

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No.48 of 2011

Sri Kajal Majumder,
son of late Nikunja Majumder, of
village & P.O. Jashmura, P.S. P.R.
Bari, District – South Tripura

..... Petitioner

- V e r s u s -

The State of Tripuram,
represented by the Department of
Home, Government of Tripura

..... Respondent

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

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

For the respondent : Mr. A. Ghosh, P.P.

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

Whether it is fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned P.P. appearing for the State.

[2] By this petition filed under Section 397 read with Section 401 of the Cr.P.C., the judgment and order dated 30.05.2011 delivered in Criminal Appeal No. 08 of 2011 by the

Addl. Sessions Judge, South Tripura, Belonia has been questioned.

[3] By that judgment, the Addl. Sessions Judge has affirmed the judgment of conviction dated 11.04.2011 delivered in case No.GR 275 of 2007 by the Sub-Divisional Judicial Magistrate, Belonia, South Tripura but with modification in the sentence, as awarded for committing the offence punishable under Section 279 of the I.P.C. It has been held that such sentence ought not have been given.

[4] One Dinesh Chakraborty (PW-6) lodged the written ejahar to the Officer-in-Charge, P.R. Bari police station, South Tripura disclosing that when he was travelling along with his nephew namely, Abhijit Chakraborty by a commander jeep bearing registration No.TR-03-2429 from Barpathari market, the vehicle got slanted on the left side of the road at a place called, Pipariakhola (Shanikhola). The vehicle was driven by its driver with extreme speed. For the said accident, the passengers of the vehicle received injuries. PW-6 and his said nephew were injured and under treatment while he lodged the information.

[5] Based on the said information, P.R. Bari case No. 50 of 2007 under Sections 279 and 338 of the I.P.C. was registered and taken up for investigation. On completion of the investigation, the final police report chargesheeting the

petitioner was filed and on taking cognizance the statement of accusation read to the petitioner when he denied the accusation and pleaded total innocence claiming to face the trial.

[6] In order to substantiate the accusation, the prosecution adduced as many as 7(seven) witnesses including the informant, the investigating officer and the Medical Officer, who attended the injured from the accident. In addition to the oral evidence, the prosecution introduced 3(three) documentary evidence including the written ejahar and the injury report. On appreciation of the evidence on records, the Sub-Divisional Judicial Magistrate, Belonia, South Tripura by the judgment dated 11.04.2011 held that the petitioner's negligence was the solitary cause for the said accident and hence, the trial court convicted the petitioner under Sections 279/338 of the I.P.C. Pursuant to that conviction, the petitioner was sentenced to suffer one month rigorous imprisonment for committing the offence punishable under Section 279 of the I.P.C and three months rigorous imprisonment for committing the offence punishable under Section 338 of the I.P.C

[7] It is apparent that there had been no endeavour to appreciate whether the petitioner is to be considered for benefit of Section 360 of the Cr.P.C by putting him to the probation

under the probation under Section 4 of the Probation of Offenders Act.

[8] Being aggrieved by that judgment and order dated 11.04.2011, the petitioner herein preferred an appeal being Criminal Appeal No.08 of 2011 under Section 374(3) of the Cr.P.C in the court of the Addl. Sessions Judge, South Tripura, Belonia. While disposing the appeal, the said judgment of the trial court was upheld by the judgment and order dated 30.05.2011 with modification in the sentence as stated. Even the appellate court did not make any attempt to weigh whether the petitioner can be granted the probation or not.

[9] Mr. D.C. Roy, learned counsel appearing for the petitioner has submitted that there is no evidence to show that the petitioner had been driving the vehicle recklessly and negligently or without proper caution. Hence, Mr. Roy, learned counsel urged for acquitting the petitioner from the accusation.

[10] From the other side, Mr. A. Ghosh, learned P.P appearing for the State has refuted such submission made by Mr. Roy, learned counsel appearing for the petitioner by stating that the victims are the witnesses of the accident and Dr. Dipen Roy (PW-2) has categorically stated that the injuries even though are not serious in nature, but those were received in the

motor vehicle accident as per the history as has been recorded in the injury report (Exbt.3).

[11] On appreciation of the submissions of the learned counsel of the parties as well as the evidence on record, what this Court finds is that there is no reason to interfere with the concurrent finding of the trial court as well as the appellate court as to rash and negligent driving inasmuch as the injured witnesses have categorically stated that the driver had been driving in a reckless speed, for which he had failed to control the vehicle. But it is equally important that the petitioner should have been considered under Section 360 of the Cr.P.C. Having regard to the nature of offence and age of the convict, this Court is of the considered opinion that the sentence as awarded in terms of the impugned judgment is required to be interfered with. Accordingly, it is ordered. The petitioner shall be released on furnishing a bond of probation in the court of the Sub-Divisional Judicial Magistrate, Belonia, South Tripura Judicial District within a period of 3(three) weeks from today coupled with an undertaking that he will maintain good conduct for a period of one year when he should be entitled to drive the vehicle with strict compliance of law. Such bond shall be supported by one surety of an amount of Rs.5,000/- (Rupees Five thousand). If within 3(three) weeks such bond of probation is not submitted, then the petitioner shall surrender before the

trial court for suffering the sentence as awarded by the appellate court by the impugned judgment and order. It is also made further clear that if any adverse report is received by the trial court in respect of the petitioner from the probation officer, the bond of probation should be discharged and the petitioner shall be compelled to suffer the imprisonment as imposed by the appellate court.

With this observation and direction, this revision petition stands disposed of.

Send down the LCRs forthwith.

JUDGE

Sujay