

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. A. NO.38 OF 2019

Sri Bibisan Debnath

S/O Sri Khokan Debnath of
Rajapur, P.S. Santirbazar,
District-South Tripura.

..... Convict-Appellant(s)

Versus

The State of Tripura

..... Respondent(s)

**BEFORE
HON'BLE MR. JUSTICE ARINDAM LODH**

For appellant(s) : Mr. A. Acharjee, Advocate
For respondent(s) : Mr. S. Debnath, Addl. P.P.
Date of hearing and delivery of
Judgment & Order : **17.06.2021**
Whether fit for reporting : **NO**

J U D G M E N T & O R D E R (O R A L)

The instant appeal arises out of the judgment and conviction and sentence dated 06.09.2019, passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur, in connection with case No.S.T 79(GT/U/) of 2014(T-1), whereby and whereunder the appellant has been convicted under Sections 304A/338/337/279 of IPC and sentenced him (a) to suffer RI for one year and to pay a fine of Rs.5,000/-, in default, to suffer further RI for three months for the offence under Section 304A, (b) to suffer RI

for six months and to pay a fine of Rs.500/-, in default, to suffer further SI for two months for the offence under Section 338 of IPC, (c) to suffer RI for two months and to pay a fine of Rs.300/-, in default, to suffer further SI for one month for the offence under Section 337 of IPC and (d) to suffer RI for one month and to pay a fine of Rs.200/-, in default to suffer further SI for ten days for the offence under Section 279 of IPC. It was also directed that all the sentences shall run concurrently.

2. Prosecution case, in brief, is that on 21.02.2014 at night about 2400 hrs. at Kalaban, Udaipur, on Garjee-Tulamura Road under R.K. Pur P.S., Gomati District, the accused-appellant was driving his vehicle bearing No.TR-03-2563(Commander Jeep) rashly and negligently and caused an accident wherein one person died.

3. The Officer-In-Charge, on being receipt of the complaint lodged by one Ratan Jamatia, carried out investigation. During the process of investigation, he recorded the statements of the available witnesses under Section 161 of CrPC, sent the body for post-mortem examination, prepared the inquest report. On completion of investigation, the investigating officer having found *prima*

facie case against the appellant had filed charge-sheet under Sections 279/337/338/304 Part II of IPC.

4. On receipt of the charge-sheet, the case was committed to the Court of learned Sessions Judge which was transferred to the Court of learned Addl. Sessions Judge, Gomati District, Udaipur. Initially charges were framed against the appellant under Sections 279/338/304 Part II and subsequently Section 304A IPC was added.

5. Trial was undertaken. In course of trial, the learned Addl. Sessions Judge had examined as many as 28 numbers of witnesses. On closure of recording of evidence of the prosecution witnesses, the appellant was examined under Section 313 of CrPC where he pleaded to be innocent when he was noticed about the incriminating materials and evidences surfaced against him by the prosecution witnesses. It is also necessary to be noted that the appellant had adduced four numbers of witnesses including him.

6. Having heard the learned counsels and considering the materials on record, the learned Additional Sessions Judge had held the appellant as guilty of

committing offence under Sections 304A/338/337/279 of IPC and sentenced him as afore-stated. Hence, this appeal.

7. Heard Mr. A. Acharjee, learned counsel appearing for the convict-appellant as well as Mr. Sumit Debnath, learned Addl. P.P. appearing for the respondent-State.

8. The owner of the offending vehicle was examined by the prosecution as PW4, but PW4 did not state about taking of leave by the appellant before the date of accident. Defence also did not put any question to PW4 regarding taking of any leave by the accused from him before the accident.

9. It is necessary to mention herein that the appellant by way of adducing evidence on his behalf has tried to project his case that at the time of accident he was on leave and he was not driving the vehicle as alleged. As I said earlier that no question was put to the owner from the side of the defence denying the fact that he was on leave, in my opinion, the learned Addl. Sessions Judge has correctly held that the appellant was not on leave on the fateful night when the accident had occurred.

10. After going through the evidence of DWs, I find that all the witnesses were his close relatives. The convict-appellant had failed to bring any independent person to support his claim that he was not driving the vehicle at the relevant point of time.

11. The first informant, *i.e.* PW21 has specifically stated that the deceased Amit Jamatia was his younger brother who died in the accident in the night of 21.02.2014 at Kalaban. As per his evidence, he along with his younger brother with other persons attended the marriage ceremony of his sister by hiring commander jeep vehicle bearing No.TR-03-2563 and at the time of return the said vehicle met an accident at Kalaban as the driver-appellant was inebriated and was driving the vehicle at excessive speed, and in spite of being cautioned to drive slowly he did not pay any heed.

12. After perusal of the depositions of PWs 12, 13, 16, 18, 24 and 26, who boarded the aforesaid offending vehicle, it is found that all of them had corroborated the said statements of PW21.

13. It is further revealed from the depositions of PWs 16 and 24 that when the vehicle was in a running condition, its front wheel came out of the axle which was the main reason of causing the accident. The learned Addl. Sessions Judge had also observed in his judgment that he looked at the seizure list, by which the defaulting vehicle was seized on 22.02.2014 and he found that at the time of seizure two front wheels were detached. The place of occurrence also remained undisputed as would be evident from the hand-sketch map of the place of occurrence and it appeared that the accident took place in mid-point of public road and in opposite directions, *i.e.* front and back sides there were tri-junctions. The evidence also had disclosed that the accident took place at the turning point. The hand-sketch map of the place of occurrence had further revealed that just adjacent to the road there was lunga land covered by jungles.

14. After careful ~~रसमोव नयसो~~ of the evidence and materials on record, I find that none of the prosecution witnesses had deposed that the appellant was driving the vehicle rashly and negligently, which are the main

ingredients of punishing an accused under Sections 227/337/338/304A of IPC.

Mere statement that the vehicle was being driven at a "*high speed*" does not be spoken of either "*negligence*" or "*rashness*" by itself. Criminality is not to be presumed, subject of course to some statutory exceptions. I find that 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*" can be drawn by invoking the maxim "*res ipsa loquitur*".

15. In the instant case, in absence of any assertions regarding rash and negligent driving, I find it difficult to uphold the conviction and sentence, as imposed by the learned Addl. Sessions Judge upon the appellant.

16. Having held so, the impugned judgment and order convicting and sentencing the appellant as afore-stated stands set aside.

It is informed that the appellant is on bail. As such, he has been discharged from his bail bond. His surety also stands discharged. Accordingly, the appellant is acquitted.

- 17.** The instant appeal stands allowed.
Send down the LCRs.

JUDGE

