

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.11 of 2015

Sri Amar Krishna Molsom,
son of late Gourhari Molsom,
resident of Laxmandhepa,
P.S. Melaghar,
District – Shipahijala, Tripura

..... **Petitioner**

- Vs -

The State of Tripura

.....**Respondent**

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

For the petitioner	:	Mr. D. Dutta, Advocate
For the respondent	:	Mr. A. Ghosh, Public Prosecutor
Date of hearing and delivery of judgment & order	:	23.02.2015
Whether fit for reporting	:	YES / NO

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Dutta, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent.

02. This is a petition filed under Section 397 read with Section 401 of the Cr.P.C. against the judgment and order dated 15.11.2014 delivered in criminal Appeal No.31(3) of 2014 by the Sessions Judge, Gomati Judicial District, Udaipur.

03. By the said judgment and order dated 15.11.2014, hereinafter referred to as the impugned judgment and order, the Sessions Judge has affirmed the judgment and order of conviction and sentence dated 16.06.2014 delivered in GR 309 of 2012 whereby the

petitioner was convicted under Section 304-A, 337 and 279 of the IPC on appreciation of the evidence as led by the prosecution and sentenced to pay fine of Rs.1000/- under Section 279, SI for one month under Section 337 of the IPC along with a fine of Rs.500/- and in default to suffer further SI for one month and SI for 6 months under Section 304-A of the IPC.

04. Being aggrieved by that judgment and order dated 15.11.2014 an appeal was filed by the petitioner being Criminal Appeal No.31(3) of 2014 and the said appeal has been dismissed by the Sessions Judge by the impugned judgment. However, the sentence as was awarded under Section 279 of the IPC was interfered with holding that since the sentence has been awarded under Section 304-A, no further sentence is reasonable.

05. From the records, it appears that on 18.06.2013 at a place called Laxmanpara the petitioner while driving the vehicle bearing No. TR-01-C-4235 in an extreme high speed could not control the vehicle in a turn and it capsized causing serious injuries to PW-1 namely Smti. Matak Manti Malsom and others. PW-1 filed the ejahar stating that the accident only took place for the rash driving of the petitioner. After investigation the chargesheet was filed under Section 304-A/337 and 279 of the IPC. In due course, the statement of accusation was read over to the petitioner. He denied the allegations claiming to face the trial.

06. In order to substantiate the substance of the accusation, the prosecution adduced as many as 10 witnesses including the victims and the investigating officer. On appreciating the evidence so produced

by the prosecution the judgment of conviction was returned by the trial court which has been affirmed by the appellate court.

07. Mr. D. Dutta, learned counsel appearing for the petitioner has submitted that there is serious discrepancy as regards the date of occurrence. In the statement of accusation the date of occurrence has been recorded as 18.06.2011 wrongly whereas the date of accident is 18.06.2010, according to the ejahar filed by PW-1. As such, Mr. Dutta, learned counsel for the petitioner has contended that the fact of accident has not been proved by the prosecution as there are clearly two versions on the records. He has further submitted that there is no proof of rash and negligent driving by the petitioner. He has taken this Court to the oral testimonies of the PWs for that purpose.

08. From the other side, Mr. Ghosh, learned PP appearing for the State has submitted that the mistake that has occurred while reading the statement under Section 251 of the Cr.P.C. has been taken due note of, by the appellate court and thereafter the said plea was rejected. As such, it has to be deemed that under Section 464 of the Cr.P.C. the appellate court has erased the effect of omission in the substance of the accusation. Section 464 of the Cr.P.C. reads as under:

"(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby."

09. Mr. Ghosh, learned PP submits that the petitioner has failed to make out such case showing that there was failure of justice.

He has contended that from reading of the evidence as laid by the prosecution, it would be apparent beyond reasonable doubt that the accident took place on the day as stated in the ejahar. PW-1 and her husband who subsequently succumbed to his injuries that he suffered from the said accident, was travelling by the vehicle involved in that accident. Mr. Ghosh, learned PP has also made generous reference to the oral testimonies of the prosecution witnesses.

10. For appreciating the rival contentions as raised by the learned counsel for the parties, it would be apposite to take a brief survey of the record of evidence.

PW-1, Smti. Matak Manti Malsom has categorically stated that about 3 years back one day at about 3 p.m. while she was with her husband Prasad Haw Malsom was travelling boarding an auto rickshaw to their house, for high speed the driver lost the control over the vehicle at a place after crossing Laxmanpara and the vehicle got suddenly capsized. Herself and her husband received injuries. She has categorically stated that her husband died succumbing to the injuries that he suffered in the accident and on that aspect there is no cross-examination.

PW-2, Sri Prabir Bhakta Malsom has corroborated the prosecution case stating in the same vein of PW-1 but there is again no cross-examination from the defence on the material part.

PW-3, namely Sri Bidhu Debbarma supported the prosecution case but without referring to the date of the accident and the nature of injuries the deceased suffered. But there is no cross-examination again from the defence.

PW-4, Sri Bikarna Malsom has corroborated the prosecution case by stating that while his wife and son were going to the Atharobhola market boarding the auto rickshaw bearing No.4325 on crossing Laxmanpara, the vehicle suddenly made an accident as a result of the high speed. But no cross-examination has been carried out again in this regard. But there had been an attempt to project that the auto rickshaw bearing No.4235 did not meet any accident but it is the auto rickshaw bearing No.4332 which met the accident.

PW-5, Smt. Basana Ch. Malsom supported the prosecution case and she was not even cross-examined. But she has given another date as the date of occurrence i.e. 18.08.2010.

Similarly, PW-6, Sri Gunaimanti Malsom has also stated that on 18.08.2010 the said accident took place.

PW-7, Sri Rupsadhan Jamatia is the seizure witness of the vehicle and he had identified his signature in the seizure list and the incidence of seizure. But he was not even cross-examined by the defence.

PW-8, Sri Sunil Murasingh who has stated that on 16.06.2010 while he was posted in the Killa PS, he received one written ejahar from one Smt. Matak Manti Malsom and he registered the Killa PS Case No.17 of 2010 under Section 279/338/304-A of the IPC.

PW-9, Sri Niru Mohan Jamatia, the medical officer testified in the trial stating that on 18.06.2010 when he was posted at Atharobhola PHC as the Medical Officer one Sri Basana Ch. Malsom and

Smti. Gonai Manti Malsom were taken to the PHC with history of road traffic accident and he examined them. During examination he found the injuries over the body of Smti. Gonai Manti Malsom. They were treated in the primary health centre till 20.06.2010.

PW-10, Sri Jaharlal Debbarma investigated the occurrence and he has categorically stated that on 22.06.2010 he seized one auto rickshaw bearing registration No.TR-01-C-4235 on preparing the proper seizure list in presence of the independent witnesses. He has identified the seizure list (Exbt.7) and his signature thereon. He recorded the statement of the witnesses immediately. Thereafter, he asked the Motor Vehicle Inspector for inspection of the vehicle. Having collected the mechanical inspection report of the seized vehicle he found that the report has categorically stated that the accident did not take place for any mechanical failure and thus he filed the chargesheet.

11. The ground of objection as taken by the petitioner that there is no evidence of the accident for rash and negligent driving. It is entirely unfounded inasmuch as there is adequate evidence to show that the accident occurred and from the accident PW-1 and her husband suffered serious injuries with some other persons. The Medical Officer came with the injury report and supported the prosecution case. There is a serious lapse as the motor vehicle inspector was not examined in the case. But that part of the statement made by the investigating officer, PW-10, was not challenged by the defence. No doubt it was the primary responsibility of the prosecution to bring the motor vehicle inspector who conducted the mechanical survey of the vehicle in the trial. This Court finds that

even in absence of such report, based on the ocular evidence as led by the prosecution, this Court can comfortably reach to the conclusion without shred of doubt that accident had taken place for rash and negligent driving of the vehicle. The plea of mechanical failure has never been projected by the defence. As the vehicle at the relevant point of time, was being driven at an extreme speed and for that speed the vehicle could not be controlled in the turn. The second ground of objection as agitated by Mr. Dutta, learned counsel for the petitioner is that there is discrepancy in the date of occurrence. On the first blush, it appears very attractive but this Court cannot be oblivious that the witnesses have come from a rustic background and merely for saying any date wrongly the advantage cannot be given to the petitioner or it cannot be held that the substance of accusation has not been proved. Reading the records of evidence in totality, it would emerge that the prosecution has led adequate evidence to enable the court gather the relevant date. In the injury report based on which the medical officer, PW-9, has categorically stated that on 18.06.2010 he treated PW-1 and one Basana Ch. Malsom has reflected the date of accident. Such record prevails over the oral testimonies. The discrepancies in framing the statement of accusation thus, has been correctly appreciated by the appellate court.

12. In the result, this Court does not find any infirmity in the finding of conviction. However, on considering the age of the petitioner as well as the residual circumstances, this Court is of the view that the punishment of SI for 6 months as has been awarded under Section 304-A of the IPC requires interference. The petitioner is sentenced to suffer SI for 3 months for commission of offence punishable under

Section 304-A of the IPC. The sentence of fine of Rs.1000/- under Section 337 stands unaltered. In the event of failure of payment of fine the petitioner shall suffer SI for one month but that imprisonment shall not be included in the SI as awarded under Section 304-A of the IPC.

With this modification in the sentence, this petition is disposed of.

JUDGE

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