

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P No.21/2019

Sri Biswajit Ghosh,
Son of Late Ramanandra Ghosh,
Resident of Lambucharra,
P.S.-Kamalpur, District-Dhalai Tripura.

..... **Petitioner(s).**

Versus

The State of Tripura
Represented by Public Prosecutor,
High Court of Tripura, Agartala.

..... **Respondent(s).**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Mr. Samar Das, Advocate.
For Respondent(s) : Mr. S. Ghosh, Addl. Public Prosecutor.
Date of hearing : 10th February, 2021.
Date of Judgment & Order : **7TH April, 2021.**
Whether fit for reporting : NO.

JUDGMENT AND ORDER

[1] Petitioner has filed this criminal revision petition challenging the judgment dated 20.12.2018 delivered in Criminal Appeal No.3 of 2018 by the Additional Sessions Judge, Dhalai Judicial District, Kamalpur affirming the conviction and sentence of the petitioner awarded by the Judicial Magistrate, First Class, Kamalpur by judgment and order dated 09.01.2018 in PRC (WP) 30/2016 whereby the trial Court imposed sentence on the petitioner as under:

SECTION	SENTENCE	FINE	DEFAULT SENTENCE
279 IPC	--	Rs.1000/-	--
338 IPC	R.I for 2 (two) months	Rs.1000/-	S.I for 10(ten) days.
304A IPC	R.I for 2 (two) months	Rs.2000/-	S.I for 15 (fifteen) days.
184 M.V. Act	--	Rs.1000/-	S.I for 10(ten) days.

It was ordered that the sentences would run concurrently. Judgment of the trial Court was affirmed in appeal by the impugned judgment. Aggrieved petitioner has challenged the judgment of the appellate Court by means of filing this criminal revision petition.

[2] Genesis of the prosecution case is rooted in the FIR which was lodged by Sri Rakhal Ch. Das (PW-1) at around 6.55 pm on 04.01.2016 at Kamalpur police station alleging, inter alia, that at about 3.25 pm on the day a face to face collision took place between two motor bikes on Kamalpur - Ambasa road near the office of Kalachari Gram Panchayat. According to the informant, the motor bike carrying registration No.TR-04-7499 driven by Amar Deb on its way from Manik Bhandar to Kamalpur collided with the motor bike carrying registration No.TR-04A-6726 driven by Biswanit Ghosh which was coming from the opposite direction. As a result of such collision between the motor bikes, drivers of both the motor bikes got seriously injured. They were immediately taken to Kamalpur district hospital by the local people. It was alleged by the informant that the accident occurred as a result of careless driving of the said motor bikes.

[3] Based on his FIR, Kamalpur PS Case No.2015 KMP001 dated 04.01.2016 under Sections 279 and 338 IPC and Section 184 Motor Vehicles Act, 1988 was registered against the drivers of the said motor bikes and the investigation of the case was taken up by police.

[4] On 5.1.2016 injured driver Amal Ch. Deb succumbed to his injuries in AGMC and G.B.P Hospital at Agartala. With the approval of the Court vide order dated 08.01.2016 of the Sub Divisional Judicial Magistrate, Kamalpur, the Investigating Officer added Section 304A IPC to the case for the purpose of investigation. During investigation, the I.O visited the crime scene and he had drawn up a sketch map of the crime scene indicating the material locations therein. Thereafter the material witnesses acquainted with the facts of the case were examined by him and their statements were recorded under Section 161 Cr. P.C. Injury reports of the victims and post mortem examination report of the deceased driver were collected and on the basis of such investigation Charge Sheet No. 22 of 2016 dated 5.4.2016 was submitted against accused Biswahit Ghosh for having committed offence punishable under Sections 279,338, 304-Part II IPC and Sections183, 184 and 190 of the Motor Vehicles Act, 1988.

[5] The Sub-Divisional Judicial Magistrate, Kamalpur having received the charge sheet made over the case to the Court of Judicial of the First Class at Kamalpur vide his order dated 19.04.2016.

[6] The trial Court viewed that the basic ingredients of Section 304 Part-II IPC were not satisfied in the case and therefore, vide his order dated 04.05.2016, the learned Judicial Magistrate, First Class took cognizance of offence punishable under Sections 279, 338 and 304A IPC and Sections 183,184 and 190(2) of the Motor Vehicles Act, 1988.

[7] At the commencement of trial the substance of accusation in terms of Section 251, Cr.P.C was stated to the accused petitioner which is reproduced hereunder:

"That, on 04.01.2016 at about 1525 hours on Kamalpur- Ambassa public way, at Kalachari under Kamalpur P.S, you being the rider of motor bike (Super splendor) bearing registration No. TR-04-A-6726 drove the motor bike in a manner so rash and negligent manner as to endanger human life or to be likely to cause hurt or injury to any person, and you thereby caused grievous hurt to Amar Chandra Deb and hurt to Sri Madhusudhan Chakraborty and consequently on 05.01.16 Amar Chandra Deb succumbed to his injuries caused by you not amounting to culpable homicide, and you thereby committed offences punishable under section 279/338/337/304A of the Indian Penal Code, 1860 and within my cognizance.

Secondly, on the same date and time and at the same place, you are the rider of the motor bike bearing registration No. GR-04-A-6726 drove the same at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle was being driven and the amount of traffic which actually was at the time or which might reasonably be expected to be in the place, and you thereby committed the offence of driving dangerously punishable under section 184 of the Motor vehicles Act, 1988, and within my cognizance.

Thirdly, on the same date and time and at the same place, you being the rider of the motor

bike bearing registration No. TR-04-A-6726 drove the same in contravention of the speed limits referred to in section 112 of the Motor Vehicles Act, 1988 and you thereby committed an offence punishable under section 183 of M.V. Act, 1988 and within my cognizance.

Fourthly, on the same date and time and at the same place, you being the rider of the motor bike bearing registration No. TR-04-A-6726 drove the same in violation of the standard prescribed in relation to road safety, control of noise and air pollution, and you thereby committed an offence punishable under section 190(2) of M. V. Act, 1988 and within my cognizance."

Accused pleaded not guilty and claimed a trial.

[8] During trial as many as 17 prosecution witnesses (PW-1 to PW-17) including the informant and Investigating Officer were examined and 17 documents (Exbt.1 to Exbt.17) were introduced on behalf of the prosecution in order to prove the case against the accused. Thereafter, the incriminating materials appearing in the prosecution evidence were explained to the accused during his examination under Section 313 Cr. P.C held on 09.11.2017. Accused pleaded innocence and claimed that the charges were foisted on him. He declined to adduce any witness on his defence.

[9] Heard Mr. Samar Roy, learned advocate appearing for the petitioner as well as Mr. S. Ghosh, learned Addl. Public Prosecutor representing the State respondent.

[10] It would be appropriate to have a glance at the evidence recorded during trial before adverting to the arguments advanced by learned counsel of the parties.

[11] As noted, two motor bikes were involved in the accident and FIR was lodged against both of the drivers of those vehicles. One of the driver namely, Amar Ch. Deb died of his injuries in hospital day after the occurrence. Other accused namely, Biswajit Ghosh is facing the trial. Among the witness examined by the prosecution, PW-1, Sri Rakhal Chandra Das came to the spot following a robust sound from his nearby office after the collision took place. He rushed to the place of occurrence and saw the two motor bikes lying on the road. Among the two accused drivers, condition of Amar Deb was serious. The PW stated that he came to know the name of the injured drivers from the local people. Immediately, he along with others had taken injured Amar Ch. Deb to hospital in an auto rickshaw. When police visited the place of occurrence, he wrote the FIR and submitted it to police. On his identification FIR was marked as Exbt.1.

In his cross examination, he categorically stated that he had no idea as to how the accident took place and who among the two accused drivers was at fault because he did not see the accident taking place.

[12] Similarly, PW-2, Sri Dilip Chanda did not also see the accident taking place. He was feeding his cow on road in front of his house when he heard the sound of collision between two motor bikes. Immediately he rushed to the place of occurrence and saw the bikes lying on road and one of the injured drivers was also lying on road. Immediately the injured was taken to hospital. The PW was declared hostile at the instance of prosecution and he was cross examined by the prosecution lawyer. Nothing could be extracted from him during such cross examination by the prosecution. In his cross examination by the accused, he categorically stated that he did not see the accident and therefore, he could not say as to who was responsible for the accident.

[13] PW-3, Sri Babul Das also stated that he did not have any idea about the accident. He did not give any incriminating evidence against any of the accused.

[14] PW-4, Sri Madhusudhan Chakraborty is an eye witness who was a pillion rider on the motor bike of deceased accused Amar Deb. The PW stated that he was returning to Kamalpur from Manik Bhandar on the motor bike of deceased accused Amar Deb. When they reached Kalachari accused Biswajit Ghosh who was riding motor bike carrying registration No.TR-04-A-6726 dashed against their motor bike from the opposite direction. According to the PW, the accident occurred because accused Biswajit Ghosh was driving his motor bike in excessive speed. As a result of the accident, the PW slipped from the motor bike and sustained fatal

injuries. Amar Ch. Deb on whose bike he was a pillion rider also received serious injury. Both of the accused drivers were taken to hospital and ultimately both of them were referred to GBP hospital where accused Amar Ch. Deb succumbed to his injuries on the following day.

[15] During his cross examination, many suggestions were given to the witness on behalf of the accused. He denied all those suggestions. The PW denied that accused Biswajit Ghosh did not drive his vehicle in high speed. He also denied the suggestion that he gave false statement before the Court during trial.

[16] PW.5, Sri Uttam Namasudra stated that at the material time he was a helper in Kalachari Panchayet Office. From there he saw accused Biswahit Ghosh driving his vehicle at high speed. He explained to the Court that by high speed he meant that the motor bike was being driven in a zig-zag manner. According to the witness, the motor bikes had a face to face collision, as a result of which deceased Amar Ch. Deb received serious injury who was taken to hospital.

In his cross examination he stated that his office was situated within a distance of 50/60 cubits away from the place of occurrence. The PW denied that he did not give true statement before the Court. He also denied that accused Biswajit Ghosh was not responsible for the accident.

[17] PW-6, Smt. Papi Deb, wife of the deceased met her injured husband Amar Ch. Deb in hospital immediately after the occurrence. She

stated that she also met Madhusudhan Chakraborty, pillion rider and Sri Sudam Hrshidas in the hospital. From them she came to know that as a result of careless driving of the motor bike by accused Biswajit Ghosh, the accident took place.

In her cross examination, PW stated that Madhusudhan Chakraborty was a colleague of her husband who was returning Kamalpur on the motor bike of her husband at the material time. She denied that the accident did not occur as a result of rash driving of Biswajit Ghosh.

[18] PW-7, Sri Arjun Ch. Deb is the younger brother of deceased Amar Ch. Deb. This PW did not also see the accident. When he went to see his injured brother at Kamalpur hospital, he met injured Madhusudhan Chakraborty who told him that accused Biswajit Ghosh was responsible for the accident because he drove his motor bike in a very high speed and dashed against the motor bike of his elder brother.

[19] Similar evidence was given by PW-8, Sri Litan Deb. He is not an eye witness to the occurrence. He came to know from the local people that the accident occurred due to rash driving of the motor bike by accused Biswajit Ghosh. Later he had gone to hospital to meet his son in law Madhusudhan Chakraborty who was travelling on the bike of deceased accused Amar Ch. Deb.

[20] PW-9, Sri Bikash Chandra Das simply stated that he saw a crowd at the place of occurrence and came to know that a collision took

place between two motor bikes. He was declared hostile at the instance of prosecution. Nothing could be extracted from him in favour of the prosecution through cross examination of the witness by the prosecution lawyer.

[21] Similarly, PW-10, Sri Pallab Das was also declared hostile to the prosecution and the PW was also cross examined by the prosecution lawyer. He did not give any incriminating evidence against the accused during his cross examination by the prosecution lawyer.

[22] PW-11, Sri Sudam Hrishidas stated that he saw deceased Amar Ch. Deb driving his motor bike in a very low speed along the left side of the road. Madhusudhan Chakraborty(PW-4) was on his bike. Suddenly, the bike of accused Biswajit Ghosh came from the opposite direction in a high Speed and dashed against the motor bike of deceased Amar Ch. Deb. The collision between two motor bikes generated a robust sound. Both of the accused drivers received fatal injuries from the accident and both of them were taken to hospital.

In his cross examination, the PW denied the suggestion of the accused that the petitioner did not drive his vehicle in high speed at the time of occurrence.

[23] PW-12, Dr. Sudip Kumar Acharjee was the medical officer at District Hospital, Kamalpur who attended the injured drivers and injured Madhusudhan Chakraborty at the hospital immediately after the

occurrence and found injuries arising out of road traffic accident in the body of all those persons. The patients were referred to AGMC and GBP Hospital, Agartala.

[24] PW-13, Sri Chakrapani Das was a motor vehicles inspector who stated that on 4.3.2016 i.e. two months after the occurrence, he examined the offending motor bikes at Kamalpur P.S. Complex. During such examination he found damages on the front portion of both the vehicles. According to him, there was no mechanical disorder in either of the vehicles at the time of occurrence.

[25] Pw-14, S.I Sri Swapan Barman investigated the case. He stated that during his investigation he examined the material witnesses of this case. He also seized the offending motor bikes and got those bikes examined by the Inspector of Motor Vehicles, collected the injury reports of those who received injury in the accident including post mortem report of deceased Amar Ch. Deb and submitted charge sheet against accused Biswahit Ghosh for causing the death of deceased Amar Ch. Deb by negligent driving.

[26] PW-15, Bijoy Kumar Deb, the cousin brother of Amar Chandra Deb, stated that he put a signature on the seizure list by which police seized the documents of the vehicle of his deceased brother.

[27] PW-16, Sri Tapan Das visited the place of occurrence after the occurrence. He saw the offending motor bikes lying on road and made

arrangement for shifting the injured to hospital. The PW could not say who was responsible for the accident.

[28] PW-17, Dr. Pradipta Narayan Chakraborty held the post mortem examination of deceased Amar Ch. Deb at AGMC and GBP Hospital at Agartala on 05.01.2016. According to the PW, Amar Ch. Deb died due to head injury resulting from the impact of hard and blunt force. The PW stated that all the injuries were ante mortem in nature and fresh in duration.

[29] It would appear from the evidence discussed above that other than PW-4, Madhusudhan Chakraborty , PW-5, Sri Uttam Namasudra and PW-11, Sri Sudam Hrishidas, there is no eye witness to the occurrence. Among these three witnesses PW-4, Madhusudhan Chakraborty was travelling on the bike of deceased Amar Ch. Deb at the time of occurrence. He stated that accused Biswajit Ghosh was responsible for the accident because he drove his vehicle in excessive speed. Uttam Namasudra (PW-5) stated that he was in Kalachari Panchayet office at the time of occurrence at a distance of 60 cubits from the place of occurrence and from there he had seen the accident. According to him, the accident occurred as a result of rash driving of accused Biswajit Ghosh. PW-11, who is stated to be another eye witness, deposed that at the material time he was returning Kamalpur from Manik Bhandar on his bicycle. At Kalachari, he saw accused Biswajit Ghosh riding his motor bike at high speed. According to him, deceased Amar Ch. Deb was driving

his motor bike in a low speed. It was stated by the PW that as a result of rash driving of accused Biswajit Ghosh, a collision between the two motor bikes took place causing injuries to both the drivers and pillion rider Madhusudhan Chakraborty(PW-4) who was travelling on the bike of deceased accused Amar Ch. Deb.

[30] Mr. Samar Das, learned counsel appearing for the petitioner submits that on the basis of information lodged by Rakhal Ch. Das (PW-1) the case was registered against both the drivers of the motor bikes involved in the accident. Since one of the accused has died, charge sheet has been filed against the other accused namely, Biswajit Ghosh. Accordingly to learned counsel, for argument's sake even if the evidence of PW-4, PW-5 and PW-11 are believed, accused cannot be held guilty because, they have given no evidence in support of rash and negligent driving. Counsel submits that materials available on record do not justify convict and sentence of the accused for rash and negligent driving.

[31] Mr. S. Ghosh, learned Additional Public Prosecutor on the other hand contends that prosecution evidence with regard to the charge of rash and negligent driving against the accused is so consistent that the concurrent findings of the courts below do not call for any interference in revision. Learned counsel, therefore, urges for dismissal of the instant petition.

[32] It would appear from the evidence of PW-4, PW-5 and PW-11 who allegedly witnessed the accident that each of these witnesses stated that the accident occurred because accused Biswahit Ghosh was driving his motor bike at a high speed. In the case of **Mrs. Shakila Khader and Ors Vrs. Nausheer Cama and Others**; reported in **(1975) 4 SCC 122**, the Apex Court observed that speed is not the only criteria for deciding rashness and negligence on the part of the driver.

Similar observation was made by the Apex Court in case of **State of Karnataka Vrs. Satish**; reported in **(1998) 8 SCC 493**, which is as under:

"4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

[33] This High Court also expounded in the case of **Suman Saha Vrs. State of Tripura**; reported in **(2019) 1 TLR 191** that only high speed cannot be the conclusive evidence of rash and negligent driving.

[34] In the present case, the Investigating Officer did not make any investigation to ascertain about the width of the road, its position, density of the traffic at the material place and the exact location of the offending vehicle and those of the witnesses and the deceased at the time of accident to present a complete picture before the Court to know actually how the accident took place and who was responsible. In absence of such evidence it would be unsafe to hold the petitioner guilty merely on the evidence that the offending vehicle was at a high speed and a person lost his life in the accident.

[35] In view of what is discussed above, this Court is of the view that prosecution has failed to establish the charges of rash and negligent driving against the petitioner by adducing sufficient, convincing and reliable evidence. Resultantly, the revision petition stands allowed and accused is acquitted of the charges brought against him. His bail bond stands discharged.

The criminal revision petition is disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the LCR.

JUDGE

Dipankar