

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. No.23 of 2023

The State of Tripura

Represented by the Ld. Public Prosecutor,
High Court of Tripura,
Agartala, West Tripura

----Appellant

Versus

Sri Puspak Saha @Ayan

S/o- Sri Parimal Saha @ Pranjal,
Resident of Vill- Srinagar Colony,
PS-Karimganj, Assam

---Respondent

For the Appellant(s)	:	Mr. Raju Datta, PP Mr. Rajib Saha, Addl. PP
For the de-facto complainant(s)	:	Mr. Pijush Kanti Biswas, Sr. Advocate Mr. Pujan Biswas, Advocate Mr. Hrishiraj Nath, Advocate Mr. S. Debbarma, Advocate
For the Respondent(s)	:	None
Date of hearing & delivery of Judgment & Order	:	05.05.2025
Whether fit for reporting	:	Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

We have heard Mr. Raju Datta, learned PP appearing for the appellant-State and Mr. Pijush Kanti Biswas, learned senior counsel appearing for the informant of the case.

2. The appeal arises out of the judgment and order of acquittal dated 04.02.2023 passed by learned Sessions Judge, North Tripura, Dharmanagar in Case No. S.T.(Type-1) 06 of

2019, whereby the accused-respondent, Sri Puspak Saha alias Ayan was acquitted from the charge framed against him under Sections 279 and 304 (Part-II) of Indian Penal Code (for short, 'IPC').

3. The Case of the prosecution is that on 22.07.2017 (Saturday), at around 05.30 am, one Reba Basu (aged about 63 years) went out for morning walk and at around 06:00 am, when she was returning to her home situated at Jail Road, Dharmanagar from Mantala area, one white colour Maruti Alto vehicle bearing No.TR 02H 0220, proceeding from Dharmanagar towards Kailasahar going on the wrong side of the road, dashed her causing severe injuries on her person. After a while, the fire service personnel arrived there and shifted her to Dharmanagar Hospital and there the attending doctor declared her dead. According to the prosecution, the accident occurred due to the intentional rash and negligent driving of the driver. The police authority received the FIR on the date of the incident at around 09:57 hrs and registered it as Dharmanagar PS Case No.2017 DMN 047 under Sections 279/304 (Part II) of IPC and upon completion of the investigation, submitted the charge sheet against the respondent under aforementioned provisions of law.

4. The respondent during the trial, denied the charges. Thereafter, prosecution tried to establish the charges by examining 16 witnesses, out of whom PW.3 and PW.5 appeared to be key witnesses of the case through whom, according to the prosecution, the identification of the respondent as the driver of

said offending vehicle at the time of alleged accident could be established. The FIR was lodged by the son of the deceased, namely, Pralay Raj Modak (PW.10) who was admittedly not an eyewitness of the occurrence. Except above-said two witnesses, no other witness of the occurrence was examined in this case.

5. Both learned PP as well as learned senior counsel Mr. P.K. Biswas, submit that learned Trial Court has miserably failed to appreciate the evidence of PW.3 and PW.5 through whom the complicity of the respondent in the accident as the driver of the offending vehicle and his rash and negligent driving were established, but the learned Trial Court failed to give due credence to the testimonies of the above-said two witnesses, leading to an improper and erroneous decision. It is also categorically argued that PW.5 who was present on the road at the time of accident and had occasion to witness the same, categorically stated that just after the accident, he saw the driver to come out from the vehicle and to flee away and then, in court, he identified him also by face as driver of the said of offending vehicle at the relevant time of accident. But, despite the same and having no substantial cross-examination of that witness as to the above-said part of evidence, Trial Court acquitted the respondent. Learned PP also submits that learned Trial Court erroneously discarded the entire evidence of PW.3 only on the ground that he had failed to identify the respondent in the court, though he was also an eyewitness to the occurrence and

narrated the entire incident without being shaken during his cross-examination.

6. In view of the submission of both the learned counsel and also as discussed above, PW.3 and PW.5 are the most vital witnesses of the case and hence their testimonies are required to be considered first. PW.3, Sri Bikash Chakraborty, stated that on 22.07.2017 at around 05:00/5:30 a.m. while he was taking preparation to go for morning walk, he heard a loud sound outside his house, and also uproar of people on the road. Immediately he rushed to the spot and noticed that one Maruti Alto vehicle had collided with a truck on right-hand side of Dharmanagar-Kailashahar road and in between the said truck and Maruti Alto vehicle, one injured lady was lying with severe bleeding on her person. At that time she was alive. He further stated that he found driver of the Alto vehicle coming out of the vehicle and fleeing towards the Mantala Market area. Thereafter, all of them raised alarm to detain said person and accordingly he was detained and he came to know that the name of driver was Ayan Saha of Dewanpassa. According to him, the truck was lying in its stationary condition for a long time at a distance of 3/4 feet from the road. He failed to identify the said driver in the court despite the respondent being present there.

7. PW.5, Debashish Acharjee, also similarly stated that on the relevant date and time, he came out from his house for a morning walk and suddenly heard a loud sound on Dharmanagar-Kailashahar road and found one Maruti Alto car had collided with

a truck which was lying in stationary condition for a long time. He also stated that he saw the driver of the Alto vehicle fleeing from the spot and some other morning walkers present there also noticed the said incident and the driver fleeing. He, along with others rushed to the spot and found that in between the said truck and Maruti Alto vehicle, a woman was lying almost in dying condition, and meanwhile, fire service personnel arrived there and shifted her to Dharmanagar District Hospital. He also stated that the driver was detained by some of the said morning walkers at that point of time. He identified the respondent in the court by face. In his cross-examination, it revealed that in his previous statement made before the investigating officer, he only stated that he found one person coming out from the vehicle after the accident, and said person was detained by local people but he did not specifically indicate him as driver of the vehicle. However, he also stated voluntarily that except said person, no one else was present in the vehicle at that time, and therefore, he had no doubt that the said person was the driver of the vehicle.

8. PW 1, Debabrata Das, is the witness of the inquest and PW.2 to Chitta Ranjan Goswami is one of the relatives of the deceased who heard about the incident and was not present at the scene of accident at the relevant time. PW.4, Raju Paul is a witness of seizer of documents of vehicle, and PW.6, Dr. Subhankar Nath is Scientific Officer of State Forensic Science Laboratory who, after examining the blood samples collected

from the said Alto vehicle and from the ground and also the specimen blood sample of the deceased, conducted DNA examination and finally found that all the said blood samples belonged to the deceased. PW.7 Mohan Singha, is a Fireman who shifted the deceased to the hospital, and PW.8, Constable Sri Suman Sutradhar was the person who handed over the seized blood samples in a parcel to the State Forensic Science Laboratory, Narsingharh. PW.10, Sri Pralay Raj Modak (son of the deceased) was the informant of the case who did not see the accident, and PW.11, Sri Rajib Lohar is the scribe of the FIR. PW.16, Dr. Debashis Debroy, conducted autopsy on the dead body of the deceased, and found the laceration injuries over the forehead, upper left abdomen, upper right abdomen, left lower leg and bruises on the left upper abdomen, right upper abdomen, multiple scratch marks in the left breast and fracture of ribs along with rupture of liver of the deceased. According to him, the cause of death was hypovolemic shock due to multiple fractures and injury to the intra abdominal organ (liver) caused by blunt trauma. PW.9, Sri Manik Kr. Barua, the recording officer who registered the FIR and PW.12, PW.13 and PW.14 were the respective investigating officers of the case.

9. We have also taken note of the evidence of PW.15, Sri Jawhar Reang, the Motor Vehicle Inspector who upon examination of the said Alto car on 07.09.2017, opined that there was no mechanical disorder found in the vehicle and the accident did not occur due to any such mechanical disorder. He

found wind screen, bonnet, front left side body and head light of the left side of said vehicle in damage condition. Though, in his evidence, he stated that during examination the brake system of the vehicle was found not in working condition, but in his vehicle inspection report he mentioned the condition of brake system to be in working condition. Therefore, it appears that his evidence and his report appear to be self-contradictory.

10. We have also examined the case diary of the police investigation, as placed by learned PP, and also meticulously gone through the materials placed in record during trial. We have no hesitation in noting that we found some flaws in the investigation touching very foundational propriety of the case relating to the identification of the present respondent. According to PW.3 and PW.5, both of them found driver of the Alto vehicle fleeing away from the spot, but none of them claimed to have detained the said driver. According to them, some other morning walkers detained said driver, but none of those persons who had detained him was examined in this case. PW.3, despite claiming that he was present on the spot and saw the driver, has failed to identify him in the court. As per the Arrest Memo, the respondent was arrested at Mantala on that day at around 12:15 hrs on that day whereas according to PW.3 and PW.5, the driver was detained just after the accident, i.e., around 06:00 am in the morning on that day. Therefore, a serious doubt arises regarding his whereabouts for about 6 hours before his arrest, if he was at all detained by the locals immediately after the accident.

11. Though the police authority mentioned some injuries of the respondent in the Arrest Memo, this itself does not conclusively establish the presence of the respondent at the time of accident on the spot as the driver of the vehicle. We are also surprised to see that the police authority proceeded for investigation only after the FIR was registered at 09:57 hrs, i.e., around 10:00 am, though fire service people shifted said injured woman to the hospital at around 6:00 am. When both fire service authority and the hospital authority had knowledge of such accident, it is hard to believe that no information was given by them to the police about the said accident. Therefore, the initiative led from the side of police for commencing the investigation and arrest of the respondent at much later time from the time of commencement of such investigation, and that too from a separate place cast doubt on the veracity of the prosecution's story about the identification of the respondent as driver of the vehicle. It is also quite surprising that though driver of the offending vehicle was allegedly detained just after the accident, but the informant did not mention the said fact in his FIR lodged about 03 hours after the accident and did not mention the name of the respondent in the FIR.

12. As we have observed, learned Trial Court also came to the conclusion on the above said grounds that the identification of the driver was not proved and finally acquitted him. According to the seizer list dated 22.07.2017, it appears that the owner of the said vehicle was one Sanjay Roy, but said Sanjay Roy was

also not examined as a witness to gather information about the driver of his vehicle. In such a situation, we do not find any sort of impropriety or perversity to disturb the findings arrived at by the learned Trial Court that would warrant interference.

13. Law is fairly settled that an order of acquittal should not be lightly disturbed, even if the appellate court finds that there is some evidence pointing towards the guilt of the accused or even the appellate court finds its view more probable than the view of the trial court after appreciating the evidence. When a person is acquitted by the learned Trial Court, the presumption of his innocence is doubly reinforced. Unless there are compelling reasons for interference with the judgment of acquittal, the appellate court should go a bit slow in disturbing such findings.

14. For the reasons stated and discussed here-in-above, we find no merit in the instant appeal and accordingly the same is dismissed.

Interim application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

Rohit

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GHOSH

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