

IN THE HIGH COURT OF TRIPURA
AGARTALA

Crl.Rev.P.No. 64 of 2010

Sri Ajit Mitra,
son of late Paresh Mitra @ Harish Mitra,
resident of Champamura,
P.O. Sekerkote, P.S. Amtali,
Dist. West Tripura,

..... **Petitioner**

-V E R S U S-

The State of Tripura

..... **Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. R. Dutta, Mr. A. Acharya, Advocates.
For the respondent	:	Mr. A. Ghosh, P.P.
Date of hearing & judgment & order	:	10.06.2015
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Roy, learned counsel vice Mr. R. Dutta,
learned counsel appearing for the petitioner and Mr. A.
Ghosh, learned P.P.

[2] By filing this petition under Section 397 read with Section 401 of the Cr. P.C., the judgment and order dated 07.06.2010 delivered in Criminal Appeal No. 10(1) of 2010 has been challenged.

[3] Mr. Roy, learned counsel has submitted that the said judgment suffers from misreading of the evidence else it would have surfaced that the prosecution has failed to prove the rash and negligent driving of the vehicle.

[4] This case emerges from the ejahar lodged to the Officer-in-Charge of Amtali Police Station disclosing that the petitioner being the driver of the vehicle, bearing registration No. TR-01-2789 drove the vehicle in an excessive speed and in negligent and rash manner. As consequence of such negligent and rash driving he met with an accident and some passengers sustained serious injuries.

[5] Based on that written ejahar, Amtali P.S Case No. 79/2007 was registered and taken for investigation. On completion of investigation, the final police report chargesheeting the petitioner was filed under Sections 279/337 of the IPC. Accordingly, the trial commenced as the petitioner pleaded not guilty and claimed to be tried.

[6] The prosecution examined as many as 10 witnesses and on completion of trial, the trial court, the court of the Judicial Magistrate, 1st Class, Bishalgarh, West Tripura, by the judgment dated 25.01.2010 delivered in G.R. Case No. 11 of 2007, convicted the petitioner under Sections 279/337 of the IPC. That judgment of conviction was challenged in the appeal filed under Section 374(3) of the Cr.P.C. being Criminal Appeal No. 10(1) of 2010 in the court of the Sessions Judge, West Tripura, Agartala. By the impugned judgement, the said appeal has been dismissed. While dismissing the said appeal the trial court has observed that out of the 10 witnesses, PWs- 5, 6 and 7 who suffered injury due to the accident did not say anything how and why the accident occurred. PWs-8 and 9 who were passengers of the vehicle stated in particular that, the accident occurred due to the rash and negligent driving of the vehicle, as the driver lost control of the vehicle due to excessive speed.

[7] Excessive speed itself is not an offence because it is a relative term. It depends on the condition of the road, situation of the road, condition of the vehicle, time of driving etc. Even though PWs-8 and 9 did not say anything regarding the measurement of speed, but they had been very specific that, due to speed the driver lost control over

the vehicle and hence the appellate court affirmed the finding of conviction as returned by the trial court.

[8] PWs-4 and 6 did not say anything material in respect of the prosecution's case. The petitioner was identified by the witnesses in the dock and such identification has not been challenged. Having regard to the nature of the evidence, this Court is not inclined to interfere with the concurrent finding of fact returned both by the trial court and the appellate court. Hence, the finding of conviction is further affirmed.

[9] However, this Court is not in agreement with the finding of the appellate court that the benefit of the provisions of Section 360 of the Cr. P.C. by granting probation under Section 4 of the Probation of the Offenders Act cannot be extended to the petitioner. Having regard to the age of the petitioner and the nature of the offence as well as the transaction, this Court is of the view that the petitioner shall be provided the benefit of probation in lieu of compelling him to suffer imprisonment and released on furnishing a bond of probation for a period of 1(one) year. Accordingly, the sentence is interfered with. The petitioner shall be released on his furnishing a bond of good conduct for a period of 1 (one) year supported by one surety.

[10] During that period of probation if any adverse report is received from the Probation Officer, the petitioner shall undergo the sentence as awarded by the impugned judgment and order.

[11] The bond of probation shall be furnished in the trial court within 21 days from today. If such bond is not furnished within the stipulated time, the petitioner shall surrender for undergoing the sentence else the necessary coercive action against the petitioner shall be adopted by the trial court to ensure that the petitioner suffer the sentence.

[12] Accordingly, this petition is partly allowed. A copy of this order be sent to the trial court along with the LCRs.

JUDGE

A. Ghosh.