

**HIGH COURT OF TRIPURA
AGARTALA
CRL. REV P NO.54 of 2022**

Sri Debabrata Banik,
S/o. Sri Amalendu Banik,
R/O. Vill:- I.C. Nagar, Madhya Para,
P.S.- Belonia, South Tripura.

..... **Petitioner(s)**

Vs.

The State of Tripura.

..... **Respondent(s)**

For the Petitioner(s) : Mr. R.G. Chakraborty, Advocate.

For the Respondent(s) : Mr. S. Ghosh, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 14.07.2023

Whether fit for reporting : NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER

This present revision petition has been filed under Section 401 read with Section 397 of Cr.P.C. to examine the legality, validity, and propriety of the impugned judgment dated 17.06.2020 passed by the learned CJM, South Tripura District Belonia in case No. PRC(SP)38 of 2016, wherein the learned Trial Court convicted the petitioner under Section 279/338 of IPC and under Section 187 of M.V. Act and also legality, validity, modifying, and propriety of the impugned judgment dated 24.08.2022 passed by the learned Sessions Judge, South Tripura, District, Belonia in Crl. Appeal No.01 of 2021.

2. The brief fact of this case is that on 10.12.2015 at about 10 am, victim Nantu Sarkar was proceeding towards his paddy field, and when he reached near the 'pakka' bridge adjacent to the

house of one Prankrishna Baidya, Belonia-Barpathari road, at that time, the vehicle bearing No.TR-08-0279 being driven by the petitioner came with excessive speed and when it tried to overtake one tipper truck, it dashed him. After the accident, the petitioner fled away from the spot with his vehicle. Due to the accident, the victim sustained injuries on his waist, leg, and other parts of his body and nearby people shifted him to Belonia Hospital, and from there he was referred to TMC, Hapania Hospital, Agartala for better treatment. It is also alleged that when the informant along with one Nripen Datta chased the offending vehicle, they found it near Vivekananda Nursery. They tried to stop the vehicle but the convict-appellant dashed their motorcycle and the informant received injuries on his right hand. It is further alleged that the accident took place due to rash and negligent driving of the driver of the offending vehicle.

3. Based on the FIR, police registered Belonia P.S. Case No. 2015/BLN/150 under Section 279/338 of IPC and Section 187 of M.V. Act. After investigation finding prima facie case, S.I. Ranjan Biswas filed charge sheet dated 31.05.2016 vide C/S No. 29/2016 under Section 279 and 338 of IPC and Section 187 of M.V. Act against accused Sri Debabrata Banik being driver-cum-owner of the offending vehicle bearing No. TR-08-0279 (*Maruti Alto 800*).

After taking cognizance and supplying the prosecution copies to the accused person, charges under Section 279 and 338 of IPC and Section 187 of M.V. Act have been framed against accused Sri Debabrata Banik. The accused-appellant denied the charges and claimed to be tried.

4. Learned Chief Judicial Magistrate, South Tripura, Belonia after evaluating the evidence, convicted the appellant for the offence and sentenced him to suffer R.I. for 2(two) months for the offence punishable under Section 279 of IPC and to suffer R.I. for 1(one) year

for the offence punishable under Section 338 of IPC. He was further sentenced to pay a fine of Rs. 500/- for the offence committed under Section 187 of M.V. Act, in default, to suffer S.I. for five days with further finding that both the sentences shall run concurrently.

5. Being highly aggrieved and dissatisfied with the said impugned judgment and order of conviction and sentence dated 17.06.2016 passed by the learned CJM, South Tripura Belonia in case No.PRC(SP)38 of 2016, the petitioner preferred an appeal before the learned Sessions Judge, South Tripura District, Belonia in Criminal Appeal No.01 of 2021. The learned Appellate Court modified the conviction under Section 338 of IPC and sentenced him to suffer R.I. for 6(six) months instead of suffering RI for 1(one) year. But the learned Appellate Court stated that there is no scope for any interference of conviction made under Section 279 of IPC and Section 187 of MV Act.

6. Being aggrieved by the said impugned Judgment and Order dated 24.08.2022 passed by the learned Appellate Court, the petitioner has preferred this present revision petition and prayed for the following reliefs:-

*" a. Admit this revision petition;
b. Call for records;
c. Issue Notice upon the respondents and
d. After hearing of the parties and on perusal of the evidence on record be pleased enough to set aside/quash the impugned judgment and order dated 24.08.2022 passed by the learned Sessions Judge, South Tripura, Belonia in CrI. Appeal No.01 of 2021 wherein and whereby the Ld. Appellate Court has dismissed the appeal and arbitrarily upholding the orders of conviction and sentence dated 17.06.2020 passed by the Ld. CJM Belonia, South Tripura in Case No.PRC(SP)38 of 2016 wherein the learned Ld. Trial Court convicted the petitioner under Section 279/338 of IPC and section 187 of MV Act and Ld. Appellate Court finds that Ld. Trial Court has rightly given the judgment and there is no scope for any interference but he Ld. Appellate Court sentencing him to suffer RI for 6(six) months.*

AND

To pass any other appropriate order/orders as your Lordship may deem fit and proper for the interest of justice."

7. Heard Mr. R.G. Chakraborty, learned counsel appearing for the petitioner as well as Mr. S. Ghosh, learned Addl. P.P., appearing for the State-respondent.

8. Mr. R.G. Chakraborty, learned counsel appearing for the petitioner submitted that the findings of the learned Courts below are unreasonable, arbitrary, and unwarranted in law and facts and as such it is not tenable in the eye of the law and is liable to be quashed and set aside. Learned counsel has casted a shadow of doubt over the deposition of prosecution witnesses and urged this Court to allow this appeal.

9. On the other hand, Mr. S. Ghosh, learned Addl. P.P. appearing for the State-respondent stated that the impugned Judgment as passed by the Court below is just and proper and needs no interference.

10. Heard both sides and perused the evidence on record.

11. On careful perusal of the evidence on record, it is evident from the investigation reports the accident has taken place on a bridge and it is a '*pakka*' permanent bridge with a dimension. The vehicle driven by the petitioner had overtaken a tripper truck and the crime vehicle had hit the complainant and caused injuries. Admittedly when it is a bridge, overtaking is strictly prohibited and since the petitioner had overtaken and caused the accident, it cannot be said that intentionally the petitioner had caused injuries to the complainant. But an accident is an accident which happens unintentionally. However, since the petitioner has not taken proper care, and was not supposed to overtake the vehicle on a bridge, this Court gives a finding against the petitioner. However, as per the petitioner, the complainant has been awarded, a sufficient amount under the Motor Vehicle Accident Compensation Act, and more so Section 338 and 279 of IPC give a provision for punishment of sentence or fine or with both and since the antecedents of the petitioner do not indicate any rash and negligent driving or any criminal background, this Court takes a lenient view and modifies the impugned order and impose a fine of Rs.1000/- on the petitioner for the offence committed as indicated above.

12. With the above modification of the impugned Judgment and Order, this present revision petition stands disposed of. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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