

HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) No.50 of 2024

Sri Jiban Krishna Debnath @ Jiban Debnath
son of Sri Haradhan Debnath, resident of Tepania,
P.S.- R. K. Pur, District-Gomati, Tripura,
aged about 45 years.

.....*Appellant(s)*.

V E R S U S

The State of Tripura,

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

For Appellant(s) : Mr. Abir Baran, Advocate.

For Respondent(s) : Mr. Rajib Saha, Addl. P.P.

Date of hearing
& delivery of judgment : **29.11.2024**
Whether fit for reporting : **Yes**

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER (ORAL)

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the impugned judgment & order of sentence dated 15.07.2024 passed by the Court of Ld. Addl. Sessions Judge, Sepahijala District, Bishalgarh, Tripura, in connection with case No.ST(T-II) 25 of 2019, whereby and whereunder Ld. Addl. Sessions Judge, Sepahijala District, Bishalgarh, Tripura, convicted the appellant under Section 304 Part-II of the IPC, 1860 and sentenced him to suffer rigorous imprisonment for a period of 10(ten) years and to pay a fine of Rs.50,000/- with default stipulation.

[2] The facts of the case may be elucidated from the judgment rendered by Ld. Trial Court. On 22/06/2015 at about 1130 hours one Samir

Biswas, son-in-law of the informant Sri Rabindra Biswas, was returning from the house of the informant situated at Nalchhar towards his house at Pratapgarh, Agartala and in between 1130 hours and 1430 hours while he reached at Pushkarbari area at Bishramganj, one bus bearing No.TR-01-A-1297 coming from the opposite direction from Agartala with high speed had at first dashed one scooty bearing No.TR-01-W-7366 and dragged the scooty along with its rider up to a Bolero Pick Up vehicle bearing No. TR-01-V-1664 and again dashed the same. Due to such accident, the rider of the scooty died on spot and the father-in-law of the victim lodged an FIR with the O/C Bishramganj PS.

[3] On the basis of the written FIR of the informant, the O/C Bishramganj PS registered a case vide Bishramganj PS case No. 2015 BRG 036 dated 22.06.2015, under Section 304 (Part-II) of the IPC, 1860 and Section 187 of the Motor Vehicles Act, 1988 against the accused person and the investigation was endorsed to SI Gour Chandra Roy and on his transfer the case was re-endorsed to SI Satya Gopal Biswas of Bishramganj PS to complete the investigation.

[4] On conclusion of investigation, I/O filed the charge sheet vide No. 41 of 2015 dated 28.10.2015 under Section 304 (Part-II) of IPC and Section 187 of the Motor Vehicles Act against the accused person, namely Jiban Krishna Debnath before the Court.

[5] After commitment, the records were sent to the court of Ld. Addl. Sessions Judge, Sepahijala Judicial District, Bishalgarh, Tripura. After perusal of the records, Ld. Trial Court framed charge against the accused person under Section 304(Part-II) of IPC on 01.03.2021 to which the accused person had pleaded not guilty.

[6] During the course of trial, prosecution had examined 17 witnesses altogether and exhibited certain documents. On conclusion of recording of evidence of the prosecution witnesses, the accused person was examined under Section 313(1)(b) of the Code of Civil Procedure, 1908. The defense i.e. the accused declined to adduce any defence evidence from his side. Thereafter, having heard the learned counsel appearing for the parties, Ld. Trial Judge convicted and sentenced the accused person under Section 304(Part-II) of IPC and sentenced him to suffer rigorous imprisonment for 10(ten) years with a fine of Rs.50,000/- (Rupees fifty thousand) and in default to suffer further rigorous imprisonment for 1(one) year. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and sentence, as stated above, the accused-appellant has preferred the instant appeal before this court.

[7] We have heard Mr. Abir Baran, learned counsel appearing for the accused-appellant and Mr. Rajib Saha, learned Addl. P.P. appearing for the respondent-State.

[8] Mr. Abir Baran, learned counsel for the appellant has taken us to the evidence adduced by the prosecution witnesses. During the course of his argument Mr. Abir Baran, learned counsel has submitted that learned trial judge could not explain the proper reasoning as to how the ingredient of Section 304(Part-II) was attracted. According to learned counsel, there is no evidence to substantiate that the accused-appellant had any knowledge that a scooty would be at the place of occurrence i.e. at Pushkarbari at Bishramganj area at the time of accident. As such, the conviction and sentence under Section 304(Part-II), according to learned counsel, does not lie against the appellant.

[9] On the other hand, Mr. Rajib Saha, learned Addl. PP has submitted that though the accused-appellant had no knowledge regarding presence of any scooty at the place of occurrence, but he had not taken any caution which ought to have been taken and he has defended the conviction and sentence passed by learned trial court on the basis of deposition of PW-1, PW-2, PW-3, PW-5, PW-6 and PW-7.

[10] Keeping in mind the submissions advanced by learned counsel appearing for the parties, we have meticulously scrutinized the evidence of PW-1, PW-2, PW-3, PW-5, PW-6 and PW-7.

[11] PW-1 is the complainant of the case, who lodged the FIR. He is not the eye-witness to the accident rather a hearsay witness. He had only heard that a bus bearing number TR-01-A-1297 had dashed his son-in-law while he was travelling to Pratapgarh, Agartala towards his own house on 22.06.2015 at about 1130 hours resulting to his death on the spot. He has deposed that after the accident the driver had fled away.

[12] PW-2 is the driver of the Bolero Pick Up vehicle bearing number TR-01-A-1664. He deposed that he was moving towards Udaipur from Agartala and when it reached at Pushkarpara, Bishramganj, he had seen the bus bearing No. TR-01-A-1297 (red coloured) which had dashed one scooty from the front side while it was moving from Agartala towards Udaipur. The scooty had fallen under the bus vehicle and then the offending vehicle dashed his (accused-appellant) own vehicle. He further deposed that at the time of accident it was raining and the driver fled away.

During the course of cross-examination, PW-2, the driver of the Bolero Pick Up vehicle, had stated that he had not submitted his vehicular documents including his Driving License.

[13] PW-3 is the assistant of the bus vehicle. He had stated that suddenly he heard a sound and after coming down from the vehicle he found an accident took place between their bus and a scooty. The scooty was stuck to the right side of the bus and one person was bleeding in injured condition.

In his cross examination, he has admitted that he was never examined by the Investigating Officer.

[14] PW-4 was the registered owner of the vehicle bearing No. TR-01-A-1297 (mini bus). He deposed that he could not say how and for whose fault the accident took place.

[15] PW-5 Smt. Anjali Das deposed that it was raining when she was tethering her cow on the road side. Suddenly, she heard a loud sound and found one bus coming from Agartala side towards Udaipur dashed one scooty coming from the opposite direction and dragged the same and again dashed one Bolero Pick-up vehicle coming from the opposite direction. The rider of the scooty was under the bus vehicle and his stomach and other organs were visible due to injury sustained by him. When the passengers of the vehicle were coming down, the driver of the bus had fled away in the jungle in front of her.

In course of her cross-examination, she stated that she could not say as to whether the bus was being driven with high speed or not, as she did not witness the accident.

[16] PW-6 Mainal Hossain in his chief examination had stated that in the year 2015 at about 1030 hours they departed from Kakraban, Udaipur for Agartala availing a Bolero Pick Up vehicle bearing number TR-01-A-1664 and when they reached at Pushkarbari, Bishramganj, suddenly a bus bearing No. TR-01-A-1297 came from the opposite direction in the wrong side with high speed had at first dashed one scooty and dragged the scooty by

its right wheel up to their vehicle and subsequently dashed their vehicle. He had further deposed that the rider of the scooty was smashed under the wheel of the bus. He further stated that he also sustained injury due to the accident.

In course of his cross-examination, PW-6 had stated that the driver of the Bolero vehicle Palash Das and another person of that vehicle Habil Miah are from the zone of his locality.

[17] PW-7 Habil Miah during his chief examination had deposed that in the year 2015 at about 1030 hours they departed from Udaipur for Agartala availing a Bolero Pick Up vehicle bearing number TR-0B-1664 and when they reached at Pushkarbari, Bishramganj, suddenly a bus coming from the opposite direction with high speed had at first dashed one scooty and dragged the scooty up to their vehicle with the rider of the scooty and thereafter dashed their vehicle. He further deposed that the rider of the scooty was smashed under the wheel of the bus. He also stated that he had sustained injury due to the accident. He had seen the driver of the bus. After the accident he came down from the bus and fled away in the jungle.

[18] The Investigating Officers were examined as PW-16 and PW-17. They have reiterated the contents of the charge-sheet.

[19] We have perused the provision of Section 304 of IPC and on perusal it is apparent that Section 304 of IPC contains two parts. The first part relates to an act by which the death is caused with the intention of causing death, or of causing such bodily injury as is likely to cause death. The second part speaks of an act which is done with the knowledge that it is likely to cause death but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

[20] Hon'ble Supreme Court of India in *Alister Anthony Pareira vs State of Maharashtra*, (2012) 2 SCC 648: AIR 2012 SC 3802 had

an opportunity to deal with the various features of Section 304 of IPC. While explaining the ingredients and scope of punishment under any of the parts of Section 304 of IPC, it was observed thus;

“27. The above Section is in two parts. Although the section does not specify Part I and Part II but for the sake of convenience, the investigators, the prosecutors, the lawyers, the Judges and the authors refer to the first paragraph of the Section as Part I while the second paragraph is referred to as Part II. The constituent elements of Part I and Part II are different and, consequently, the difference in punishment.

28. For punishment under Section 304 Part I, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death. In order to find out that an offence is “culpable homicide not amounting to murder” – since Section 304 does not define this expression – Sections 299 and 300 IPC have to be seen.

29. Section 299 IPC reads as under:

*“299. **Culpable homicide.** – Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”*

To constitute the offence of culpable homicide as defined in Section 299 the death must be caused by doing an act: (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death, or (c) with the knowledge that the doer is likely by such act to cause death.

30. Section 300 IPC deals with murder and also provides for Exceptions. The culpable homicide is murder if the act by which the death is caused is done: (1) with the intention of causing death, (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or (3) with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, or (4) with the knowledge that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. The Exceptions provide that the culpable homicide will not be murder if that act is done with the intention or knowledge in the circumstances and subject to the conditions specified therein. In other words, culpable homicide is not murder if the act by which death is caused is done in extenuating

circumstances and such act is covered by one of the five Exceptions set out in the later part of Section 300.

[21] In the instant case, the conviction and sentence have been declared under Section 304 (Part II) of IPC. It appears that out of 17 witnesses only two passengers of Bolero Pick Up vehicle have stated that the driver of the offending vehicle i.e. the appellant was driving the vehicle with high speed, rashly and negligently. Since conviction and sentence have been declared under Section 304 (Part II) of IPC, question falls for consideration whether rash or negligent act of the appellant was preceded with the knowledge that such of his act was likely to cause death.

[22] On meticulous scrutiny of the evidence placed on record in the instant case, we find that the accident took place suddenly at a critical juncture, that is, at a sharp turn on the road, and that too, when it was raining. It is not the case of prosecution that the accused-appellant had the knowledge that at the relevant point of time one scooter would be moving at the scene of occurrence. In the case of *Alister Anthony Pareira (supra)* the Supreme Court while upholding the conviction and sentence of the appellant after taking judicial notice of the fact came to a clear finding that in Mumbai, people do sleep on pavements and the accused was also aware of the fact that at the place of occurrence people sleep as the accused was the resident of that area. Moreso, the driver of the vehicle (Toyota Corolla) was driving the car in drunken condition and he was under the influence of liquor. In that circumstances, the Supreme Court had not taken a different view than that of the view taken by the High Court that the accused had knowledge and in any case such knowledge would be attributed to him that his actions were dangerous or one time enough to cause injuries which may even result into death of persons.

[23] In the case at hand, there is absolutely no evidence that the accident occurred due to rash and negligent act of the driver of the vehicle i.e. the appellant and it was done with the knowledge that by such act, death was likely to be caused. *Moreso, the negligence is a relative term and depends upon the circumstances of each particular case. What might be negligence under such circumstances at some time or place may not be negligence under other circumstances at another time and place. All the surroundings or attendant circumstances must be taken into account, such as the opportunity for deliberation, degree of danger and many other considerations of life nature, affecting the standard of care which may reasonably be required in a particular case.*

[emphasis supplied]

[24] We have noticed, during examination under Section 313 CrPC, no specific question was put by the trial Court as to whether the accident leading to the death of the scooty driver can be attributed to the knowledge of the appellant, i.e. the driver of the bus vehicle. Here, we find that the salutary provisions of Section 313 of the Code of Criminal Procedure have not been complied with by the trial Court. It is settled proposition that examination of the accused under Section 313 CrPC is to put the incriminating circumstances at his notice giving him an opportunity to offer explanation. In the present case, the failure to pose specific questions by the trial Court to the accused/appellant at this stage of examination further impairs the judgment and order of conviction and sentence of the appellant.

[25] In the instant case, PW-6 and PW-7 stated that they had seen the bus moving from Udaipur towards Agartala recklessly with high speed. We are expressing our inability about the credibility of these two witnesses as they themselves stated in the cross-examination that both of them

and the driver of the Bolero hailed from same locality and they knew each other. Another ground of suspecting the credibility of these two witnesses is that the driver of the Bolero vehicle did not submit his Driving License and other vehicular documents during the process of investigation. Here, questions arises as to why the investigating officer did not make any endeavour to seize the vehicular documents as well as the Driving Licence of the driver of the Bolero Pick Up vehicle. This act on the part of the Investigating Officer leads us to draw adverse inference about the purity and integrity of the investigation conducted by the Investigating Officers.

[26] In furtherance thereof, when a driver is said to have driven the vehicle recklessly with high speed as deposed by PW 6 and PW 7, it would amount to “rash and negligent driving” within the meaning of the language of Section 279 of the Indian Penal Code. That is why the legislature in its wisdom has used the words “manner so rash or negligent as to endanger human life”. In the instant case, besides PW 6 and PW 7, none of the witnesses deposed anything about the exact position of the scooty just at the time of the accident. Some witnesses stated that the bus vehicle dashed the scooty, but, none of them stated the position of the alleged offending bus, the Bolero pick up vehicle and the scooty as well, at the time of accident. The statements of PWs 6 and 7, further, according to us, appear to be omnibus as they failed to narrate as to how and in which manner the driver of the bus vehicle i.e. the appellant herein was found to be reckless or negligent at the time of accident. *The evidence as to the manner in which the bus vehicle was being driven by the appellant, in our opinion, is necessary to rule out the possibility that actions of the victim driving the scooty or the driver of the Bolero pick up vehicle could be the reason behind the accident. Absence of such evidence has raised serious doubt about the negligent act of the accused*

appellant vis-à-vis the cause of the accident. It is settled proposition of law that suspicion, howsoever grave, cannot take the place of proof. According to us, the prosecution evidence placed on record qua the attending circumstances do not point out the fact that it is only and only the appellant and none else, who can be held to be guilty of committing the alleged offence. Needless to say, the prosecution has to prove the charge beyond reasonable doubt.

[27] At the cost of repetition, as we said earlier, in the instant case, the accident occurred at a sharp curve on the road when it was raining too. In light of analysis as regards the relevant law coupled with the evidence placed on record, we are afraid of upholding the findings and decision of Ld. Trial Judge convicting and sentencing the accused-appellant under Section 304 (Part-II) of IPC.

[28] As a sequel, the conviction and sentence returned by Ld. Addl. District Judge, Sepahijala District, Bishalgarh, in case No. ST(T-II) 25 of 2019 vide order dated 15.07.2024 is hereby set aside and quashed. Since the appellant is on bail, he is discharged from the liability of his bail bond, and consequently, the surety(s) also stands discharged. The accused-appellant is set at liberty.

Send down the LCRs.

(S. DATTA PURKAYASTHA, J)

(ARINDAM LODH, J)

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