

CRR/55/2011
AKBAR ALI
VS
STATE OF WEST BENGAL

gd

Mr. Navanil De,
Mr. Rajeshwar Chakraborty,
Mr. Srinjan Ghosh,
Mr. Subhrajit Dey,
Ms. Monami Mukherjee

...for the petitioner.

Ms. Sima Biswas

...for the State.

This revisional application challenges the judgment passed by learned Additional Sessions Judge, 2nd Court, Suri at Birbhum, affirming thereby the judgment and order dated 29th January, 2010 passed by learned Judicial Magistrate at Dubrajpur, thereby recording an order of conviction under Sections 279/304A of the IPC and thereby sentencing the accused person to undergo simple imprisonment for six months and to pay fine of Rs.500/- for committing the offence under Section 304A of the IPC and to suffer simple imprisonment for one month for committing the offence under Section 279 of the IPC.

Briefly stated on 3rd January, 2007 SI, Ajoy Sarkar of Dubrajpur Police Station informed the Officer-in-Charge of the Police Station that on 3rd January, 2007 at about 19.15 hours while he along with force were performing duty on Panagarh Moregram Highway near Jaydev Padmabati Service Station at Joydev More, a truck registered as WB 41A/8177 dashed NVF 1934 Md. Noor Hossain. He was taken to hospital where he

succumbed to injuries. The information since disclosed offence cognizable in nature Dubrajpur P.S. Case No.1 of 2007 dated 3rd January, 2007 was registered under Sections 279/304A of the IPC. Police took up investigation and submitted charge-sheet against Akbar Ali. Accused Akbar Ali stood the trial by his innocence. In order to crown success, prosecution examined as many as nine witnesses. Learned Trial Court after considering the evidence led by prosecution witnesses recorded the order of conviction. The accused person made an unsuccessful attempt to reverse the order of conviction by preferring Criminal Appeal No.8 of 2010. Learned Additional Sessions Judge, 2nd Court, Suri was pleased to dismiss the appeal and thereby affirmed the order of conviction.

I have heard Mr. Rajeshwar Chakraborty, learned counsel for the appellant and Ms. Sima Biswas, learned counsel for the State.

It is submitted by Mr. Chakraborty that learned Trial Court failed to appreciate the evidence adduced by prosecution witnesses in its proper perspective. No evidence came to the fore indicating that the driver of the offending vehicle was responsible for the accident and because of rash and negligent manner of driving the victim sustained and succumbed to such injury. It is further contended that prosecution since failed to examine the offending vehicle by mechanical expert the possibility of accident due to mechanical fault cannot be ruled out. But learned Trial Court and learned Appellate Court did not consider this aspect of the prosecution case.

Ms. Biswas, learned counsel for the State, however, submits that all the nine witnesses claimed to have the direct knowledge about the accident and learned Trial Court was justified in recording order of conviction based on the testimony of the eyewitnesses which was rightly affirmed by learned Appellate Court.

I have the benefit to go through the testimony of prosecution witnesses as certified copy of the same has been made available by learned defence counsel. Ajoy Sarkar is the de facto complainant who set the criminal proceeding into motion and as PW-1 he stated that one truck bearing no.WB 41A/8177 dashed and ran over NVF Md. Noor Hossain while it was overtaking another vehicle but truck was at high speed. The accident was caused due to rash and negligent act of driving of the accused person. Noor Hossain was taken to hospital where he succumbed to injuries. During cross-examination he stated that the road was highway and busy. The distance from Joydev More to Padmabati Service Station is less than half kilometer. The truck was standing at a distance of 100 ft. from the place of occurrence. He was confronted with the written information exhibit-1 and he admitted that he did not mention in the written information that the accident took place while the offending vehicle was overtaking another vehicle. PW-2, Arafat Khan; PW-3, Abu Taher Khan did not support the prosecution case and both were examined in the light of Section 154 of the Evidence Act. PW-4, Gaffar Khan stated that an accident took place in front of Padmabati Petrol Pump at Joydeb More. The driver fled

away leaving the said vehicle. He arrived at the place of occurrence after 2-3 minutes from the accident. PW-5, Constable Gurudas Mondal stated that one truck loaded with stone while proceeding towards the Illambazar at a high speed ran over Noor Hossain. It was very busy highway. He himself along with NVF were checking the vehicles on the highway at the relevant point of time. PW-6, Biswanath Chowdhury is an employee of Jaydev Padmabati Service Station who stated that hearing a sound he came out from the station and found a police personnel who was lying with injuries. PW-7, Basanta Bagdi stated that one truck ran over Noor Hossain, NVF who was standing by the side of road and 2/3 trucks were coming and one of the trucks dashed him. PW-8, Sanjoy Mal is a rickshaw puller. He was cooking food inside the pump and he heard about the accident. PW-9, Sukhamoy Das is the owner of the vehicle. Therefore, it appears that PW-8 and PW-9 did not have any direct knowledge about the incident. PW-7, Basanta Bagdi did not support the testimony of PW-1 that the accident took place while the offending vehicle was overtaking another vehicle. PW-6 is also post occurrence witness who went to the place of occurrence having heard the sound. PW-5, Gurudas Mondal also did not whisper about the fact that accident took place while the offending vehicle was overtaking another vehicle. Therefore, the testimony of witnesses relied upon by learned Trial Court as witness of eyewitnesses appears to be factually incorrect. The IO of this case has not been examined. Therefore, I do not have sufficient evidence to find out the exact place of occurrence. The

accident took place on the highway or by the side of highway is a question that remains unanswered. Prosecution was under obligation to prove that the accused person omitted to do something or committed something which a reasonable and prudent man would not have done. But there is no evidence to demonstrate negligence or rashness in the action or omission on the part of the accused person. Even autopsy surgeon was not examined to show the nexus between the injuries sustained by the victim and his death. The prosecution ought to have examined the offending vehicle by mechanical expert to rule out the possibility by any mechanical fault that was responsible for the accident.

In my humble opinion, prosecution failed to prove the charges beyond reasonable doubt and the judgment impugned suffers from infirmity which should not be allowed to remain in force and should be set aside which I, accordingly, do.

The revisional application is allowed and impugned judgment passed by learned Appellate Court is set aside.

Resultantly, the judgment passed by learned Trial Court is also set aside.

Accused person is discharged from bail bonds.

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

Photocopy of the testimony of prosecution witnesses is taken on record.

(Siddhartha Roy Chowdhury, J.)

