HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 3 of 2017

Sentu Rudra Paul,
son of Manindra Rudra Paul,
resident of Ambassa Colony,
PS: Ambassa,
District- Dhalai Tripura.

---- Revision Petitioner(s)

Versus

The State of Tripura,

---- Respondent(s)

For Petitioner(s) : Mr. A. Basak, Adv.

For Respondent(s) : Mr. R. Datta, P.P.

Date of hearing : 09.10.2020

Date of pronouncement : 17.11.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

J u d g m e n t & O r d e r

1. This criminal revision petition is directed against the judgment dated 30.01.2017 passed by the learned Addl. Sessions Judge, Unakoti Judicial District, Kamalpur in case number Criminal Appeal 14 of 2016 whereby he affirmed the judgment & order dated 28.05.2016 passed by the learned Sub

Divisional Judicial Magistrate, Kamalpur in case number PRC 01 of 2015 convicting the petitioner for having committed offence punishable under sections 279 and 304A IPC and sentencing him to undergo RI for 2 (two) years and fine of Rs.2,000/- with default stipulation under section 304A IPC. No separate sentence was awarded for his conviction under section 279 IPC.

2. The prosecution story, briefly stated is that on 02.01.2015, the first informant (PW-1) lodged the written FIR with the Officer in Charge of Ambassa police station alleging, inter alia, that at about 1 O'clock in the afternoon when his brother Ranjit Das along with Raju Dhar was on their way home from Ambassa on their three wheeler goods' carrier, the speeding vehicle of the petitioner bearing registration No. TR 04 2146 hit their three wheeler carrier from the opposite direction and as a result, said Ranjit Das & Raju Dhar were seriously injured and when they were taken to Kulai hospital at Kamalpur, brother of the informant was declared dead and injured Raju Dhar was referred to GBP hospital at Agartala.

3. Based on his FIR, Kamalpur P.S. case No. 01 of 2015 under sections 279, 338 and 304 Part-II, IPC and sections 184 and 187 MV Act was registered and investigation was taken up.

4. The investigation was conducted by Sri Subimal Debnath, Sub Inspector of police of Ambassa police station who

having completed the investigation submitted challan No. 05 of 2015 dated 31.01.2015 under sections 279, 338 and 304 Part-II, IPC and sections 184 and 187 MV Act against the petitioner.

5. The learned Sub Divisional Judicial Magistrate received the charge sheet and took cognizance of offence punishable under sections 279, 338 and 304 Part-II, IPC in the case.

6. The court, however, decided to proceed against the accused for offence punishable under sections 279, 304A IPC. The petitioner pleaded not guilty and claimed a trial.

7. During trial, as many as 11 (eleven) witnesses including the first informant and one of the victims of the accident were examined and 7 (seven) documents (Exbt.1 to Exbt.7/1) were exhibited on behalf of the prosecution. At the closure of the prosecution evidence, statement of the accused petitioner was recorded under section 313 Cr.P.C. In reply, he denied the charges and claimed that the case was foisted on him. He also declined to adduce any evidence in support of his defence.

8. At the conclusion of trial, the learned trial court having appreciated the evidence and having made reference to the relevant legal provisions and the decisions cited by learned counsel of the parties held the petitioner guilty and passed the following order with regard to his conviction and sentence:

"18. Owing to the above, accused Sentu Rudrapal is hereby convicted under section 279/304A IPC.

19. In view of the observation of the Hon'ble Supreme Court held in Dalabir Singh Vs. State of Haryana AIR 2000 SC 1667, I am not inclined to extend the benefit given under the Probation of Offenders Act. In that particular case it has been opined that leniency shown to the drivers who are found guilty of rash driving would be at the risk of further escalation of road mishaps. Later on, heard on the point of sentence.

20. Having considered all aspects, convict Sentu Rudrapal is hereby sentence to suffer Rigorous Imprisonment (R.I.) for two years for commission of offence under section 304A of the IPC with a fine of Rs.2,000/-, in default of payment of fine, to suffer further simple imprisonment (S.I.) for the period of one month. No order of sentence is passed for commission of offence under section 279 of IPC in view of section 71 of IPC."

9. In appeal, the learned Addl. Sessions Judge, Kamalpur came to the conclusion that the accident occurred in a market area where the accused petitioner was required to drive his vehicle very cautiously. Ld. Addl. Sessions Judge was of the view that even in the market area, he drove his vehicle at a very high speed, otherwise, he would not have hit the three wheeler goods carrier. Therefore, the learned Addl. Sessions Judge by applying the doctrine of due care held the petitioner guilty and affirmed the judgment of conviction and sentence passed by learned trial court.

10. Mr. A. Basak, learned counsel for the petitioner has submitted that the impugned judgment of learned Addl. Sessions Judge suffers from serious infirmities which amounted

to gross miscarriage of justice. According to Mr. Basak, learned counsel, apart from the oral statement of some of the witnesses that the vehicle was plying at high speed, there is no other evidence against the accused petitioner in support of rash and negligent driving. It is contended by learned counsel that speed itself does not amount to rashness or negligence unless there are other proof of rashness or negligence. Further contention on behalf of the petitioner is that the learned trial court should not have relied on the evidence of PW-1 in as much as he did not witness the occurrence. Apart from PW-1, PW-6 and PW-7 were not also reliable witnesses because PW 6 and PW-7 who stated to have been injured in the accident never attended any hospital for treatment. Prosecution did not take into evidence any injury report of these witnesses. It is finally argued by Mr. Basak, learned counsel that the learned Addl. Sessions Judge without appreciating the contradictions appearing in the evidence of the prosecution witnesses upheld the judgment and order of conviction and sentence awarded by the learned trial court which was totally erroneous. Learned counsel, therefore, urged for setting aside the impugned judgment.

11. Mr. R. Datta, learned P.P. argued taht the accused petitioner could not make out any ground for interfering with the judgments of the courts below. It was submitted by Mr. Datta, learned P.P. that enough evidence was adduced at the

trial to establish that the accused petitioner was guilty of rash driving which resulted in the death of an innocent person and the learned trial court on proper appreciation of evidence arrived at the conclusion of his guilt. In appeal, the learned appellate court reassessed the entire evidence and considered the submissions of the learned counsel of the parties on the basis of which the learned appellate court affirmed the conviction and sentence of the accused. According to learned P.P., no ground is made out by the petitioner for exercising the revisional jurisdiction of this court in the instant case. Learned P.P., therefore, urges for dismissal of the revision petition.

12. PW-1, Sri Sudip Das, who is the first informant of this case almost replicated his FIR statement. It was stated by the PW at the trial that when the speeding vehicle of the accused petitioner hit the three wheeler goods carrier, his brother was smashed under the three wheeler goods carrier and died instantly. According to him, the accused was previously known to him and therefore he could recognize him easily.

In his cross examination, it was stated by the PW that when the accident occurred he was present there and noticed the accident with his own eyes. But, after drawing his attention to his police statement recorded under section 161 Cr.P.C. and also to his FIR statement it was noted by the trial

court that nowhere in his previous statement he stated that he was present when the occurrence took place.

13. The statement of Sankar Das, PW-2, is relevant in as much as he saw the accident from a nearby tea stall. According to PW-2, the offending commander jeep of the petitioner came from the opposite direction in excessive speed and hit the three wheeler goods carrier as a result Ranjit Das, a local man died at the spot and Raju Dhar who was the puller of the carrier was referred to the local hospital.

In his cross examination, he stated that the deceased was his cousin brother. It was also stated by him in his cross examination that the deceased and the puller of the three wheeler goods carrier came together before the accident took place and they were having talks after parking the goods carrier.

14. PW-3, Pawan Chandra Bhowmik is another eye witness who stated in his examination in chief that at the relevant point of time he was gossiping with deceased Ranjit Das standing at the road side on Assam Agartala road. After a while, Raju Dhar came riding his three wheeler goods carrier and parked it at the side of the road. At that time the vehicle of the petitioner hit the three wheeler from the opposite direction as a result of which Ranjit Das died at the spot and puller of the three wheeler was injured.

15. Statement of PW-4, Dipankar Biswas does not have any relevance because he did not witness the occurrence.

16. PW-5, Asish Das also came to the spot after the accident took place and he had no idea as to how the accident occurred.

17. The evidence of Jagabandhu Goswami, PW-6, is very relevant because he was a passenger of the offending commander jeep. According to him, the vehicle in which he was travelling hit a three wheeler goods carrier at Ambassa as a result of which one person died at the spot and other received injury. About the speed of the vehicle he stated that the jeep was running at a speed of 42-50 km per hour at the time of occurrence. According to him, he occupied a back seat in the jeep and he also received injury on his forehead from the accident.

18. PW-7, Raju Dhar is one of the most vital witnesses of this case. It was stated by PW-7 that he was returning home with his three wheeler goods carrier along with Assam Agartala road. At Ambassa, he parked his carrier and started having a talk with deceased Ranjit Das. At that time the offending vehicle of the petitioner came from the opposite direction and hit his three wheeler goods carrier. As a result of the collision, Ranjit Das died at the spot and both of his hands were broken.

In his cross examination, it was stated by the PW that the accident actually occurred at a tri junction where the road leading to his house joins the Assam Agartala road. When he was standing with Ranjit Das at the road side keeping his three wheeler parked, the accident occurred.

19. PW-8, Rabi Shil heard a robust sound from his saloon and following the sound he arrived at the spot and saw that the commander jeep of the accused petitioner hit the three wheeler of Raju Dhar on the road as a result of which Ranjit Das died and Raju Dhar was injured.

20. PW-9 did not see the accident. Therefore, his evidence is of no relevance.

21. PW-10 is the investigating officer who examined the material witnesses of the case during investigation and collected the post mortem examination report of the decease and on the basis of the materials collected by him, he submitted charge sheet against the petitioner under sections 279, 338 and 304 Part-II, IPC and sections 184 and 187 MV Act.

In his cross examination, the IO specifically stated that his investigation revealed that at the time of occurrence PW-7 Raju Dhar was paddling the goods carrier while the deceased was seated thereon. His investigation also revealed that when they were about to enter into the lane leading to

their house, the commander jeep of the petitioner hit the carrier from the opposite direction.

22. PW-11, Dr. Jashim Debbarma was a medical officer at Kamalpur at the relevant time. He was posted in BSM hospital where the dead body of Ranjit Das was brought after the accident. To ascertain the cause of death, PW-11 held post mortem examination over the body of the deceased and according to him cause of death was massive intracanial hemorrhage following head injury which was anti mortem in nature.

23. The fact that the accident took place and Ranjit Das died in the accident is not disputed. The question before the appellate court was whether the factum of rash and negligent driving was proved in the case to attribute the liability under section 304A IPC to the accused petitioner. The appellate court considered the case within the parameters laid down by the Apex Court in **Ravi Kapur Vs. State of Rajasthan** reported in **(2012) 9 SCC 284** and came to the conclusion that the accused petitioner, as a driver of a motor vehicle, failed to exercise due care while driving his vehicle on public road particularly in a market area and as a result of his careless and reckless driving hit the three wheeler goods carrier of PW-7 resulting in the loss of life and injuries to others. Based on such findings, the learned appellate court by the impugned judgment dated

31.01.2017 upheld the conviction and sentence of the petitioner under section 304A IPC.

24. Section 304A IPC carves out a specific offence where death is caused by doing a rash and negligent act. The tests of rashness and negligence in respect of driving have been laid down by the Apex Court in a catena of decisions. In the case of **Ravi Kapur** (Supra) which is relied upon by the learned appellate court, it has been laid down by the Apex Court that the factum of rash and negligent driving has to be examined in the light of the attending facts and circumstances of a given case and the preliminary considerations in this regard are (a) the manner in which the vehicle was driven, (b) whether it was driven either rashly or negligently and, (c) whether such rash and negligent driving was of such nature so as to endanger human life. With regard to the *parameter of reasonable care in determining the question of negligence or contributory negligence, the Apex Court held that while driving a vehicle on public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians*. The relevant passages from the said judgment of the Apex Court are reproduced hereunder:

"12.Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact

incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

14. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not

endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

25. Thus, the obligation of a driver of vehicle under the doctrine of reasonable care extends to the *right users* of the road, may be either vehicular users or pedestrians. The duty is of course higher in the cases of children of tender years, old people, blind and otherwise disabled persons. In the instant case, the offending vehicle hit a three wheeler goods carrier. The evidence of the investigating officer has revealed that PW-7 Raju Dhar was paddling the three wheeler and the deceased was sitting thereon. The road was also not free because some work of the Public Works Department was in progress. Moreover, it was a market area always crowded with people. In such a situation, the deceased himself risked his life by sitting on a three wheeler goods carrier. This fact was ignored by the learned trial court as well as the learned appellate court while appreciating the evidence. Loss of life and injury does not ipso facto make a driver liable to be convicted under section 304A IPC unless it is proved beyond reasonable shadow of doubt that he drove the vehicle in a rash and negligent manner and such rash and negligent driving was the proximate cause of death. In the given case, apparently, the investigating officer has done a shallow investigation. His investigation does not reveal the

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traffic condition of the road, the exact location where the accident took place, shape of the road at that location, the position of the vehicles before and after the collision and the exact position of the witnesses who allegedly witnessed the collision taking place. Every investigation in a case of vehicular accident should be directed to ascertain these basic facts for the courts to determine the liability for the accident. Approach of the learned appellate court was wrong in as much as it relied on the evidence of the prosecution witnesses, despite taking note of the fact that PW-1 and other witnesses who were stated to be eye witnesses improved their version at the trial. Learned appellate court relied on the statement of the investigating officer who said that the deceased was sitting on the three wheeler goods carrier which was being paddled by PW-7. At the same time it believed the statement of PW-3 namely Pawan Chandra Bhowmik who stated that he was gossiping with the deceased at road side at the time of occurrence. Such material contradiction in prosecution evidence should not have escaped the notice of the learned appellate court.

26. Apparently, prosecution has failed to adduce reliable evidence with regard to the charge of rash and negligent driving against the petitioner in the instant case. Apart from the oral statement of some of the witnesses that the offending vehicle was being driven at a high speed at the time

of occurrence, no other material has been brought on record to establish the factum of rash and negligent driving against the petitioner. In **Bachhu Miah Vs. State of Tripura** reported in **(2013) 2 TLR 934** it was held by this High Court that high speed itself does not constitute rash and negligent driving. In a later decision in **Nantu Chandra Das @ Nantu Das Vs. State of Tripura** reported in **(2015) 1 TLR 1007** it was similarly held by this High Court that speed itself does not constitute rashness or negligence unless supported by the proof of other material factors for the offence of rash and negligent driving. As noted, most of the witnesses improved their version at the trial which cast doubt over the veracity of their statement. The investigating officer did not also conduct the investigation in the right manner to apprise the court about the material facts like traffic condition of the road, the exact location where the accident took place, shape of the road at that location, the position of the vehicles before and after the collision and the exact position of the witnesses who allegedly witnessed the collision taking place. The deceased on the other hand himself risked his life by sitting on the three wheeler which was made for carrying goods only and that too in a busy and crowded road which is obviously accident prone zone. In these circumstances, it could not be stated with certainty that the accident occurred due to rash and negligent driving of the

accused petitioner and as such he should have been given the benefit of doubt.

27. For the forgoing discussions, the impugned judgment dated 31.01.2017 of the learned Addl. Sessions Judge, Kamalpur is set aside and the accused petitioner stands acquitted of the charges under sections 279 & 304A IPC. The petitioner being on bail, his bail bond stands discharged.

The petition is allowed and disposed of.

Pending interim application, if any, stands disposed of.

Send back the LC record.

JUDGE

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Rudradeep