused who was present before the court while PW.7 deposed before the court on behalf of the prosecution.

19. Based on the above evidence produced on record the learned APP has argued that all the prime witnesses of the prosecution have given cogent and consistent evidence supporting the prosecution case and the credibility of these witnesses has not been impeached and hence, the prosecution has proved the accusation leveled against the accused beyond reasonable doubt.

20. On the other hand the learned defense counsel has argued that only two eye witnesses who have supported the prosecution case is an interested witnesses and hence, their evidence has to be

disbelieved. It is further argued that the another eye witness has turned hostile to the case of the prosecution and no eyewitnesses have been examined to prove the alleged rash and negligent riding of the bike by the accused. The prosecution has failed to prove the accusation leveled against the accused beyond reasonable doubt. It is further argued that the evidence of PW.2 and 3 prime witnesses examined by the prosecution suffers from material discrepancies and hence accused is entitled for the benefit of doubt. Further it is argued that the accused is resident of Israel at the time of accident one KSRTC bus moved in a rash and negligent manner hit the deceased Nanjegowda, the accused ride the bike behind the KSRTC bus due to the accident occurred between KSRTC bus and the deceased Nanjegowda, the rider of the bike dashed his bike against the hind portion of the KSRTC bus, as such the damages caused to the front portion of the bike and in no way the accused is responsible for the accident.

21. In the light of evidence produced on record and in the light of arguments advanced by the learned APP and learned defense counsel, a perusal of material on record discloses that in the present case the accused has stood trial for the offences punishable under section 279 and 304(A) of IPC and sec. 181 of IMV Act. In the present case the burden of proof is on the prosecution to prove the following factors:

1. The alleged accident has occurred on a public road.
2. That the accused was the rider of the bike bearing Reg.No.HR-26-BQ-3932 when the alleged accident took place.
3. That the riding of the bike by the accused amounts to culpable rashness and negligent.
4. As a consequences of negligence and rash riding of the bike by the accused the death of the deceased Nanjegowda occurred.

22. With regard to the 1st ingredient pertaining to the place of occurrence is concerned, in the present case a perusal of the evidence on record discloses that Ex.P.2 First Information Statement the place of occurrence is shown as in front of Sri.Shambhulingeshwara Tea and Panipuri Stall, near Kodishettipura village, Srirangapatana Taluk, on Mysore – Bangalore state highway. The contents of Ex.P.3 spot mahazar also supports the case of the prosecution to the effect that the accident has occurred on Bangalore – Mysore State Highway before Sri.Shambhulingeshwara Tea and Panipuri Stall, Kodishettipura village. Apart from that a perusal of the evidence on record discloses that PW.2 Srinivasa the first informant and eye witness, PW.3 Honnegowda, eye witness of the accident has given consistent evidence to the effect that the accident has occurred before Sri.Shambhulingeshwara Tea and Panipuri Stall, Kodishettipura village on Bangalore – Mysore state highway. A perusal of evidence on record discloses that during the trial

accused has not disputed the place of occurrence. Considering the oral and documentary evidence produced on record by the prosecution, I hold that prosecution has proved that the alleged accident has occurred on public way.

23. With regard to 2nd ingredient pertaining to the identity of the accused as the rider of the offending bike bearing Reg.No.HR-26-BQ-3932 when the alleged accident took place, has mainly relied on the evidence of PW.2 and 3 Srinivasa and Honnegowda the first informant and eye witnesses who have identified the accused as the rider of the offending bike when the alleged accident took place. Further a perusal of evidence on record discloses that during the trial accused has not disputed his identity as the rider of the offending bike bearing Reg.No.HR-26-BQ-3932 when the alleged accident took place. PW.7 then CPI the Investigating Officer in his chief examination has stated that on 09.12.2017 at about 1.00 p.m. accused appeared before him and he arrested the accused in accordance with law then produced him before the concerned jurisdictional magistrate along with remand application. Considering the oral and documentary evidence produced on record by the prosecution and further considering the fact that during the trial accused has not disputed his identity as the rider of the offending bike. I hold that the prosecution has proved the identity of the accused as the rider of the offending

bike bearing Reg.No.HR-26-BQ-3932 when the alleged accident took place.

24. With regard to 3rd ingredient pertaining to alleged rash and negligence riding of the bike bearing Reg.No.HR-26-BQ-3932 by accused resulting into accident the death of deceased Nanjegowda is concerned, the prosecution has mainly relied on the contents of Ex.P.2 First Information Statement and evidence of PW.2 and 3. The first informant and eye witness to the accident and the contents of Ex.P.3 spot mahazar of the place of occurrence and Ex.P.10 IMV report of the vehicle involved in the accident.

25. A perusal of the contents of Ex.P.2 first informant statement discloses that soon after the accident PW.2 Srinivasa one of the eye witness of the accident has lodged the first informant statement before the police alleging that the accident had occurred due to the rash and negligent riding of the bike bearing Reg.No.HR-26-BQ-3932 by its rider resulting into accident. Ex.P.2 First Informant Statement it was specifically alleged that the rider of the offending bike has ride the same from the side of Bangalore towards Mysore at high speed in a rash and negligent manner and dashed the bike to the deceased Nanjegowda resulting into accident and cause injuries to the deceased. As such the injured sustained injuries towards leg, head and other parts of the body. It further establishes that the

rider of the bike dragged the injured Nanjegowda to some distance.

26. To prove the alleged rash and negligent riding of the offending bike by the accused resulting into accident prosecution has mainly relied on the evidence of PW.2 and 3, the first informant and eye witnesses of the accident. A perusal of evidence of PW.2 Srinivasa the first informant eye witness of the accident discloses that he has given evidence stating that he was eye witness of the accident which took place on 06.12.2017 at about 6.45 p.m. before Sri.Shambhulingeshwara Tea and Panipuri Stall, Kodishettipura village, on Bangalore – Mysore state highway. PW.2 in his evidence has deposed that at the time of accident he stood in front of the tea shop along with CW.2 to 4. By that time the rider of the bike riding his motor bike with high speed in a negligent manner and dashed against the deceased Nanjegowda. PW.2 has further deposed that at the place of occurrence the accused has ride his bike from the side of Bangalore towards Mysore at high speed and dashed the bike to the deceased as a result of which the deceased fell down and sustained injuries then died at the spot itself. PW.3 has further deposed that the rider of the bike also sustained injuries towards his right shoulder. Immediately PW.3 rushed to the spot and attended the rider of the bike as well as the deceased. PW.2 in his evidence has further deposed that he has attended the injured

accused and shifted the accused to the hospital for treatment in an ambulance. He has further deposed that he has lodged Ex.P.2 first information statement before the police. PW.2 in his evidence has further deposed that the accident has occurred only due to rash and negligent riding of the offending bike by the accused who has ride the same at high speed and dashed the bike to the deceased resulting into accident. PW.2 in his evidence has identified Ex.P.4 and 5 the photographs of the place of occurrence and Ex.P.6 and 7 as the photographs of the offending bike. According to PW.2 after lodging the complaint the police officials visited the spot and drawn Ex.P.3 spot mahazar at place of occurrence in his presence and pancha witnesses. PW.2 has supported the case of the prosecution with respect to drawing of Ex.P.3 mahazar at the place of occurrence and recovery of offending bike involved in the accident from the place of occurrence.

27.PW.3 another eye witness in his chief examination has deposed that on 06.12.2017 at about 6.45 p.m. in front of Sri.Shambhulingeshwara Tea and Panipuri Stall, Kodishettipura village on Bangalore – Mysore state highway, had tea along with CW.1, 3 and 4. PW.3 has further deposed that at the time of having tea he was facing towards Bangalore – Mysore State Highway. Further he has deposed that by that time one bike was coming from Bangalore direction towards Mysore with high

speed. By that time one Nanjegowda after crossing the divider crossed the road towards Kodishettipura village. Immediately he heard the noise and turned towards the place from where he heard the noise. By that time bike and one injured fell on the road. Further PW.3 has deposed that the offending bike was coming from Bangalore direction with high speed. Immediately he rushed to the spot and he saw that deceased Nanjegowda sustained injuries towards his leg and head. Even the rider of the bike also sustained bleeding injuries. The rider of the bike complaint of pain in his hand, the bike which available in the place also damaged, by that time the injured Nanjegowda died at the spot itself. PW.3 has further deposed that the police officials shifted deceased Nanjegowda to the hospital. Again the police officials shifted the injured bike rider to the hospital for treatment. PW.3 in his evidence has identified the accused who appeared before the court while deposing in the witness box and stating that the accused was the rider of the bike at the time of accident and due to his speed driving the accident occurred. PW.3 further deposed that the police officials visited the spot and drawn mahazar as per Ex.P.3 and also drawn rough sketch at the place of occurrence. PW.3 has identified his signature at Ex.P.3 and further deposed that in the presence of pancha witnesses the police officials drawn mahazar and sketch. He deposed regarding the presence of CW1,2 and 4 at the time of mahazar. PW.3 has

supported the case of the prosecution with regard to drawing of Ex.P.3 mahazar at the place of occurrence and recovery of bike. In the accident from the place of occurrence. PW.3 has further deposed and has identified Ex.P.4 and 5 as the photographs of the place of occurrence and Ex.P.6 and 7 as the photographs of the offending bike.

28. With respect to the chief examination of PW.2 who is said to be the eye witness and also support the case of the prosecution, the learned counsel for the accused cross-examined at length. In his cross-examination PW.2 has admitted that deceased Nanjegowda belongs to his village, Kodishettipura. But deceased is not the relative to the PW.2. PW.2 has categorically denied that the deceased was having old age ailment and deaf he confirmed that the accident occurred on 6th day of December, he categorically denied that the tea shop is also accompanied with panipuri stall. He further denied that the shop belonged to CW.4 is a panipuri stall. He further denied that except Panipuri no other eatables available in the shop. PW.2 has admitted that from Mysore towards Bangalore the road is in a up manner. He categorically denied that where the accident occurred the road was damaged. He further denied that from Bangalore towards Mysore direction the road is in a up manner. He further admitted that he does not aware about the width of the Mysore – Bangalore State Highway. By virtue of the above said cross-examination of

PW.2, it is crystal clear that PW.2 and the deceased are belongs to the same village, but not related with each other. The question and suggestion posed to the PW.2 itself goes to show that PW.2 is very well aware of the place of occurrence and also the shop available in the place of accident which belongs to CW.1. It is also crystal clear that PW.2 is very well has a good knowledge about the place where the accident occurred.

29. In his further cross-examination PW.2 has categorically denied that at the time of having a cup of tea he was chat with others. According to him he sat on the plastic chair nearby the tea shop. Further he has deposed that along with three members he sat on the plastic chair nearby the tea shop. He categorically denied that in the first informant statement no whisper regarding sat on the chair. He admitted that on Mysore – Bangalore State Highway, near Sriramapura, there are trees, plants and bushes. He further admitted that Bangalore – Mysore State Highway is at the distance of 30 -35 feet from a panipuri stall. He further admitted that the face of the panipuri stall towards Mysore direction. He further admitted that he stood in front of panipuri stall. Further he deposed that by the side of the shop he sat. According to him on his right portion the shop is situated. He further admitted that on Bangalore -Mysore State Highway, in a road divider, there are plants and bushes. He further admitted that two trees are standing in front of the panipuri stall and by

the side of the Bangalore – Mysore road, he categorically denied that there are trees in a place towards cross from Mysore – Bangalore State Highway, towards Sriramapura. According to PW.2 he came to the tea shop, 30 minutes earlier to the accident, it means at about 6.15 a.m- 6.20 a.m. According to him he came to tea shop alone. Subsequent to his arrival other customers were joined him in a tea shop. By virtue of the above said cross-examination it is crystal clear that PW.2 came to the spot where the accident occurred and 30 minutes earlier to the accident. According to him he was facing towards Mandya and he saw the rider of the bike who rode the same with high speed from Bangalore direction towards Mysore. In his cross-examination he has deposed with respect to the clear cut description about the place of occurrence, where the tea stall is situated, the persons who are all accompanied with him while having tea and also he deposed regarding the trees, plants and bushes available near the place of accident. The answer elicited from the mouth of the PW.2 itself goes to show that he was present at the time of accident, as such he narrated the entire description of the place of occurrence and his presence in front of the tea stall along with other eye witnesses. By virtue of his cross-examination on perusal of evidence of PW.1 even though she has turned hostile towards the case of the prosecution, in the cross-examination by the learned prosecution for the state, she has clearly admitted that she is

running Shambhulingeshwara Prasanna tea stall. Further she deposed that 06.12.2017 when deceased Nanjegowda met with an accident she rushed to the spot and attended the deceased Nanjegowda by providing drinking water to him. The above said cross-examination of PW.1 is much more corroborated with the cross-examination portion of PW.2 regarding his presence in front of the tea shop at the time of accident. PW.2 has denied in the cross-examination that after heard the noise he turned towards the spot where the accident occurred. He further denied that he had saw the front portion from the place where he sat. He categorically denied that he was unable to observe the accident from the place where he sat near the tea shop. He categorically denied that he was not an eye witness to the accident. He has also deposed the boundaries with respect to the place of accident. But the boundaries as narrated by PW.2 is not totally corroborated with the Ex.P.3. But mere non corroboration of the boundaries as stated by PW.2 which compare to Ex.P.3 is insufficient to deny the entire evidence of PW.2. According to PW.2 deceased Nanjegowda made an attempt to cross the road by that time the accident occurred. He categorically denied that the house belongs to deceased Nanjegowda is situated towards Shambhulingeshwara panipuri stall. He further denied that he never seen the deceased Nanjegowda much earlier to accident. Further PW.2 in his cross-examination has deposed that he was

witnessed that the deceased Nanjegowda crossed the road. Further he deposed that after crossing the divider deceased Nanjegowda was proceeded in a foot path towards his house. The above said cross-examination reflects that much earlier to the accident and at the time of accident as well as subsequent to the accident PW.2 witnessed the incident occurred on that day while deceased Nanjegowda crossing the road witnessed by PW.2. The above said cross-examination it is crystal clear about his presence with respect to occurrence of accident.

30.During the cross-examination PW.2 has deposed that bumper and front head light and back portion of the bike light damaged in an accident. According to him in a bike the accused had heavy luggage. Further he has deposed that after the accident the bike dragged deceased Nanjegowda to the distance of 20-25 feet, but he never found the abrasion over the different parts of the body of the deceased, but he has clearly stated that deceased sustained injuries to his right leg and head. According to him the police officials seized the bike in his presence. The above said cross-examination clearly established that damages caused to the bike belongs to the accused, injuries to the deceased and seizure of offending bike. The cross-examination itself supports the case of the prosecution.

31.PW.2 in his cross-examination with respect to the mahazar he has clearly answered that the police officials drawn

spot mahazar according to his information. Further he has deposed that the police officials read over Ex.P.3, spot mahazar to him and the pancha witnesses. After read over Ex.P.3 himself and remaining panch witnesses affixed their signature. Further he has deposed that the police officials took the photograph of the place of occurrence. He categorically denied that he was not present at the time of mahazar and sketch. He further denied that he was not an eye witness to the incident. He further denied that KSRTC bus was proceeded at the time of accident. PW.2 further denied that the KSRTC bus dashed to the deceased thereby the accident occurred. He further denied that after the accident the driver of the KRSTC bus who dashed to the deceased suddenly applied the brake, as such the accused who ride the bike behind the KSRTC bus dashed against the KSRTC bus. PW.2 in a clear cut wordings in cross-examination has admitted that he is unable to speak about the speed limit of the bike per hour. PW.2 in his unequivocal wordings denied that deceased belongs to his native, as such he deposed falsely before the court, he deposed falsely with respect to eye witness regarding the accident and even though he was not present at the time of mahazar, he deposed falsely before the court that he was witnessed the mahazar and sketch.

32.By considering the over all evidence of PW.2 in the chief examination as well as in the cross-examination, the counsel for

the accused utterly failed to elicit the answer from the mouth of the witness in support of its defense. It is crystal clear that the defence has utterly failed to prove that PW.2 was not an eye witness. It is also crystal clear that the counsel for the accused failed to prove that PW.2 was not present at the time of drawn sketch and mahazar. More over involvement of the KSRTC bus as suggested by the counsel for the accused is categorically denied by PW.2. All the suggestions and questions are properly answered by PW.2. By over all gathering of the evidence of PW.2 prosecution has clearly proved that PW.2 is an eye witness to the incident and he supports the case of the prosecution with respect to the rash and negligent driving of the accused.

33. PW.3 who is also said to be an eye witness in the cross-examination has categorically admitted that he is coolie by profession and he is attending the coolie from 8.00 a.m. to 5.30 p.m. PW.3 has further deposed that CW.3 constructed the residential house nearby the tea stall as such he was attending as a coolie in a building construction. On the date of accident he was attending the coolie work at the building spot. According to him the date on which the accident occurred was winter season. But he has categorically denied that snow falling at about 6.00 p.m. He admits that after 5.30 in a winter season it may be dark. He further admits that no street light in a Mysore – Bangalore highway on junction road of Sriramapura. Further he admits that

it was not dark on the date of accident. He categorically denied that due to the dark time as well as falling snow he could not observe the road and on coming vehicles. PW.3 has deposed that in between the place of his work and panipuri stall, there is a distance of 500 to 600 feet. According to him CW.3 also accompanied with him at the time of accident. Further he admitted that panipuri stall facing towards Bangalore – Mysore state highway. He categorically denied that he sat on the left side of the panipuri stall, but he deposed further that he sat by the right side of the tea stall. He categorically denied that he never witnessed the accident from the place where he sat and had tea. According to him the width of the foot path where the deceased was proceeded about 10-15 feet. According to him he chat with others while having a cup of tea. According to him he facing towards east but he denied that on Bangalore – Mysore State Highway, at Sriramapura junction road, there are trees and plants. In his further evidence has deposed that only two Ashoka trees are standing. He categorically denied that Bangalore – Mysore state highway is in a upper manner. He categorically denied that due to such up road the vehicle coming from Bangalore direction are in slow and cautious manner. He admits that Bangalore – Mysore State highway is a very busy road. By considering the above said cross-examination it is elicited from the mouth of the PW.3 that he was present near the

Shambhuingeswara tea stall at the time of accident and witnessed the rash and negligent riding of the rider of the bike. He has also deposed regarding the place of occurrence, the manner in which the accident occurred, how the accident occurred and caused injuries to the deceased as well as on coming vehicle on Mysore – Bangalore State Highway. By over all considering the above said cross-examination, it is crystal clear that PW.3 is an eye witness to the accident. Even though cross-examined by each and every corner but the counsel for the defense failed in its attempt to elicit answer from the mouth of the witness in support of his defense. The effort made by the learned counsel for the accused holds in water.

34.Regarding the involvement of the KSRTC bus PW.3 has deposed that in every 7-8 minutes one KSRTC bus moving from Mysore to Bangalore or Bangalore to Mysore. He admits that while he had tea one KSRTC bus moving from that place. He admits that after moving KSRTC bus he had heard the noise. When he rushed to the spot deceased Nanjegowda fell on the road. He categorically denied that the driver of the KSRTC bus suddenly applied the brake. He further deposed and pleads his ignorance about the bike coming from the hind side of the KSRTC bus suddenly applied the brake and dashed against the hind portion of the KSRTC bus. By virtue of the above said cross-examination learned counsel for the accused elicit answer from

the mouth of the PW.3 that KSRTC bus was moving at the time of the accident, but it is not admitted by PW.3 that KSRTC bus hit the deceased thereby the accident occurred. Another important suggestion made by the learned counsel for the accused that the rider of the bike ride the bike from the hind portion of the KSRTC bus in a reasonable distance due to the sudden applying the brake by the driver of the KSRTC bus the accused also suddenly applied the brake as such the bike dashed to the KSRTC bus. By considering the over all cross-examination of PW.3 with respect to the involvement of the KSRTC bus not proved by the counsel for the accused.

35.Regarding the mahazar PW.3 in the cross-examination has deposed that the police officials obtained his signature at the place of occurrence and also at police station. He has further admitted that he never read the contents of the mahazar but the police officials read over the contents of the mahazar. He pleads his ignorance with respect to the seizure of the vehicle or any material collected from the spot. By virtue of this cross-examination, it is crystal clear that the police officials drawn mahazar at the place of occurrence and obtained the signature of PW.3 and read over the contents of Ex.P.3 to PW.3.

36.According to PW.3 himself and deceased Nanjegowda belongs to the same caste but not the relatives. He categorically denied that he never seen the accused at the time of accident and

the driver of the KSRTC bus dashed to the deceased thereby the accident occurred. Further he deposed that the police officials drawn drawing the lines in a place of occurrence. He categorically denied that he never witnessed mahazar and sketch after the accident.

37. After considering the over all chief examination and cross-examination of PW.3, it is crystal clear that the prosecution has proved his presence at the time of accident, his presence at the time of mahazar and sketch drawn by the police officials, at the time of seizure of the offending bike through cogent and convincing acceptable evidence. Even though learned counsel for the accused made an attempt to elicit answer in a cross-examination which vested in his hands as a weapon in support of his defense holds in water. He failed in his attempt to prove his defense.

38. With regard to appreciation of evidence of eye witnesses the Apex court of land in a decision reported in **AIR 1996 SC 3073** has held that while appreciating evidence of eye witnesses the court has to adhere to two principles:

- 1) Whether it was possible for the witnesses to be present.
- 2) Whether there is anything inherently improbable or unreliable in their presence.

39. Keeping in view of the ratio of the above cited decision a perusal of evidence of PW.2 Srinivas the first informant

statement and evidence of PW.2 and 3, the first informant and eye witness discloses that both the eyewitnesses were the resident of Kodishettipura village which is situated very near from the place of occurrence. PW.2 in Ex.P.2 first information statement and in his evidence claims that at the time of accident he stood by the side of the Shambhulingeshwara tea stall. On perusal of cross-examination of PW.2 discloses that the defense counsel in the cross-examination of PW.2 has not disputed the fact that PW.3 was eye witness of the alleged accident and the presence of the PW.2 and 3 at the place of occurrence when the alleged accident took place. In the cross-examination PW.2 and 3 have categorically stated about their presence in a place of occurrence. Hence, the evidence of PW.2 and 3 that they were the eye witnesses of the accident and the accused was riding his motor bike at the place of occurrence when the alleged accident took place remained unchallenged. Keeping in view of the ratio of the above cited decision, I hold that PW.2 and 3 are natural and probable eye witnesses of the accident and there is no inherent in probability or unreliability in his presence at the place of occurrence, when the alleged accident took place. Even PW.3 a coolie was attending his coolie work in a building construction by CW.3, that building construction was going on hardly at the distance of 500-600 feet from the place of occurrence. His coolie work commencing from 8.00 a.m. till 5.30 p.m. The accident

occurred at about 6.45 p.m. after attending his coolie work it is quite natural he reached the tea stall along with the CW.3 for a cup of tea. Therefore, the presence of PW.2 and 3 at the place of occurrence when the alleged accident took place is believable as true and genuine.

40. In the present case a perusal of evidence of PW.2 and 3, the first informant eye witness and also eye witness of the accident discloses that they have given cogent, consistent evidence of the effect that at the time of accident the accused being the rider of the offending bike bearing Reg.No.HR-26-BQ-3932 has rode the same at speed and dashed the bike to the deceased Nanjegowda which resulting into accident.

41. It is pertinent to note that the relationship between speed, rash or negligent driving depends upon the place,time and condition of the road, where the accident has taken place. In the present case on perusal of contents of Ex.P.3 the spot mahazar discloses that the accident has taken place on Bangalore – Mysore state highway before Shambhulingeshwara tea stall, Kodishettipura village. The width of the road is shown as 28 feet on the place of occurrence. The contents of Ex.P.3 spot mahazar and Ex.P.4 and 5 the photographs of the place of occurrence discloses that the accident has occurred almost in the center of the road i.e., 12 feet distance from the edge of the road. In the present case, a perusal of evidence of PW.2 and 3 the eye witnesses of the

accident discloses that they have given unshaken evidence to the effect that at the time of accident accused has ride the bike at speed and dashed the bike to the deceased which resulting into accident.

42. It is pertinent to note that the accused being the rider of the bike driving the same on a state highway is expected to drive the same carefully. Accused being a rider of the bike driving the same on state highway is duty bound to drive the same exercising reasonable care and precaution to guard against the injuries to other persons who are also using the road. An imperative duty is cast on the accused to ride the bike carefully by exercising reasonable and proper care and precaution on the state highway.

43. In the present case evidence on record discloses that the accused being the rider of the bike has not only driven the same on a public road at high speed but also dashed the bike to the deceased who was proceeded by walk on the same direction and dragged the deceased at the distance of 20 feet resulting into accident and the death of deceased Nanjegowda. The very fact that the accused has ride the bike at high speed and dashed the bike to the deceased resulting into accident certainly amounts to both rash and negligent driving on the part of the accused.

44. A perusal of the contents of Ex.P.3 spot mahazar and Ex.P.6 and 7 photographs of the offending bike and the contents of Ex.P.10 IMV report and evidence of PW.5 IMV inspector discloses

that as a result of accident front wheel guard, right side rear view mirror, head light were damaged. The very fact that in the accident the front portion of the offending bike was extensively damaged supports the case of the prosecution that at the time of accident the accused was riding the offending bike at speed and dashed the offending bike to the deceased.

45. In a decision reported between **State of Karnataka by K.R.Sagara Police v/s Akram Pasha reported in ILR 2007 Kar.4120** the Hon'ble High Court has held that,

“In a road accident when prosecution materials indicates rash and negligent act of the rider of the vehicle, the burden is on the rider of that vehicle to show that he was not at fault. If the driver disputes his rash and negligent driving the manner in which the accident took place he has to show in what other manner the incident had taken place if the accused fails to avail opportunity to him under section 313 of Cr.P.C. by explaining his version of the incident, court will have no option but to accept the version of the prosecution to the extent it proved.

46. In the present case on hand, prosecution through the contents of Ex.P.2, the first information statement, Ex.P.3 spot mahazar, Ex.P.10 IMV report and through evidence of PW.2 and 3, the first informant and eye witnesses of the accident has proved that the accident has occurred only due to rash and negligent riding of the offending bike by accused. In the present case

accused has disputed the accusation of rash and negligent riding made against him. However while recording the statement of the accused under section 313 of Cr.P.C. the accused has furnished explanation to show how the accident has taken place. But that explanation given by the accused is in no way helpful to his defense to cross-examination of PW.2 and 3. Mere explanation while recording statement under section 313 of Cr.P.C. has no sanctity in the eyes of law. On the other hand accused himself examined as DW.1 but in his chief-examination he has only spoken with respect to validity of the driving license he has not spoken and not deposed with respect to the explanation as stated in the 313 statement. I hold that this court has accept the version of the prosecution case to the effect that the accident has occurred only due to culpable rash and negligent driving of the accused.

47.The learned defense counsel has argued that PW.2 and 3 who have supported the prosecution case is the residence of the same village to which the accused belonged and they are interested witness of the present case, hence their evidence cannot be accepted on its face value. The learned defense counsel further argued that since the evidence of PW.2 and 3 the interested witnesses is not corroborated by any other independent witnesses accused is entitled for benefit of doubt.

48. However it is pertinent note that the Apex court of land in a decision reported between **Dalbir Kaur vs State of Punjab**

reported in AIR 1977 SC 472 dealing with the meaning of the term “interested” has held that it postulate that the person concerned must have some direct interest in seeing that the accused person is somehow or other convicted because he has some animus against the accused. The Apex court of the land in another ruling reported between **Dalip Singh vs State of Punjab reported in AIR 1953 SC 364** has held that a witness is independent, unless he springs from a source likely to be tainted. It is further held that the witness is tainted only if the witness has reason or motive for falsely implicating the accused.

49. In the present case in hand a perusal of evidence of PW.2 and 3 examined as eyewitnesses of the accident discloses that they are having no reason or motive to falsely implicated the accused and they are having no reason to get the accused convicted and have no animus against the accused. That being the case mere fact that PW.2 and 3 belongs to the same village to which the deceased belonged cannot be considered as a ground to brand PW.2 and 3 as interested witness. Hence, the argument of the learned counsel for the defense that PW.2 and 3 are the interested witnesses and hence their evidence has to be disbelieved cannot be accepted.

50. The learned counsel for the defense has further argued that the evidence of PW.2 and 3 with regard to the alleged rash and negligent riding of the accused is not corroborated by any

independent witness i.e., PW.1 and hence it is not safe to place reliance on the uncorroborated evidence of PW.2 and 3. No doubt PW.1 who is said to be the eye witness has turned hostile with respect to rash and negligent riding of the rider of the bike by the accused. But in the cross-examination she has admitted that she was running Sri.Shambhulingeshwara tea stall where the place of occurrence. Immediately after the accident she rushed to the spot and attended the deceased.

51.By keeping in mind the evidence of PW.1 to 3 it is pertinent to note that under section 134 of Evidence Act, no particular number of witnesses shall in any case be required for proof of any fact. The Apex court of the land in a score of decisions has repeatedly stated that it is weight of the evidence and not number of witnesses which court ought to consider. The Apex court of the land repeatedly ruled that it is the quality not the quantity of the evidence which matters. The Apex court of the land has held that if the evidence of the single witness produced on record is credit worthy there is no question of extending benefit of doubt to the accused on the ground that the evidence of a single witness is not corroborated.

52. In the light of the observations made by the Apex court of the land in the above cited decisions, a perusal of the evidence on record discloses that admittedly PW.2 who has lodged the first information statement before the police pertaining to the alleged

accident was the eye witness of the accident. PW.3 also one of the eye witness who was accompanied with PW.2 also spoken regarding the accident. PW.2 and 3 have given trustworthy evidence supporting the prosecution case with regard to rash and negligent riding of the accused resulting into accident and death of Nanjegowda. Considering the fact that the in cross-examination of PW.2 and 3 no materials were elicited to disbelieve their evidence and their credibility has been impeached and they have with stood the test of cross-examination successfully, I hold that their evidence cannot be discarded only on the ground that their evidence was not corroborated by evidence of PW.1 who is another eye witness who has turned hostile to the case of the prosecution.

53.PW.2 and 3 in their cross-examination to a question put to them have stated that the offending bike was going on the road behind the KSRTC bus and also stated that after the accident the offending bike dashed against the hind portion of the KSRTC bus and then the rider of the bike fell down and sustained the injuries. The learned defense counsel has high lighted these points and argued that PW.2 and 3 was not an eye witness of the accident and further argued that the very fact that after the alleged accident the rider of the bike lost control over the bike and suddenly applied the brake and dashed against the KSRTC bus. These facts high lighted by the learned counsel for the defense.

According to counsel for the accused it was not driven at speed by the rider of the bike.

54. However it is also pertinent to note that during the trial in the cross-examination of PW.2 and 3, their presence at the place of occurrence and witnessing the accident was not disputed by the defense hence, mere fact that PW.2 and 3 in their evidence has stated that they stood by the side of the tea stall and chat with each other as such due to the standing trees and plants they could not witness the accident does not hold good. With regard to this aspect speedy riding of the offending bike by the accused the very fact that in the accident the offending bike was damaged supports the case of the prosecution that the vehicle was driven at speed, the injuries sustained to the deceased Nanjegowda also reflects the rashness and negligent riding of the rider of the motor bike. The rider of the motor bike also sustained injuries to his hand, then he shifted to hospital in an ambulance for treatment. During the course of trial also the accused appeared before the court with hand bag as suggested by the doctor. These aspects reflects the rash and negligent riding of the rider of the motor bike. The defense as stated above cannot be a conclusive proof to come to the conclusion that the offending bike was not ridden at speed.

55. The learned defense counsel in his argument has pointed out some discrepancy in the evidence of PW.2 and 3 with regard to

place where the first informant statement was written and their presence at the time of accident. I have perused the same. The discrepancy as pointed out is not material to disbelieve the case of the prosecution.

56.A perusal of contents of Ex.P.10 IMV report and evidence of PW.5 IMV inspector discloses that the accident has not occurred due to the mechanical defect of the offending bike which involved in the accident. A perusal of the cross-examination of PW.4 IMV inspector discloses that in his cross-examination no materials were elicited to disbelieve his evidence with regard to the damages found on the front portion of the offending bike rode by the accused and also with regard to his finding to the effect that the accident has not occurred due to the mechanical defect of the vehicle involved in the accident. The contents of Ex.P.10 IMV report rules out the chances of accident occurring due to the mechanical defects of the vehicle involved in an accident. In the cross-examination PW.5 has opined that if any other vehicle dashed against the bike the damages as shown in Ex.P.10 may occur. It is further stated that if any vehicle fell down and dragged any person or vehicle scratches may or may not found in the vehicle. These two suggestions are in no way helpful to the accused to extend the benefit of doubt.

57. By perusing the oral and documentary evidence produced on record, I hold that the prosecution has proved the 3rd ingredient

beyond reasonable doubt to the effect that the accident has occurred only due to rash and negligent riding of the bike by the accused.

58. With regard to the 4th ingredient pertaining to death of Nanjegowda is concerned, a perusal of evidence on record discloses that Ex.P.8 inquest mahazar of the deceased was marked with consent of the defence. Ex.P.9 P.M. report of the deceased marked through the doctor who conducted the post Mortem and also prepared the report. P.M. report and inquest mahazar discloses that the death was caused as a result of injuries sustained in road traffic accident. In a P.M. report the cause for death has clearly noted that due to severe hemorrhage and shock due to grievous injury to vital organ, left lung, heart and brain and left leg, vessels the accident occurred.

59. During the cross-examination the doctor who conducted the P.M. report who has also deposed before the court as PW.4 has clearly denied that the fracture and injuries to lungs, heart and brain as shown in the Ex.P.9 only occurred when the height of the vehicle equivalent to lungs, heart and brain, contact with force impact those injuries occurred, but in his further answer PW.4 has categorically stated that if any vehicle which is in high speed and contact the lungs, heart and brain, then those injuries may occur. Further he admits that the fracture of 8th and 5th ribs may occur when the broad surface of the object contact with such ribs.

But it is answered with respect to the circular object, PW.4 has clearly stated that there is no rules and procedure if any circular object contact with any human body the scar or mark of that circular object may found. Further it is stated that due to that circular object contact of the human body direct or indirect injury may occur. If direct injury occurred due to the contact of that circular object in that particular part of the body the mark of the circular object may found. But it is categorically stated by PW.4 that no circular object mark found on a body of the deceased at the time of postmortem. It is further admitted that if broad surface of the vehicle contact with human body then the injuries as shown in the Ex.P.9 may occur. But he categorically denied that if the bike hit the human body the injuries as shown in Ex.P.9 not occurred. By keeping in mind the entire chief examination and cross-examination of PW.4 as well as the offending vehicle involved in the accident i.e., Ex.P.6 and 7 photos itself shows that the front portion of the bike is having circular object i.e., front head light and also mudguard may cause injury as shown in Ex.P.9. Apart from that on perusal of the P.F as well as the IMV report it establishes that the offending bike is Royal Enfield motor cycle with gear. As per the copy of the registration certificate and also the policy copy reflects that the cubic capacity of the vehicle 350 and gross weight of the vehicle is 180kg. By considering the nature of the vehicle definitely if that offending vehicle hit the

deceased the injuries as shown in Ex.P.9 would have occur. As per Ex.P.10 front wheel guard, right side rear view mirror, head light damage in an accident. As per the police record and evidence of PW.2 and 3 after the accident the offending bike dragged the body of the deceased at the instance of 20 feet. It shows the impact of the vehicle on the body of the deceased and the speed limit of the rider of the offending vehicle and also rash driving on the part of the accused. The evidence of PW.4 is supported the case of the prosecution to prove that the death of the deceased in a road traffic accident. The injuries as shown in Ex.P.9 also occurred due to hit by the bike which rode by the accused. The entire oral and documentary evidence reflects that the accused ride the bike at the time of the accident. His presence in a place of occurrence also not disputed. By perusing the evidence of produced on record, I hold that the prosecution has proved the 4th ingredient to the effect that as a consequence of rash and negligent riding of the offending bike by accused death of Nanjegowda was caused.

60. PW.6 the partly Investigation done by him in his cross-examination has stated that CW.1 lodged the complaint. The written complaint submitted by CW.1 when he was on duty on the alleged date of accident. He admits that the hand writing in the contents of the Ex.P.2 and signature are in different hand writing. Further he deposed that he never enquired about the author of the Ex.P.2 who has written that complaint. He never enquired who

has informed the contents of the Ex.P.2 to CW.1. He categorically denied that he has not drawn Ex.P.8 in a mortuary at Srirangapatana General Hospital. He further denied that he has prepared Ex.P.8 in a police station according to his whims and fancy in support of the case. He has further denied that he has not recorded the statement of the panch witnesses at inquest. He admitted that he has not get any information from the accused with respect to validity of driving license. Further he denied that he build up the record in support of the case of the complainant police. On careful perusal of the entire cross-examination no effective answer elicit from the moth of PW.6. On the date of accident PW.6 was on duty and received the complaint from CW.1 then registered the criminal case, prepared FIR, then submitted the same to the concerned jurisdictional court and to the higher officials of the police station. There is no rule the first informant shall prepare the first information statement in his handwriting or he has to prepare the complaint in his hand writing. PW.2 is a village rustic man. He was witnessed to the accident, as such on the date of accident itself he lodged the complaint. Mere the contents of complaint and signature of CW.1 differ in hand writing is insufficient to disbelieve the case of the prosecution. More over PW.6 is only to receive the complaint and lodge the FIR, then visited the mortuary and conducted inquest on body of the deceased. Thereafter handed over the entire record to PW.7 for

further investigation. The part of the work done by PW.6 is in accordance with the procedure. All the suggestions are categorically denied by the PW.6 with respect to the formalities followed by him. More over PW.6 is the official witness. There is no animus between the PW.6 and the accused to deposed falsely against the accused. PW.6 is having no reason or motive to falsely implicated the accused and he is having no reason to get the accused convicted. That being the case mere fact that PW.6 followed the procedure cannot be considered as a ground to brand PW.6 as interested witness in support the case of the prosecution. PW.6 is the official witness and no reason to depose against the accused.

61.PW.7 in the cross-examination also deposed in favour of the prosecution and denied the entire defense of the accused. He categorically admitted that he has not enquired about the eye witnesses with respect to the moving of KSRTC bus at the time of accident. Further he deposed that he enquired with the persons who were present at the time of the accident with respect to the KSRTC bus moved in a place of occurrence on the alleged date of accident. But all those persons informed him that no KSRTC bus was proceeded at the time of the accident in a place of occurrence. If really the KSRTC bus involved in the accident definitely the accused would have lodged the complaint against the driver of the KSRTC bus before the concerned police station or lodged the

complaint before the SP of Mandya or filed private complaint against the KSRTC bus before the jurisdictional magistrate court. No such attempt made by the accused. At the first time during the course of cross-examination of eye witness and PW.7 counsel for the accused has taken a defense with respect to the involvement of the KSRTC bus. Even the accused who deposed as DW.1 in his evidence also he has not deposed anything with respect to the involvement of the KSRTC bus in an accident. Except explanation in 313 statement about the KSRTC bus no other cogent, convincing and acceptable evidence available on record. Both the eye witnesses have categorically denied that the involvement of the KSRTC bus in an accident. More over Mysore – Bangalore state highway is normally busy road and more vehicles including KSRTC bus running from Mysore to Bangalore and Bangalore to Mysore but the involvement of the KSRTC bus in an accident to be proved by the accused in accordance with law. But in such efforts, no oral and documentary evidence available on record to believe the theory of the accused.

62. With respect to the mahazar even during the course of cross-examination PW.7 has admitted that no scratch mark on the place of accident with respect to the the accident. He has further admitted that no object and material recovered from the spot. Regarding that aspect PW.7 has clarified that on 07.12.2017 he visited the spot and drawn mahazar. As such no scratch mark or

any material or object available in a place of occurrence. At the time of investigation he never enquired about the relationship between the deceased and eye witnesses. But the relationship of the eye witnesses and deceased elicited from the mouth of the PW.2 and 3. They are the resident of Kodishettipura village and the deceased also the resident of same village. But according to PW.2 and 3 they are not related with the deceased. Regarding the offences alleged against the accused the presence of the eye witnesses at the spot when accident occurred plays a very important role. The relationship not required. According to PW.2 he had been to tea shop 30 minutes earlier to the accident. Thereafter remaining eye witnesses came to the spot. According to PW.3 he was a coolie by profession and he was attending the coolie work in a building construction, that building belongs to CW.3. After attending his coolie work from 8.00 a.m. to 5.30 p.m. he had been to the tea shop along with CW.3 for a cup of tea. By considering these aspects reflects in the cross-examination shows that both of them were present at the time of accident. The evidence of PW.7 is in corroboration with the evidence of PW.2 and 3 with respect to their presence in a place of occurrence as an eye witness regarding the rash and negligent riding on the part of the rider of the bike. Even though PW.7 has not enquired during the course of investigation with respect to the relationship between PW.2, 3 with the deceased is in no way fatal to the case of

the prosecution. PW.7 has further admitted that he never enquired with PW.2 and 3 from where they have been to the tea shop on the alleged date of accident. But regarding this aspect the learned counsel for the defence himself elicited from the mouth of PW.2 and 3. No enquiry with respect to the above said aspect during the course of enquiry by PW.7 is in no way fatal to the case of the prosecution. PW.7 has admitted that at Ex.P.3(d) it reflects the deceased was after crossing the road divider on Mysore – Bangalore state highway proceeded towards the other edge of the road. He further admitted that the accident occurred in the middle of the road. No doubt as per the sketch by the side of the road divider the accident occurred. But the width of the road is about 27 feet from Mysore towards Bangalore state highway, the width of the road is 27 feet and from Bangalore to Mysore state highway width is about 27 feet. In between that highway there is a road divider. The offending vehicle involved in the accident is a bike. The accident occurred at the distance of 12 feet from the edge of the footpath. Remaining 15 feet width of the road available to the accused to ride his motor bike. If the rider of the bike would have taken proper care and caution while riding the vehicle on a Mysore -Bangalore state highway definitely he would have avoid the accident. If reasonable care and caution taken by the accused definitely he would have avoid the accident. Being a rider of the bike driving the same on a state highway is expected

to ride the same carefully. The accused being the rider of the bike driving the same on the state highway is duty bound to drive the same by exercising with reasonable care and precaution to guard against the injuries to other persons who are also using the road. Mere the accident occurred in the middle of the Mysore – Bangalore state highway as shown in Ex.P.3 is insufficient to believe that no rash and negligent driving on the part of the accused.

63. PW.7 during the course of his cross-examination has categorically denied that even though the KSRTC bus dashed to the deceased in the middle of the road, thereby the accident occurred and the KSRTC bus fled from the spot, only with an intention to implicate the accused in a false case he filed the charge sheet against the accused. Further he has deposed that after the accident the accused fell on the road thereby he has also sustained injuries, it is elicited from the mouth of the accused during the course of investigation. He has further denied that he falsely shown the eye witnesses and pancha witnesses in the charge sheet even though they were not the eye witnesses. He categorically denied that he prepared Ex.P.3 in a police station in support of the case. All the suggestions are categorically denied by PW.7 with respect to recording of statement of the eye witnesses, drawn mahazar in the presence of panch witnesses. During the course of argument the learned counsel for the accused

has vehemently argued that the accused is the resident of Israel, he is not well versed with the local language, as such the police officials implicated the accused in an offence. But on careful perusal of entire evidence of PW.7 no way it is elicited from the mouth of the PW.7 what is the animus between PW.7 and the accused. On careful perusal of entire evidence of PW.7 with respect to the formalities followed by him during the course of investigation for the offences alleged against the accused, it is in no way discloses that he is having any reason or motive to falsely implicated the accused in a criminal case and he is having any reason to get the accused convicted. Mere submitted the charge sheet against the accused for the alleged offences as a investigation officer is insufficient to believe the version of the argument canvassed by the learned counsel for the accused.

64. In present case, by perusing the evidence produce on record by prosecution to prove the accusation leveled against accused the entire circumstances may be construed on whole are as follows,

1. The contents of Ex.P. 2 first information statement and the evidence of PW.2 & 3, the first informant eye witness who are natural and probable eye witnesses of the incident who have given cogent, consistent and convincing evidence about identity of accused as the rider of the offending bike and also with regard to rash and negligent riding of the offending bike by accused resulting into accident.

2. No mechanical fault in the offending bike driven by the accused involved in the accident was noticed.
3. No case of error of judgement has been made by the accused.
4. Accused has not offered proper explanation at all as to how the accident has taken place.

65. By perusing the the oral and documentary evidence produce on record and over all assessment of the same, I hold that the prosecution by way of cogent, convincing and consistent evidence has proved that the accused being the rider of the bike bearing Reg. No. HR-26-BQ-3932 has driven the same at high speed in a rash and negligent manner from the side of Bangalore towards Mysore on 6/12/2017 at about 6.45 PM. On Bangalore-Mysore State High way before Sri Shambulingeswara tea stall, Kodishettyapura village and dashed the offending bike to the deceased Nanjegowda going in the same direction resulting in to accident as a consequence of which Nangegowda has sustained injuries and succumbed to the injuries.

66. By perusing the evidence on record and over all the assessment of the same, I found accused guilty for the offences punishable under section 279 and 304(A) of IPC. In view of the above said discussion, I answer point No.1 and 2 in the Affirmative.

67. **Point No.3:** In this point the prosecution has to prove that the accused has no Indian valid and effective driving license

to ride the bike at the material time of accident thereby the accused committed the offence punishable under section 181 of I.M.V Act.

68.Regarding this aspect the prosecution has examined the investigating officer as PW.7 and he has deposed that he has submitted representation to the RTO official as per Ex.P.12 and obtained the report and in that report the RTO endorsed that the accused had no valid and effective driving license at the material time of accident within the territory of India. As such the accused has committed the offence punishable under section 181 of IMV Act. Regarding this aspect accused himself deposed as DW.1 and got marked Ex.D.1. According to the accused he had valid International Driving Permit issued by the State of Israel and that driving license valid from 07.12.2017 till 06.12.2018. That International Driving Permit got marked as Ex.D.1. On careful perusal of Ex.D.1 the single sheet of the license reflects that it is nothing but International Driving Permit issued on 07.12.2017 and issued by Ministry of Transport, Israel, valid until 06.12.2018. The International Driving Permit number shown as 21708697. The list of states which recognize the International Driving Permit according to the 1949 or the 1968 conventions on road traffic also reflects at Ex.D.1. In a list of states India is also one of the state. By keeping in mind the above said aspect at Ex.D.1 on careful perusal of the Conventions on road traffic 1949 reflects

that India is also one of the signatory to the above said conventions. On 19.09.1949 India has signed the conventions on road traffic. In a declaration and reservations India has declared that it has accepted the convention on road traffic 1949 subject to a declaration made in accordance with paragraph No.1 of Article -2 of the Convention. Excluding annexes 1 and 2 from its application of the convention. Another convention on road traffic 1968 India is also one of the signatory. By virtue of the 1949 and 1968 conventions on road traffic, no doubt International Driving Permit recognize within the territory of India. But at the same time as per International Driving Permit the holder of the license as per Article -41 of Convention complied the requirements for driving license. As per International Driving Permit (IDP) also called an International Driving License (IDL), is valid, required by law, identity document that allows the holder to drive a private motor vehicle in any country or jurisdiction that recognizes IDPs. **To be valid, the IDP must be accompanied by valid driving license issued in the holders country of Citizenship.** The IDP, which is slightly larger than a passport, is a multi language translation of the drivers license from issuing Nation, complete with photograph and vital statistics. No driver needs any International Drivers License to have recognized the driver license from his country or jurisdiction ratified by either 1949 Geneva or 1950 Vienna conventions. The convention on road

traffic, commonly known as the Vienna convention on road traffic is an international treaty designed to facilitate International Road Traffic and to increase road safety by establishing standard traffic rules among the contracting parties.

69. By considering the International Driving Permit it is crystal clear that it must be accompanied by a valid driving license issued in a holders country of citizenship. The accused is citizen of Israel. As such Ex.D.1 must be accompanied by valid driving license issued in the holders country of citizenship i.e., Israel. But Ex.D.1 not accompanied with valid driving license issued by the Israel country. Apart from that on perusal of the Article 41 of the Convention describes requirements for driving license are as follows:

1. Every driver of a motor vehicle must hold a driving license.
2. Driving licenses can be issued only after passing theoretical and practical exams which are regulated by each country or jurisdiction.
3. Contracting parties shall recognize as valid for driving in their territories.
 - a) Domestic driving license conforms to the provisions of annexe -6 to the convention.
 - b) International Driving Permit conforms to the provisions of annexe-7 to the convention, on condition that it is presented with the corresponding domestic driving license.
4. Driving license issued by a contracting party shall be recognized in the territory of another

contracting party until this territory becomes the place of normal residence of their holder.

5. The above said requirements not applied to learner driving licenses.

6. The period of validity of an International Driving Permit shall be either not more than three years after the date of issue or until the date of expire of the domestic driving license whichever is earlier.

7. Contracting parties may refuse to recognize the validity of the driving license for persons under 18 or for categories C, D, CE and DE under 21.

8. An International Driving Permit shall only be issued by the contracting party in whose territory the holder has their normal residence and that issue the domestic driving license or that recognized the driving license issued by another contracting party, it shall not be valid for use in that territory.

70. By considering the above said requirement it is crystal clear that the accused ought to have obtained domestic driving license from the Israel. The International Driving Permit must be accompanied by valid domestic driving license issued in the holders country of citizenship i.e., Israel. But the accused has not produced the domestic driving license issued by the Israel. Ex.D.1 not accompanied with the domestic driving license. As such it is crystal clear that the accused had no valid International Driving Permit at the material time of accident. If International Driving Permit accompanied with the domestic driving license then only

Ex.D.1 is valid in accordance with law. When Ex.D.1 is not accompanied with domestic driving license then Ex.D.1 has no sanctity in the eyes of law. More over Ex.D.1 written in Israel language. The translation of contents of Ex.D.1 also not produced by the accused or his counsel.

71. By considering the above said aspect again on careful reading of the Motor Vehicles Act 1988 as per sec.9 of the Act,

(1) Any person who is not for the time being disqualified for holding or obtaining the driving license may apply to the licensing authority having jurisdiction in the area-

(i) in which he ordinary resides or carries on business, or

(ii) in which the school or establishment referred to in section

12.from where he is receiving or has received instruction in driving a motor vehicle is situated.

For the issue to him of a driving license.

Corresponding Law: S.7(1) of Act IV of 1939

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

(3) No driving license shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test of competence to drive as may be prescribed by the central government.

Provided that: Where the application is for a driving license to drive a motor cycle or a

light motor vehicle, the licensing authority shall exempt the applicant from the test of competency prescribed under this subsection, if the licensing authority is satisfied,

a) (i) That the applicant has previously held a driving license and that the period between the date of expiry of that license and the date of such application does not exceed five years or

(ii) The applicant holds or as previously held a driving license issued under section 18 or

(iii) that the applicant holds a driving license issued by a competent authority of any country outside India.

72. On careful reading of the wordings as spelt out in sec.9 (3) (a)(iii), it is crystal clear that any person may apply to the licensing authority having jurisdiction in the area. Any person means a citizen of India or any foreigner. As per sec.9(1) the accused herein the resident of Israel is also covered within the meaning of any person. As per sec.9 (3)(a)(iii) even though the accused holds a driving license issued by competent authority of Israel in the form of Domestic driving license and also International Driving Permit, then it is the bounden duty of the accused to apply to the licensing authority within the territory of India and on such application the licensing authority within the territory of India also grant the driving license to the accused which holds good within the soil of the land. Only exemption

available to the accused after applying the driving license from the test of competency prescribed under the sub-section 9.

73. Even though the accused is having International Driving Permit he must and should have obtained the driving license from the concerned licensing authority within the territory of India which also signatory to the convention on road traffic 1949 or 1968. In the present case the accused has not produced the domestic driving license issued by the Israel along with International Driving Permit. He has also not applied the grant of driving license as per sec.9(3)(a)(iii) of Motor Vehicles Act 1988. By considering all these aspects this court is of the opinion that the accused had no valid and effective driving license to ride the motor cycle within the territory of India. As such the accused has committed the offence punishable under section 181 of Motor Vehicles Act.

74. As per International Driving Permit, license categories according to the 1968 convention applicable from 29.03.2011 with respect to motor cycle is as follows;

“The category and description of the vehicle i.e., motor cycles with cubic capacity not exceeding 125 cm and a power not exceeding 11KW (light motor cycles). Only with respect to the above said motor cycle with cubic capacity and power the International Driving Permit is applicable. On perusal of the the copy of the certificate of the registration with respect to the offending bike available in the

police record reflects that the class of vehicle shown as motor cycle and cubic capacity shown as 350. By considering the description of the vehicle as recognized in 1968 convention the cubic capacity of the motor cycle not exceeding 125cm³ but in the present case the offending vehicle cubic capacity is 350. By considering these aspects also Ex.D.1 not in accordance with the terms and conditions and license categories according to 1968 convention”.

75. With regard to the aspect of sentence is concerned in

Darbir Singh vs State of Hariyana reported in (2000) 5

SCC 82, the Apex court of land has held that provision of probation of offenders Act 1958 cannot be made applicable to the offence punishable under section 304(A) of IPC where the accused found guilty. In the said decision the court has held that,

“Bearing in mind the galloping trend in a road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of offence under section 304(A) of IPC as attracting the benevolent provisions of sec.4 of the P.O. Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of the automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly informed himself that he cannot afford to have single movement of laxity or inattentiveness when

his leg is on the pedal of the vehicle in locomotion. He cannot and should not taken 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 such death ensures he might not be convicted for the offence, and lastly that even if he is convicted he would be dealt with leniency 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 a 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.

76. Further in an another decision reported between **Ratan Singh vs State of Punjab reported in AIR 1990 SC 84** the Apex court of the land has held that:

“When a life has been lost and circumstances of the driving are rash no compassion required to be shown to the accused. Keeping in mind of the observation of the Hon'ble Supreme Court”.

77. With respect to the aspect of sentence under section 279 and 304(A) of I.P.C I have relied upon the ruling reported in **(2004) 4 Crimes 52 in between M.Nagaraju vs State**, in this ruling the Hon'ble High Court of Karnataka has clearly held that:

“ Evidence Act, 1872-Sections 4, 79, 85, 89, 105- Indian Penal Code, 1860 (IPC) –

Sections 279, 337, 338, 304A- Order of sentence – The offence under section 279 is a technical offence and it merges with the major offences like 304-A IPC therefore, separate sentence awarded by the courts below is incorrect and the same is liable to be set aside”.

78. By keeping in mind the observation as stated above the offences under section 279 is merges with the major offence like 304(A) of I.P.C. as such separate sentence under section 279 of I.P.C not necessary. By keeping in mind all these aspects and in view of the above said discussion, I answer point No.3 in the Affirmative.

79. Point no:4: In view of my findings on the point no.1 to 3 and the reasons assigned thereon, I proceed to pass the following:

O R D E R

Acting under section 255(2) of Cr.P.C the accused is hereby convicted for the offences punishable under section 279, 304(A) of I.P.C and sec.181 of M.V.Act 1988.

The accused is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- for the offence punishable under section 304(A) of I.P.C. In default of payment of fine the

accused is further ordered to undergo rigorous imprisonment for a period of four months.

The accused is sentenced to undergo imprisonment for a period of 2 months and to pay a fine of Rs.500/- for the offence punishable under section 181 of MV Act. In default of payment of fine the accused is further ordered to undergo imprisonment for a period of one month.

The sentences to run concurrently.

After depositing the fine amount, a sum of Rs.10,500/- shall be paid to the legal heir of deceased Nanjegowda.

Bail bond and surety bond of accused stands canceled.

(Dictated to the Stenographer on line computer and typed by her, corrected, signed and then pronounced by me in the open court on this the 12th day of April 2018.)

(G.S.Praseela Kumari)
Prl. Senior Civil Judge & JMFC
Srirangapatna.

:ANNEXURE:

List of Witness examined for the prosecution:

- PW.1 : Ratnamma
PW.2 : Srinivasa
PW.3 : Honnegowda
PW.4 : K.C.Keshav Rao
PW.5 : Sadrulla Shareef
PW.6 : Puneeth B.N
PW.7 : C.M.Ravindra

List of documents marked for the prosecution:

- Ex.P.1 : Statement of PW.1
Ex.P.2 : Complaint
Ex.P.2(a) : Signature of PW.2
Ex.P.2(b) : Signature of PW.6
Ex.P.3 : Spot mahazar
Ex.P.3(a) : Signature of PW.2
Ex.P.3(b) : Sketch
Ex.P.3(c) : Signature of PW.3
Ex.P.3(d) : Signature of PW.7
Ex.P.4 & 5 : Photograph of place of occurrence
Ex.P.6 & 7 : Photograph of offending bike
Ex.P.8 : Inquest mahazar
Ex.P.8(a) : Signature of PW.6
Ex.P.9 : P.M report

- Ex.P.9(a) : Signature of PW.4
Ex.P.9(b) : Signature of PW.6
Ex.P.10 : IMV report
Ex.P.10(a) : Signature of PW.5
Ex.P.10(b) : Signature of PW.7
Ex.P.11 : FIR
Ex.P.11(a) : Signature of PW.6
Ex.P.12 : Requisition
Ex.P.12(a) & (c) : Signature of PW.7
Ex.P.12(b) : Endorsement

List of material objects marked for the prosecution:NIL.

List of Witness examined for the defense:

DW.1 : Vasar Men Almog

List of documents marked for the defense:

Ex.D.1 : Driving license of accused.

Prl. Senior Civil Judge & JMFC
Srirangapattana.