
(2011) 04 GAU CK 0061
In the Gauhati High Court
Case No : Criminal Rev. P. No. 17 of 2003

Sri Rajib Debnath

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2011) 04 GAU CK 0061

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : B.N. Majumder, for the Appellant; R.C. Debnath, Special Public Prosecutor, for the Respondent

Judgement

C.R. Sarma, J.—By filing this revision petition, the Petitioner has challenged the judgment and order, dated 10.03.2003, passed by the learned Addl. Sessions Judge, West Tripura, Agartala, in Cril. Appeal No. 12(1)/2002, whereby and whereunder, the learned Addl. Sessions Judge, confirmed and upheld the judgment and order, dated 16.01.2002, passed by the learned Judicial Magistrate 1st Class, Agartala, West Tripura, in case No. G.R.657/2000.

By the aforesaid judgment and order, dated 16.01.2002, the learned Judicial Magistrate, convicted the revision Petitioner for the offences under Sections 279 and 304A of the Indian Penal Code (for short "IPC") and sentenced him to suffer simple imprisonment for one month, for his conviction, u/s 279 IPC and rigorous imprisonment for six months, for his conviction, u/s 304A IPC.

2. I have heard Mr. B.N. Majumder, learned Counsel, appearing for the revision Petitioner and Mr. R.C. Debnath, learned Special Public Prosecutor for the State-Respondents.

3. The prosecution case, in brief, is that, on 15.08.2000, at about 9 p.m., when Sri Paresh De (hereinafter called "the deceased"), was coming through the road,

the accused-Petitioner, driving his vehicle, bearing No. TRT-2496 (Jeep), in a rash and negligent manner, knocked down the said deceased and thereby caused his death. On receipt of FIR, lodged by the son of the deceased, police registered a case, u/s 279/304A IPC and launched investigation into the matter and submitted chargesheet against the accused-Petitioner for the offences under Sections 279 and 304A IPC and forwarded him to the Court to stand trial.

4. The prosecution, in order to prove its case, examined as many as 12 witnesses, including the Medical officer and the Investigating Police Officer.

5. At the close of the evidence for the prosecution, the accused Petitioner was examined u/s 313 Code of Criminal Procedure. He denied the allegations, brought against him and declined to adduce any defence witness.

6. Considering the evidence on record, the learned Judicial Magistrate 1st Class, Agartala, West Tripura, by the impugned judgment and order, dated 16.01.2002 aforesaid, recorded conviction and sentence against the accused-Petitioner as indicated above.

Aggrieved by the said judgment and order of conviction, the Petitioner, as Appellant, preferred an appeal, before the learned Addl. Sessions Judge, West Tripura, Agartala, and the learned Addl. Sessions Judge, by the impugned judgment and order, dated 10.03.2003, while dismissing the appeal, upheld the impugned conviction and sentence. Aggrieved by the said judgment and order, passed by the learned Addl. Sessions Judge, the convicted person, as Petitioner, has come up with this revision petition.

7. Mr. B.N. Majumder, learned Counsel, appearing for the Petitioner, taking this Court through the evidence on record, has submitted, that the prosecution failed to establish, beyond all reasonable doubt, that the Petitioner had driven the vehicle in rash and negligent manner, endangering human life or in a manner likely to cause hurt or injury to any person. It is also submitted, that the prosecution failed to adduce any medical evidence i.e. the injury report or the post mortem report, to substantiate that the deceased died due to the injuries sustained by him in the said accident. The learned Counsel, appearing for the Petitioner, submitted that the learned Courts below committed error by convicting and sentencing the accused-Petitioner for the offences u/s 279 and 304A IPC.

8. Mr. R.C. Debnath, learned Special Public Prosecutor, supporting the impugned judgment and orders, submitted that there are sufficient evidence on record to show that the Petitioner had caused the death of the deceased by driving his vehicle in a rash and negligent manner.

9. Admittedly, there is no medical evidence or injury report to show that the Petitioner had sustained injury, which was sufficient to cause death of the deceased. Therefore, in the absence of any medical evidence, it is hardly possible to conclude, that the death of the deceased was caused due to the injuries, if

any, sustained by him in the said accident.

10. In view of above, in the absence of any medical evidence, the conclusion of the Courts below that the deceased died due to the injuries, sustained by him, in the said accident, can't be held to be reasonable. Therefore, I am inclined to hold, that the prosecution failed to establish, beyond all reasonable doubt that the death of the deceased was caused due to rash and negligent driving, on the part of the accused-Petitioner and as such the conviction and sentence, recorded u/s 304A IPC can't stand in the eye of law. Accordingly, the impugned conviction and sentence, recorded u/s 304A IPC is liable to be set aside and quashed and I do so.

11. Mr. Braja Kr. Saha, who was the eye witness to the occurrence, deposed as PW. 1. He stated that the vehicle, driven by the Petitioner, had dashed against the deceased and that the accident was caused due to negligent driving on the part of the driver of the vehicle. He clearly stated that, after causing the accident, the driver of the vehicle had fled the place, leaving the vehicle and the injured therein. This conduct on the part of the Petitioner goes against him.

12. PW. 9, Sri Sukumar Debnath, was another vital witness of this case. He was the assistant in the said vehicle and he was also present in the vehicle, at the time of the accident. He stated that the vehicle was coming in high speed and that at the time of taking a turning, the vehicle had dashed against the deceased. Supporting the evidence of PW. 1, PW. 9 stated that, after causing the said accident, the driver of the vehicle had fled away. He clearly stated that the accident took place due to fault on the part of the driver. This witness was duly cross-examined on behalf of the defence, but nothing could be elicited to render his evidence disbelievable.

13. Carefully perusing the evidence of PW. 1 and PW. 9, it is clear that, both the witnesses were eye witness to the occurrence and they stated that the accident took place due to fault of the driver i.e. rash and negligent driving on the part of the driver of the vehicle. That apart, from the evidence of PW. 9, it is found that the accident took place at the time of taking a turning. As the driver was required to take a turning, he should have been careful and bring down his speed. His failure to do so indicates that his driving was rash and negligent.

14. PW. 2 Sri Subhas Dutta, PW. 3 Sri Jagabandhu Das and PW. 7 Sri Haridas Sutradhar, stated that they did not see the accident.

15. PW. 4, Sri Parimal Das, was the scribe of the FIR. He exhibited the FIR, written by him as Ext. P.1 and his signature thereon as Ext. P.1/1. He was not a witness to the occurrence.

16. Sri Dibakar Das, who was a Vehicle Inspector of the Office of the Deputy Transport Commissioner, Agartala, deposed as PW. 5. He stated that, on being requisitioned, he examined the concerned vehicle i.e. TRT-2496 (Jeep) and found that, there was no mechanical disorder in respect of the said vehicle. He

exhibited his report, as Ext. P.2 and his signature thereon as Ext. P.2/1.

The opinion of the said Vehicle Inspector, that there was no mechanical disorder with regard to the offending vehicle, sufficiently indicates that the accident took place due to negligence on the part of the driver of the offending vehicle.

17. Sri Sachindra Nama, who deposed as PW. 6, stated, that the offending vehicle, after the accident, had entered into his compound by breaking the fencing and gate of his house. This witness was not present at the time of the accident.

18. PW. 8, Sri Jitendra Debnath, stated about the seizure of a half shirt with blood stain and one dhuti, by the police.

19. PW. 10, Sri Suklal Debnath, is the owner of the concerned vehicle. He was not present at the time of the accident. He stated that the accused-Petitioner i.e. Sri Rajib Debnath was the driver of the offending vehicle at the relevant time.

20. Sri Ranjit Dey i.e. the son of the deceased, who lodged the FIR, deposed as PW. 11. He stated that, on being informed about the accident, he rushed to the hospital and found that his father was lying dead in the hospital. He exhibited the FIR as Ext. P.1 and his signature thereon as Ext. P.1/2.

21. Sri Kantilal Chowdhury, who was the Investigating Police Officer, deposed as PW. 12. He stated that, during investigation he prepared the inquest report, examined the witnesses and submitted the chargesheet.

22. From the above discussed evidence rendered by PWs, more particularly, the evidence of PW. 1 and PW. 9, coupled with the evidence of PW. 5, it is found, that the accident took place due to fault on the part of the driver of the vehicle. There is nothing on record to find that there was any constraint on the part of the driver of the vehicle to stop the vehicle immediately after finding the deceased on the road. That apart, PW. 1 clearly stated that the deceased was on the left side of the road.

23. In the light of the above discussion, I find no difficulty in holding that the Petitioner, who was the driver of the concerned vehicle, at the relevant time, had driven the vehicle in a rash and negligent manner. Therefore, in my considered opinion, the Courts below committed no error by convicting the Petitioner for the offence u/s 279 IPC.

24. Mr. B.N. Majumder, learned Counsel, appearing for the Petitioner, has submitted, that the occurrence took place on 15.08.2000 in connection of which the Petitioner was convicted on 16.01.2002 and that the appeal preferred against the said conviction, was dismissed, on 10.03.2003. In view of above, it is submitted, that the Petitioner, who is a married person, having his wife and their children to look after, has already suffered a lot and as such a lenient view may be taken in respect of imposing the penalty.

25. Considering the entire aspect of the matter, the delay and the suffering

already undergone by the Petitioner, I am of the opinion that by sending the Petitioner to jail for a short period of one month at this belated stage will not serve any purpose. Therefore, I am of the opinion that, ends of justice would be met if the Petitioner is sentenced to pay fine instead of undergoing imprisonment. Accordingly, the sentence recorded by the Courts below u/s 279 IPC is modified and the Petitioner is directed to pay fine of Rs. 500/- (Rupees five hundred) only instead of undergoing imprisonment for one month. In default of payment of fine, as indicated above, the Petitioner shall suffer simple imprisonment for 1(one) month.

26. With the above modification in respect of the sentence of the Petitioner, for his conviction u/s 279 IPC, this Criminal Revision Petition is partly allowed.

Return the Lower Court Records.