

**THE HIGH COURT OF TRIPURA  
AGARTALA**

*CRL. REV. P. NO.95 OF 2007*

**Sri Asish Roy,**  
S/O Sri Saradindu Roy,  
Resident of Village-Kalachari,  
PO & PS-Kamalpur,  
District-Dhalai.

..... *Petitioner*

- *Vs* -

**The State of Tripura**

..... *Respondent*

**BEFORE  
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. S. Choudhury, Advocate

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : **14.01.2015**

Date of delivery of  
Judgment & order : **20.01.2015**

|                             |            |           |
|-----------------------------|------------|-----------|
| Whether Fit for Reporting : | <b>Yes</b> | <b>No</b> |
|                             |            | ✓         |

*JUDGMENT & ORDER*

This revisional application under Section 397 read with Section 401 of CrPC is directed against judgment and order of conviction and sentence dated 02.06.2007 passed by learned Sessions Judge, West Tripura, Agartala in Criminal Appeal No.7(1) of 2007 whereunder the learned Sessions Judge partly upheld the judgment and order of conviction and sentence dated 07.02.2007

passed by learned Chief Judicial Magistrate, West Tripura, Agartala in Case No.GR 198 of 2004.

**2.** Heard learned counsel, Mr. S. Choudhury who has appeared on behalf of learned counsel, Mr. B. Deb for the petitioner and learned P.P., Mr. A. Ghosh for the State respondent.

**3.** Prosecution case is that on 03.04.2004 at about 2.45 pm a Maruti van, bearing registration No.TR-01-G-0223 being driven most rashly and negligently, while passing through Assam-Agartala Road at Khayerpur(Dalura Drop Gate), knocked down a person, namely Binoy Majumder who was riding his bicycle and also knocked down three school girls, namely Sangita Paul, Meenakshi Paul and Pratima Paul in the roadside and thereafter the driver left the vehicle in the roadside and fled away from the spot.

**3.1.** Immediately after the occurrence police officer from Ranirbazar P.S. appeared at the spot and one Kajal Das lodged an FIR which was recorded by police officer and accordingly Ranirbazar P.S. Case No.12 of 2004 under Sections 279 and 338 of IPC was registered against the driver of the Maruti van vehicle bearing No.TR-01-G-0223.

**3.2.** After investigation police submitted charge sheet against the accused petitioner for commission of offence punishable under Sections 279 and 304A of IPC and accordingly cognizance was taken and in course of trial the accused petitioner was

examined under Section 251 of CrPC to which he pleaded not guilty and claimed to be tried.

**3.3.** In the course of trial, prosecution examined 12 witnesses and thereafter accused was examined under Section 313 of CrPC and in his turn accused declined to adduce any defence evidence.

**3.4.** At the end of trial learned Chief Judicial Magistrate found the accused petitioner guilty of committing offence punishable under Sections 279 and 304A of IPC and sentenced him to suffer simple imprisonment for two years and to pay a fine of ₹5,000/-(rupees five thousand) and in default of payment of fine to suffer simple imprisonment for two months under Section 304A of IPC. Further he was sentenced to pay a fine of ₹1,000/-(rupees one thousand) under Section 279 of IPC and in default of payment of fine to suffer simple imprisonment for ten days.

**3.5.** Aggrieved, the accused petitioner preferred Criminal Appeal No.7(1) of 2007 in the Court of Sessions Judge, West Tripura, Agartala and after hearing learned Sessions Judge while upholding the judgment and order of conviction has held that the petitioner cannot be separately sentenced under Section 279 of IPC in view of the provisions of Section 71 of IPC since the accused was already found guilty of committing offence punishable under Section 304A of IPC and therefore he set aside the order of sentence under

Section 279 of IPC and convicted the accused petitioner only under Section 304A of IPC and sentenced him to suffer simple imprisonment for one year.

**3.6.** Aggrieved, the present revisional application is filed.

**4.** While exercising jurisdiction under Section 397 read with Section 401 of CrPC in a case of revision this Court is required to see the correctness, legality and propriety of the judgment/order passed by the lower Courts and the regularity of the proceedings conducted by the lower Courts. This Court is not generally required to meticulously examine the evidence on record and re-appreciate the same unless it is shown that there is perversity in the appreciation of the evidence.

**5.** Keeping in mind the settled principle of law let us now consider the points raised by learned counsel of the petitioner at the time of argument.

**5.1.** It is argued by learned counsel, Mr. Choudhury for the petitioner that PWs 1, 2 and 3 claimed to be the eyewitnesses of the accident but they could not identify the driver of the offending vehicle at the time of accident. Only PW11 who claimed to be the owner of the vehicle stated that the accused petitioner was the driver of the offending vehicle at the time of accident but PW11 produced no document that the petitioner was engaged as driver

and so the oral evidence of PW11 alone cannot prove the fact that the accused was the driver of the offending vehicle.

The trial Court and the appellate Court, both considered the evidence of PW11 who made specific statement that the accused was the driver of the offending vehicle at the time of accident. His evidence has not been shaken in any manner. The vehicle was released on bail in his favour and the documents of the vehicle were seized at the time of investigation. It is amply proved that at the time of accident the accused was the driver of the vehicle. While he made a consistent statement that the accused was the driver of the offending vehicle his evidence cannot be brush aside. The trial Court and the appellate Court relied on the evidence of PW11. The accused, as it appears was arrested by police in the course of investigation and was produced before the Court wherefrom he got bail. The accused nowhere has taken the plea that he was not the driver of the vehicle at the time of accident. While in his examination under Section 313 of CrPC in reply to question No.11 he simply stated that he is innocent and nothing else. It is, therefore, amply proved that the accused petitioner was the driver of the offending vehicle at the time of accident. The injured witnesses, i.e. PWs 2 and 3 and the eyewitness, i.e. PW1 naturally could not notice who was at the steering of the vehicle at the moment of accident. It is to be ascertained by the investigating agency and the investigating agency after examination of the owner of vehicle arrived at a conclusion that the accused petitioner was the driver of the vehicle and that has not been controverted.

Therefore, the argument advanced by learned counsel for the petitioner has got no merit at all.

**5.2.** The next argument advanced by learned counsel, Mr. Choudhury is that the I.O. of the case has not been examined and so the prosecution case cannot be held to be proved.

Learned P.P. has submitted that non-examination of the I.O. has not caused any prejudice to the petitioner since there are other cogent evidence on record.

I.O. is an important witness who investigated the case and submitted charge sheet but there is nothing in law that if I.O. has not been examined the entire prosecution case is to be thrown overboard. The appellate Court has rightly answered the point and I find nothing to give further finding on the issue.

**5.3.** It is also submitted by learned counsel, Mr. Choudhury that the allegation of rash and negligent driving has not been proved.

The PWs 1, 2 and 3 are the eyewitnesses of the accident. They made categorical statements that the vehicle was passing through Agartala from Jirania side and PWs 2 and 3 were on the roadside. They were knocked down by the vehicle. The deceased Binoy Majumder was riding a bicycle coming from opposite direction and he was knocked down and received severe injury and all the injured were taken to G.B. Hospital where Binoy

Majumder died. The death of Binoy Majumder occurred because of the accident has not been disputed. While the eyewitnesses stated that the vehicle being driven rashly and negligently knocked down them in the roadside, it is abundantly proved that the vehicle was driven rashly and negligently.

A rash act is primarily an overhasty act done without due deliberation and caution. Negligence is the absence of such care and caution which an ordinary prudent man in the ordinary course would take or would not take. In the present case, as I find the evidence of PWs 1, 2 and 3 are enough to arrive at a conclusion that the vehicle was driven rashly and negligently and as a result the accident had occurred. Therefore, this argument of learned counsel, Mr. Choudhury has no merit at all.

**6.** In respect of punishment the learned Sessions Judge has already taken a lenient view. Learned Sessions Judge observed that separate punishment under Section 279 of IPC in view of the provisions of Section 71 of IPC, cannot be accepted. Section 279 and 304A of IPC are independent provisions prescribing punishment for offence. So Section 71 of IPC cannot be applied in the facts and circumstances of the case. Since the State did not challenge the finding of the learned Sessions Judge, I find no reason to interfere in the finding of the learned Sessions Judge on that point. Learned Sessions Judge only ordered the accused petitioner to suffer simple imprisonment of one year for the offence punishable under Section

304A of IPC and the sentence is not disproportionate to the offence committed and therefore I find no reason to interfere in the sentence.

**7.** Accordingly, the revisional application stands dismissed.

**8.** Send back the L.C. records along with a copy of this judgment.

**JUDGE**