
(2012) 02 GAU CK 0081
In the Gauhati High Court
Case No : Criminal Rev. P. No.69 of 2004

Shri Jhutan Dey

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 397, 401
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2012) 02 GAU CK 0081

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; R.C. Debnath, Special Public Prosecutor, for the Respondent

Judgement

S. Talapatra

1. This petition as filed u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 impinges the judgment and order dated 10.06.2004 as passed by the learned Addl. Sessions Judge, West Tripura, Agartala in Criminal Appeal No.48(4) of 2002. The said criminal appeal, however, was filed against the judgment of conviction and order of sentence dated 09.09.2002 as passed by the learned Judicial Magistrate, 1st Class, Agartala, West Tripura in Case No. G.R.43/2000.

2. The prosecution case as reflected from the records is that on 21.01.2000 a telephonic information was received at the East Agartala Police Station about a road traffic accident that occurred at Katalbagan. Making an entry in the G.D. of that information, police rushed to the place of occurrence, where they received a written complaint from Dr. Jayanta Kishore Debbarma. In the complaint, it was stated that the complainant, after hearing a big sound had came out to the road and found that his brother's Maruti car and a Commander Jeep were lying in a ditch adjacent to the road. On enquiry, the complainant came to know that a Lorry bearing No.TR-01-1935 dashed the Commander Jeep bearing

No.TR-01-3133, which in turn dashed the Maruti car bearing No.ML-05B-6912 which was parked nearby. Severe damage was caused to the Maruti car. From the complaint, it further reveals that the injured passengers of the Commander Jeep were taken immediately to the G.B. Hospital. On receipt of the complaint as stated, East Agartala P.S. Case No.8/2000 under Sections 279/338 of IPC was registered. After completion of investigation, charge sheet was filed against the present petitioner under Sections 279, 337 and 338 of IPC.

3. The learned Judicial Magistrate 1st Class, Agartala, West Tripura, took cognizance on 18.05.2002 and also examined the petitioner u/s 251 of Cr.P.C. in regard to the allegations constituting the offence under Sections 279, 337 and 338 of IPC. The petitioner pleaded not guilty and claimed to be tried.

4. To establish the substance of accusation as read out to the petitioner, the prosecution examined as many as 11 witnesses including the Investigating Officer and few documents were admitted in the evidence as proved, such as Ejahar, FIR form, Map with index of the place of occurrence, common seizure list of the Maruti car with its documents and the Commander jeep, injury reports of the victims etc. On the other hand, the petitioner did not adduce any evidence.

5. Learned counsel appearing for the petitioner strenuously argued that despite in the complaint there was disclosure of involvement of the Lorry but no investigation was directed against the driver of that Lorry being No.TR-01-1935. Apart that he further submitted that there is no proof of rash and negligence, committed by the petitioner. Some vague statements have been made by the prosecution witnesses without definitely pointing at the petitioner that for his negligence the accident occurred hurting few persons. He has taken me particularly to the evidence of PWs. 4, 5, 6 and 10 to contend that a scrutiny of the deposition as made by these witnesses would show that the petitioner cannot be held guilty of the substance of accusation as has been done by the trial court as well as the appellate court. However, the learned Special Public Prosecutor appearing for the State has strongly refuted the submission of the learned counsel appearing for the petitioner. He submitted that almost all the witnesses had stated in unison that the Commander Jeep was being driven in an extreme high speed. Therefore, the conviction as recorded cannot be faulted.

6. As this petition has been filed u/s 397 read with Section 401 of Cr.P.C. challenging the legality of the impugned order as stated, it is not open to this court to re-appreciate the evidence on record as a whole but if it is found or contended that the evidence were misread and read out of context, definitely this court has got a very limited scope to make a scrutiny of the evidence determinative for weighing the challenge.

7. It is trite law otherwise that if the High Court interfered with the concurrent findings of the subordinate courts below specially by reappreciating the evidence in its revisional jurisdiction, this power of revision was ordinarily be exercised sparingly and the High Court in exercise of revisional jurisdiction cannot re-write

the judgment of the learned trial court. Keeping this limitation on the anvil, a very limited scrutiny of the evidence has been done to avoid failure of justice.

8. Learned counsel for the petitioner heavily relied on the depositions of PWs. 4, 5, 6 and 10. PW.4 namely Sri Sukanta Kar categorically stated that he was seated in the backside of the Jeep. Right from the beginning the vehicle was being driven at a high speed, on few occasions the passengers asked the driver to drive slowly but he did not pay heed. On reaching Katalbagan (place of occurrence), the vehicle suddenly lost control. At that time a Lorry was coming from the opposite direction. The jeep dashed against a roadside tree and ran into a nearby ditch. He sustained grievous head injury and lost sense. Other passengers also sustained injuries. He denied the suggestion that the vehicle was not being driven at a high speed as well as that the jeep was knocked down by the Lorry. This witness categorically stated that "the Lorry was also coming speedily".

9. Similarly, PW.5 namely Smti Iti Das stated that though there was little shower, the vehicle was being driven at a high speed. Passengers asked the driver to drive slowly but he did not listen to. On reaching the place of occurrence, when the Lorry was found coming from the opposite direction, the jeep dashed a Maruti car parked on the roadside and went into the adjacent ditch along the culvert. He also suffered injuries and was taken to hospital. On cross-examination, she denied that the driver was plying the vehicle slowly or that the commander jeep was knocked down by the Lorry.

10. PW.6 namely Sri Rabindra Ch. Das, who is the owner of the commander jeep bearing No.TR-01-3313, stated that at the relevant point of time and day the vehicle was being driven by the petitioner. He also identified his driver on the dock. He denied the suggestion in the cross-examination that the petitioner was not the driver of his vehicle.

11. PW.10 Dr. J.K. Debbarma did not divulge anything of relevance. He was a seizure witness. This witness in no manner supported the case of the petitioner rather PWs. 4 and 5 stated in unison that despite request to drive the vehicle in low speed the petitioner had driven the vehicle in high speed resulting in the accident under reference.

12. PW.1 namely Sri Ranjit Das and PW.2 namely Sri Prakash Sinha did not state anything of material importance. PW.3 Dr. A.K. Bhattacharjee has stated that he examined the injured in the hospital having injuries from the accident and some of the injured were also admitted as indoor patients considering the grievous nature of their injuries. None of the witnesses stated that the Lorry was in any way responsible for the said accident and as such the contention that by not arraigning the driver of the Lorry as accused, the investigation went haywire cannot be accepted.

13. PW.11, the Investigating Officer has categorically stated that after completion of investigation, he submitted the charge sheet. He admitted that the vehicle was

examined by the Motor Vehicle expert and preliminary report was received on the same day and thereafter he also received final mechanical examination report on 31.05.2000. However, the said Motor Vehicle Inspector was not examined by the prosecution and as such the report was also not admitted but, nowhere the petitioner has projected his defence on the basis of that report. Even in this case, learned counsel appearing for the petitioner did not make any reference to that aspect and no ground has been taken on that aspect of the matter and as such this court refrains from consideration in that regard.

14. Mr. R.C. Debnath, learned Special Public Prosecutor appearing for the State has stated that rashness and negligence in regard to the act for which the said accident occurred has been sufficiently established by the prosecution witnesses. He further submits that driving rashly and negligently endangering human life cannot be weighed with latitude. In support of his contention, the learned Special Public Prosecutor referred to a decision of the Apex Court in Dalbir Singh vs. State of Haryana & Ors., as reported in AIR 2000 SC 1677, where the Apex Court has observed :

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal Courts cannot treat the nature of the offence u/s 304-A, IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

15. On taking an aggregate assessment of the materials as placed on evidence, it appears that despite caution sounded by the passengers of the vehicle, the petitioner did not restrain him from driving the vehicle at a high speed. No doubt, high speed is a relative term but it cannot be also doubted that the prosecution had discharged the duty regarding what they meant by high speed in the facts and circumstances of the case inasmuch as PWs. 4 and 5 has categorically stated that "for high speed" the petitioner as the driver could not control the vehicle and it dashed a Maruti car and a tree before it fell into a ditch.

16. The decision of R. vs. Caldwell, as reported in (1981) 1 All ER 961 has been cited with approval in R. vs. Lawrence, as reported in (1981) 1 All ER 974 and it was observed that :

... Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting "recklessly" if, before doing the act, he either falls to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it.

The same principle has been adopted by the Apex Court in Kuldeep Singh Vs. State of Himachal Pradesh, .

17. On the yardstick of these observations, the prosecution had succeeded to establish the petitioner's rashness and negligence in driving and thereby endangering the human life. As such the substance of accusation as read under Sections 279/337 and 338 of IPC was proved, however, since the petitioner was convicted u/s 337 of IPC, the learned trial court taking a correct position of law did not convict the petitioner u/s 338 of IPC.

18. On such appreciation, it clearly shows that the vehicle was being driven at a very high speed and two of the witnesses have stated in unison that the vehicle was being driven in high speed despite their sounding caution to the petitioner. Therefore, the conviction as recorded cannot be faulted.

19. Another aspect cannot also be brushed aside that the convict petitioner was facing the stress and strain of investigation, trial, appeal and revision petition since 2000.

This court is persuaded by a decision of Himachal Pradesh High Court in State of Himachal Pradesh Vs. Madan Lal, , where it has been observed :

16. The occurrence took place more than 10 years before and since then the accused is under the stress and strain of investigation, trial and the appeal. Therefore, some lenience in the matter of punishment to be awarded to the accused, will be fully justified. Therefore, taking a lenient view, the accused is sentenced to undergo simple imprisonment for three months and to pay fine of Rs.1,000/- and in default of payment of fine, to suffer further imprisonment for one month u/s 304-A of the Indian Penal Code and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo imprisonment for one month....

20. In the present case, the learned Addl. Sessions Judge, West Tripura, Agartala, while disposing the appeal has discounted the sentence of fine, directing the sentence for SI for six months u/s 279 of IPC and another sentence

for six months u/s 337 of IPC to run concurrently.

21. Considering the stress and strain as suffered by the petitioner, the sentence of the petitioner is further reduced to 1(one) month simple imprisonment u/s 279 of IPC and another 1(one) month simple imprisonment u/s 337 of IPC and both the sentences would run concurrently.

22. With this observation and modification in the sentence, this revision petition stands disposed of.

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