

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO.58 OF 2008

Sri Sanjit Sukla Baidya @ Khokan,
S/O Late Jamini Sukla Baidya of
Manikbhandar, P.S. Kamalpur,
Dhalai District.

..... *Petitioner*

- *Vs* -

The State of Tripura,

..... *Respondent*

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

For the petitioner : Mr. S. Chakraborty, Advocate

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

Date of hearing and
delivery of Judgment
& order : **29.06.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

This revisional application under Section 397 read with Section 401 of CrPC is directed against judgment and order of conviction and sentence dated 21.06.2008 passed by learned Addl. Sessions Judge, Kamalpur, North Tripura in Criminal Appeal No.3 of 2008, whereunder the learned Addl. Sessions Judge upheld the judgment and order of conviction of the accused petitioner by

judgment dated 04.03.2008 passed by learned Judicial Magistrate, First Class, Kamalpur, in G.R. Case No.177 of 2006.

2. Heard learned counsel, Mr. S. Chakraborty for the petitioner and learned P.P., Mr. A. Ghosh for the State respondent.

3. The informant, Nazir Uddin(PW1) lodged an FIR on 13.09.2006 at about 1930 hrs. before O/C Kamalpur P.S. alleging that on that day at about 4.30 PM they got down from a vehicle at a place near Durai Shibbari Mandir on Ambassa-Kamalpur road and the road running north to south at that place. The informant Nazir Uddin with his wife Hasina Bibi(PW3), son Reaj Uddin(PW8) and minor daughter Sahena Khatun got down from the vehicle and while Nazir Uddin with Sahena was crossing the road from western side to eastern side of the road, suddenly, the offending vehicle bearing No.TR-01-B-2438 running from north to south with abnormal high speed knocked down Sahena Khatun aged about 5½ years and Sahena died on the spot.

Kamalpur P.S. Case No.50 of 2006 under Sections 279 and 304A of IPC was registered on the basis of the FIR lodged by Nazir Uddin(PW1) and after investigation police submitted charge sheet against the accused petitioner for commission of offence punishable under Sections 279 and 304A of IPC.

Cognizance was taken on the basis of the police report and in due course trial was taken up in the Court of learned Judicial

Magistrate, First Class, Kamalpur, who examined the accused petitioner Sanjit Sukla Baidya under Section 251 of CrPC for commission of offence punishable under Sections 279 and 304A of IPC to which he pleaded not guilty and claimed to be tried.

4. In course of trial prosecution examined 10 witnesses, namely PW1 Nazir Uddian, PW2 Nazir Ahmed, PW3 Hasina Bibi, PW4 Nur Hussain, PW5 Mujibar Rahaman, PW6 Sudip Sinha, PW7 Rasij Uddin Ahmed, PW8 Reaj Uddin, PW9 Narayan Debnath and PW10 Dilop Debbarma. Out of the aforesaid witnesses, according to the prosecution, PWs 1, 3, 4 and 8 are the eyewitnesses of the accident. PW6 is the owner of the vehicle who was declared hostile by the prosecution and his previous statement recorded by I.O. under Section 161 of CrPC has been proved as *Exbt.5*. PW10 is the I.O. of the case. Other witnesses are of little importance.

5. Learned Judicial Magistrate, First Class at the conclusion of the trial found the accused guilty of the charge and sentenced him to suffer S.I. for six months under Section 279 of IPC and again for commission of offence punishable under Section 304A of IPC he was sentenced to suffer SI for two years and to pay a fine of ₹3,000/- in default of payment of fine to suffer SI for two months.

6. Aggrieved, the accused petitioner preferred Criminal Appeal No.3 of 2008 and the learned Addl. Sessions Judge by impugned judgment dated 21.06.2008 upheld the judgment and

order of conviction but reduced the sentence under Section 304A of IPC from two years to one year.

7. Aggrieved, the present revisional application is filed.

8. Learned counsel, Mr. Chakraborty appearing for the accused petitioner has submitted that the evidence of PW1 *i.e.* the informant is quite in contradiction with that of the allegation made in the FIR. In the FIR he stated that after getting down from the bus near Durai Shibbari Mandir on Ambassa-Kamalpur road, his wife and son crossed the road and he with his minor daughter, Sahena while was crossing the road at that time the offending vehicle came from northern direction with a high speed and knocked down his daughter Sahena on the road and head of Sahena was crashed and she died on the spot. But in the deposition before Court he stated in contradiction of his earlier statement that he and his daughter crossed the road from western to eastern side and his daughter was knocked down by the offending vehicle. Drawing my attention to the hand-sketch map, *i.e.* *Exbt.7* learned counsel, Mr. Chakraborty has submitted that the skidding mark of the tyre on the road shows that it was on the middle of the road and the place of accident as marked is also on the middle of the road. So, it is quite evident that the victim was knocked down on the middle of the road and not in the road side as stated by PWs. It is also submitted by Mr. Chakraborty, learned counsel that there is no legal evidence to show that the accused petitioner was the driver

of the vehicle at the time of accident. In the FIR it is mentioned that the informant could not see the driver at the time of accident and the driver's name has been incorporated later on. He has also submitted that PW8 though stated to have identified the accused at the time of accident but actually he did not see the accident and he was not cross-examined in respect of his earlier statement recorded by I.O. and that was a defect of the defence lawyer who conducted the case for which the accused should not suffer.

9. Learned P.P., Mr. Ghosh on the other hand has submitted that there is evidence on record to show that because of rash and negligent driving of the offending vehicle No.TR-01-B-2438 by the accused petitioner the accident had occurred and so the trial Court as well as the appellate Court rightly arrived at a conclusion of guilt of the accused.

10. While exercising revisional jurisdiction this Court is not required to re-examine and re-appreciate the evidence on record which has already been considered and appreciated by the Courts below, unless it is shown that there is total non-appreciation of the evidence on record or that the judgment is passed without evidence or on the basis of inadmissible evidence. The revisional Court is to see the correctness, legality and propriety of the finding recorded by the trial Court and affirmed by the appellate Court and further to see the regularity of the proceedings before such inferior Court.

11. Both the trial Court and the appellate Court recorded a concurrent finding of guilt of the accused. However to consider the argument advanced by learned counsel, Mr. Chakraborty I have gone through the impugned judgment and the evidence on record. The life of a minor girl Sahena Begum aged about 5½ years has been taken away by a motor vehicle accident. The question is the identity of the offending vehicle, the driver of the offending vehicle at the time of the accident and whether the vehicle was driven rashly and negligently. In the FIR the informant stated that because of rash and negligent driving the accident occurred and the number of the vehicle he got after the accident as TR-01-B-2438 and the name of the driver Sanjit Sukla Baidya alias Khokan. The statement made in the FIR shows that just at the time of the accident the informant could not take down the number of the offending vehicle and also did not notice the driver.

PW3, the wife of the informant and mother of the deceased in her deposition identified the accused in the dock and stated that he was driving the vehicle but in cross-examination stated that she did not see who was driving the offending the vehicle at the relevant time of accident.

PW4 stated that he had seen the face of the driver as the accident occurred in front of him and he identified the driver in the dock. In cross-examination his attention was drawn to the

previous statement and it was recorded that he actually did not identify the accused driver of the vehicle.

PW8 stated that he knew the accused driver who is known as Khokan of his village and he identified the accused in the dock. This evidence of PW8 has not been controverted in the cross-examination and it stands good that the accused petitioner was the driver of the vehicle at the time of accident.

PW6, the owner of the vehicle was declared hostile by the prosecution and in his examination-in-chief he stated that the vehicle belonged to him but he cannot say who was driving the vehicle on that day since the driver was appointed by syndicate and he knew the accused who did not drive his vehicle. His previous statement recorded by I.O. has been proved as *Exbt.5* and in that statement he has clearly stated that the accused petitioner was the driver of the offending vehicle at the time of accident.

12. The oral evidence of PW8 about identity of the accused is supported by *Exbt.5* the previous statement of PW6 and so it cannot be altogether said that the trial Court as well as the appellate Court arrived at a wrong finding in respect of identity of the accused as the driver of the offending vehicle at the time of accident.

The next point is whether 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. Learned counsel, Mr. Chakraborty has drawn my attention to the hand-sketch map prepared by I.O. which is proved as *Exbt.7* wherefrom it appears that the accident occurred on the middle of the road. There is neither any evidence in the examination-in-chief nor in the cross of the I.O. about the actual spot of the accident but *Exbt.7* shows that deceased Sahena, a minor girl was knocked down on the middle of the road. So either she was on the middle of the road or suddenly she tried to cross the road when the accident occurred and the driver pushed the break of the vehicle and therefore there was skidding mark but the accident had occurred. The accused in his defence denied everything but did not take any plea that because of negligence on the part of the minor girl, who was left loose by her parents, the accident occurred and it could not be avoided. In the absence of any such plea taken on behalf of the accused, it is very difficult to appreciate the defence statement, especially in a revisional case where the evidence has already been appreciated in that regard by the trial Court and the appellate Court. The minor girl was knocked down. She was aged 5½ years so far the statement made by the informant in the FIR. So her parents or guardians were supposed to take care of the baby while crossing the road or passing through the road. The driver of the vehicle also

supposed to take care while driving the motor vehicle if there are passersby or specially the children in the roadside or crossing the road. In the present case, the hand-sketch map though showing that the accident occurred on the middle of the road but PW1 stated that he crossed the road with his daughter when the accident occurred and PWs 3 and 8 also stated almost in the same tune. The evidence in this regard, though there is some inconsistency but the trial Court and the appellate Court relied on the evidence, and while exercising revisional power I do not like to interfere in the evidence to the extent to reverse the finding of the trial Court since the finding is based on evidence which has been appreciated by both the Courts.

13. FIR was lodged on 13.09.2006 at 1930 hrs. Inquest report which has been proved as *Exbt.2* shows that it was prepared before registration of the FIR at the spot where the accident occurred. FIR was received at P.S. and according to the informant some police officer wrote the FIR as per his statement. So there may be a little bit time gap between the lodging of the FIR and preparation of the inquest report and that much of discrepancy is almost in every criminal case for which the prosecution case should not be thrown overboard.

14. Learned counsel, Mr. Chakraborty has submitted that there is nothing on record that the accused was previously punished for any like offence and that from the evidence it is clear that the

minor girl might have been accidentally knocked down for the fault of guardians and so the accused may be given the benefit of Probation of Offenders Act.

15. Since in the given facts and circumstances of the case the life of a minor girl has been taken away and since I feel that the person who is in the steering should not be leniently dealt with when the offence is proved, I am not inclined to release the accused under Section 360 of CrPC or to give him the benefit of Probation of Offenders Act. However, the accused petitioner, as it appears, suffered mental pain from 2006 till today because he was found guilty in the accident and hence considering the mental suffering already suffered by the accused I think the sentence may be reduced to six months rigorous imprisonment.

16. Accordingly, it is hereby ordered that the accused petitioner shall suffer R.I. for six months for commission of offence punishable under Section 279 of IPC and again for commission of offence punishable under Section 304A of IPC he should suffer R.I. for six months and to pay a fine of ₹3,000/-(rupees three thousand), in default of payment of fine further SI of one month. The substantive sentences shall run concurrently.

The revisional application accordingly stands dismissed with modification of sentence as aforesaid.

17. Send back the records to the Courts below along with a copy of this judgment.

JUDGE