

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 552 of 2016

Golap Sk.

Vs

The State of West Bengal

**For the Appellant
(Learned Legal Aid Counsels)**

**: Mr. Saryati Datta,
Mr. Tapodip Gupta.**

For the State

: Mr. Avishek Sinha.

Hearing concluded on

: 05.04.2024

Judgment on

: 03.05.2024

Shampa Dutt (Paul), J.:**The Appeal:-**

1. The present appeal has been preferred against a judgment and order dated 30.06.2016 passed by the learned Additional District and Sessions Judge, Fast Track 1st Court, Lalbagh, Murshidabad in Sessions Case no. 2/2015 and Sessions Trial no. 08 (April)/2015, thereby convicting and sentencing the appellant to suffer Simple Imprisonment for 1 (one) year in respect of offence under Section 304A of the Indian Penal Code and to pay a fine of Rs. 5,000/- in default to suffer further Simple Imprisonment for 1 (one) month more.

The Prosecution:-

2. On the basis of a written complaint, filed by one Golenur Bibi @ Golasun Bewa, on 02.04.2012, with the Officer in Charge of Nabagram Police Station, Nabagram P.S. Case no. 75/2012 dated 02.04.2012 under Sections 279/338/304A of the Indian Penal Code against one accused person namely Golap Sk, the appellant herein, was registered and on completion of investigation it ended in a charge sheet.
3. The prosecution case as derived from the first information report reveals that, the de facto complainant is the wife of the Victim, namely Late Karim Sk @ Kasim Sk. It is stated that:-

On 30.03.2012 at about 10 am, the victim, aged about 60 years, was returning by walking from the Panchgram market, towards east to proceed towards his house, by the metal road of Panchgram-Nabagram bounds and during

that time, while the victim took a turn towards the direction of his house from the metal road, then the appellant herein, on that relevant time, was coming by motorcycle with speed and on a sudden, the appellant dashed and/or hit the victim with his motorcycle. And after that, being knocked, the victim fell down and later on he was taken to the Berhampore Hospital for treatment but the doctor could do little to save him and later on he breathed his last due to injury in the following morning while he was hospitalized at Berhampore.

4. On completion of trial the Appellant was convicted and sentenced as above.

The Evidence:-

5. The victim's wife (P.W1) though not an eye-witness, has stated that the Appellant had caused the death of her husband.
6. P.W.3 an eye witness has clearly stated that the Appellant while riding a motor cycle at high speed hit the victim and the victim fell down and received back side head injury.

Analysis of Evidence:-

7. A claim case being MAC Case No. 146 of 2012 under Section 163A of M.V. Act was filed. The victims family got an award/compensation of an amount of Rs. 1,29,500/- along with interest @ 6% per annum.
8. As per report of the police the complainant (P.W. 1) has expired due to illness, but her evidence is on record.
9. P.W.9 is the son of the victim and an eye witness to the incident in this case. He too has stated that the appellant caused the fatal accident by driving his motorcycle in a rash and negligent manner.

10. Thus the findings of the trial Court as to the conviction of the Appellant requires no interference, having been proved beyond all reasonable doubt.

11. **Section 304A of the Indian Penal Code, lays down:-**

“304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients.- To bring a cause of homicide under sec. 304A IPC, the following conditions must exist, namely,

(1) there must be death of the person in question;

(2) the accused must have caused such death; and

(3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide - *State of Punjab v Balwinder Singh*, (2012) 2 SCC 182.”

12. The Supreme Court in ***Shankar Kerba Jadhav & Ors. Vs. State of Maharashtra***, AIR 1971 SC 840, decided on 8th September, 1969, held:-

“Further the Sessions Judge would have been entitled to recommend enhancement of sentence to the High Court if he had maintained the conviction. And the High Court could sua motu have issued notice for enhancement. If we were to accept the contention, finality is attached to the sentence given by the Magistrate. We do. not think this is the scheme of the Code. On the other hand the scheme of the Code seems to be to confer final authority on the High Court. The first contention therefore fails and we hold that in disposing of an appeal from an order of acquittal the High Court is competent to pass a sentence which the trial court was empowered to pass.”

13. **Thus the sentence is modified** to the extent that the appellant shall pay a **fine** of Rs. 10,000/- i.d. to suffer S.I. for six months. The fine if realized, be paid to the family of the victim as compensation. The substantive sentence to suffer S.I. for one year **is set aside**.
14. **The Appellant shall pay the fine within 30 days from the date of communication of this order failing which the trial Court shall proceed in accordance with law.**
15. **CRA 552 of 2016 is disposed of.**
16. **Appellant's bail bonds stand cancelled.**
17. All connected applications, if any, stand disposed of.
18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)