

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 568 of 2018

Farman Ali
Vs.
The State of West Bengal

For the Appellant : Mr. Debabrata Acharyya
Mr. Sital Samanta

For the State : Mr. Saibal Bapuli
Mr. Bibhaswan Bhattacharyya

Heard on : 15th March 2023

Judgment on : 15th March 2023

The Court:

This criminal appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, 4th Court, Malda in Sessions Case No. 56 of 2018 arising out of Bamangola P.S. Case No. 230 of 2016 dated 15.11.2016. By the impugned judgement learned Trial Court was pleased to hold that prosecution successfully proved the charge under Sections 279/304A of the Indian Penal Code and thus recorded an order of conviction, sentencing the accused person to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- for committing offence under Section 279 of the Indian Penal Code and two years of

rigorous imprisonment and to pay a fine of Rs.5000/- within the meaning of Section 304A of the Indian Penal Code with default clause.

Briefly stated, Smt. Bijaya Tarafdar Sikdar set the criminal administration into motion by informing the O / C Bamangola P.S. in writing about the accident of her husband Krishnapada Sikdar on 12.11.2016 at 6 AM in the morning. Krishnapada hired one tricycle fitted with motor, locally known Bhutbhuti and went to Bamangola from his residence at Mandapara Basuria, P.S. Tapan. On his way back near 22 Mile, the said vehicle turned over and her husband and the driver of the vehicle both sustained injuries. Both were taken to Mudipukur Hospital. Her husband succumbed to such injuries. Police registered English Bazar U/D Case No. 713 / 2016 dated 12.11.2016. Explaining the reason for delay in informing the police. Smt. Tarafdar stated in her written information that the driver of the vehicle was rash in driving the said Bhutbhuti and was responsible for the death of her husband.

The information since disclosed offence cognizable in nature, Bamangola P.S. Case No. 230 of 2016 dated 15.11.2016 was registered under Sections 279/338/304 of the Indian Penal Code. Police took up investigation and submitted charge sheet against the driver of the vehicle, Farman Ali, who stood the trial pleading his innocence to the charge framed under Sections 279/338/304 of the Indian Penal Code. To bring home charges prosecution examined nine witnesses. Out of these nine witnesses only P.W. 6 can be said to have any direct knowledge about the alleged incident.

Mr. Acharya, learned counsel appearing on behalf of the appellant impeaches the impugned judgement by saying that learned Trial Court has failed to appreciate

the evidence on record in as much as learned Trial Court could not appreciate that. There was no evidence to hold that the appellant who was driving the vehicle was negligent, rather it should be a case of contributory negligence that resulted into the accident. According to Mr. Acharyya, P.W. 6 while adducing the evidence claimed that vehicle was being driven at a high speed, precisely it was running at a speed of 80 KM per hour. But such statement should be considered to be inherently incorrect. It was not possible for witness to assess the speed of the vehicle standing on the road. Therefore, the testimony of P.W.6 ought to have been ignored by learned Trial Court but the said evidence was used as sheet anchor to record the order of conviction.

From the attending facts of the case it appears that the accident took place on the road while vehicle was on motion. Investigating Officer in course of investigation failed to collect any evidence as to the condition of the road, its measurement, or the topography of the place of occurrence.

P.W. 6 claimed to have witnessed the alleged occurrence, stated that the vehicle was moving at a speed of 80 kmph. But it was not possible for the said witness to take note of such speed.

Mr. Bhattacharyya, learned counsel representing the State submits that other than speed of the vehicle there is nothing to indicate that the driver of the vehicle was negligent or rash. Investigating Agency did not take the pains to get the vehicle examined by mechanical expert as it was a motor fitted vehicle. The possibility of mechanical fault resulting into the unfortunate accident cannot be ruled out. Speed

alone cannot be attributed to the rashness or negligence on the part of the driver of the vehicle.

Under such circumstances, I am of the view that prosecution has not been able to prove the charges beyond reasonable doubt and the impugned judgement should not be allowed to remain in force.

Accordingly, the appeal is accepted. The impugned judgement is set aside.

The accused person is set at liberty and be released on bail subject to execution of bond under Section 437A of Code of Criminal Procedure for six months.

Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)