

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 95 of 2008

Sri Amar Pal,
S/O Late Chitta Ranjan Pal
resident of village- Madhya Pilak, P.O.- Madhya Pilak,
P.S.- Belonia, District- South Tripura.

... **Petitioner.**

- **Versus** -

The State of Tripura
Represented by the Secretary,
Home Department, Government of Tripura, Agartala

... **Respondent.**

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the petitioner : Mr. D.C Saha, Advocate.

For the respondent : Mr. A. Ghosh, PP

Date of hearing & delivery
of Judgment and Order : **19.01.2015.**

Whether fit for reporting : **YES / NO**

JUDGEMENT AND ORDER (ORAL)

The instant revision petition is directed against the judgment dated 26.11.2008 passed by the learned Additional Sessions Judge, Belonia, South Tripura in Criminal Appeal No. 18(3) of 2008 whereby the learned Appellate Court set aside the conviction and sentence under Section 279 IPC and upheld the conviction under Section 304(A) IPC modifying the sentence passed by the learned Judicial Magistrate, 1st class, Belonia, South Tripura in GR case no. 21 of 2004 and sentenced the accused petitioner to suffer one year simple imprisonment instead of two years simple imprisonment and also to pay a fine of Rs. 25,000/- instead of Rs.5,000/- for commission of offence under Section 304(A) IPC in default to suffer simple imprisonment for six months.

2. Heard Mr. DC Roy, learned counsel appearing for the accused petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the State.

3. The prosecution story in short, is that on 05.02.2004 one written complaint was filed by Smt. Bandana Debnath before the Officer-in-Charge of the Baikhora police station stating inter alia that on 02.02.2004 at about 1420 hrs while her husband was loading paddy bags in the canter truck at Ramraibari, Amar Paul, the accused petitioner started the vehicle without looking behind. Due to that the husband of the complainant Ratan Debnath fell with the paddy bags and received severe injuries and ultimately succumbed to the injuries in the GB hospital on 04.02.2004.

4. A case was registered as Baikhora P.S. case No. 03 of 2004 under Sections 279/338/304(A) IPC and the said case was endorsed to S.I. Subash Debnath for investigation. After investigation the S.I. submitted the charge sheet under Sections 279/338/304(A) IPC against the accused petitioner. The learned Judicial Magistrate, 1st class, Belonia, South Tripura after following the procedure completed the trial, recorded the evidences of the witnesses as well as the statement of the accused petitioner under Section 313 Cr.P.C. On completion of the trial the learned Judicial Magistrate, 1st class, Belonia, South Tripura convicted the accused petitioner under Sections 279/304(A) IPC. The learned trial Court for commission of offence under Section 279 IPC sentenced the accused petitioner to suffer simple imprisonment for six months and to pay a fine of Rs.5,000/- in default to suffer further simple imprisonment for two

months and for commission of offence under Section 304(A) IPC sentenced him to suffer simple imprisonment for two years and to pay a fine of Rs. 5,000/- in default to suffer simple imprisonment for another two months

5. Being aggrieved by the judgment and order of the learned Judicial Magistrate, 1st class, Belonia, South Tripura, the accused petitioner preferred an appeal before the learned Additional Sessions Judge, Belonia, South Tripura which was registered as Criminal Appeal no. 18(3) of 2008. The learned Additional Sessions Judge after hearing the learned counsel for the parties decided the appeal setting aside the order of conviction and sentence under Section 279 IPC and upholding the conviction under Section 304(A) IPC but modifying the sentence, as stated supra. Being aggrieved by the decision of the learned Additional Sessions Judge, Belonia, South Tripura, the accused petitioner prefers the instant revision petition.

6. The entire prosecution case is based on evidences of PW-2 (Sri Krishnadhan Debnath) and PW-3 (Sri Nitai Debnath). These two witnesses are eye witness to the occurrence and they stated that when they were loading the food grain bags at Ramraibari, the accused petitioner being the driver of the vehicle suddenly started the vehicle and as a result of which the victim Ratan Debnath fell down from the vehicle with the paddy bags and sustained grievous injuries. The victim Ratan Debnath was referred to Jolaibari hospital and from there to Udaipur hospital and thereafter to GBP hospital and subsequently he succumbed to his injuries.

7. In the instant case, the learned Additional Sessions Judge, Belonia, South Tripura though has acquitted the accused petitioner from the charge under Section 279 IPC setting aside the order of conviction and sentence passed by the learned trial Court but convicted the accused petitioner under Section 304(A) IPC. Now, question arose as to whether in absence of conviction under Section 279 IPC, any person can be convicted under Section 304(A) IPC.

8. Mr. Roy, learned counsel appearing on behalf of the accused petitioner would contend that basic offence is rash and negligent driving and if a death is caused due to such rash and negligent act not amounting to culpable homicide then the same would come within the purview of Section 304(A) IPC. He further submits that it is not the case of the prosecution that the accused petitioner started the vehicle even after seeing the loading of paddy bags by the deceased Ratan Debnath, as a result of which said Ratan Debnath fell down from the vehicle and sustained grievous injuries and subsequent to that succumbed to the injuries. Thus, unless the rash and negligent driving is proved, it cannot be said that the accused petitioner caused death of Ratan Debnath by doing rash and negligent act which constitute an offence under Section 304(A) IPC. He has further contended that when the learned Appellate Court set aside the order of conviction under Section 279 IPC he ought not have upheld the order of conviction under Section 304(A) IPC and sentenced thereto.

9. Mr. Ghosh, learned Public Prosecutor in his usual fairness submits that in absence of order of conviction under Section 279 IPC

order of conviction under Section 304(A) cannot be maintained as the *sine qua non* of an offence under Section 304(A) IPC is rash and negligent driving which in the instant case, the prosecution has failed to prove.

10. This Court has gone through the judgment of the learned Appellate Court and it appears that the learned Appellate Court mainly relied upon the evidence of PW-2 and PW-3 who are the eye witnesses. After proper scrutiny of the evidence of those witnesses it appears that when the deceased Ratan Debnath was loading the paddy bags in the truck he fell down from the said truck with the paddy bags and received severe injuries as the accused petitioner being driver started the vehicle. Now, question is whether the accused petitioner started the vehicle knowing it that the deceased Ratan Debnath was loading the paddy bags in the vehicle.

11. Mere starting of the vehicle itself would not constitute the offence under Section 304(A) IPC. To prove an offence under Section 304(A) IPC the prosecution has to prove negligence more than a simple negligence. None of the witnesses also stated that the offending vehicle i.e. the truck was driven at a high speed due to which deceased Ratan Debnath fell down. As the evidence regarding driving of the vehicle rashly and negligently is not available and more so the accused petitioner had no knowledge regarding the loading of paddy bags by the deceased while he started the vehicle, it would be proper for this Court to set aside the order of conviction under Section 304(A) IPC. Accordingly, it is ordered.

12. In view of the above, the accused petitioner is acquitted from the charge leveled against him and as he is on bail, his bail bond is discharged.

13. With the above order, the instant criminal revision petition is disposed of. Send down the LCRs forthwith.

JUDGE

Saikat