

**THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No. 9 of 2012

Sri Pradip Mallik.
Son of Sri Jagadish Mallik,
Resident of Abhoynagar, P.O. Nalua,
P.S. Belonia, District- South Tripura.

.....Petitioner

- VERSUS -

The State of Tripura.

.....Respondent.

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

For the petitioner	: Mr. R. Dutta, Advocate.
For the respondent	: Mr. R. C. Debnath, Addl.P.P.
Date of hearing & delivery of judgment and order	: 30.07.2015
Whether fit for reporting	: NO.

Judgment and Order (Oral)

This revision petition has been filed by the petitioner against the judgment and order dated 16.01.2012 passed by the Ld. Additional Sessions Judge, South Tripura, Belonia, in Crl.A. No. 13 of 2011 whereby, the learned Sessions Judge upheld the order of conviction of the petitioner under Sections 279 and 304-A of the IPC and sentence to suffer RI for 3 months and to pay a fine of Rs. 300/-, in default to suffer SI for 15 days for commission of offence under Section 279 of IPC and also to suffer RI for 1 year and to pay a fine of Rs. 3000/-, in default to suffer Simple Imprisonment for 3 months for commission of

offence punishable under Section 304-A passed by the Ld. Judicial Magistrate, 1st Class, Belonia, South Tripura vide judgment and order dated 24.11.2011 passed in G.R. Case No. 109/2008 with a direction to the petitioner to surrender before the Trial Court on or before 25.02.2012 to undergo the sentences passed by the Trial Court.

[2] Heard Mr. R. Dutta, 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 01.04.2004 at about 0230 hours, one Dilip Datta lodged a written complaint with the Baikhora P.S. that on that day at about 08.30 hours, his younger brother, namely Sudip Dutta @ Nayan was proceeding towards Santirbazar from Baikhora by riding his motorbike bearing No. TR-03-A-7989 and on the way, when he reached Betaga area the Commander Jeep bearing No. TR-01-A-2027, coming from the opposite direction in a rash and negligent manner dashed the motorbike. Consequently, his brother died on the spot.

[4] On receipt of the aforesaid complaint Bikhora P.S. Case No. 23 of 2008 was registered under Section 279 and 304-A of I.P.C. against the petitioner and the case was endorsed to S.I., Sri Jaharlal Debbarma for investigation.

On completion of investigation I.O. submitted the charge sheet before the Ld. S.D.J.M. Belonia, South Tripura under Section 279/ 304-A of IPC against the petitioner.

[5] On receiving of the charge sheet, the Ld. S.D.J.M. Belonia, South Tripura took cognizance of the offence punishable under Section 279/304-A of IPC and thereafter, transferred the case to the Ld. Judicial Magistrate, 1st Class, Belonia, South Tripura. The Ld. Judicial Magistrate, 1st Class Belonia, South Tripura framed charges under Sections 279/304-A of IPC against the accused petitioner which he denied.

[6] To prove the charge against the petitioner the prosecution examined as many as 10 witnesses. They are PW-1, Dr. Santanu Das is a Medical Officer, PW-2 Shri Bikram Roy, PW-3 Shri Dilip Datta, PW-4 Shri Tapan Majumder, PW-5 Shri Sujit Sen, PW-6 Shri Jagadish Baidya, PW-7 Shri Hara Krishna Debnath, PW-8 Shri Jaharlal Debbarma (I.O), PW-9 Shri Mihir Patari and PW-10 Shri Kanoj Debbarma (MVI).

[7] Prosecution also exhibited some documents. After closure of prosecution evidence, the petitioner was examined under Section 313 of the Cr.P.C. to which he denied the allegations leveled against him. He did not adduce any evidence in his defence.

[8] After hearing on both sides and on perusal of the evidence on record, the Ld. Trial Court convicted the petitioner under Section 279/304-A of the IPC and sentenced him as stated supra.

[9] Aggrieved by and dissatisfied with the judgment dated 24.01.2011 passed by the Judicial Magistrate, 1st Class, Belonia, South Tripura, the petitioner had preferred an appeal before the Ld. Sessions Judge, South Tripura, Belonia, being Crl. Appl. No. 13 of 2011. The Ld. Sessions Judge dismissed the said appeal with a direction to the petitioner to surrender before the trial court on or before 25.02.2012 to undergo the sentences passed by the Ld. Judicial Magistrate, in G.R. Case No. 109 of 2008. Hence the instant revision petition against the judgment of the Appellate Court.

[10] Mr. Dutta, learned counsel appearing for the accused petitioner submits that except PW-4, namely, Sri Tapan Majumder, who claimed himself to be the eye witness, there is no other eye witness. From the evidence of PW-4 it appears that this witness nowhere stated in his evidence that the accident took place due to high speed of the commander jeep with rash and negligent driving of the petitioner. But the Ld. Courts below came to the conclusion that the accident took place due to high speed, rash and

negligent driving of the driver of the commander jeep i.e. the petitioner. Such findings of the courts below are perverse and are not tenable and liable to set aside. It would also be evident from the evidence of PW -4 that just after the accident the driver of the commander jeep stopped his vehicle on the road which tells itself that the vehicle was not driving with rash and negligent manner and the vehicle was in very high speed and the alleged offending vehicle was stopped after crossing the P.O. by losing its balance.

[11] So it is crystal clear that the commander jeep had sufficient balance to stop on the spot but the rider of the motor bike by losing his balance might have stroke the commander jeep, sustained injuries and died on the spot.

[12] Further this witness contradicts the prosecution case regarding the death of said Sudip Dutta @ Nayan as the informant i.e. PW-3, the brother of the deceased stated that he witnessed his younger brother lying dead on the spot whereas, PW-4 stated that later on he came to know that the deceased Sudip Dutta @ Nayan was died in the Primary Health Center. Such type of contradiction though minor creates a doubt on the prosecution case, Mr. Dutta contends.

[13] He also submits that it would transpire from the evidence of PW-4 that he shifted from his version made under Section 161 of Cr.P.C. and during his cross examination, he stated that as he was not asked by the I.O., he did not state all the facts during the recording of his statement under Section 161 of the Cr.P.C. So for such improved version of a witness full of contradictory statements who claimed to be vital witness of the prosecution, the petitioner cannot be convicted under Section 279/304-A of IPC and may be acquitted from the charges leveled against him.

[14] Mr. Dutta, further contends that both the learned trial court and the Appellate Court did not appreciate the ingredients of both the provisions of Section 279/304-A of IPC. The essential ingredients of both the Sections is that "***such death must be caused by a rash and negligent driving***", which in the instant case has not been proved against the petitioner by the prosecution.

[15] On the other hand, learned Addl. P.P. while supporting the judgment of the courts below submits that PW-4 is the only eye witness in this case who has narrated about the accident though when the accident occurred the other people was not available as eye witnesses and for that, there is no reason to disbelieve this witness. He

further submits that apart from the deposition of PW-4 the evidence of PW-9, the owner of the offending vehicle clearly established that the petitioner was the driver of the offending vehicle at the time of accident and there is no evidence that for the fault of the rider of the motorcycle, the accident occurred and the place of occurrence being on the extreme western point of the road turning from the north to south, it is evident that the jeep came to the wrong side and dashed the motorcycle.

[16] He further submits that though it is established that PW-4 is related to the informant but such relation simplicitor cannot be a ground to disbelieve this witness. On that particular day around 8.30am he was working as a mason at Betaga area on a bridge and at that time he noticed the commander jeep bearing No. TR-01-A-2027 coming from Santirbazar to Bikhora dashed the motorcycle at a high speed and due to this, the rider of bike sustained grievous injuries who was shifted to the Muhuripur P.H.C. and after the accident, the driver of the commander jeep lost his balance and stopped the vehicle on the road and fled away. Therefore, both the courts below rightly relied upon the evidence of PW-4 and convicted and sentenced the petitioner under Sections 279/304-A of the IPC.

[17] The other witnesses are PW-1, Dr. Santanu Das who conducted the postmortem examination of deceased Sudip Datta @ Nayan who identified his signature on the report which was marked as Extb-1 and Exbt-1/1 respectively. PW-2 Bikram Dey is the seizure witness of the wearing apparels of the deceased Sudip Datta @ Nayan which was marked as Exbt-2. PW-3 the informant and the elder brother of the deceased who did not witness the accident. PW-5, Sujit Sen who deposed that he knew nothing about this case. PW-6 Jagadish Baidya is the hearsay witness. PW-7 Harekrishna Debnath is the scribe. PW-9, Mihir Patari, the owner of the jeep and PW-10, Kanoj Debbarma is the MVI who inspected both the vehicles and stated in his deposition that he found both the vehicles were in damage condition due to an accident and the accident occurred not for any mechanical disorder of the vehicles.

[18] 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 279/304-A of the IPC.

[19] The accident was occurred in the year 2008 and admittedly the petitioner is on bail. Thus, according to this

Court it would not be proper to send him again in the jail after almost 7 years. Accordingly, this Court is of considered opinion that it would meet justice if the sentence is modified to the extent of payment of fine instead of imprisonment as ordered by the courts bellow.

[20] Accordingly, the conviction under Section 279 read with Section 304-A of the IPC passed by the Trial Court and affirmed by the Appellate Court is upheld but the sentence is modified to the extent of payment a fine of Rs. 1,000/- for commission of offence punishable under Section 279 of IPC and a fine of Rs. 3,000/- for commission of offence punishable under Section 304-A of IPC, in total Rs. 4,000/. Fine money shall be deposited within 2 months before the learned Judicial Magistrate, 1st Class, Belonia, South 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 Trial Court. After deposition of fine money the bail bond of the accused petitioner will be terminated.

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

JUDGE

A.Ghosh.