

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO.77 OF 2009

Sri Niladri Das @ Sunni,
S/O Sri Binoy Bhusan Das of
Village-Gangail Road,
P.S. West Agartala, Agartala,
District-West Tripura.

..... *Petitioner*

- *Vs* -

The State of Tripura,

..... *Respondent*

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

For the petitioner : Mr. Somik Deb, Advocate
For the respondent : Mr. R.C. Debnath, Addl. P.P.
Date of hearing : **29.05.2015.**
Date of delivery
of Judgment & order : **04.06.2015.**

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER

This criminal revisional application under Section 397 read with Section 401 of CrPC is directed against the judgment and order dated 03.08.2009 passed by learned Sessions Judge, West Tripura, Agartala in case No. Criminal Appeal 54(3) of 2006, whereunder the learned Sessions Judge upheld the judgment and order of conviction of the accused-petitioner under Sections 279 and 304A of IPC, passed by learned Judicial Magistrate, First Class,

Agartala, West Tripura in case No.G.R.891 of 2005 but set aside separate sentence under Section 279 of IPC and sentenced the accused-petitioner to suffer R.I. for six months for commission of offence punishable under Section 304A of IPC and further directed him to pay as compensation of ₹50,000/- to the complainant. Learned Judicial Magistrate, First class, while found the accused-petitioner guilty of committing offence punishable under Sections 279 and 304A of IPC had sentenced him to suffer R.I. for two years and to pay a fine of ₹5,000/-, in default of payment of fine, to suffer sentence of another six months under Section 304A of IPC and also sentenced him to suffer imprisonment for six months under Section 279 of IPC. On appeal, learned Sessions Judge by impugned judgment dated 03.08.2009 modified the sentence and further directed the convict-petitioner to pay compensation of ₹50,000/- to the informant, *i.e.* the husband of the deceased-victim of motor accident.

2. Heard learned counsel, Mr. Somik Deb for the petitioner and learned Addl. P.P., Mr. R.C. Debnath for the State respondent.

3. Prosecution case is that on 15.10.2005 at about 8.00 PM the informant(PW1), Uttam Rudra Pal and his wife, Smt. Sandhya Rudra Pal were engaged in loading and unloading of Laxmi idols and at that time the accused-petitioner, Niladri Das alias Sunni, riding a motor bike bearing No.TR-01-E-4686, being driven most rashly and negligently with abnormal high speed, dashed Smt.

Sandhya Rudra Pal from her backside, and as a result Sandhya Rudra Pal was thrown to the roadside near a lamppost and she received severe injury on her head and other parts of the body. Immediately after the accident she was taken to G.B. Hospital and was under treatment in the hospital till she succumbed to the injuries on 19.10.2005. Uttam Rudra Pal, the husband of the victim Sandhya Rudra Pal lodged the FIR on 19.10.2005 and accordingly West Agartala P.S. Case No.159 of 2005 under Sections 279 and 304A of IPC was registered and investigation was entrusted to S.I. K.C. Uchai(PW8), who after investigation submitted charge sheet against the accused for commission of offence punishable under Sections 279 and 304A of IPC and on the basis of that charge sheet cognizance was taken by the learned Chief Judicial Magistrate and on transfer of the case to the Court of learned Judicial Magistrate, First Class, the accused was examined under Section 251 of CrPC on 19.05.2006 narrating the substance of allegation to which the accused pleaded not guilty and claimed to be tried.

4. In course of trial, prosecution examined eight witnesses and after closure of the prosecution evidence accused was examined under Section 313 of CrPC and in his turn the accused declined to adduce any defence evidence. Defence case is that of a bare denial of the prosecution case. While cross-examination of PW1, *i.e.* the informant, defence has suggested that a false FIR was lodged implicating the accused-petitioner only to justify the motor accident claim case instituted by the informant since the motor bike

belonged to the accused-petitioner was having with all documents and that another vehicle committed the accident and that the motor bike belonged to the petitioner was not involved in the accident.

5. Learned Judicial Magistrate, First Class, at the conclusion of trial found the accused-petitioner guilty of committing offence punishable under Sections 279 and 304A of IPC and sentenced him as stated hereinbefore.

On appeal preferred before the learned Sessions Judge by the accused-petitioner, the finding of conviction under Sections 279 and 304A of IPC was maintained but separate sentence under Section 279 of IPC was set aside and sentence under Section 304A of IPC was also reduced to six months imprisonment and a compensation of ₹50,000/- was inflicted by the learned Sessions Judge.

Aggrieved, the present revisional application is preferred challenging the judgment and order of conviction and sentence.

6. While exercising revisional jurisdiction this Court is to see the correctness, legality and propriety of the judgment/order passed by the inferior court and regularity of the proceedings taken up by such court. This Court is not ordinarily required to re-examine

and re-appreciate the evidence which is already appreciated by the trial Court and the appellate Court unless it is found that there is clear non-appreciation of the evidence already on record or appreciation of inadmissible evidence, or that finding has been recorded without any evidence on record. If there is evidence on record on the point of decision formulated by the Courts below for arriving at a conclusion of guilt, this Court is not required to enter into the records again to substitute its own view in place of the view taken by the trial Court and the appellate Court. The appellate Court substantially reduced the sentence of imprisonment to six months which is most unusual and not expected in ordinary course but since there is no challenge made by the State respondent on that ground, I find no reason to re-open the issue.

7. Learned counsel, Mr. Deb appearing for the accused-petitioner has submitted that the accident as alleged occurred on 15.10.2005 at about 8.00 PM but the FIR was lodged on 19.10.2005. This delay in lodging the FIR has not been explained satisfactorily and hence the entire prosecution case is liable to be disbelieved and the judgment and order of conviction and sentence should be set aside.

8. Learned Addl. P.P., Mr. Debnath on the other hand has submitted that the delay has been explained and both the trial Court as well as the appellate Court accepted the explanation and no prejudice is caused to the accused because of the delay and

hence there is no need of attaching any importance on the issue of delay in lodging FIR.

9. The point of delay in lodging the FIR was raised before the trial Court as well as the appellate Court. Both the Courts arrived at a concurrent finding that the delay has been explained and there is nothing in the record to throw doubt on the prosecution case because of the delay in lodging the FIR.

10. The accident occurred on 15.10.2005 at about 8.00 PM on a public road at Masterpara under West Agartala P.S. The FIR was lodged on 19.10.2005. PW7 is the scribe of the FIR and he proved it as Exbt.4. The signature of the informant(PW1) has been proved as Exbt.1. The content of the FIR has been proved by legal evidence. In the FIR the informant stated that he was busy with the treatment of his wife and therefore there was delay in lodging the FIR. On perusal of the evidence of PW8 and Exbt.3, the seizure list of the offending motorbike I find that PW8 on the date of accident itself at about 8.30 PM seized the offending motorbike No.TR-01-E-4686 by preparing a seizure list in connection with West Agartala P.S. G.D. Entry No.1364 dated 15.10.2005 and that seizure list though has been proved but the copy of the G.D. Entry No.1364 has not been proved. It is, therefore evident that on the date of accident itself, immediately after the accident, the offending vehicle was seized by the police but thereafter neither police obtained any FIR from any witness nor police lodged any *suo motu* FIR to

investigate the offence though it was a cognizable offence. PW1 in his deposition stated that he met the police officer on the next day of the accident but he did not lodge any FIR. In cross-examination he clearly stated that on 16.05.2005 since he was busy with the treatment of his wife he did not lodge FIR and that he did not assign any reason for the delay in lodging the FIR. PW6 in his deposition stated that on 15.10.2005 he informed the police about the accident. It was the duty of the police to record the information lodged by PW6 as FIR and investigate it. But police failed to take step according to law and did not register FIR though PW6 informed the police.

11. There is no time fixed under the law for lodging FIR. Hence, a delayed FIR is not *per se* illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity of any possible concoction of a false version. The object of insisting upon prompt lodging of the FIR is to obtain early information regarding the circumstances in which the crime was committed. Delay in lodging the FIR quite often results in embellishment. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, but also danger creeps in with the introduction of coloured version, exaggerated account or concocted story. Delay in lodging FIR by itself be fatal to the case of the prosecution but the Court of fact has to consider in

the light of the totality of the evidence, whether the delay adversely affects the case of the prosecution and that is the matter of appreciation of evidence.

12. Both the trial Court as well as the appellate Court considered the facts and circumstances as well as the evidence on record and arrived at a consistent finding that the delay has not affected the veracity of the prosecution case in any manner. It is a settled law that the Court should not be too fastidious because of the delay in lodging of the FIR, especially when there is no doubt about the incident, unless of course, the delay is likely to corrode the credibility of the prosecution case. In the present case, in the FIR itself the informant explained that because of his involvement in the treatment of his wife he could not lodge the FIR immediately after the occurrence but it is on record that he met the police officer on the following day of the accident. It is on record that PW6 informed the police about the accident on the date of accident itself and PW8 seized the offending motorbike within half an hour of the accident but he took no effort to obtain an FIR from a person who had knowledge about the accident nor he lodged the *sou motu* FIR about the accident. It is a failure in taking appropriate step by the police officer in the circumstances of the case. The prosecution evidence is very clear, cogent and authentic and has not been shaken in any manner to throw any doubt about the authenticity of the accident alleged to have occurred on 15.10.2005 at about 8.00 PM and therefore simply because of the delay in lodging the FIR, I

think it will not be proper to throw the prosecution case overboard and in that sense the trial Court as well as the appellate Court rightly appreciated the facts and circumstances of the case and arrived at a reasonable finding.

13. The Supreme Court in the case of ***Ramdas & Ors. v. State of Maharashtra*** reported in ***(2007) 2 SCC 170***, the Supreme Court has held—

"In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay."

14. In the case of ***Sahebrao and Anr. v. State of Maharashtra*** reported in ***AIR 2006 SC 2002*** the Supreme Court has held that the settled principal of law is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR could put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.

15. The trial Court and the appellate Court arrived at a concurrent finding with satisfaction that there was explanation for the delay which was acceptable and that there is no embellishment in the prosecution version on account of delay and so such delay is not fatal.

16. In the given facts and circumstances of the case, I am of the considered opinion that the delay in lodging the FIR in the facts and circumstances of the case has not corroded the credibility of the prosecution case and hence the prosecution case should not be thrown overboard for such delay.

17. Mr. Deb, learned counsel for the accused-petitioner has argued that the evidence on record is not sufficient to hold that the accused-petitioner was driving the motorbike rashly or negligently. Mere driving with high speed cannot be termed as a rash or negligent driving unless associated with some other factors to justify the allegation of rash and negligent driving or riding. Referring to the evidence on record he has submitted that it is not sufficient to arrive at a conclusion that rash and negligent riding on the part of the accused.

18. Learned Addl. P.P. on the other hand has submitted that the evidence of PW1 has not been shaken in any manner which

has proved the ingredients of rash and negligent riding by the accused.

19. A rash act is an over-hasty act done without due deliberation and caution. In rashness the criminality lies in running the risk of doing an act with recklessness or indifference to consequences. Negligence means breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do or doing something which a prudent or reasonable man would not do. Culpable negligence is acting without consciousness that illegal or mischievous effects will follow, but in circumstances which show that the actor has not exercised the caution incumbent on him, and that if he had, he would have had the consciousness. The imputability arises from the neglect of the civil duty of circumspection.

20. In the present case, Sandhya Rudra Pal died because of head injury and other injuries received due to the accident. The evidence of PW5, the autopsy surgeon proved the fact that Sandhya Rudra Pal received head injury and other injuries. In the FIR PW1 clearly stated that the accused was driving the motorbike most rashly and negligently and dashed Sandhya Rudra Pal on the road and as a result she was thrown outside the road near a light post. In his evidence, PW1 stated that the accused-petitioner was riding the motorbike in a jig jag manner and in a very high speed and that

he always used to drive the motorbike in rash and negligent manner and he was earlier also cautioned by the people of the locality. It is overwhelmingly brought on record that the accused is a resident of the same neighbourhood of the witnesses. PWs 2 and 4 rushed to the spot of accident within a moment and found the motorbike lying and also found Sandhya Rudra Pal lying with injuries. The accused in his examination under Section 313 of CrPC did not come out with any explanation that the accident occurred for any other reason than that of the alleged rash or negligent riding. While cross-examining PW1 it was suggested on behalf of the accused that some other vehicle committed the accident and that the motorbike of the accused has been involved only to justify motor accident claim case. A suggestion is not an evidence. To justify the suggestion, the party making the suggestion has to adduce evidence in support thereof otherwise the suggestion has no value at all. PW1 is the only eyewitness of the accident and his evidence has not been shaken in any manner in the cross-examination or otherwise and from his evidence itself and from the other circumstances which appeared in the evidence on record it is quite enough to hold that the accused-petitioner was riding the motorbike rashly and negligently at the time of accident.

21. Next argument advanced by learned counsel, Mr. Deb is that the appellate Court inflicted compensation of ₹50,000/- on the accused-petitioner without hearing him and even without giving him any notice thereof. Section 357 of CrPC empowers a trial Court or

an appellate or a revisional Court to impose payment of compensation for the injury suffered by the victim. Learned counsel has referred the case of ***Mangilal v. State of M.P.*** reported in **(2004) 2 SCC 447** and has submitted that imposition of compensation without affording any opportunity of hearing was not justified. The Supreme Court in that reported case has categorically held that an opportunity of hearing has to be granted before directing payment of compensation under Section 357(4) of CrPC. If the appellate Court intends to grant compensation it must grant an opportunity of hearing so that the relevant aspects like the need to award compensation, capacity of the accused to pay and several other relevant factors can be taken note of.

22. In the present case, the learned Sessions Judge abnormally reduced the sentence of imprisonment and also modified the sentence of fine and without assigning any reason ordered payment of compensation of ₹50,000/-. From the judgment of learned Sessions Judge itself it shows that he did not hear the prosecution or the defence on the issue of payment of compensation under Section 357(4) of CrPC.

23. In view of the law settled by the apex Court the order of learned Sessions Judge inflicting compensation without hearing the parties cannot be sustained and hence that part of the finding of

learned Sessions Judge in respect of payment of compensation is liable to be interfered and set aside.

24. The case is remanded back to the learned Sessions Judge to give opportunity to the accused-petitioner in respect of payment of compensation and after hearing both side the learned Sessions Judge should pass an order under Section 357(4) of CrPC. Learned Sessions Judge will be at liberty to hold as to whether the accused shall be held responsible for payment of compensation or not.

25. Learned counsel, Mr. Deb has also argued that the accused-petitioner was a young man of twenty three years at the time of alleged occurrence. The offence committed by him is minor offence and so he may not be put to suffer imprisonment with hardcore criminals. A lenient view may therefore be taken in respect of punishment.

26. Learned Addl. P.P. has submitted that the Sessions Judge has already taken a lenient view in respect of punishment and no further leniency may be shown.

27. The accused-petitioner was charged for commission of offence punishable under Sections 279 and 304A of IPC and he was found guilty of committing the offence prescribed under both the sections. The trial Court accordingly sentenced him under both the

Sections. Learned Sessions Judge while considering the factum of punishment has held that the ingredients of Sections 279 and 304A of IPC are same and therefore applying Section 71 of IPC he set aside the sentence awarded by the learned Magistrate under Section 279 of IPC. The view taken by learned Sessions Judge is absolutely wrong and is not permitted within the ambit of Section 71 of IPC.

28. Section 71 of IPC reads as follows:-

"71. Limit of punishment of offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.—(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by

each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y."

29. The illustrations attached to Section 71 makes it abundantly clear that where an offence consisting of several parts of the same nature is committed, it will come within the purview of Section 71 of IPC.

30. Section 279 of IPC prescribes punishment for rash driving or riding on a public way and Section 304A of IPC prescribes punishment for causing death by rash and negligence act. Both are separate and distinct offences and therefore the observation of learned Sessions Judge that the basic ingredients of Sections 279 and 304A are same is absolutely wrong but I do not like to interfere in such finding since the finding has not been challenged by the prosecution. The offence under Section 279 of IPC and the offence under Section 304A of IPC are separate and distinct offences and there shall be separate punishment under both the sections for rash or negligent driving/riding as well as for causing death because of such rash or negligent driving or riding.

31. Regarding the quantum of punishment, as it appears learned Sessions Judge already abnormally reduced the punishment which was not at all called for.

32. The Supreme Court in the case of ***Dalbir Singh vs. State of Haryana*** reported in **AIR 2000 SC 1677 : (2000) 5 SCC 82** has held:

"When automobiles have become death trap any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic."

33. It is the duty of the Court to impose a proper punishment. It will be a travesty of justice if the accused is allowed to go by paying a fine only. Drastic reduction of sentence in such cases apart from creating law and order problem would be repugnant to basic concept of criminal justice. In the case of ***Surja Ram v. State of Rajasthan*** reported in **(1996) 6 SCC 271** the Supreme Court has observed that while considering the punishment

to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

34. In the case of ***Sevaka Perumal vs. State of Tamilnadu*** reported in ***AIR 1991 SC 1463 : (1991) 3 SCC 471*** the apex Court held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

35. In the given facts and circumstances of the present case, the accused-petitioner was riding the motorbike rashly and negligently and has taken away the life of a young lady and therefore I find no reason to show any further leniency in respect of punishment. I also find no reason to give the accused-petitioner benefit of the Probation of Offenders Act or Section 360 of CrPC.

36. The revisional application accordingly stands disposed of. The judgment and order of conviction and sentence passed by learned Sessions Judge under Section 304A of IPC is affirmed. The rest part of the order of learned Sessions Judge imposing compensation of ₹50,000/- is set aside and quashed. As already stated hereinbefore, learned Sessions Judge should give opportunity of hearing to the accused-petitioner in respect of compensation and after hearing both side should pass an appropriate order under Section 357(4) of CrPC. Learned Sessions Judge will be at liberty to hold as to whether the accused-petitioner should be held responsible for payment of compensation or not. Learned Sessions Judge should dispose the matter within 45 days from today.

37. Send back the records to the Court of learned Sessions Judge along with a copy of the judgment.

JUDGE