

(2014) 04 TP CK 0012

In the Tripura High Court

Case No : Crl. Rev. P. 11 of 2009

**Sri Prabhat Malakar and Sri Subhash Pal Vs The State of
Tripura, represented by the Secretary, Department of Home, Government
of Tripura**

Date of Decision : 28-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 313, 397, 401
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2014) 04 TP CK 0012

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

**Advocate : P. Dhar, legal aid counsel, Advocate for the Appellant; R.C. Debnath,
Additional P.P, Advocate for the Respondent**

Judgement

S.C. Das, J.—This revisional application u/s 397 read with Section 401 of Cr.P.C. is directed against the Judgment & Order dated 30.09.2008 passed by learned Additional Sessions Judge, Belonia in Criminal Appeal No. 16 of 2008 whereunder learned Additional Sessions Judge upheld the Judgment & Order of conviction and sentence dated 18.08.2008 of accused Subhash Pal passed by learned SDJM, Belonia in Case No. G.R. 120 of 2005.

Learned SDJM found the accused Subhash Pal guilty of committing offence punishable u/s 279, 337 and 304A of IPC and sentenced him to suffer R.I. for 3 months and to pay a fine of Rs. 500/- in default to suffer S.I. for one month u/s 279 and 337 of IPC. He has also convicted the accused Subhash Pal for commission of offence punishable u/s 304A of IPC and sentenced him to suffer R.I. for 6 months and to pay a fine of Rs. 1,000/- in default of payment to suffer S.I. for 3 months.

The accused Subhash Pal preferred Criminal Appeal No. 16 of 2008 in the Court of learned Additional Sessions Judge, Belonia and by Judgment dated 30.09.2008, learned Additional Sessions Judge dismissed the appeal and hence, the present revisional application is filed by the accused-convict Subhash Pal

through the petitioner Prabhat Malakar.

2. Heard learned legal aid counsel Ms. P. Dhar for the petitioner and learned Additional P.P., Mr. R.C. Debnath for the State-respondents.

3. Prosecution case, in short, is that on 20.06.2005 at about 6.30 p.m., a jeep vehicle No. TRT-3028 driven by convict-accused Subhash Pal was running towards Belonia from Barpathari direction through Barpathari-Belonia road and at the same time, jeep vehicle No. TR-01-3834 driven by accused-driver Babul Das (acquitted) proceeding towards Barpathari and there was a severe head on collision between the vehicles at Samarendra Nagar on Barpathari-Belonia road and as a result, Smt. Minati Dey (Das), the sister-in-law of the informant Benode Das received severe injury and died on the spot. Other passengers of the vehicle also received injuries. On the basis of an FIR lodged by Benode Das, brother-in-law of victim Minati Dey (Das), P.R. Bari Case No. 25 of 2005 u/s 279, 304A and 338 of IPC was registered and after investigation, police submitted charge sheet against the convict-accused Subhash Pal, driver of TRT-3028 and also against Babul Das, driver of TR-01-3834 for commission of offence punishable u/s 279, 304A and 338 of IPC.

4. In the course of trial, both the accused persons were examined u/s 251 Cr.P.C. for commission of offence alleged and they pleaded not guilty and claimed to be tried.

5. Prosecution examined 18 witnesses to prove the charge and also exhibited several documents. Defence cross-examined the prosecution witnesses but adduced no defence evidence.

6. Learned trial Judge considering the evidence on record convicted accused Subhash Pal, the driver of TRT-3028 and sentenced him as stated hereinbefore. The other accused Babul Pal was acquitted from the charge.

7. While exercising power of revision, the revisional Court is to see the correctness, legality and propriety of an order, passed by inferior Court and further to see the regularity of the proceeding before such inferior Court. The revisional Court is not required to reassess and re-appreciate the evidence on record, which has already been considered by the trial Court and the appellate Court. The revisional Court should not interfere with the concurrent finding of fact recorded by the trial Court and the appellate Court unless it is shown that the finding is based on no legal evidence and is perverse.

8. Learned legal aid counsel, Ms. Dhar has submitted that according to the prosecution, P.Ws 7, 8, 11 and 16 are the only eye witnesses of the accident, who were travelling with the offending vehicle No. TRT-3028 in which the convict Subhash Pal was on the steering. All those witnesses except P.W. 8 stated that both the drivers were responsible for the accident whereas based on the same evidence, one accused i.e. Subhash Pal has been convicted, but the other accused Babul Das has been acquitted. While based on same evidence, one

accused has been acquitted, the other accused also ought to have been acquitted by the trial Court. That aspect has not been considered by the trial Court as well as by the appellate Court. Learned counsel has also submitted that there is no evidence of rash and negligent driving of the vehicle and the eye witnesses simply stated that for the fault of both the vehicle, the accident occurred. In the absence of any cogent evidence of rash and negligent driving, the trial Court would not have convicted the accused for commission of the offence alleged and appellate Court also would not have affirmed the order of conviction and sentence. It is further submitted by Ms. Dhar, learned legal aid counsel that no expert evidence that the vehicles have no mechanical disorder at the time of alleged accident recorded during trial and so, the finding of the trial Court and the appellate Court that the accident occurred for rash or negligent driving was altogether unfounded and not tenable in law.

9. Learned Additional P.P., Mr. Debnath, on the other hand has submitted that the trial Court recorded positive finding based on evidence that the accident occurred because of rash and negligent driving of vehicle No. TRT-3028 since the vehicle, which was carrying passenger, was also found carrying 7/8 bundles of long bamboo on the roof of the vehicle and 17/18 passengers were inside the vehicle and because of the vehicle being overloaded, the accident occurred since the driver could not control the vehicle. This finding of the trial Court is based on sound appreciation of evidence which is considered by the appellate Court and is not called for interference in the revision petition. It is also submitted by Mr. Debnath, learned Additional P.P. that rashness and negligence should be inferred from the bundle of facts allegedly stated by the witnesses. The trial Judge arrived at a definite finding about rash and negligent driving by the driver Subhash Pal and there is no reason to interfere with it. Both the vehicles were examined by the Motor Vehicle Inspectors and there was no mechanical disorder, but in course of trial, Motor Vehicle Inspectors have not been examined though it was necessary to examine them. But it may be presumed that there was no mechanical disorder of the vehicle and the accident occurred for rash and negligent driving by the driver of vehicle No. TRT-3028.

10. I have gone through the records of the trial Court. While going through the records of the trial Court, I am quite surprised and astonished to see that the accused Subhash Pal was not examined u/s 313 Cr.P.C. A memorandum of examination was prepared with several questions and signature of accused was obtained, but those questions neither put to the witness nor any answer was recorded by the learned Magistrate whereas learned Magistrate put his signature at the bottom of the memorandum prepared for examination of the accused u/s 313 Cr.P.C. It is evident that learned Magistrate without examination of the accused u/s 313 of Cr.P.C. proceeded with trial and convicted him for the offence alleged. Since the accused was not examined u/s 313 Cr.P.C., I find serious irregularity in the trial conducted by the learned SDJM. It is a serious lapse on the part of learned SDJM in the discharge of his judicial duty. He has mechanically prepared a memorandum of examination of accused u/s 313 Cr.P.C.

and it is obvious that those questions prepared for examination u/s 313 Cr.P.C. were not put to the accused by the learned SDJM and as such, answer to those questions were not recorded by him. He has put his signature at the bottom in a mechanical manner and proceeded with the trial of the case.

It is further surprising that learned Additional Sessions Judge has not examined the L.C. records while passing judgment in the appeal preferred by the accused. It was the duty of the learned Additional Sessions Judge to go through meticulously the trial Court record and to pass judgment taking into account the materials on record. It is definite that the learned Additional Sessions Judge mechanically passed the judgment without applying mind to the materials in the L.C. record.

In the circumstances, I find no other alternative, but to set aside the judgments in respect of the accused Subhash Pal passed by the learned SDJM and affirmed by learned Additional Sessions Judge.

11. The case is remanded back to the Court of learned SDJM, Belonia to examine the accused afresh u/s 313 Cr.P.C. and thereafter, to proceed with the case against the accused as per law.

The other accused Babul Das since already been acquitted and that acquittal has not been challenged, cannot be interfered.

12. Registry is directed to send a letter of caution to the concerned learned SDJM and learned Additional Sessions Judge for their rectification in future.

13. Send back the L.C. records along with a copy of this Judgment.