

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 41 of 2012

Mantu Sarkar

Vs.

The State of West Bengal

Judgment on: 15/05/2023

Rai Chattopadhyay, J.

- (1)** In this appeal the appellant has challenged the judgment and order of the Additional Sessions Judge, 2nd Court at Barasat dated 16.11.2011. The judgment was delivered in Sessions Trial No. 1(10)/10, which arose with regard to G.R. Case No. 1101/09.
- (2)** The appellant has been convicted, for offences under Section 279/304A of the IPC and sentenced to suffer rigorous imprisonment for two months for the offence under Section 279 IPC and for six months for the offence under Section 304A IPC. This appeal has been filed to assail the said impugned judgment and order of conviction and sentence.
- (3)** This appeal has been filed in the year 2012 and pending since then.

(4) This appeal has been listed before this Court on 08.05.2023.

Since the date of listing of this appeal before this Court, the same has been called on for twice, on each date of Court's functioning. However, no one has appeared either for the appellant or the State. Thus, in this appeal, it is found that the appellant has had a reasonable and sufficient opportunity of being heard, which he did not avail in spite of the appeal being pending and called on for a considerable period of time.

(5) It is also noted that during the time the present appeal has been pending before this Court and called on, no pleader for the appellant has also represented him, in spite of there being sufficient scope for him to appear to represent the appellant. Accordingly it is found that pleader on behalf of the appellant, if there is any, has also not availed the opportunity to represent the appellant in spite of there being sufficient scope and reasonable opportunity for that.

(6) Under such circumstance this appeal may be taken up for final determination, which shall not be in contravention and hostility with the provision under Section 384 (1) proviso (a) of the Cr.P.C.

(7) On perusal of the record it is also found not necessary to call for the record from the trial Court in connection with Sessions Trial No. 1(10)/10.

(8) The case of the prosecution in short is that one Manik Sarkar S/o Late Mahindra Nath Sarkar of village Joygachi 30 No. Rail Gate, Habra came to I.C., Barasat P.S, 06.05.09 at 00.05 hrs. and filed a written complaint to the effect that on 04.05.09 at about 10.20 P.M. his brother-in-law, Gobinda Debnath was driving 107 Tata bearing Registration No. WB-25B/6803 and was proceeding from Habra towards Barasat and when he came to Joypul, Dasturibagan, at that time accused, Mantu Sarkar the driver of WB-51/3247 (Tata - 407) came up suddenly in rash and negligent manner and at high speed from the opposite side and dashed 107 Tata bearing Registration No. BW-25B/6803. As a result, the driver of 107 Tata bearing Registration No. WB-51/3247 was seriously injured and the local people took him to Barasat Hospital and from there he was shifted to R.G. Kar Medical College & Hospital as his condition was critical and finally he succumbed to injuries on 05.05.09 at about 4.00 A.M.

It is the case of the prosecution is that the driver of the offending vehicle bearing Registration No. WB-51/3247 (Tata-407) namely Mantu Sarkar accused in this caused of accident willfully causing the death of Gobinda Debnath and was guilty of committing culpable homicide not amounting to murder.

The defacto complainant has also stated that he became slightly late in lodging the FIR as he was busy with the treatment of his deceased brother-in-law, Gobinda Debnath, the driver of Tata -107 bearing Registration No. WB-25B/6803.

The police on the basis of the FIR started barasat P.S. Case No. 312 dated 06.05.2009 u/s 279/427/304 IPC.

(9) On the perusal of the certified copy of the impugned judgment it appears that the trial Court, in the same, has elaborately and categorically discussed on the evidence available before it, both ocular as well as others. The trial Court has analyzed the same after through scrutiny and has come to a finding and decision which is a just, reasonable and plausible view, on the basis of the available evidence.

(10) This Court finds no cogent or sufficient reasons to interfere with such plausible decision, arrived at by the trial Court on the basis of the evidence on record. Hence, it is found that there is no sufficient ground for this Court to interfere with the finding of the trial Court and its decision in the impugned judgment and order. Hence, the appeal merits no success.

(11) Therefore, upon examining the petition of appeal and the copy of the impugned judgment and upon finding that there is no

sufficient ground for interfering, CRA 41 of 2012 is dismissed in terms of the provision under Section 384 of the Cr.P.C.

(12) Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)