

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL REV. P. NO. 72 OF 2011

Sri Ashim Gope,
son of Sri Narayan Ch. Gope,
resident of village : Kalgachaliya,
P.S. Sidhai, District : West Tripura

..... **Petitioner**

– Vs –

The State of Tripura

..... **Respondent**

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

For the petitioner : Ms. S. Deb Gupta, Advocate

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

Date of hearing : 17.06.2015

Date of judgment & order: 28.07.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

As the appeal filed by the petitioner, questioning the judgment of conviction dated 19.01.2011 delivered in case No. G.R.1048 of 2007 by the Chief Judicial Magistrate, West Tripura, Agartala failed, the petitioner has filed this revision petition under Section 397 read with Section 401 of

the Cr.P.C., challenging the appellate court judgment dated 23.06.2011 delivered in Crl. Appeal No.8(1) of 2011, whereby the judgment of conviction passed by the trial court has been affirmed.

2. The genesis of the prosecution is rooted in the written ejhar filed by one Manicharan Debbarma (PW.1) disclosing that on 01.10.2007 while his wife, Usha Rani Debbarma (PW.5) alongwith other persons was proceeding towards Agartala by boarding a vehicle No.TR-01C-1958 (Cruiser) and when the vehicle reached at Kalagachia, near the brick field on Agartala-Simna road at about 7.30 hours, the said vehicle met an accident due to rash and negligent driving of the driver of the Cruiser vehicle. As a result, his wife (PW.5) sustained grievous head-injury. She also sustained injury on some other parts of her body. She was immediately shifted to Mohanpur Primary Health Centre alongwith other passengers. Thereafter, his wife was referred to the G.B.P. hospital, Agartala for better treatment on the very same day.

3. Based on the said ejhar dated 03.10.2007, which was almost after two days from the date of occurrence, Sidhai P.S. case No. 51 of 2007, under Sections 279/338 was registered and taken up for investigation.

4. It is an admitted position that, after the investigation was complete, the final police report chargesheeting the petitioner was filed. On taking cognizance, the statement of the accusation for committing offence punishable under Section 279 read with Section 338 of the IPC was read over to the petitioner, to which he pleaded total innocence and claimed to face the trial.

5. In order to substantiate the accusation as stated, the prosecution adduced as many as ten witnesses alongwith some documentary evidence including the written ejahar (Exbts.1 and 6), injury reports (Exbts.3 and 4) and the inspection report of the vehicle (Exbt.5).

6. After the prosecution evidence was recorded, the petitioner was examined under Sections 313 of the Cr.P.C. to have his response on the incriminating materials those surfaced in the evidence.

7. For purpose of appreciating the challenge as made in the impugned judgment, it would be appropriate to have a brief survey of the evidence as led by the prosecution.

8. PW.1, Manicharan Debbarma has supported what he had narrated in the written ejhar (Exbt.1). Moreover, he was not an eye witness.

9. PW.2, Sushanta Deb did not reveal anything of material importance, but he has stated that while he was working in the brick field at Kalagachia, he found that one Cruiser vehicle bearing No.TR-01C-1958 was lying overturned. They brought four passengers from inside the vehicle in the injured condition and transported them to the Mohanpur Primary Health Centre.

10. PW.3, Bibhash Dhar Choudhury also followed the suit of PW.2, Sushanta Deb.

11. PW.4, Smt. Anjali Debnath was a passenger in the vehicle which was involved in the accident. She has stated that the vehicle was being driven at 'excessive speed' and in a negligent manner. She lost her sense at the spot. She received some injuries. She has stated that she could identify the driver by face and subsequently, she had identified the driver in the court.

12. PW.5, Smt. Usha Rani Debbarma, the other victim has stated that that vehicle was being driven at excessive speed and turned over the paddy land near the brickfield. She lost her sense and regained sense at the Mohanpur PHC. She sustained injuries on her head and other parts of the body and she had been admitted at the G.B.P. hospital, Agartala for six days. She has categorically stated that the petitioner was

the driver and he was known to her from before. She identified the petitioner at the dock. But, in the cross-examination she has admitted that she did not state to the Investigating Officer that the petitioner drove the vehicle at an excessive speed and met the accident.

13. PW.6, Tapan Chakraborty is another passenger and he had identified the petitioner as the driver of the Cruiser vehicle in the court. He has also stated that the vehicle was being driven at an excessive speed. He was the witness of the seizure of the Cruiser vehicle, being TR-01C-1958 and he identified the seizure list.

14. PW.7, Bikash Debnath is another passenger of the vehicle involved in the offence. He has stated the same story that the vehicle was being driven at an excessive speed and the accident occurred as the driver of the said vehicle could not control the speed. He has categorically stated that the petitioner was the driver and he identified the petitioner in the court. He has further stated that he sustained injury on his neck. There was no cross-examination over the identification made by this witness from the defence.

15. PW.8, Dr. Ajoy Kr. Bhattacharjee has stated that he had examined PW.4 (Smt. Anjali Debnath) for the injury on 01.10.2007 at G.B.P hospital, Agartala and he identified the

injury report (Exbt.3). He has also stated that he had examined another patient, namely Usha Rani Debbarma (PW.5) having injury over the right parietal region measuring 2" in length. She had also tenderness over the cervical spine. He has further stated that both the injuries were simple in nature and the patient was discharged on 05.10.2007. The injury report of the PW.5 has been identified and marked as (Exbt.4).

16. PW.9, Manish Das is the Inspector of Motor Vehicles, who examined the vehicle on 06.10.2007 on the requisition of the police in connection with Sidhai P.S. case No. 51 of 2007. He found that the 'wind screen glass' and the body of the Cruiser vehicle were damaged and there was no mechanical disorder in the said vehicle. However, no cross-examination was carried out by the defence.

17. PW.10, Kajal Dab, is the Sub-Inspector of Police and he identified the handwriting of the recording officer, namely Partha Munda. After endorsement of the investigation, he visited the place of occurrence, prepared the hand sketch map and recorded the statements of the witnesses. He also arrested the petitioner, seized the vehicle and also arranged for the mechanical examination of the vehicle. Later on, after collecting the medical report and the Motor Vehicle Inspection

report, he submitted the chargesheet under Sections 279/337 of the IPC. He has admitted that in the cross examination he did not issue any notice to the owner of the vehicle under Section 130 of the Motor Vehicle Act.

18. Ms. S. Deb Gupta, learned counsel appearing for the petitioner, has submitted that there is no evidence for rash and negligent driving of the petitioner. The victims suffered injury from the accident met by the said vehicle. The 'speed' is a relative term. By stating that the vehicle was being driven in an excessive speed shall not necessarily mean and imply that the vehicle was being driven rashly and negligently. Apart that, Ms. Deb Gupta, learned counsel has asserted that identification of the driver is questionable as the owner who endorsed the vehicle to be driven by an authorised person was not examined. As such, the petitioner has asserted that the impugned judgment of conviction is liable to be interfered with.

19. From the other side, Mr. A. Ghosh, learned public prosecutor appearing for the state, has submitted that the identification of the driver has been categorically established by PW.5, PW.6 and PW.7. Those witnesses were the passengers. Mr. Ghosh, learned public prosecutor has vehemently contended that the witnesses, namely Smt. Anjali

Debnath(PW.4), Usha Rani Debbarma (PW.5), Tapan Chakraborty (PW.6) and Bikash Debnath (PW.7) have narrated how the accident took place. It is apparent from their testimonies that the speed was so excessive, so dangerous that the driver who was driving it could not control the vehicle. It by itself establishes that the driver was driving the vehicle with rashness and negligence. Apart that, Mr. Ghosh, learned public prosecutor appearing for the respondent has submitted that PW.8 has categorically stated about the injuries received by PW.4 and PW.5. PW.9 has ruled out the fact that the accident had taken place for any mechanical disorder and hence no interference of the impugned judgment is called for.

20. With due regard to the submission made by the learned counsel as well as the evidence available in the records, this court is of the view that the judgment of conviction does not suffer from any infirmity. However, having regard to the age of the petitioner, this court is of the view that the sentence is required to be modified and hence for committing the offence punishable under Section 279 of the of the IPC, the petitioner is sentenced to suffer simple imprisonment for 1(one) month and he is further sentenced to suffer simple imprisonment for 1(one) month for committing

the offence punishable under Section 337 of the IPC. Both the sentences shall run concurrently.

21. Having held thus, this petition stands dismissed, however, subject to modification of the sentence as indicated above. It is directed that the petitioner shall surrender in the court of the Chief Judicial Magistrate, West Tripura, Agartala within a period of 30(thirty) days from today for suffering the sentence, else coercive action shall be taken by the Chief Judicial Magistrate, West Tripura, Agartala. Needless to say, if the petitioner suffered any detention in respect of this case, that shall be set off from the sentence.

Send down the LCRs forthwith.

JUDGE

Moumita