

**ORISSA HIGH COURT,
CUTTACK**

CRIMINAL REVISION NO. 129 OF 2001

From the judgment dated 19.02.2001 passed by Shri J.M.Patnaik, Addl. Sessions Judge, Nayagarh in CrI. Appeal No.26/51/37 of 1997/1992/1991, confirming the judgment dated 18.02.1991 passed by Shri M.S. Dhal, J.M.F.C., Ranpur, in G.R. Case No.113 of 1987.

Raghunath Pradhan
Petitioner

Versus

State of Orissa Opposite Party

For Petitioner - M/s D.P. Dhal, A.K. Acharya,
K.Rath, S.K. Tripathy
and P.K.Rautray

For Opp. Party - Mr. Pratap Rout,
Addl. Standing Counsel.

PRESENT:-

THE HON'BLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 21.04.2006

PRADIP MOHANTY, J. This revision arises out of the judgment and order dated 19.02.2001 passed by the learned Addl. Sessions Judge, Nayagarh, in Criminal Appeal No.26/51/37 of 1997/1992/1991, confirming the judgment of conviction and sentence passed by the J.M.F.C., Ranpur in G.R. Case No.113 of 1987.

2. The case of the prosecution in brief is that on 10.10.1987 at about 7.00 a.m., while the victim Bali Dei, an old lady, was proceeding on the left side of the road towards the temple of Lord

Siva, a bus bearing registration number ORC 1155, which was coming from Godipada side in a reckless manner being driven by the accused-petitioner, dashed against her. As a result, she fell down and the bus ran over her causing her instantaneous death. Thereafter, an FIR was lodged before the Ranpur P.S., on receipt of which investigation commenced and after closure of investigation charge sheet was submitted under Sections 279/304-A, I.P.C. But the learned J.M.F.C., on perusal of police papers, took cognizance under Section 118-A of the Motor Vehicles Act besides the aforesaid two sections of the Indian Penal Code.

3. In order to prove its case, the prosecution examined as many as 12 witnesses including the M.V.I. (P.W.11) and the doctor, who conducted autopsy over the dead body of the deceased, and exhibited certain documents marked Exts.1 to 5.

4. The plea of the accused-petitioner is complete denial of the allegation. In order to substantiate his plea, the accused-petitioner examined himself as D.W.1. In his evidence, while admitting the fact that he was driving the vehicle at the time of accident, he stated that the deceased, all on a sudden, fell in front of the bus while attempting to cross the road. Therefore, he is in no way responsible for the accident.

5. After considering the evidence on record, the learned J.M.F.C., Ranpur found the accused-petitioner guilty of the offence under Sections 279 and 304-A, I.P.C. read with Section 118-A of the M.V. Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/-, in default to undergo further imprisonment for two months under Section 304-A, I.P.C. The learned Magistrate did not impose any separate sentence for the offence under Section 279, I.P.C. and Section 118-A, M.V. Act, as, according to him, the sentence already passed would meet the ends of justice. Against the said judgment of the trial court, the accused-petitioner preferred appeal, which was disposed of by the learned Addl.Sessions Judge, Nayagarh,

confirming the judgment and order of conviction passed by the trial court. Hence this revision.

6. Mr. Tripathy, learned counsel for the accused-petitioner, submits that P.W.1 is a highly interested witness as he happens to be a relation of the deceased. Therefore, no credence should be given to the evidence of P.W.1. He further submits that the prosecution has deliberately withheld to examine the independent witnesses, though the place of occurrence was a busy road and independent witnesses were available at the relevant time. His further submission is that the deceased was an old lady and was hard of hearing.

On the other hand, Mr. Rout, learned Addl. Standing Counsel, submits that P.Ws.1 and 5 are ocular witnesses. P.W.5 is an independent witness, who corroborates the testimony of P.W.1. He further submits that on the ground of interestedness, the evidence of P.W.1 cannot be thrown above board if it is otherwise trustworthy.

7. Perused the LCR and judgments of the courts below. Admittedly, the old lady was slight hard of hearing. She was proceeding on her left side and the bus dashed against her from behind. P.W.1 has stated in his evidence that the driver of the bus blew horn only from a little distance. After the horn was blown, the victim went to the extreme left side being more conscious of coming of the bus from her back side. Even then, the bus ran over her. P.W.5, the independent witness also corroborates the above statement with regard to the accident. D.W.1 has categorically admitted that he was driving the vehicle at the relevant time. He has, however, stated in his evidence that the old lady fell in front of his bus while attempting to cross the road. But there is no evidence with regard to application of brake by the accused-petitioner. No material contradiction has also been brought to the notice of this Court in the evidence of the prosecution witnesses. In view of the above, this Court does not find any reason to differ from the findings recorded by the courts below

and set aside the order of conviction passed against the accused-petitioner. No point of law has been raised.

9. At this stage, Mr. Tripathy, learned counsel for the accused-petitioner, submits that the accused-petitioner is a young man. He is the only earning member of his family. The family will suffer heavily if he is sent to jail. He is also a first offender and no previous sentence has been proved against him. Therefore, a lenient view may be taken and instead of sentencing the accused-petitioner to suffer imprisonment and pay fine, he may be released under the provisions of Section 4 of the Probation of Offenders Act.

10. Considering the facts and circumstances of the case, while upholding the conviction of the petitioner this Court feels that instead of imposing any sentence upon the petitioner, he should be released under Section 4 of the Probation of Offenders Act.

11. In the result, this revision is disposed of by upholding the conviction of the petitioner but setting aside the sentence and directing that the petitioner be released as per the provisions of Section 4 of the Probation of Offenders Act.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
 April 21, 2006 / **G.D.Samal**