

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 377 of 2015

Sanjoy Roy

Vs.

State of West Bengal.

For the appellant	:	Mr. Mohinoor Rahaman, Ms. Maria Rahaman, Ms. Iqra Rahaman.
For the State	:	Mr. Saswata Gopal Mukerji, Ld. P.P Mr. Aniket Mitra.
Heard on	:	28.07.2023
Judgment on	:	22.08.2023

Shampa Dutt (Paul), J.:

1. THE APPEAL:-

This is an appeal against the Judgment dated 22.05.2015 and Order dated 25.05.2015 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Calcutta in S.C. Case No.12/2012/S.T. Case No.3(7) of 2012 thereby convicting the accused/appellant under Section 279/337 of the Indian Penal Code and sentencing him to suffer simple imprisonment for two months and to pay a fine of Rs.500/- in default

further simple imprisonment for 10 days for the offence punishable under Section 279 of the Indian Penal Code and also sentencing him to suffer simple imprisonment for two months and to pay fine of Rs.500/- in default further simple imprisonment for 10 days for the offence punishable under Section 337 of the Indian Penal Code and both sentences are to run concurrently.

2. PROSECUTION CASE:-

- a) The prosecution case in a nutshell is that on 26.06.2009 at about 9:55 P.M. the appellant was driving a TATA-407 Vehicle being No. WB 25B 6899 in a rash and negligent manner and while so driving, made a series of accidents at the crossing of Beadon Street, J.M. Avenue, near Natun Bazar Marwari Relief Society, at the crossing of Burtolla Street and Rabindra Sarani and finally dashed one Dipak Singh in front of 174, Rabindra Sarani.
- b) Police started the aforementioned case against the appellant. After completion of investigation, police submitted charge-sheet no.176/2011 under Section 279/308 of the Indian Penal Code and Section 185 of the Motor Vehicle Act and the case was committed to the Court of Sessions for Trial.
- c) The learned Additional District and Sessions Judge, 2nd Fast Track Court, Kolkata framed charge on 27.07.2012 under Sections 279/308 of the Indian Penal Code and 185 of the Motor Vehicle Act.
- d) Twelve witnesses were examined.
- e) The learned trial court convicted the appellant under Sections 279/337 of the Indian Penal Code and 185 of the M.V. Act and sentenced him for two months S.I. for each offence and pay a fine of Rs.500/- in

default further simple imprisonment for 10 days, for each offence under Section 279 and 337 of the Indian Penal Code.

3. THE DEFENCE CASE:-

- i) That the very approach of the learned Judge in the assessment of the evidence and consideration of the cases of the respective parties was defective is as much as the learned Judge condoned all the mistake of the prosecution in proving the material parts of the case treating them either as minor or as irrelevant.
- ii) That the Judgment and Order of conviction and sentence is erroneous on the face of the record and thus liable to be set aside.

4. THE EVIDENCE:-

P.W. 1, is an injured. He was dashed from behind by the offending vehicle.

P.W. 2, is also an injured. He deposed that the offending vehicle, being a Tata 407 on 26.06.2009 at 10.15-20PM was moving at high speed.

P.W. 4, is a traffic guard, who while on duty saw that the offending vehicle had jumped a signal and then recklessly dashed against one white ambassador, then damaged one PCO booth. After dashing several persons, the driver/appellant left the vehicle in running condition and tried to flee, but he was apprehended by this witness after a chase. This witness identified the accused on dock.

P.W. 5, is a seizure witness.

P.W. 6, is the doctor who examined the injured, P.W.1 and 2 and has proved the same before the court.

P.W. 8, is the owner of the offending vehicle and father of the accused. He has admitted that the accused was driving the vehicle.

The vehicle was examined by PW-9 mechanical expert, who did not find any mechanical defect or failure in/with the vehicle.

5. ANALYSIS OF EVIDENCE:-

Though the accused was charged under Section 185 of the M.V. Act, there was neither any medical examination of the accused to ascertain if he was drunk nor any witness to substantiate the said charge and as such the accused was acquitted of the said charge.

Section 279 of the Indian Penal Code, lays down:-

“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.

Ingredients of offence.—The essential ingredients of the offence under Section 279 are as follows:-

- (1) The accused was driving a vehicle or riding.
- (2) He was doing so on a public way.
- (3) He was also doing so rashly or negligently.
- (4) The act of driving or riding was to endanger human life or was likely to cause hurt or injury to any other person.”

Section 337 of the Indian Penal Code, lays down:-

“377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature

with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

P.W-8, is the owner of the offending vehicle and father of the driver/accused. The accused/appellant in his examination under Section 313 Cr.P.C. and his father, P.W 8 have both admitted that the appellant was driving the offending vehicle in a rash and negligent manner.

PW-1 and PW-2 are the injured. PW-4 is the traffic guard who apprehended the appellant. PW-6 is the Doctor who proved the injuries of PW-1 and PW-2. PW 1, 2 & 3 are all eye witnesses.

All these witnesses have clearly proved that the appellant was driving the offending vehicle on a public way in a manner so rash and negligent that he endangered human life and thereby caused injury/hurt to PW 1 and PW 2. Exhibit 2 proves that the injuries were not grievous.

The prosecution has thus proved the charge under Sections 279/337 of IPC against the appellant beyond all reasonable doubt and the Trial Court rightly passed the judgment under appeal.

The Supreme Court in *Surendran vs Sub Inspector of Police, Criminal Appeal No. 536 of 2021, on 30 June, 2021, held:-*

“7. Learned counsel for the appellant has placed reliance on judgment of this Court in A.P. Raju versus State of Orissa, 1995 Supp.(2) SCC 385 and Prakash Chandra Agnihotri versus State of M.P., (1990) Supp. SCC 764.

8. *We have considered the submissions of learned counsel for the appellant and have perused the record.*

9. *The judgment of this Court in Prakash Chandra Agnihotri (Supra) as relied by learned counsel for the appellant does support his submissions. In the above case, the accused was convicted and sentenced for six months under Section 304A. This Court converted the sentence of imprisonment into fine of Rs.500/-. The Court was of the view that it would be harsh to send the appellant to the Jail after 18 years of the occurrence. Following was observed in paragraph 1 of the judgment: -*

“1. The Courts below have maintained the conviction of the appellant under Section 304-A Indian Penal Code. We have gone through the judgments of courts below and we find no infirmity therein. We uphold the conviction. The occurrence took place on February 18, 1972. The appellant has throughout been on bail. He has been sentenced to six months rigorous imprisonment and a fine of Rs.250. We are of the view that it would be rather harsh to send the appellant to jail after 18 years of the occurrence. The ends of justice would be met if the appellant is asked to pay a fine of Rs.2000/-. The sentence is thus converted to a fine of Rs.2000/-. On realisation the amount shall be paid to the family of the deceased girl. The amount be deposited with the Trial Court within two months from today and the trial court shall disburse the same to the parents of the girl and in absence of the parents to the next of kin of the girl. In default of the payment of fine the appellant shall undergo imprisonment for six months.”

10. *The incident took place on 16.02.1995 i.e. more than 26 years ago. It appears that appellant was throughout on the bail. The Trial Court after marshalling the evidence has recorded the conviction under Section 279, 338 and awarded sentence of imprisonment of six months and further sentenced to pay a fine of Rs.500/- under Section 337.*

11. *We do not find any error in conviction recorded by the Trial Court. The conviction of appellant is affirmed, however, looking to the facts and circumstances of the present case specially the fact that 26 years have elapsed from the incident, we are inclined to substitute the sentence of six months imprisonment under Section*

279 and 338 into fine. Six months sentence under Section 279 and 338 IPC are substituted by fine of Rs.1000/- each whereas sentence of fine under Section 337 IPC is maintained.”

The present case is dated 27.07.2009.

The appellant has been sentenced to suffer simple imprisonment for two months and to pay a fine of Rs.500/- in default further simple imprisonment for 10 days for the offence punishable under Section 279 of the Indian Penal Code and also sentenced to suffer simple imprisonment for two months and to pay fine of Rs.500/- in default further simple imprisonment for 10 days for the offence punishable under Section 337 of the Indian Penal Code and both sentences were directed to run concurrently.

Fourteen years have passed. Hopefully, better sense has prevailed upon the Appellant in all these years.

6. CONCLUSION:-

From the materials and evidence on record, it is seen that the prosecution has proved their case against the appellant beyond all reasonable doubt and as such, the order of conviction dated 22.05.2015 passed by learned Additional District and Sessions Judge, 2nd Fast Track Court, Calcutta in S.C. Case No.12/2012/S.T. Case No.3(7) of 2012 thereby convicting the accused/petitioner under Section 279/337 of the Indian Penal Code, being **in accordance with law is affirmed.**

However, considering the facts and circumstances in the present case especially the conduct of both the owner of the vehicle/father of the appellant and also the appellant, who admitted to the offence by **deposing**

truthfully and also keeping in mind that the proceedings in this case has continued for 14 long years, **the sentence imposed by the trial court is modified** to payment of fine of Rs.1,000/- for offence under Section 279 of IPC and fine of Rs.500/- for offence under Section 337 of IPC. **Substantive sentence of two months for the said offences under Sections 279/337 IPC is set aside.**

The appellant shall deposit the fine before the trial court within a month from this date in default suffer imprisonment in default of fine as imposed by the trial court.

The present appeal being CRA 377 of 2015 stands disposed of.

Copy of this judgment be sent to the learned Trial Court for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)