

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 720 OF 2014

MAHAMMAD SAIDUL SHAIKH @ MD. SAIDUL SK.

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Debabrata Acharya, Adv.

Mr. Sital Samanta, Adv.

For the State : Mr. Debasish Roy, Ld. PP.

Mr. Saryati Dutta, Adv.

Last heard on : 29.07.2025

Judgement on : 27.10.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an appeal filed by the appellant under Section 374(2) of Cr.Pc against the Judgement and order of conviction dated 21.11.2014 passed by the Learned Additional District and Session Judge, 24 Parganas South at Alipore in Sessions Trial no. 1 (1) /13 whereby the appellant was convicted for the offence committed under Section 304-A of IPC and sentenced to suffer imprisonment for two years and to pay a fine of Rs.5000/- only in default to suffer simple imprisonment for further 6 months.

Facts of the case

2. Shorn of any unnecessary details the case of the prosecution is that on September 1, 2009 at about 18.50 hrs when a scooterist namely Debu Prasad Mitra aged about 65 years was plying on R.13 Avenue ,Kolkata - 26 ,a Private Bus ,Route NO. -76 Regd. no. WB -19A 4360 was coming behind the scooter in the same direction and the driver of said private bus drove the vehicle carelessly and recklessly and hit the scooter from back as a result scooterist fell down and the bus run over his left leg causing amputation .He was removed to S.S.K.M hospital immediately but E.M.O on duty declared as brought dead. The S.I Ram Bihari Upadhyay of Tollygaunge P.S. lodged the complaint and on that basis of such complaint Tollygaunge P.S. Case started under Section 279/427/304 I.P.C and after completion of investigation submitted the charge-sheet under Section 279/304 (part-II) OF I.P.C and the charges being exclusively triable by the Sessions Court it was transferred to the Learned Trial Court after commitment where the charge was framed by the Learned Court under the aforesaid Section .The contents of the said charge were read over and explained to him to which he pleaded not guilty and claimed to be tried and hence the trial commenced .The Learned Trial Court after considering the evidences and the facts and circumstances passed the order of conviction against the appellant sentencing to suffer Rigorous Imprisonment for a period of two years with a fine of Rs 5000/- . Being aggrieved thereby this appeal has been filed.

Submissions

3. The learned advocate representing the appellant argued that no fatal squad traffic police F.S.T.P lodged the complaint and the information as alleged was received from Tollygunge traffic guard .The P.W. 2 is not the owner of the vehicle and claimed to be the owner by virtue of power of attorney and his declaration was not seized by a seizure list. Notice under Section 133 of the Motor Vehicles Act was not served upon the owner. The evidence adduced by the witness did not make out a case of rash and negligent driving and P.W. 3 claiming to be the eye witness, were never examined by the I.O .P.W. 6 did not produce any document to show that he was on duty. P.W. 4 did not support the prosecution case that the bus was plying rashly and negligently. P.W. 13 the I.O did not examine the conductor.
4. The Learned Advocate relied upon the decision reported in ***State of Maharashtra vs. Vijay Sadanand Shenoy¹, Nageshwar Shri Krishna Ghobe vs. Sytate of Maharashtra², Braham Dass vs. state of Himachal Pradesh³***. It is the further contention of the Learned Advocate that whether the scooterist had a valid licence or not was never ascertained and the investigation was perfunctory as failed to ascertain who was the actual driver and whether on account of the fatal turn by the scooterist the accident happened .It is further submitted that that in this case in the event the order of conviction is affirmed the provision of Probation Act if can be applied as the punishment is for 2 years with the fine of Rs. 5000/-and there are serious doubts regarding the involvement of this appellant.

¹ 1981 SCC (Cri) 741

² 1973 SCC (Cri) 664

³ (2009) 2 C Cr LR 547

5. The prosecution on the other hand argued that the unfortunate incident happened due to rash and negligent driving of the bus and a person died because of such negligence. The prosecution has cited 13 witnesses including the eye witness, proved the forensic report, the declaration given by the owner/P.O.A giving and identifying the driver. The P.W. 3 adduced evidence as eye witness and the evidence of other witnesses which were impeccable and could not be demolished by the defence counsel. The Learned Court after considering the entire facts and circumstances rightly passed the order of conviction. The Learned prosecution relied upon the decision of Hon'ble Supreme Court in ***Thakur Singh vs State of Punjab***⁴ to substantiate that in the case under Section 279/304-A IPC the Probation of Offender's Act is not applicable.

Hence prayed for dismissal of the appeal.

Analysis

6. In order to bring home the charges the prosecution cited 13 witnesses who are the complainant and the local people including the eye witness. On scrutinising the evidences adduced by the witnesses it is seen that P.W. 1 Ram Behari Upadhyay was posted as a Duty Officer at Tollygunge P.S and on 1.1.09 he went to the spot on receiving information from Tollygunge traffic guard about the incident and he diarised the information and went to the place of occurrence and lodged the complaint. He proved the G.D Entry and the same is Exhibit 3. On enquiry at the spot he came to learn that a Bus Route no. 76 was plying recklessly and dashed the scooter from its backside. He further

⁴ (2003) 9 SCC 208

deposed that F.S.T.P came to the police station and took the charge of the vehicle. From his cross-examination the admitted fact found that in the written complaint the said G.D Entry No. was not mentioned.

7. P.W. 2 is the owner of the Bus No.WB-19A /4360 but later on said Partha Sakha Manna is the owner and he executed a power of attorney in his favour. According to this witness one Saidul Sk. was the driver of the Bus. In his cross examination he said he did not witness the accident. He also admitted that there is a syndicate union who decides which driver would drive which vehicle and a Register is being maintained accordingly. Police did not seize the syndicate Register and it's true that Syndicate union can only say who was driving the vehicle on that day. He was examined by the court as he identified the driver and then said syndicate union could only give the name of the driver. In reply he said that later on he learnt from Syndicate union that the appellant was driving the said vehicle.

8. In this case the P.W. 3 deposed as eye witness. According to his testimony he is a footpath dweller in front of Gurudwar park gate and he resides with his family .He could not provide the date and year but said in the month of Bhadra when he was eating puffed rice he saw one scooter going moving towards Rashbehari and behind it was a Bus moving towards same direction. There was a pitch and the scooterist in order to avoid the same took a turn and at that point of time the Bus coming behind dashed it and he fell down and the Bus ran over the legs .He gave the number of the Bus and said the driver fled away after it ran over and the police came and took the injured to the hospital. It is found from his cross examination that he is an illiterate person and police did not examine him. He could not read the numbers from

the calendar at the Court room when asked. P.W. 4 is the wife of P.W. 3 and she also saw the incident as she and her husband was having Muri in the evening. She saw that a scooter to avoid the pitch on the road when took turn and the bus behind it which was going towards the same direction dashed the scooter. She said that she was not examined by police

9. The G.D entry movement Register shows the name of the P.W. 4 to be examined by the police. However and she could not say the number of the Bus or whether it was plying rashly or not. The other footpath dweller P.W. 5 did not say anything.

10. In this case the other witnesses are the motor vehicle inspector who gave the report that the Bus had no mechanical fault, the Medical Officer who examined the body of the deceased and prepared the report accordingly. The traffic guard P.W. 12 who was on duty on 1.9.09 at the crossing of Rashbehari Avenue, Sadananda Road and Protapaditya Road from 2.00 P.M to 10 P.M deposed while he was on duty he heard Dhoro Dhoro then he saw people were running after a Bus so he also chased and followed the same bearing Registration No. WB-19A/4360. It was going towards Gariahat side from Chetla and after a certain distance the Bus stopped and the Driver ran away. He saw the driver running away and therefore he could identify him. Then he went to the spot that is in front of Gurudwara where the said Bus ran over the scooterist. He shifted the injured to the hospital .So from the above nature of evidence there is no room to doubt that on the relevant day there was a case of accident whereby the Bus Regd No.WB-19A/4360 was involved and the Scooterist died after he was runover by the Bus .

11. P.W. 8 Digbijoy Roy Chowdhury posted at Fatal Squad Traffic Police, Lalbazar as Mechanical Expert and on 1.9.09 on receiving a requisition from FSTP, Lalbazar he examined the private Bus bearing Registration No.WB-19A - 4360 on the same day and on examination he did not find any mechanical fault and he prepared the report and submitted the same. In his cross examination he admitted that he did not mention about the particulars of the equipment used by him and at the time of examination only Malkhana Babu was present. He also did not mention the chassis no. of the said vehicle. P.W. 9 is the Autopsy Surgeon and held the P.M. on 2.9.09 over the dead body of Debi Prosad Mitra and on examination he found the death was due to the effects of the injuries noted in the Post Mortem Report. He also said in his cross examination that the nature of injuries may be sustained if a person falls down.

12. In this case the G.D Entry extract dated 1.9.09 at 18.55 hrs was proved before the court and marked with Exb.1. The Exhibit 2 the G.D Entry 7. movement register (Tollygunge P.S) reveals that the foot-path dweller Mamatha Mondol wife of Rabi Mondal near Gurudwara was examined and one Durba Sarkar wife of Kochi Sarkar was examined as local people and came to know that the Bus was driving recklessly and hit the scooter from behind as a result the scooterist fell down and he was ran over by the said bus. The written complaint was lodged on 1.9.09 and the seizure list shows both the Bus and the scooter was seized. Exhibit 5 is the declaration given by the owner with the name of the driver.

13. The stand taken by the Learned Defence Counsel that it was beyond the knowledge of the owner who will drive which vehicle since there is a system of

Syndicate union who decide the same, do not have any legs to stand as the owner /the power of attorney holder identified the driver and also gave the declaration with the name of the driver. The P.W.12 the Traffic guard saw the appellant to run away after keeping the bus little away from the place of occurrence. Most importantly the appellant during his examination under Section 313 Cr.Pc never denied that he did not ply the vehicle on that day and excepting a mere denial he did not cited any witness also. Exhibit 6 is the production list shows the name of the appellant as driver and it was signed by him. Therefore there leaves no room to doubt the involvement of the appellant as the driver of the offending Bus.

- 14.** The photograph of the scooter bearing no W.R.F 6514 VSP was also marked with exhibit 8 and it fully tallies with the Register of Motor Vehicle accident marked with exhibit. 9. The exhibit 12 is the request letter dated 3.9.09 by the Deputy Commissioner of police Traffic Department, Kolkata asking for necessary arrangement for the forensic examination report of the both the Bus and the Scooter and Exhibit 12/1 is the Report which suggest that the front gate of the Bus had scratches at a height varying from 93 cm to 97 cm and the knob of the break of right handle of the scooter was broken. The report was not specific about the queries asked for in the letter but in view of the description it is clear that the scooter fell down toward right side and the handle knob got damaged but the question arises that if the Bus dashed at the left side why it turned towards right side. If at this stage the version of the footpath dweller who practically saw the incident can be considered that there was a pitch and the scooterist tried to a take a sudden turn and the Bus which was coming just behind it without maintaining much distance ran over upon

him, it would be more reasonable. The patient not only suffered injuries in his lower part but also on the occipital region and the autopsy surgeon opined that such type of injuries may be caused when someone falls down.

15. Though no doubt the burden of proof in a criminal trial is upon the prosecution. In the decision relied upon by the Learned Defence Counsel in ***Nageswar Sri Krishna Ghobe vs State of Maharashtra (supra)*** it was observed:-

“in case of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during the few moments immediately preceding the actual accident, from which the true cause can be ascertained ..When accidents takes place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupation and in normal course their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then they would look towards the direction of the noise and see what had happened. It is seldom -and it is only a matter of coincidence -that a person already looking in the direction of the accident and may for that reason be in a position to see and Later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know something more than what

they may happen to see there, would lead them to form some opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye-witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured.”

In the instant case the I.O did not cite the conductor when he would have been a vital witness in this case. That apart no evidence could be found regarding his presence in the bus or immediately after the accident what he did. So the only witnesses who saw the incident are the footpath dwellers P.W 3 and 4 the husband and wife who deposed that the bus hit the scooter as a result he fell down but the bus hit the scooter as the scooterist took a sudden turn. Fact remains I.O did not show the presence of any pitch on the road but even if such fact is considered it would be evident that the Bus could have stopped seeing the scooterist fell down from the scooter provided the bus maintained a reasonable distance.

16. An essential element to attract Section 304A I.P.C is death due to rash and negligent act and in the decision relied upon by the Learned Defence Counsel in the case of **Ramraj singh vs State of Madhya Pradesh (supra)** it was observed by the Hon’ble Supreme Court that Section 279 IPC deals with rash driving on a public way and on bare reading of the provision makes it clear

that it must be established that the accused was driving any vehicle on a public way in manner which endanger human life or was likely to cause hurt or injury to other person . Obviously the foundation in accusation under Section 279 IPC is not negligence ,similarly in Section 304 -A the stress is on causing death by negligence or rashness .Therefore for bringing an application either section 279 or 304-A an element of rashness or negligence is to be established even if the prosecution version is accepted in toto. So the duty lies upon the prosecution to prove that there was negligence and the vehicle was driving rashly endangering the life and safety of the pedestrians or the passengers .In this case both the Bus and the Scooter were sent for Forensic examination where it was specific query about the speed but the report submitted was silent on that point.

17. In this case the charge was framed under Section 304-Part (II), and the Learned Trial Court held that that the charge under Section 304 part -II is not established since no clinching evidence has come that the Bus was driving rashly. This court also do not find any case of rash driving of the Bus .But the forensic report coupled with the evidence adduced by the eye witness and the nature of injury sustained as mentioned in the P.M Report it is clear that on account of negligent driving the accident occurred as the Bus dashed the scooter from backside and possibility cannot be ignored that on account of sudden turn by the scooterist as the reasonable distance was not maintained between the two vehicles the accident took place . The evidence of eye witness also mentioned about a pitch for which there was a sudden turn but even if that is considered it is evident the Bus did not maintain the required distance for which on account of a little turning , the Bus dashed the scooter . The role

of the conductor definitely played a crucial role in giving alert signal in time to the driver but no one has uttered a single word about his presence and the appellant/accused also despite giving an opportunity kept silent. A little carefulness could have avoided such fatal accident and the life of the scooterist could have been saved. Accordingly this court do not finds any reason to interfere with the judgement passed by the learned Trial Court.

Conclusion

18. The subsequent question arises as to whether the probation of offenders Act is applicable in the case where the order of conviction is passed for commission of offence under Section 279/304-A I.P.C. The Learned Advocate appearing on behalf of the accused person also argued that in this case in case the order of conviction is affirmed the provision of Probation Act will be applied as the punishment is for 2 years with the fine of Rs 5000/-but the Learned prosecution relied upon the decision of Hon'ble Supreme Court in **Thakur Singh vs State of Punjab**⁵ where it was observed taking note of **Dalbir Singh vs State of Haryana**⁶ at paragraph 13; The Court relied on **Dalbir Singh v. State of Haryana**⁷, wherein it was held that the benefit of the Act could not be granted to a person convicted of the commission of offences punishable under Sections 279 and 304-A of the Penal Code, 1860 and opined that it was not permissible to grant the benefit of the Act in an offence which involved rash and negligent driving and accordingly, dismissed the application.

⁵ (2003) 9 SCC 208

⁶ 1 (2000) 5 SCC 82

⁷ (2000) 5 SCC 82

19. In this case the learned Trial Judge assigned the reason as to why the Court did not apply the Probation of offender's Act and this court fully endorsed to the said fact. However that the incident happened long back in the year 2009 and the Judgement was delivered by the Learned Trial Court on 21.11.2014 and the criminal Appeal was filed before the High Court in the year 2014 and the appeal was kept pending for hearing and in the mean time long 15 years have passed . The appellant then aged about 31 years is now aged about 46 years approximately and no other criminal antecedent is found against him. In the case of **Sanjoy Calaro vs State of Karnataka**⁸ in the Hon'ble Supreme Court ,where the order of conviction was passed by the Learned Trial Court under Section 279/304A IPC and affirmed by the Appellate court in paragraph 11 held;

'11. Considering the facts and circumstances of the case, we find no reason to interfere with the concurrent conviction against the Appellant. However, with regard to the sentence imposed we deem it appropriate to extend to the appellant the benefit under the Probation of Offenders Act and set aside the sentence by which he has been directed to undergo simple imprisonment for six months. Further, we award a total Compensation of Rs. 10,00,000/- (Rupees ten lakhs only) in favour of the surviving legal heirs of the deceased in lieu of the benefit extended to the appellant and the appellant shall duly conform with the payment of such compensation'.

⁸ 2025 INSC 686

Accordingly the Hon'ble Court directed to deposit a sum of Rs.10, 00,000/- (Rupees ten lakhs only) with the Trial Court within eight weeks from the date of the judgement .Further directed out of the said amount, Rs.1,00,000/- (Rupees one lakh) is to be paid to each of the ten legal heirs of the deceased, as described in the table referred to above.

- 20.** Therefore in the light of aforesaid decision this Court also upheld the view of the Learned Trial Court but modifies the sentence to 1year in place of two years. However after applying the benefit under the Probation of Offender's Act instead of sending the Appellant to correctional home the appellant is awarded with a compensation to pay an amount of Rs. 1 lakh to the surviving legal heirs of the deceased in lieu of the benefit extended to the appellant. Accordingly the appellant is directed to pay the compensation amount of Rs. 1 lakh within a period of 6 weeks from this date in default he shall have to undergo the above sentence. The appellant shall confirm the payment of compensation within a period of two weeks, immediately after the payment, to the learned Trial Court and in case of non-compliance the learned Trial Court will ensure that the appellant suffered the sentence as directed by this Court.
- 21.** Accordingly this CRA is disposed of with the above directions.
- 22.** In view of the above all other connected applications are hereby disposed of.
- 23.** Let a copy of the order along with a copy of this judgement be forwarded to the Learned Trial Court forthwith.
- 24.** Parties will be at liberty act on the server copy of the order.

25. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)

