

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 46 of 2011

Shri Gouranga Lal Roy,
Son of late Birendra Lal Roy,
Resident of Aralia, P. S. East Agartala,
Sub-Division- Agartala, District- West Tripura.

.....Petitioner

- V E R S U S -

The State of Tripura.

.....Respondent.

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner	: Mr. Somik Deb, Advocate.
For the respondent	: Mr. R. C. Debnath, Addl.P.P.
Date of hearing & delivery	
of judgment and order	: 27.07.2015
Whether fit for reporting	: Yes / NO.

Judgment and Order (Oral)

In this revision petition challenge is the judgment dated 04.05.2011 passed by the Ld. Sessions Judge, West Tripura, Agartala in Crl.A. No. 43(4) of 2010 the learned Sessions Judge upheld the order of conviction of the petitioner under Sections 279 and 338 of the IPC and sentencing him to suffer SI for 2 months under Section 279 of IPC and SI for 6 months under Section 338 of the IPC, passed by the learned Judicial Magistrate, 1st Class in G.R. Case No. 1073 of 2007.

[2] Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. R. C. Debnath, learned Addl. P.P. appearing for the State respondent.

[3] Prosecution case, in short, was that on the intervening night of 09.10.2007 and 10.10.2007 at about 12.10 a.m. one Rajesh Saha, (PW-2) was on the way to Agartala riding his Scooter bearing No. TRM-5463 and he was on his extreme left side of the road and driving the Scooter in normal speed. While he was near Bardowali bus stop, at that time a Canter Truck vehicle bearing No. TR-01-B-1930 coming from opposite direction with a high speed being driven rashly and negligently knocked down Rajesh Saha with his scooter and as a result, Rajesh Saha received severe bleeding injuries and he was shifted to G.B. Hospital immediately by the people gathered there.

[4] Tapash Saha brother of the injured Rajesh Saha lodged F.I.R. on the following morning on the basis of which West Agartala P.S. Case No. 221 of 2007 under Section 279 and 338 of I.P.C. was registered against driver of Canter Truck vehicle bearing No. TR-01-B-1930 belongs to Agartala Municipality. Both the vehicles i.e. the Scooter and SWARAJ MAZDA (Canter Truck) were seized by the police from the spot of accident on 10.10.2007 immediately after the FIR was lodged. The documents of the vehicles were

also seized and it was transpired during investigation that the accused petitioner was the driver of the canter truck vehicle at the time of accident and accordingly, charge sheet was submitted against the accused appellant for commission of offence punishable under Sections 279 and 338 of IPC.

[5] Cognizance was taken on the basis of the police report and in course of trial, learned Magistrate examined the accused petitioner under Section 251 of Cr.P.C. for commission of offence punishable under Sections 279 and 338 of the IPC to which the accused appellant pleaded not guilty and claimed to be tried.

[6] In course of trial prosecution examined as many as 10 witnesses. Out of the aforesaid 10 witnesses PW-1 Sri Tapash Saha was the informant and elder brother of the injured Rajesh Saha (PW-2). PW-2, Rajesh Saha was the victim. PW-3 was the Assistant Engineer of Agartala Municipality who was In-charge of motor vehicles of the Municipality. PW-4 was the scribe of the FIR. PW-5 was a staff of PW-3 and was a witness to the seizure of documents of the offending vehicles. PW-6 was a witness to the seizure of the scooter and the Canter truck vehicle. PWs. 7,8,9 and 10 were all Police Officers who investigated

the case. The court also examined Dr. Sujit Kr. Das and Sri. Ashes Deb as C.Ws 1 and 2.

[7] Mr. Deb, learned counsel appearing for the accused petitioner submits that except the injured i.e. PW-2, no other witnesses were examined by the prosecution to prove the accident and hence, the prosecution case cannot be said to have proved with sufficient evidence.

[8] He further submits that even the persons who carried the injured to the hospital for his treatment were not examined and there is no such proof that the vehicle was driving rashly and negligently by the accused petitioner.

[9] On the other hand Mr. Debnath, learned Addl. P.P. submits that PW-2, the injured vividly narrated about the accident and the accident occurred at midnight when other people at the very moment of accident may not be available and for that reason prosecution case cannot be disbelieved.

[10] He also submits that that PW-3 a responsible Officer of the Municipality was examined to prove that the accused was the driver of the offending vehicle at the time of accident.

[11] Before discussing on the submission of learned counsel appearing for both the parties, it would be proper to re-produce the evidences of witnesses particularly, PWs 2 and 3.

[12] PW-2, is the victim and in his evidence he has stated that on 09.10.2007, at about 12.30 in the midnight on his way to house from Badharghat the offending vehicle bearing No. TR-01-B-1930 dashed his scooter and as a result of which he fell and sustained injuries and at that time some persons were present near the place of occurrence and they shifted him to GB Hospital and after sometimes of the accident he lost his sense and on the following morning he regained his sense in the GB Hospital where his brother Tapash talked with him and then he came to learn that after the occurrence in the previous night someone informed his brother about the accident from his mobile phone and he also narrated the accident to his brother Tapash. From his evidence it also appears that he sustained injuries on right leg, left hand and on the head and he received treatment in GB Hospital till 10.10.2007 and on 11.10.2007 he was taken to Apollo Hospital, Kolkata. From his evidence it also appears that his brother lodged FIR after being aware of the facts of accident from him and that he still has problem in walking.

[13] PW-3, Sri Apan Debnath in his evidence only stated that he was the In-charge of the motor vehicles of the Agartala Municipality Corporation and the accused person was the driver of the offending vehicle at the time of incident.

[14] The other witnesses are mainly the seizure witnesses except the court's witness. CW-1 Dr. Surajit Kr. Das in his evidence stated that on 10.10.2007 he examined the injured Rajesh Saha who was admitted through G.B. Emergency Block with history of alleged RTR and on examination he found the following injuries:

- (1) Fracture both bone left forearm.
- (2) Fracture shaft of right femur.
- (3) Fracture right upper third of right fibula. CT scan of brain done on 10.10.2007 and the report was normal. The patient was also attended by ortho surgeon Dr. J. Batta and Dr. S. Debnath and later on, the patient refused to take line of treatment given by ortho surgeon and took the discharge from hospital on request.

[15] Court witness No. 2, Sri Ashesh Deb, a Motor Vehicle Inspector who had examined one truck vehicle bearing registration No. TR-01-B-1930 at Battala TOP in reference to West Agartala P.S. Case No. 221 of 2007 under

Sections 279/338 of the IPC and on examination of the said vehicle he found damage occurred in the vehicle as follows:

(1) Bumper (2) Front show, after examination he opined that the alleged accident occurred not due to any mechanical disorder of the vehicle. He has also identified his report which was marked as Exbt. 8.

[16] Upon perusal of the evidence on record as well as the judgment of the courts below, this Court is of the considered opinion that neither the Trial Court nor the Appellate Court committed any wrong holding that the accused petitioner is guilty of offence punishable under Sections 279/338 of the IPC.

[17] The incident was occurred in the year 2007 and the petitioner is also admittedly on bail for all along. Thus, according to this Court it would not be proper to send him again in the jail after almost 8 years. Thus, it would meet justice if the sentence is modified to the extent of payment of fine instead of imprisonment as ordered by the courts bellows.

[18] Accordingly, it ordered that the accused person is convicted under Section 279 read with Section 338 of the IPC and sentenced him to pay a fine of Rs. 1,000/- for commission of offence punishable under Section 279 and fine of Rs. 1,000/- for commission of offence punishable

under Section 338 in total Rs. 2,000/-. Fine money shall be deposited within 2 months before the learned Judicial Magistrate, 1st Class, Agartala, West Tripura. If the fine money is not deposited within the aforesaid period, then the accused petitioner shall be taken into custody for suffering the sentence as ordered by the learned Judicial Magistrate, 1st Class. After deposition of fine money the bail bond of the accused petitioner will be terminated.

[19] With the above, this revision petition is partly allowed. Send down the LCRs.

JUDGE

A.Ghosh.