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AGARTALA

Crl. Rev. P No.41 of 2018

Saddak Miah @ Sadek Miah
son of Md. Dulal Miah
of Khilpara(Fakir Bari)
P.S.-R.K.Pur
Gomati Tripura District ……..…Petitioner(s)

Versus

The State of Tripura ……..Respondent(s)

For the Petitioner(s) : Mr. S.Lodh, Adv.

For the Respondent(s) : Mr. S.Debnath, Addl. PP.

Date of hearing : 21.10.2020

Date of delivery of
Judgment & order : 17.11.2020

Whether fit for reporting :

Yes	No
	✓

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Judgment & Order

[**1**] This criminal revision under Section 397 read with section 401 of the Code of Criminal Procedure, 1973 has been directed against the judgment and order dated 11.06.2018 of the Additional Sessions Judge of Gomati Judicial District, Udaipur in Crl. Appeal No.9(1) of 2017 affirming the judgment and order of conviction and sentence dated 23.12.2016 passed by the learned

Assistant Sessions Judge of Gomati Judicial District in case No. ST.18(GT/U) of 2015 convicting Md. Saddak Miah @ Sadek Miah (the petitioner herein) and sentencing him to RI for 6 months for each of the offences punishable under Sections 279 and 337 of the Indian Penal Code(IPC hereunder) and RI for 2 years for offence punishable under Section 304A IPC directing that the sentences would run concurrently.

[**2**] The basic facts required to be noted for the purpose of appreciation are that Sri Nantu Das, son of Shri Haradhan Das of Maharani, Udaipur lodged a written complaint with the Officer-in-charge of R.K.Pur Police Station of Udaipur in Gomati Tripura District at 6.25 P.M on 11th March, 2014 alleging, inter alia, that at about 4.15 P.M on the day, a speeding tripper truck of white colour bearing registration No. TR-03-C-1730 collided with an auto rickshaw of green colour bearing registration No.TR-03-A-3889 on the approach road of Maharani Barrage. Allegedly, the offending tripper truck of the petitioner came from the opposite direction when the auto rickshaw was proceeding to Maharani Barrage along its approach road. It has been alleged by the informant that at the time of the said collision between the two vehicles, he was standing near the place of occurrence

along with some other people. Seeing that the offending tripper truck was coming at high speed from the opposite direction, the alarmed auto driver parked his vehicle at the road side to allow the tripper truck to go. Apprehending danger, the informant and other people who assembled there also raised their hands and signaled the tripper truck not to proceed further. Defying their signal, the offending tripper truck maintained its speed. As a result, the truck hit the auto rickshaw and dragged it to a considerable distance. The people started chasing the tipper truck and ultimately they could detain the truck along with the petitioner driver. Allegedly, the petitioner was found to have consumed alcohol because there was smell of alcohol in his mouth. As a result of the accident, one of the passengers of the auto rickshaw namely Arun Kumar Datta died and others received serious bleeding injuries. They were immediately taken to Tripura Sundari District Hospital at Udaipur. It was alleged by the informant that the accident occurred due to rash and negligent driving of the vehicle by the petitioner who was drunk at the time of the accident.

[**3**] Based on this FIR, R.K.Pur PS case no 45 of 2014 under Sections 379, 338 and 304, part-II IPC was registered and the investigation of the case was

entrusted to Shri Jaharlal Debbarma, sub-inspector of police who was then posted as the Officer-in-charge of Maharani police out-post. During his part of the investigation, Shri Debbarma [**PW-19**] arrested the accused, made necessary seizures and examined the material witnesses of the case. Later part of the investigation was conducted by Shri Biswajit Das, sub-inspector of police of R.K.Pur police station who submitted charge sheet against the accused petitioner for his prosecution under Sections 379, 338 and 304, Part-II IPC.

[**4**] Having perused the records and the documents attached therewith and after having considered the submissions made on behalf of the parties, the learned trial court framed charges against the petitioner which are as under:

"Firstly, that you on 11-03-2014 at about 1615 hours at Maharani, Jamtala Market under P.S.-R.K.Pur, District-Gomati, Tripura being the driver of Tripper Vehicle bearing No. TR-03-C-1730 coming from the side of Dakmura towards Maharani over public road drove the vehicle in rash and negligent manner at Maharani Barrage and dashed one Auto Rickshaw bearing No. TR-03-A-3889 endangering lives of the passengers of the Auto Rickshaw and you thereby committed an offence punishable U/S. 279 of the Indian Penal Code and within the cognizance of this court.

Secondly, that you on the above mentioned date, time and place drove the vehicle bearing No.TR-03-C-1730 in a

rash and negligent manner and dashed the Auto Rickshaw bearing No.TR-03-A-3889 due to which passengers, namely, Rajarshi Sen, Bapi Sarkar(Sen), Pranati Sarkar and Jadav Chandra Mallik sustained grievous injuries and you thereby committed an offence punishable U/S. 338 of the Indian Penal Code and within the cognizance of this court.

Lastly, that you on the above mentioned date, time and place drove the mentioned vehicle bearing No.TR-03-C-1730(Tripper) in a rash and negligent manner knowing that such rash and negligent act may cause death of any person of that road or any passenger of the Auto Rickshaw bearing No.TR-03-A-3889 and thereby caused death of one passenger of the said Auto Rickshaw, namely, Arun Kumar Datta and you thus committed an offence punishable U/S.304 of the Indian Penal Code and within the cognizance of this court."

The petitioner pleaded not guilty to the charges and claimed a trial.

[**5**] In order to substantiate the charges brought against the petitioner, the prosecution apart from adducing the oral evidence of as many as 23 witnesses had introduced 15 documents. After the recording of prosecution evidence was concluded, the petitioner was examined under Section 313 read with Section 281 of the Code of Criminal Procedure for having his replies on the incriminating materials available against him. The petitioner, in answer, abjured his guilt and claimed that the charges were foisted on him.

[**6**] Though charges under Sections 279, 338 and 304, Part-II IPC were framed against the petitioner and the

case was tried for those charges, the learned trial court having appreciated evidence and submissions of the parties and having relied on the decision of the Apex Court in ***State Tr.P.S Lodhi Colony, New Delhi vs. Sanjeev Nanda*** reported in ***AIR 2012 SC 3104*** convicted the petitioner under Sections 279, 338 and 304A IPC and sentenced him for those offences which was affirmed in appeal by the impugned judgment of the learned Additional Sessions Judge of Gomati Judicial District at Udaipur which is under challenge before this court.

[**7**] I have heard Mr. S.Lodh, learned counsel appearing for the petitioner as well as Mr. S.Debnath, learned Addl. PP appearing for the State-respondent.

[**8**] Mr. Lodh, learned counsel of the petitioner has contended that the learned courts below failed to appreciate the evidence of the prosecution witnesses and came to an erroneous conclusion that the driver of the tripper truck was responsible for the accident. It is argued by learned counsel that neither the trial court nor the appellate court had taken into consideration the road condition and particularly the shape and width of the road where the accident took place before holding the petitioner guilty of rash and negligent driving. According to learned counsel of the petitioner, the evidence on

record clearly indicates that the accident occurred due to the fault of the auto driver who apart from carrying 6(six) passengers beyond the capacity of the vehicle had suddenly gone to the extreme right side of the road resulting in a head on collision between the two vehicles. It is contended by Mr. Lodh, learned counsel of the petitioner that under no circumstances the tripper truck of the petitioner which was coming from the opposite direction would have hit the auto on its left side if the auto would not have suddenly taken a right turn and gone to the right side of the road. Further contention of Mr. Lodh, learned counsel of the petitioner is that for argument's sake even if it is assumed that the tripper truck of the petitioner was in high speed, it is not the only criterion to hold the driver guilty of rash and negligent driving. Rashness and negligence on the part of the driver has to be established by the prosecution in the given facts and circumstances of the case taking into consideration all other materials including the shape and width of the road, the traffic condition of the area, etc. In support of his contention, Mr.Lodh, learned counsel has relied on the following decisions of the Apex Court:

(i) **Mrs. Shakila Khader and Ors. vs. Nausheer Cama and Ors** reported in **(1975) 4 SCC 122**

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(ii) **State of Karnataka vs. Satish** reported in **(1998) 8 SCC 493**

[**9**] Mr. S.Debnath, learned Addl. PP, per contra, has contended that the charges against the accused petitioner were well established before the learned trial court and on a detailed examination and appreciation of evidence, the learned trial court found the petitioner guilty of offence which was affirmed in appeal by the learned Additional Sessions Judge of Gomati Judicial District. According to Mr. Debnath, learned Additional PP, there is no ground to interfere with the concurrent findings of the courts below. Learned counsel, therefore, urges the court for dismissal of the instant revision petition.

[**10**] The question which falls for consideration is whether the findings recorded by the courts below call for interference in exercise of the revisional jurisdiction.

[**11**] As noted, oral evidence of as many as 23 prosecution witnesses was recorded by the trial court. Among them, **PW-1**, Shri Rajarshi Sen was a passenger of the auto rickshaw. According to him, he along with his wife, two daughters namely Rini and Mahuya, mother-in-law and his brother-in-law (the deceased) boarded the auto rickshaw at about 3.30 P.M on the fateful day. The vehicle was being driven by Jadav Chandra Mallik [**PW-4**].

When their vehicle was at a distance of about 30 feet from Maharani Barrage, they saw the offending tripper truck crossing the barrage from the opposite direction. The PW then instructed the driver of his auto rickshaw to park the vehicle at the left side so as to make way for the tripper truck of the petitioner. Accordingly, it was parked at the left side of the road. But, the offending vehicle of the petitioner hit the auto rickshaw, as a result of which his brother-in- law Arun Kumar Datta who was sitting left to the driver on the driver's seat slipped on the ground and the auto was dragged by the offending vehicle along with its passengers to a distance of about seven feet. They were rescued by the local people and brought to the nearby primary health center where the brother –in-law of the PW was declared 'brought dead'. The PW also received fracture injury and the injured passengers were brought to Tripura Sundari District Hospital at Udaipur. The PW, however, stated in his examination in chief that the offending vehicle was in normal speed at the time of the accident.

In his cross examination, amongst other things, it was suggested to the PW that the auto rickshaw in which he was travelling hit the tripper truck in high speed. The PW denied the suggestion.

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[**12**] PW-2, Smt. Bapi Sarkar(Sen), the wife of PW-1, is also an eye witness to the occurrence who gave same evidence and deposed before the trial court that the vehicle of the petitioner hit the auto rickshaw in which the PW was travelling as a result of which Arun Kumar Datta who was sitting left to the driver slipped from the auto rickshaw and died. The PW also received injuries in her nose, hand and head.

In her cross examination, it was suggested to her that due to overloading, their auto rickshaw capsized near the barrage resulting in their injuries and the death of said Arun Kumar Datta. The suggestion was denied by the PW.

[**13**] PW-3, Smt. Rini Sen also supported the evidence of her parents, PW-1 & PW-2.

In her cross examination, it was suggested to her that at the time of occurrence the auto rickshaw in which she was travelling was in motion and it was not parked at the left side of the road. She denied the suggestion.

[**14**] PW-4, Jadav Chandra Mallik, was the driver of the auto rickshaw which was hit by the offending vehicle. According to him, he reached the place of occurrence with his vehicle at about 4.15 P.M. When he was about to

reach the barrage through the approach road, he saw the speeding vehicle of the petitioner which was coming from the opposite direction. Immediately he parked his vehicle at the left side of the road. The people who were there shouted at the petitioner and asked him to stop his vehicle. But, it hit the auto rickshaw and dragged it to a distance of about 20/30 cubits. The PW then lost his sense. He regained his sense in hospital and came to know that one of his passengers died and the petitioner was driving the offending vehicle.

In his cross examination he admitted that other than him there were six passengers in his vehicle at the time of accident and he allowed Arun Kumar Datta to sit on his seat who slipped from the vehicle after the collision. He denied the suggestion of the accused petitioner that he involved the accused petitioner in the case with a view to strengthen his claim for compensation.

[**15**] PW-5, Tushar Kanti Datta, PW-6, Anjan Kumar Pal, PW-7,Sushil Das, PW-8, Anil Chandra Jamatia, PW-9, Sibu Acharjee did not witness the occurrence. Therefore, it is not necessary to refer to their evidence.

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[**16**] PW-10, Dr.Debasish Pal, examined Arun Kumar Datta, passenger of the auto rickshaw in Tripura Sundari District Hospital and found that the passenger was brought dead to the hospital. According to the PW, the death occurred due to ante mortem blunt trauma which was accidental in nature.

[**17**] PW-11, Dr.Chandan Mallik, PW-12, Shri Khelendra Debbarma, PW-13, Shri Parimal Ray did not also witness the occurrence. Therefore, their evidence is also of no use for determining the liability of the petitioner.

[**18**] PW-14, Arjun Mandal is the owner of the offending vehicle who admitted the involvement of his vehicle in the accident and deposed that the petitioner was the driver of his vehicle.

In his cross examination he told that he did not issue any appointment letter in favour of the petitioner. It was suggested to the PW that his vehicle was not involved in the accident and it was not driven by the petitioner. The PW denied the suggestion.

[**19**] The other two eye witnesses of the case are Shri Nantu Das who is PW-15 and Shri Santi Debnath who is PW-18. Among them PW-15, Nantu Das is the first informant. According to him, he was in Maharani market

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at the time of occurrence from where he had seen the collision. It has been deposed by the PW that the offending vehicle was crossing Maharani barrage in normal speed from the opposite direction and the auto rickshaw which was ascending the approach road for getting into the barrage stopped at the right side of the road after seeing the offending tripper truck. Then, the tripper hit the auto. When the petitioner driver tried to flee away, he was detained by the local people and handed over to police. The PW then lodged the FIR, Exbt.7. The PW was declared hostile and cross examined on behalf of the prosecution. He was also cross examined on behalf of the accused.

In his cross examination, he deposed that he never raised his hand and signaled the offending tripper truck to stop.

[**20**] PW-18, Santi Debnath, has stated that he was gossiping with PW-15 near the Maharani barrage at the time of occurrence. All on a sudden the offending vehicle hit the auto rickshaw on the approach road of Maharani barrage. According to the PW, the offending vehicle was coming from Udaipur side and the auto was proceeding towards Udaipur side. Before the collision took place the PW along with others raised alarm but the accident could

not be prevented. The PW however, deposed that the offending tripper truck was in normal speed. According to him driver of the offending vehicle was found in intoxicated condition.

In his cross examination, it was suggested to him that he was not present at the place of occurrence. The PW denied the suggestion.

[**21**] PW16, Shri Tapas Pal, PW17, Shri Ajit Debbarma, PW-20, Shankar Nag are all official witnesses and their evidence is not found to be useful in deciding the case.

[**22**] PW-19, Shri Jaharlal Debbarma, carried out the investigation of the case. During his investigation he visited the place of occurrence and prepared map with index, arrested the accused, examined the witnesses, made the seizure of documents and material exhibits and subjected the vehicles to mechanical examination.

In his cross examination he stated that he did not file any prosecution report against the driver of the auto rickshaw though his investigation revealed that the vehicle was carrying passengers beyond its capacity. It was also deposed by the PW that he did not mention the width of the approach road to the barrage in his map.

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[**23**] PW-21, Shri Rabindra Chandra Barman, an inspector of motor vehicle had conducted mechanical inspection of the auto rickshaw as well as the offending tripper truck and found damage in both of the vehicles. The inspection report of the auto rickshaw was taken into evidence as exhibit -13 and that of the offending tripper truck as exhibit -14.

[**24**] PW-22, Dr. Sangita Sarkar examined the injured passengers of the auto rickshaw in Maharani PHC immediately after the occurrence and recorded the injuries suffered by them in her injury reports which are exhibit-15 series. PW-23, Shri Biswajit Das, concluded the investigation and submitted charge sheet against the accused petitioner.

[**25**] To reiterate the facts, the learned trial court, on appreciation of evidence, acquitted the accused from the charge under Section 304, Part-II IPC and convicted him for committing offence punishable under Sections 279, 337 and 304A IPC and he was sentenced separately to various terms of imprisonment, as aforesaid, for each of the offences. The convict challenged the decision of his conviction and sentence before the learned Additional Sessions Judge, Udaipur who affirmed the conviction and sentence in appeal. Challenge in this criminal revision

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petition is to the said judgment of the learned Appellate Court.

[**26**] I have heard the submissions made on behalf of the parties and perused the materials available on record. As noted, the petitioner has been convicted under Sections 279, 337 and 304A IPC. At this stage, it would be apposite to reproduce the said provisions which are as under:

> *"279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
>
> *337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*
>
> *[304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]"*

[**27**] It would be apparent from a careful perusal of Section 279 IPC that the essential ingredients of the offence under Section 279 IPC are that accused must drive his vehicle on a public road in such a rash or

negligent manner so as to endanger human life or that the driving was of such nature which was likely to cause hurt or injury to any other person.

[**28**] One of the distinctions between Section 279 and Section 337 is that in a case under Section 279 IPC, the ingredient of driving a vehicle or riding on public way is essential whereas Section 337 IPC is not limited only to the cases of driving. Section 337 IPC contemplates that any rash or negligent act that endangers human life or personal safety of others shall be liable to penalty under Section 337 IPC and obviously such act may include rash or negligent driving. Similarly, Section 304A IPC will apply to the cases where death of a person is caused by any rash or negligent act but there is no intention to cause the death and no knowledge that the act complained of will cause the death. In the instant case, the trial court did not find any evidence to infer that the accused intentionally caused the death of the victim by rash or negligent driving or that he had knowledge that by his act he was likely to cause the death of the victim and on such finding, the trial court acquitted the accused from the charge of Section 304, Part-II IPC which was affirmed in appeal. Such finding is not in challenge before

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this court. Therefore, the short questions which fall for consideration are whether in the given facts and circumstances, the petitioner could be held guilty for driving his vehicle in a manner so rash and negligent which resulted in the death of an innocent person and whether the concurrent findings of the courts below in this regard warrant any interference in this revision petition.

[**29**] In support of his contention that speed cannot be the only criteria for attributing rash and negligent driving against the accused, learned defense counsel has relied on the decision of the Apex Court in the case of ***Mrs. Shakila Khader and Ors.***(supra) wherein the Apex Court has held as follows:

> ***"6….The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic and the attempt, as in this case, to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident."***

[**30**] Same ratio was decided by the *Apex Court in* ***State of Karnataka vs. Satish***(supra) which has been relied upon by learned counsel of the petitioner wherein the Apex Court has held as follows:

"4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur…….".

[**31**] Apparently, the investigating agency has done a very shallow investigation in this case. No evidence with regard to the width of the road, its shape and the density of traffic on the road was collected during investigation. Not even any photograph of the vehicles involved in the accident was taken by the investigating officer. The case is totally based on oral evidence and among the 23 witnesses examined, only 6 are eye witnesses who are PW-1, PW-2, PW-3, PW-4, PW-15 and PW-18 among whom PW-15, Nantu Das, first informant, turned hostile during trial. Among the said eye witnesses, PW-1, who

was a passenger of the auto rickshaw categorically stated in his examination in chief that at the time of accident, the offending vehicle was in normal speed. PW-18 deposed that when the petitioner driver of the offending vehicle was detained, there was smell of alcohol in his mouth. But, there is no corroborative evidence in this regard. Even though petitioner was arrested soon after the occurrence, no medical evidence has been adduced to prove the fact that the petitioner was intoxicated while driving the offending vehicle. This apart, admittedly the auto rickshaw involved in the accident was carrying 6 passengers other than the driver beyond the permitted capacity of the vehicle which means that the auto rickshaw was overloaded. Even the driver's seat of the vehicle was occupied by two passengers on his left and right side leaving little space for the driver to sit. Obviously, therefore, the driver was not able to control the vehicle in case of emergency. None of the courts below had taken note of these facts while holding the petitioner guilty. Even though the accident resulted in the death of an innocent person and injuries to other passengers of the auto rickshaw, the accident does not ipso fact make the petitioner liable for the accident in

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absence of strict proof of rash and negligent driving against him. Other than the oral statement of high speed, there is no other evidence on record to establish negligence or rashness on the part of the petitioner in driving the offending vehicle. In fact, it cannot be said with certainty that the accident occurred due to rash and negligent driving of the petitioner and the benefit of such doubt must go to the petitioner.

[**32**] Resultantly, the criminal revision petition is allowed. The conviction and sentence of the petitioner under Sections 279, 337 and 304A IPC are set aside. He stands acquitted of all the charges. His bail bond stands discharged.

The case is disposed of accordingly.

Send back the LC Records.

JUDGE

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