

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.66 OF 2008

Sri Titu Datta,
S/o Sri Nirode Baran Datta,
Resident of Vill.- Bramhabari,
Udaipur, P.S.-R.K.Pur,
District-South Tripura.

.... **Convict-Appellant-Petitioner.**

-- Vrs --

The State of Tripura.

..... **Respondent.**

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

For the Appellant- : Mr. A. Pal, Adv.
Petitioner

For the Respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing & delivery : **22.01.2015**
of Judgment & order.

Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order, dated 08.08.2008, passed by learned Sessions Judge, South Tripura, Udaipur in Criminal Appeal No.13(3)/2008 where-under the learned Sessions Judge upheld

the judgment and order of conviction and sentence dated 20.06.2008 passed by learned Judicial Magistrate 1st Class, Udaipur, South Tripura in Case No.GR 14 of 2007.

2. Heard learned counsel Mr. A. Pal for the accused-petitioner and learned Addl. P.P., Mr. R.C.Debnath for the State-respondent.

3. Prosecution case is that on 10.01.2007, at about 10-30 a.m., Nantu Nama (P.W.3), son of the informant Hare Krishna Nama (P.W.1) was on way to Udaipur from Fulkumari riding a rickshaw and at that time a Commander Jeep Vehicle bearing No.TR03-2181 with high speed coming from opposite direction i.e. from Udaipur towards Fulkumari, knocked down the rickshaw and as a result, Nantu Nama plunged out of the rickshaw, fell on the ground and received injuries on his head, right knee and other parts of the body. The rickshaw was also damaged substantially. The vehicle thereafter injured some other people also and ultimately the vehicle was stopped and the driver fled away. It is alleged that the accident occurred for the rash and negligent driving of the vehicle since the driver lost control over the vehicle and therefore, knocked the rickshaw and as a result, Nantu Nama suffered injuries.

4. Immediately after the accident, P.W.1 Hare Krishna Nama lodged the FIR in writing before the O.C.,R.K. Pur P.S.

and accordingly, R.K. Pur P.S. case No.14/2007, under Sections 279, 338 and 427 of IPC was registered and investigation was taken up.

5. After investigation, police submitted charge sheet against accused-petitioner for commission of offence punishable under Sections 279, 337 and 427 of IPC and accordingly cognizance was taken and trial was taken up against the accused.

6. In course of trial, accused was examined under Section 251 of Cr.P.C. to which he pleaded not guilty and claimed to be tried.

7. Prosecution examined 12 witnesses altogether including the injured victim P.W.3 Nantu Nama and another eye witness P.W.10 Matilal Dey. Defence cross examined the prosecution witnesses and after closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C. and in his turn, accused declined to adduce any defence evidence.

8. Defence case so far ascertained from the cross examination of the prosecution witnesses is that the road was under construction by the GREF at the place of accident at that

relevant point of time and that the vehicle was not driven rashly and negligently.

9. Learned Judicial Magistrate 1st Class at the conclusion of trial by his impugned judgment dated 20.06.2008 found the accused-petitioner guilty of committing offence punishable under Sections 279 and 337 of IPC and sentenced him to suffer R.I. for 6(six) months and to pay a fine of Rs.500/- in default of payment to suffer S.I. for further one month under Section 337 of IPC but inflicted no punishment under Section 279 of IPC.

10. The appeal filed by the accused-petitioner was dismissed and the judgment and order of conviction and sentence was upheld.

11. Learned counsel Mr. Pal appearing for the accused-petitioner submits that the eye witnesses of the accident i.e. P.Ws 3 and 10 could not identify as to who was the driver at the time of accident and so, the conviction and sentence of accused was bad in law. He has also argued that to ascertain as to whether the vehicle was having with mechanical disorder or not neither the Motor Vehicle Inspector was examined nor the report submitted by the Motor Vehicle Inspector was exhibited and so the prosecution has failed to prove that the

vehicle had no mechanical disorder at the time of alleged accident and the benefit should go to the accused-petitioner and he should get the benefit of doubt. The third argument advanced by learned counsel Mr. Pal is that there was no rash or negligent driving and mere driving with high speed cannot amount to be rash or negligent driving.

12. Learned Addl. P.P. has submitted that the accused after the accident fled away leaving the vehicle in the road. His father, P.W.4 was the owner of the vehicle and P.W.4 stated that the accused was the driver of the vehicle. So, the identity of the accused has been established. He has further argued that non examination of the Motor Vehicle Inspector is of no consequence in the case since there is no point raised on behalf of the accused that the accident had occurred for any mechanical disorder of the vehicle. He has further argued that if the road was under construction, the accused would take proper care but there is nothing that he was driving the vehicle with proper care and caution.

13. I have meticulously gone through the impugned judgment passed by the learned Judicial Magistrate 1st Class and the learned Sessions Judge. I have also gone through the evidence on record. As I find in the evidence on record, P.W.3 was on way to Udaipur riding a rickshaw. The offending vehicle

TR03-2181 (Commander Jeep) was from opposite direction and both the eye witnesses i.e. P.W.3 and P.W.10 stated that the vehicle was with high speed and it knocked the rickshaw and as a result, P.W.3 was plunged out of the rickshaw and sustained injury on his head, right knee and other parts of the body. It is in the cross examination of the witnesses that the road was under construction by GREF and as a result, the usable road was narrow. Since the road was under construction and the usable portion of the road was narrow, it was necessary for all the drivers of the vehicle to take proper care and caution. I agree with the submission of learned counsel Mr. Pal that mere driving with high speed cannot be termed as rash or negligent driving. A mechanically propelled vehicle must have speed but it should be in the proper place where the vehicle should be with high speed. The place between Matabari to Udaipur so far the evidence shows is within the locality and it is in the evidence that the road in front of Match factory was under construction by GREF and under such circumstances, the driver was supposed to take proper care and caution while passing through such road. A rash act is 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. It will be a rash act if the driver has not taken

proper caution while passing through a road which was narrow because of the construction of the road was going on. Therefore, the argument advanced by learned counsel Mr. Pal cannot be accepted that the driver was not at fault and there was no rash and negligent driving.

14. Regarding identity of the accused, as I find, P.W.4 the owner of the vehicle, who is the father of the accused petitioner has stated that the accused petitioner went out with the vehicle on the date of accident. The driving license of the accused was also seized by police. One cannot expect that a passerby will be able to identify the driver of the vehicle while the vehicle was with high speed. The fact what is disclosed is that after the accident the accused fled away leaving the vehicle on the road. So, eye witnesses could not naturally identify the person who was driving the vehicle but the identity of the accused driver has been established sufficiently by the evidence of P.W.4. Regarding non examination of the Motor Vehicle Inspector, as I find, there is nothing in the evidence that the accident occurred for any mechanical disorder of the vehicle. No such plea was taken on behalf of the accused and hence, non examination of the Motor Vehicle Inspector is of no consequence.

15. Learned counsel, Mr. Pal submitted that the accused is a young man of 25 years of age and there is nothing on record that before the alleged accident there was any other occasion of accident by the accused. Under such circumstances, he prayed for a lenient view in respect of punishment.

16. Learned Addl. P.P. also has fairly submitted that since there is nothing to show that the accused earlier committed any such accident and so, he has no objection if a lenient view is taken in respect of punishment.

17. I have gone through the materials on record. There is no allegation that the accused in any earlier occasion also was held guilty of rash and negligent driving. He is aged 25 years. So, considering his age and the fact that there was no earlier occasion of accident by the accused, I think a fine shall meet the ends of justice. Accordingly, for commission of offence punishable under Section 279 and 337 of IPC, the accused-petitioner is sentenced to pay a fine of Rs.5000/- (Rupees five thousand) in default of payment of fine, to suffer S.I. for 3(three) months.

18. With this modification of sentence the revisional application stands disposed of.

- 19.** Fine money if realized, be given to the injured victim P.W.3 Nantu Nama.
- 20.** Send back the L.C. records along with a copy of this judgment.

JUDGE