

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No.104 of 2010

Sri Jiyaul Rakman Hossain,
son of Md. Sirajmiah, resident of
Chanban, P.O.& P.S. R.K. Pur,
District- Udaipur, South Tripura

..... **Petitioner**

- V e r s u s -

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

..... **Respondent**

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

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

For the respondent : Mr. R.C Debnath, Addl.PP.

Date of hearing and : **04.06.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C Roy, learned counsel appearing for the petitioner as well as Mr. R.C. Debnath, learned Addl. P.P. along with Mr. S.B. Dey, learned counsel appearing for the state.

[2] This is a petition filed under Section 397 read with Section 401 of the Cr.P.C questioning the legality of the judgment and order dated 19.11.2010 delivered in Criminal appeal No. 21(3) of 2010 by the Sessions Judge, South Tripura Udaipur, Now Gomati Judicial District affirming the judgment

dated 31.07.2010 delivered in case No.GR 250 of 2006 by the Judicial Magistrate, First Class, Udaipur, South Tripura convicting the petitioner under Section 304-A of the I.P.C for committing the offence of rash and negligence act, causing death. By the impugned judgment, the sentence has been modified. For such modification, the petitioner now shall suffer 1(one) year simple imprisonment with a fine of Rs. 1,000/- in default of payment of fine, to suffer further 2(two) months simple imprisonment under Section 304-A of the I.P.C as no sentence has been awarded under Section 279 of the IPC.

[3] One Sri Sadhan Ch. Chakraborty (PW-2) lodged the information disclosing that one Maruti Van bearing registration No. TR-03-0470 which was being driven in a very high speed ran over a middle aged unknown woman who was walking along the left side of the road. He has categorically disclosed that the accident occurred owing to speed and reckless driving by the driver of the said Marutti Van.

Based on the said information which was lodged on 12.06.2006, R.K. Pur P.S case No. 243 of 2006 under Sections 279/304-A was registered and taken up for investigation. After completion of the investigation, the final police report charge sheeting the petitioner was filed. On taking cognizance of the offence punishable under Sections 279 and 304 of the IPC, the

statement of accusation was read to the petitioner to which he pleaded total innocence and claimed to face the trial.

[4] In order to substantiate the charge of accusation, the prosecution adduced as many as 13 witnesses including the informant, two other eye witnesses, the medical officer, who attended the grievously injured lady when she was brought to the hospital and the investigating officer. That apart, the prosecution introduced as many as 7(seven) documentary evidence including the seizure list of the wearing apparels of the deceased, the mechanical inspection report conducted by the Motor Vehicle inspector on the offending vehicle etc.

To rebut the evidence led by the prosecution, the defence adduced four witnesses but no document. After the prosecution evidence was closed, the petitioner was examined under Section 313 of the Cr.P.C, where he had again reiterated his stand that he was not guilty of the accusation. On appreciation of the evidence, the Judicial Magistrate, 1st Class, Udaipur, South Tripura convicted the petitioner under Sections 279/304 of the I.P.C and sentenced him to suffer simple imprisonment for 6(six) months for committing the offence punishable under Section 279 of the IPC with fine of Rs. 500/-, in default of payment of fine, to suffer further simple imprisonment for one month. The petitioner was further sentenced to suffer 2(two) years simple imprisonment and to

pay a fine of Rs. 1,000/- for committing the offence punishable under Section 304-A of the I.P.C and in default of payment of fine, he shall suffer further imprisonment for 2(two) months.

[5] Being aggrieved by that judgment and order dated 31.07.2007 as passed by the Judicial magistrate, 1st Class, Udaipur South Tripura, the petitioner herein preferred an appeal under Section 374(3) of the Cr.P.C in the Court of the Sessions Judge, South Tripura, now Gomati Judicial District, Udaipur being Criminal Appeal No.21(3) 2010. After hearing, the Sessions Judge, by the judgment dated 19.11.2010, has not interfered with the conviction but he has interfered with the sentence. No sentence has been recorded for committing the offence punishable under Section 279 of the I.P.C. having regard to the provision of Section 171 of the I.P.C. The Sessions Judge has also reduced the sentence awarded under Section 304-A of the I.P.C to one year simple imprisonment with fine of Rs.1,000/-, in default of payment of fine, to suffer simple imprisonment for 2(two) months. This judgment affirming the conviction and modifying the sentence to the extent as stated is under challenge in this petition.

[6] Mr. Roy, learned counsel appearing for the petitioner has contended that the conviction has been returned solely on the basis of the statement of PW-4, Sri Samir Ranjan Saha, who is the owner of the said Maruti vehicle. According to Mr. Roy,

learned counsel, in absence of any corroboration and for the identification the accused first time in the dock, the judgment of conviction is totally uncalled for, equally so its affirmation by the appellate Court. He has further endeavoured to make out a case that if the hand sketch map is believed than the position of the victim stated by the witness of the prosecution cannot be relied. He has submitted that if the vehicle had been moving from P to P1, there cannot be any occasion of hitting the lady coming from the wrong side.

[7] While refuting the submission of Mr. Roy, learned counsel, Mr. S.B. Dey, learned counsel appearing for the State has categorically submitted that what Mr. Roy has contended is a product of misreading of the evidence.

For the purpose of appreciating the contentions made by the learned counsel for the parties, this Court has taken a short survey to ascertain whether there is any infirmity calling for interference. There is no dispute that none of the prosecution witnesses, except PW-4, Sri Samir Ranjan Saha, had identified the petitioner as the driver of the vehicle bearing registration No. TR 03-0470. PW-2, Sri Sadhan Chakraborty at the first instance disclosed the identity of the vehicle with its registration No. TR 03-0470, immediately after the occurrence. PW-1 is also the seizure witness of the wearing apparels of the deceased.

[8] PW-2, Mr. Sadhan Ch. Chakraborty, who lodged the information has categorically stated in the trial that at about 5 pm in the afternoon, a lady was proceeding towards Rajarbag from Ramesh Chowmuhani along the designated left side of the road when a white coloured maruti van bearing registration No. TR-03-0470 was proceeding towards Ramesh Chowmuhani from the Rajarbag side in a very high speed. But suddenly deviating from its left side, dashed the lady by moving towards its right hand side and the skull of the lady was smashed. The vehicle was detained at the very spot but the driver fled away. The lady died in the spot. She was aged about 48 years. He has categorically stated that the accident occurred due to the rash and negligence of the driver of the said vehicle. He identified his signature in the ejahar. Nothing could be elicited from his cross-examination. PW-3, Sri Manik Deb Roy has almost replicated the same what has been stated by PW-1 in the trial.

[9] PW-4 Sri Samir Ranjan Saha, the owner of the vehicle has categorically stated as under:

"Darogababu had seized my vehicle, along with some documents, including driving license of my driver Jiaul Raqman Hossain. I had taken my vehicle and the documents on bail, on furnishing a bond. On the date of the accident i.e. on 12.06.2006 the accused Jiaul Raqman Hossain was the driver of my vehicle. He is present today in Court and identified."

He has also identified the seizure list.

In the cross-examination, he was suggested that the petitioner Jiyal Rakman Hossain was not his driver but he denied that suggestion categorically.

[10] PW-5, Sri Subrata Roy Sarkar categorically made the similar statement like PW-2. PW-6, Sri Nirmal Sutradhar, another witness has confirmed the presence of PWs-1 & 5 on the spot at the time of accident. He has also stated in the similar manner as stated by PWs 2 and 5. He has further stated that one maruti van bearing registration No. TR-03-0470 was coming towards Ramesh Chowmuhani from the Rajarbag side in a very high speed. It lost control and dashed the lady, recklessly going to the wrong side of the road. The driver of the vehicle after hearing their hue and cry fled away from the spot. He was also the witness to the inquest procedure and identified his signature on the inquest report.

[11] PW-7, Sri Ajit Kr. Paul is not the eye witness. But he had identified the lady and stated that the deceased was his sister. PW-8, Soni Madraji, who helped the Doctor during the postmortem examination which was conducted by Dr. Debasish Paul. He has identified his signature on the seizure list as he was there at the time of seizing the wearing apparels of the deceased. PW-9, Sri Shib Shankar Roy was not examined by the prosecution. PW-10, Sri Rasaraj Das is the relative of the deceased but he is a hearsay witness. PW-11 Ashim Saha, Sr.

Motor Vehicle Inspector, conducted the mechanical examination of the vehicle, seized from the place of occurrence on 17.06.2006 and stated that there was no mechanical disorder in the vehicle.

[12] PW-12, Dr. Debasish Paul, who conducted the postmortem examination of the deceased has stated that the cause of death was apparent, and it was for subdural hemorrhage over the left parietal region which was ante mortem caused by blunt force which occurs in the cases of the Road Traffic Accident (RTA). He identified the postmortem report prepared by him without any challenge from the defence.

[13] PW-13, Mr. Siddhartha Sankar Chowdhury, who is the investigating officer has elaborately narrated in the trial how he conducted the investigation on preparing the seizure list and recording of the statements of the witnesses and when a *prima facie* case had surfaced, he filed the charge sheet. Even PW-13 was not confronted very seriously by the defence.

[14] The hand sketch map denotes the place of occurrence and the hand sketch map if read with the oral testimonies of the eye witnesses it would appear that the victim was found on the designated left side of the road as she was proceeding from the end of P/1 to P, whereas the vehicle was

coming from P to P/1 and dashed the lady on the place of occurrence coming on to the wrong right side of the road. The eye witnesses have categorically stated that the vehicle was being driven not only in an extreme speed but recklessly. Thus it smashed the lady. In the examination as carried out under Section 313 of the Cr.P.C, the petitioner denied all such incriminating materials but he has failed to give any other explanation during his examination under Section 313 of the Cr.P.C. Even he has not stated that even though he was the driver of that vehicle but he has not driving the vehicle at the relevant time. He has merely stated that the statement made by the PW-4 is false. Thereafter, he adduced 4(four) defence witnesses D.W.1 Shri Farid Meah, D.W.2 Shri Mujibir Meah, D.W.3 Shri Santi Sarkar and D.W.4. Shri Pradip Acharjee. All those witnesses appeared at the spot after the accident. What they deposed in the trial is that the lady was known to them as the lady was suffering from mental derangement and she used to loiter on the road without any proper care and caution. Only D.W-4, Pradip Acharjee has stated that he is professionally a rickshaw puller and at the time of accident he was present at the spot. He saw that a mad lady dancing on the road and suddenly dashed with one maruti van and got injured. The defence case hinges entirely on this version. Now, after balancing the evidence as led by the prosecution and the defence, this Court has no hesitation to come to conclusion that the prosecution has

proved the charge beyond reasonable doubt. The persons, who were present at the time of accident cannot be disbelieved rather the statement of DW-4 is highly improbable for the reason that his solitary statement stands against the statement made by the other eye witnesses as stated. As such, this Court will not take any cognizance of his statement and thus, this Court is inclined to hold that the finding of conviction is clearly based on cogent reasons. Accordingly, this revision petition stands dismissed.

Before parting with the records, it is observed that the Sessions Judge, Gomati Judicial District, Udaipur has correctly discarded the plea of granting probation to the petitioner because his conduct does not inspire confidence as he did not honestly approach the Court.

Send down the LCRs forthwith.

JUDGE