

GAHC010002642012



2024:GAU-AS:11657

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./25/2012

TULKU BAHADUR LAMA @ TURKU
S/O LT. ZETA LAMA, R/O VILL- BIJAYPUR, P.S. SILAPATHER, DIST.
DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.A GOHAIN, MR.N N B CHOUDHURY

Advocate for the Respondent : , PP, ASSAM

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. NNB Choudhury, Advocate
For the Respondent	: Mr. KK Das, Addl. PP, Assam
Date of Hearing	: 26.11.2024
Date of Judgment	: 26.11.2024

JUDGMENT AND ORDER(ORAL)

1. Heard Mr. NNB Choudhury, learned counsel for the petitioner. Also heard Mr. KK Das, learned Additional Public Prosecutor, Assam.
2. The present application is filed under Section 397/401 read with Section 482 Cr.P.C. assailing judgment and order dated 20.06.2011 passed by the learned Session Judge, Dhemaji, in Criminal Appeal No. 8(1)/2011 arising out of the judgment & order dated 25.01.2011 passed by the learned Judicial Magistrate, First Class, Dhemaji in GR case No. 317/2005 (DMJ) thereby convicting the petitioner under Section 279/304(A) IPC and sentencing him to undergo Simple Imprisonment for three (3) months under Section 279 IPC and also sentencing him to undergo Simple Imprisonment for one year under Section 304(A) of IPC. The aforesaid sentences were to run concurrently.
3. Mr. NNB Choudhury, learned counsel for the petitioner contends that both the learned courts below have committed error of law and both the decisions are perverse inasmuch as there is no iota of evidence to suggest either to the effect that the petitioner was driving the offending vehicle or that even if he is driving the vehicle, he was driving it in a rash and negligent manner except, that the vehicle was driven at a high speed. According to the learned counsel, nothing is discernible from any of the eye witnesses account to suggest any rash and negligent driving on the part of the petitioner and therefore, such judgments are liable to be interfered by this court in exercise of its revisional power otherwise same will result miscarriage of justice.
4. Per contra, Mr. KK Das, learned Additional Public Prosecutor, Assam argues that from the evidence of the eye witnesses, it is clear that the offending vehicle was driven at a very high speed and the victim was in the right side of the road. Therefore, even though, there is no specific deposition as regards rash and negligent driving such factum itself establishes beyond any reasonable doubt that the petitioner was driving the vehicle in a rash and negligent manner and therefore, the learned court below have rightly passed the judgment and this is not a fit case to exercise this court's revisional power.

5. I have given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record including the statements/ depositions of the witnesses before the learned trial court.
6. The prosecution has projected PW1, PW3, PW5, PW6 and PW7 as eye witnesses to the incident. From their deposition what is discernible is that the accident took place at about 5.30/6.00 p.m. on 08.06.2005 at National Highway No. 52. The evidence of the eye witnesses further suggests that the vehicle was at a high speed. The evidence of PW1, the mother further suggests that her daughter was knocked by the vehicle at a point when she and another person was talking near the road and the victim child was coming towards her.
7. Law is by now well settled that it is the prosecution who is to prove rash and negligent driving and same is to be proved by clear and credible evidence. There can be two kinds of witnesses which can be treated as credible witness in such nature of a case, which firstly the eye witnesses account and the physical evidence from the site of the accident. It is equally well settled that high speed alone is not enough to prove rash and negligent driving. The circumstances and context surrounding the driving behavior are important. In a given case driving at a high speed or low speed does not necessarily mean that the driver acted rashly and negligently.
8. In the case in hand, as recorded hereinabove, none of the eye witnesses had testified regarding any rashness or negligence on the part of the driver in driving the vehicle, except stating that he was in a high speed/ excessive speed. The fact remains that the accident took place in a National Highway.
9. Therefore, in the aforesaid circumstances there ought to have been some material to suggest certain acts or omission on the part of the driver which could prove negligence or rashness on his part, more particularly, when the vehicle was being driven in a National Highway. There is no physical evidence even to remotely suggest

rash and negligent driving rather prosecution case suggests that the mother of the victim was talking to another person near highway and the accident took place while the victim was coming towards them. The eye witnesses also deposed that the driver used breaks to stop the vehicle. Therefore, in the considered opinion of this court, both the learned courts below have failed to consider this aspect of the matter resulting in patent defect in the judgment inasmuch as the law settled in this regard has been ignored by both the learned courts.

10. That being the position, this court is of the view that this is a fit case where this court should exercise its revisional power. Accordingly, the judgment and order dated 20.06.2011 passed by the learned Session Judge, Dhemaji, in Criminal Appeal No. 8(1)/2011 arising out of the judgment & order dated 25.01.2011 passed by the learned Judicial Magistrate, First Class, Dhemaji in GR case No. 317/2005 (DMJ) thereby convicting the petitioner under Section 279/304(A) IPC and sentencing him to undergo Simple Imprisonment for three (3) months under Section 279 IPC and also sentencing him to undergo Simple Imprisonment for one year under Section 304(A) of IPC is set aside and quashed. Accordingly, the petitioner is acquitted from the charge of commission of offence under Section 304-A and Section 279 IPC.

11. Accordingly, the present criminal revision petition stands disposed of. Parties to bear their own costs.

JUDGE

Comparing Assistant