

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRL REV P No.44 of 2022

Sri Krishna Nandi son of late Sudhir Nandi resident of village-Barpathari,
P.O. Barpathari, P.S. P.R. Bari, District- South Tripura (Age-31 years).

..... Petitioner(s)

V E R S U S

The State of Tripura, to be represented by the learned Public Prosecutor,
Hon'ble High Court of Tripura, Agartala.

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 20th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. D. Paul, learned counsel appearing for the
petitioner and also heard Mr. S. Debnath, learned Additional Public
Prosecutor appearing on behalf of the respondent-State.

[2] The instant petition has been filed by the petitioner-convict
against the judgment dated 29.06.2022 passed by the Sessions Judge, South
Tripura, Belonia in Criminal Appeal No.07 of 2022 modifying the order of
conviction of the petitioner dated 08.03.2022 passed by the Chief Judicial
Magistrate, South Tripura, Belonia in PRC.(SP) 01 of 2019 under Section
279 and 338 of Indian Penal Code (IPC, for short) and Section 187 of MV
Act.

[3] Brief facts are as under :

Case of the petitioner as revealed from the FIR is that on 18.11.2017 at about 2100 hours, the informant Sri Kartik Debnath along with his friend Sri Raju Debnath were standing and gossiping at outside the NH-44 road at Sagardhepa in front of Hrishyamukh road. The petitioner was driving the vehicle bearing registration No.TR03H-0375 (Alto Car-800) in rash and negligent manner and dashed both the victims. Resultantly, both the victims were injured and immediately shifted to Jolaibari CHC. The informant was admitted there but Raju Debnath was referred to Udaipur District Hospital in deteriorated condition. He was again shifted to GBP Hospital from Udaipur for better treatment. Subsequently, the informant lodged this instant case before O/C Baikhora police station for investigation.

[4] On the basis of the FIR, Police registered Baikhora P.S Case No.2017/BKR/075 under Sections 279, 388 & 427 of IPC. Subsequently, the investigation was started and after completion of investigation, the Investigating Officer filed charge sheet dated 30.11.2018 vide C/S No.71 of 2018 under Sections 279, 388 & 427 of IPC and Section 187 of M.V Act against the petitioner. After taking cognizance, charges were framed against the petitioner as he denied the charges and claimed to be tried.

[5] During trial the prosecution examined as many as 15 witnesses. The petitioner was examined under Section 313 of Cr.P.C as he denied the incriminating materials and also denied to adduce defence witnesses. The learned Chief Judicial Magistrate, South Tripura, Belonia vide judgment dated 08.03.2022 convicted the petitioner under Sections 279 and 388 of IPC and Section 187 of M.V. Act and sentenced the petitioner to suffer S.I. for ten days and also sentenced him to suffer S.I. for six months and to pay fine of Rs.1,000/- for the offence punishable under Section 338 of IPC, and in default to suffer S.I. for ten days and was further sentenced to pay fine of Rs.500/- for the offence punishable under Section 187 of M.V Act, and in default to suffer for five days.

[6] The petitioner preferred Criminal Appeal No.07 of 2022 against the judgment dated 08.03.2022 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia to the learned Sessions Judge, South Tripura, Belonia. The learned Sessions Judge dismissed the appeal and modified the sentence to the effect that the petitioner would suffer S.I. for one month and pay fine of Rs.1,000/- for the offence punishable under Section 279 of IPC and in default to suffer S.I. for three months and to pay fine of Rs.1,000/- for the offence punishable under Section 338 of IPC and in default to suffer S.I. for 15 days and was further

sentenced to pay a fine of Rs.500/- for the offence punishable under Section 187 of M.V. Act and in default to suffer S.I. for five days.

[7] Aggrieved by the order of the learned Sessions Judge, the petitioner filed this present appeal seeking the following reliefs :

“(i) Admit the instant Criminal Revision petition U/S 397(1) read with Section 401 of Cr.P.C. against the judgment dated 29.06.2022 passed by the learned Sessions Judge, South Tripura, Belonia;

(ii) Issue notice upon the respondents;

(iii) Allow the Criminal Revision petition U/S 397(1) read with Section 401 of Cr.P.C. by setting aside the judgment dated 29.06.2022, passed by the learned Sessions Judge, South Tripura, Belonia and setting aside the judgment dated 08.03.2022 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia;

(iv) Pass any further order/orders as this Hon’ble High Court considered fit and proper.”

[8] Mr. Mr. D. Paul, learned counsel appearing for the petitioner contends that the petitioner did not commit the offence as he was not part of rash and negligent driving of the offending vehicle. He further stated that at the stage of deposition, none of the prosecution witnesses identified the petitioner and subsequently as an afterthought the name of the petitioner was included in the FIR and was falsely implicated. Counsel further contends that there are discrepancies in the averments made by the prosecution witnesses and further contends that the petitioner is a poor man and does not have sufficient means to run his livelihood and also there is no criminal antecedent against him and is not in a position to suffer imprisonment for no fault of his own. Counsel for the petitioner further

asserts that none of the injured persons stated anything about the bicycle and had it not been an afterthought, they would have at least mentioned that there was a bicycle which was being driven by the driver recklessly and dashed us. Subsequently, he prays for setting aside the judgment dated 29.06.2022 passed by the Sessions Judge, South Tripura, Belonia in Criminal Appeal No.07 of 2022 modifying the order of conviction of the petitioner dated 08.03.2022 passed by the Chief Judicial Magistrate, South Tripura, Belonia in PRC.(SP) 01 of 2019.

[9] On the other hand, Mr. S. Debnath, learned Additional Public Prosecutor contends that in a revision petition entering into the evidence is not permissible. However, he contends that P.W.2 has specifically stated that the said vehicle was driven by the petitioner and the witness has identified the accused person after the accident. He submits that prior to the accident, P.W.2 has seen the petitioner driving the vehicle and after the accident, he became unconscious and regained his sense in the hospital. He submits that even P.W.6 also identified the petitioner driving the vehicle and, therefore, the discrepancies cited by the counsel for the petitioner are very minor.

[10] After hearing the learned counsel for the respective parties, the appeal is allowed to the extent that the petitioner shall pay fine of Rs.1,000/- for the offence punishable under Section 279 of IPC and to pay

fine of Rs.1,000/- for the offence punishable under Section 338 of IPC and he is further directed to pay fine of Rs.500/- for the offence under Section 187 of the M.V. Act.

[11] Accordingly, the present petition is partly allowed and the judgment dated 29.06.2022, passed by the learned Sessions Judge, South Tripura, Belonia and the judgment dated 08.03.2022 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia are modified to the extent indicated above. Send down the LCRs forthwith.

[12] Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)



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