

CRA 132 of 2018

In the matter of : Abdul Hussain alias Abul Hussain

Ms. Puja Goswami ... for the appellant (amicus curiae)

Mr. Prasun Kr. Dutta

Mr. N. P. Agarwala

Mr. P. Bose ... for the State

This appeal assails the judgement and order of conviction passed on 28.03.2018 by the learned Additional Sessions Judge, 2nd Court, Islampur, Uttar Dinajpur in Sessions Case No. 58 of 2016 (Sessions Trial No. 04(7)16) sentencing the convict to suffer simple imprisonment for a period of one month and to pay a fine of Rs.500/- for committing offence under Section 279 of the Indian Penal Code and rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- for committing offence under Section 304A of the Indian Penal Code.

Briefly stated that Nurefa Khatun (P.W.1) on 28.10.2008 informed the officer-in-charge of Goalpokher P.S. that on 28.10.2008 at about 10 AM one motor vehicle came to her neighbourhood with some persons attending a marriage ceremony. After the passengers alighted from the vehicle the driver started the vehicle when one of her sons Md. Kamal, aged about 2 ½ years was dashed and the child died on spot. On the basis of such information Goalpokher P.S. Case No. 209/08 was registered under Sections 279/304 of the Indian Penal Code.

Police took up investigation and submitted charge sheet against the appellant. The appellant pleaded his innocence and stood trial. Prosecution examined five witnesses in order to bring home charges.

Nurefa Khatun(P.W.1), the de facto complainant stated that eight years ago at about 10 AM an accident took place in front of her house when her son was playing and the vehicle came and dashed her son, who died on spot. She did not see the driver of the offending vehicle who fled away soon after the accident. Her son was taken to hospital and was declared dead.

During cross-examination she stated that she did not see the driver.

Tanjur Alam (P.W.2) stated that 7/8 years ago at about 10.30 /11.00 AM Kamal the victim was standing by the side of the road when one vehicle came with a group of people. After the passengers alighted the driver started the vehicle. Suddenly the vehicle dashed Kamal. He along with Naimuddin took Kamal to hospital but at hospital Doctor declared him dead.

During cross-examination he stated that the road of the village is narrow. It was not possible for any driver to drive the vehicle rashly at a high speed over the said road.

Abdul Khalek (P.W.3) identified the accused person in Court and stated that an accident took place eight years ago at about 10.30 AM in his neighbourhood when a vehicle dashed Kamal who died on spot.

During cross-examination he stated that many people assembled when the offending vehicle came with group of people

to attend the marriage. He did not see the victim at that point of time. Road was narrow and kancha road. It was not possible to drive the vehicle at a high speed over the said road.

Abdul Haque (P.W.5) is the scribe who did not have any direct knowledge about the incident.

Mr. Susanta Kumar Paul (P.W.5) is the Investigating Officer who after investigation submitted charge sheet against the accused person and from his cross-examination we find that he did not take the measurement of the road. From the attending facts of the case it is admitted that an accident took place on the fateful day when a baby was dashed by a vehicle. But there is no evidence to indicate that the driver was rash while driving the vehicle. Therefore, there is no ingredient of offence within the meaning of Section 279 of the Indian Penal Code. It is argued by Ms. Goswami, learned amicus curiae that the driver of the offending vehicle was not apprehended from the spot. Even the Investigating Officer (P.W. 5) found offending vehicle stationed at the place of occurrence but there is not credible evidence to build a nexus between the accident and the appellant. There is no eye witness to suggest that the offending vehicle was driven by the appellant.

Under such circumstances, when the identity of the appellant could not be established as the driver of the offending vehicle, I do not find any reason to be in agreement with the view expressed by the learned Trial Court.

In my humble opinion the appellant is entitled to benefit of doubt particularly when there is no evidence that he was the man

behind the steering wheel when the incident took place. Accordingly, the order of conviction is reversed to an order of acquittal.

The appellant be discharged from bail bonds.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

I record my appreciation for the able assistance rendered by Ms. Puja Goswami, learned advocate, as amicus curiae in disposing of the appeal.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)