

GAHC010012782013



2024:GAU-AS:11795

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

**Case No. : Crl.Rev.P./449/2013**

MD. BAHAR ALI @ SAHADUL ALI  
S/O MD MUSLIM ALI R/O PANITOLA P.S. PANITOLA, DIST. TINSUKIA,  
ASSAM.

VERSUS

THE STATE OF ASSAM

**Advocate for the Petitioner** : MR.R SHARMA, MS. B SARMA, AMICUS CURIAE,MR.S S  
SHARMA,MR.L SARMA,MS.F KHAN

**Advocate for the Respondent** : , ,PP, ASSAM

**BEFORE**  
**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

|                    |                                |
|--------------------|--------------------------------|
| For the Petitioner | : Ms. B Sarma, Amicus          |
| For the Respondent | : Mr. B Sarma, Addl. PP, Assam |
| Date of Hearing    | : 28.11.2024                   |
| Date of Judgment   | : 28.11.2024                   |

**JUDGMENT AND ORDER(ORAL)**

1. Heard Ms. B Sarma, learned Amicus for the petitioner. Also heard Mr. B Sarma, learned Additional Public Prosecutor, Assam.
2. The present application is filed under Section 397 read with Section 401 Cr.P.C. assailing judgment and order dated 08.02.2013 passed by the Judicial Magistrate First Class, Tinsukia in GR case No. 57/2011 sentencing the petitioner to pay a fine of Rs. 500/- and in default to undergo 7 days Simple Imprisonment under Section 279 IPC and to pay a fine of Rs. 500/- in default to undergo Simple Imprisonment 7 days and also to suffer Rigorous Imprisonment for 4 months under Section 304(A) IPC. The further challenge is order dated 08.08.2013 passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No. 10(2)/2013 arising out of GR case No. 57/2011 dismissing the appeal, while reducing the period of imprisonment from 4 months to 3 months.
3. Ms. B Sarma, learned Amicus 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 that the petitioner 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. B Sarma, 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 hit from behind. 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 testimonies of the witnesses.
6. The prosecution had projected PW3 and PW4 as eye witnesses to the incident. From the deposition of PW-3, what is discernible is that the vehicle was in a high speed and knocked the victim from behind and the local people tried to beat the driver, however, the injured was taken by the driver in the same vehicle to the hospital. The PW-4 another eye witness also deposed that the vehicle was in high speed and hit the victim from backside and the driver took the victim to the Civil Hospital at Tinsukia.
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 evidences which can be treated as credible evidence in a such nature of case, firstly the eye witnesses' account and secondly, 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. Rash and negligent driving is driving a vehicle or riding on a public road in a way that endangers human life causing injury or death. Driving in a manner disregarding safety of others and failing to exercise the necessary caution that a reasonable driver would do under similar circumstances, leading to a potential harm shall be a negligent driving.
8. In the case as recorded hereinabove none of the eye witnesses had testified anything regarding any rashness or negligence on the part of the driver in driving the vehicle in the road except stating that the vehicle was in a high speed. The prosecution has failed to adduce any evidence or material to suggest certain acts or omission on the part of the driver which could establish negligence or rashness on his part, more particularly, when the vehicle was being driven in a public road. There is no physical

evidence even to remotely suggest rash and negligent driving. Even, there is no material to suggest anything that the victim was in the right side of the road or as regards the driving behavior of the accused driver. Therefore, in the considered opinion of this court, both the learned courts below had failed to consider these vital aspect of the matter resulting in patent defect in the judgments inasmuch as, the law settled in this regard has been ignored by both the learned courts which resulted miscarriage of justice.

9. 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 08.02.2013 passed by the Judicial Magistrate First Class, Tinsukia in GR case No. 57/2011 sentencing the petitioner to pay a fine of Rs. 500/- and in default to undergo 7 days Simple Imprisonment under Section 279 IPC and to pay a fine of Rs. 500/- in default to undergo Simple Imprisonment 7 days and also to suffer Rigorous Imprisonment for 4 months under Section 304(A) IPC and the judgment and order dated 08.08.2013 passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No. 10(2)/2013 arising out of GR case No. 57/2011 dismissing the appeal by reducing the period of imprisonment from 4 months to 3 months and interfering other part of the order dated 08.02.2013 are set aside and quashed. Accordingly, the petitioner is acquitted from the charge of commission of offence under Section 304-A and Section 279 IPC. Bail bond stands discharged.

10. While parting with the record, this court appreciates the assistance rendered by Ms. B Sarma, learned counsel as Amicus Curiae. Accordingly, Registry shall ensure that Ms. Sarma, learned counsel be paid the legal fee, as payable to a Legal Aid Counsel as per the norms fixed by the Legal Service Authority.

**JUDGE**

**Comparing Assistant**