

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. No.01 of 2018

Sri Sudip Das,
son of Sri Haripada Das,
resident of Vill. & P.O. Dwarikapur,
PS – Kalyanpur, Distt. Khowai, Tripura

-----Appellant(s)

-Vs.-

The State of Tripura

-----Respondent(s)

For the Appellant(s)	:	Mr. A. Basak, Advocate
For the Respondent(s)	:	None
Date of hearing and delivery of Judgment & Order	:	29.06.2019
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment and Order (Oral)

Heard Mr. A. Basak, learned Legal Aid Counsel appearing for the appellant. None appears for the State despite Mr. S.S. Datta, learned special P.P. appearing for the state was informed by Mr. S. Ghosh, learned counsel that the matter would be taken up today inasmuch as on 27.06.2019 when the matter was taken up for hearing, the counsel for the state was not available. Even today Mr. S. S. Datta, learned Special PP has failed to attend the hearing. As such, this court does not have any other alternative but to decide the case in absence of representation from the State and based on the records.

02. The appellant was charged under Section 304, Part-II of the IPC and Section 279 of the IPC separately and after trial, the appellant has been convicted under Sections 304-A and 279 of the IPC. Pursuant to the conviction, the appellant has been sentenced to suffer RI for one year and fine of Rs.5,000/- with default stipulation under Section 304-A of the IPC and RI of 6 months for committing offence punishable under Section 279 of the IPC.

03. Being aggrieved thereof, this appeal has been filed by the appellant. The prosecution against the appellant was launched based on the written ejahar (Exbt.1) filed by one Raj Kishore Das on 04.10.2014 at about 2130 hours in Khowai Police Station revealing that when his son namely Ranjit Das was crossing the road at about 1800 hours on 04.10.2014, in a place nearby the house of Sujit Modak, a red coloured Maruti vehicle having no number, dashed his son and his son failing to absorb impact of thrust had been seriously injured at a distance of 100 cubits. The local people rushed him immediately to the hospital where the attending doctors declared his son dead.

04. Based on the said information as lodged by Raj Kishore Das, PW-2, Khowai PS Case No.105/2014 under Sections 279/304-A of the IPC was registered and taken up for investigation. On completion of the investigation, the police report was filed under Section 304, Part-II of the IPC and under Section 279 of the IPC. Since the offence punishable under Section 304, Part-II of the IPC is exclusively triable by the Court of Sessions, the police papers were committed to that court and on taking cognizance, the Addl. Sessions Judge, West Tripura, Khowai framed the charge against the appellant as stated above, to which the appellant pleaded innocence and claimed to face the trial.

05. To substantiate the charge, as many as 35 witnesses were examined and 16 documents were introduced in the evidence including the post mortem examination report (Exbt.11). After the prosecution evidence was recorded, the appellant was examined under Section 313(1)(b) of the Cr.P.C. when the appellant reiterated his plea of innocence by stating that the material incriminating him are all concocted. After appreciation of the evidence, the Trial Judge passed the finding of conviction as stated.

06. Mr. A. Basak, learned Legal Aid Counsel has submitted that from a bare reading of the finding of the Trial Judge, it would be apparent that there is no evidence of negligence but only a finding as regards the high speed is there and on the basis of that, the negligence was assumed without any corroborating evidence. According to Mr. Basak, learned Legal Aid Counsel, high speed alone cannot be treated as negligence. High speed with recklessness or rashness causing the accident may be treated as the negligence or rashness for purpose of both the offence as punishable under Sections 304-A and 279 of the IPC. For purpose of reference, the relevant part of the impugned judgment dated 24.11.2017 delivered in ST(T-2) 22 of 2016 is extracted hereunder:

"On marshaling the above evidence of the prosecution witnesses, I find PW3 to PW6, PW9, PW10 and PW19 are the eye witnesses of the occurrence. From the evidence of PW3 it reveals that he noticed the vehicle proceeding towards Teliamura with a high speed while he came out from his house and found the injured lying on the road. PW-4,5,6,9 and 10 were in the vehicle. They in their evidence clearly stated that the present accused was the driver of the vehicle and on the date of accident they were coming from Kamalpur by boarding in the said vehicle and the accident took place at Chebri on Khowai-Teliamura road. They also deposed that the vehicle was in high speed and soon after the accident the driver fled away with his vehicle. From the hand-sketch map, I find the PO is in the extreme eastern side of the road and where the accident took place, it was a

straight way. Said witnesses in their evidence deposed that in the early morning the accident took place even the I.O. in his hand-sketch-map did not show any other vehicle running at that time. So, it is clear that road was free and the deceased was by the side of the road but the vehicle given dash to the injured. The evidence of P.W.4 to PW6, PW9 and 10 clearly established that the present accused was the driver while the accident took place. It is fact that on the date of accident there was no permanent registration number of the vehicle but from the evidence of other witnesses, it reveals that after the accident the driver kept the vehicle in another place even he brought his vehicle in a garage as well as to the maruti dealer where from he purchased the vehicle and the authorized maruti dealer also confirmed it by adducing his evidence that the present accused is the owner of the offending vehicle. Apart from this it reveals from the investigation of the I.O. as well as from the evidence of the eye witnesses that the frontal glass of the vehicle was broken in the alleged P.O. So, in such a circumstances the ingredients which are needs to be proved by the prosecution for the offence u/s.279 of IPC is found to be proved by them since it reveals that the accused was driving the vehicle at the time of accident and he was driving his vehicle on a public motor road and he was also rash and negligent in his driving the vehicle."

07. Mr. Basak, learned Legal Aid Counsel has relied on a decision of the apex court in ***State of Karnataka vs. Satish*** reported in ***(1998)8 SCC 493*** where the apex court while dealing with the element of "high speed" has observed as follows:

"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."

Thereafter, in **Satish** (supra) the apex court having finding no other set of evidence in respect of the negligence acquitted the driver-accused from the charge.

08. Since the State is not represented, this court has scrutinized the record carefully to find out whether the prosecution has established by evidence that there had been rash and negligence on the part of the appellant contributing to the accident related to death of the informant's son. As stated earlier that 35 witnesses were examined.

PW-1, Joymal Rudra Pal, has stated that the son of PW-2 namely Ranjit was dashed by a red coloured Maruti vehicle. At that time he was in the house. Having received the news, he rushed to the Chebri Hospital. So, he did not see the accident. Even he could not provide the registration number of the vehicle.

PW-2 is the informant namely Sri Raj Kishore Das. PW-2 was as well not the eye witness. He has stated that he was informed 'by a person'. But he never disclosed the name of that person. That person has reportedly stated that his son Ranjit met an accident and the person failed to say where the accident took place. Then he was informed by another person that his son has been shifted to hospital. Immediately he rushed to the Chebri Hospital and found his son with serious bleeding injuries. He submitted the written complaint to the police station (Exbt.1) and on the basis of that complaint a police case was registered. He has stated nothing more in the trial.

PW-3, Narayan Deb, has stated that at the time of accident he was in his house and had registered a big sound. He came out on the road and saw a red coloured Maruti vehicle was proceeding towards Teliamura with high speed. He found an injured person lying on the road. The person was identified as Ranjit. He was from their locality. He shifted the injured to the Chebri Hospital. He did not see how the accident took place inasmuch as that he was inside his house.

PW-4, Kaushik Deb, has stated that he and few other persons hired one Maruti Alto to go to Kamalpur to see Durga Puja there. The vehicle was of the appellant and he was driving the vehicle. On the day of Dasami, in the early morning, they started for Kamalpur by the said vehicle. On their way to Chebri Market, suddenly they felt a jerk of the vehicle and noticed the frontal glass of the vehicle was broken. Thereafter, the driver fled away with the vehicle 'in high speed'. He came to know that the said vehicle gave dash to a person in that place and that is the reason why the frontal glass of the vehicle was broken. In the cross-examination, he denied the fact that on the way to return from Kamalpur, the vehicle was driven by the appellant or it did not dash any person nearby the Chebri Market on the road. All the suggestions made from the defence were denied by him.

PW-5, Kuladeep Paul, was one of the co-passengers of the vehicle which met accident on 04.10.2014. He has stated that the vehicle gave dash to the person at about 1530 to 1600 hours. After giving the dash the driver controlled the speed but again, with high speed the driver fled away with the vehicle. In the cross-examination, he has further stated that he fell asleep in the vehicle and therefore he

could not say how the accident took place and the frontal glass was broken.

PW-6, Sri Niloy Sutradhar, is one of the co-passengers. He has also stated that on the way of their return when they reached a place nearby Chebri Market, he suddenly heard a big sound and noticed that the frontal glass of the vehicle was broken. The vehicle was being driven by the appellant. PW-6 denied the suggestions which were mostly structured on absence of amiable personal relation between the driver of the vehicle and PW-6.

PW-7, Sri Haripada Das, has stated that the appellant was the owner of that vehicle bearing registration No.244. He stood as the witness to the seizure of the vehicle. The seizure was carried out on 09.10.2014. He was also witness to the seizure of the broken pieces of glass from the place of occurrence.

PW-8, Sri Dharmendra Barma stood as the witness to the seizure of the broken glass and he has identified his signature on the seizure list (Exbt.4).

PW-9, Sri Manoj Gope, a person who knew the appellant from before and was a co-passenger. PW-9 has stated that they went to see the Durga Puja at Kamalpur. On the way returning from Kamalpur on the next morning when they reached nearby Chebri on Khowai-Teliamura road, the vehicle with its high speed gave dash to a person and at the impact of thrust, the frontal glass of the vehicle was broken. He saw the person falling on the ground but the driver without stopping the vehicle proceeded with high speed by turning the vehicle in a separate direction. After far distance the driver asked them to get down

from the vehicle and accordingly they got down from the vehicle. From that place they returned their respective houses on foot. They identified the driver in the court. No material facts could be extracted or elicited in the cross-examination.

PW-10, Sri Niranjan Das, was also one of the co-passengers. He just replicated the statement of PW-9, but in the cross-examination nothing could be elicited from him which can support the defence.

PW-11, Sri Rajib Das, is the elder brother of the deceased, Ranjit Das. He had witnessed the inquest procedure. He had signed the report of inquest (Exbt.5). But he was not the witness to the accident.

PW-12, Sri Uttam Das, is a neighbour of the deceased. He was also the witness of the inquest procedure.

PW-13, Sri Kali Ranjan Das, is a co-villager of the deceased and the witness to the inquest procedure.

PW-14, Sri Bimal Das, again a co-villager in whose presence the wearing apparels of the deceased namely T-shirt, one white coloured vest were seized on preparing the seizure list (Exbt.6). He was also the witness to the seizure of a small bottle, Exbt.MO-1, the gauge cloth, Exbt.MO-2 and the shirt which has been identified as Exbt.MO-3.

PW-15, Sri Bidyut Roy is the witness to the seizure of the material objects, Exbts.MO-3 and MO-4.

PW-16, Sri Indrajit Debnath was the constable at Khowai PS on 15.12.2014. He had received the blood, hair, vest, the half pant, gauge paper which were seized from the deceased. He had also identified PW-4 in the trial.

PW-17, Sri Debasish Shil, is another constable posted at Khowai PS on 15.12.2014. When the police officer seized blood, hair, vest, half pant and gauge paper, he stood witness to such seizure. He identified the material objects, Exbts.MO-1 and MO-4.

PW-18, Sri Jantu Roy is the scribe of the written complaint. He has stated that he wrote the complaint, Exbt.1, at per dictation of PW-2.

PW-19, Sri Biswajit Roy, is one of the independent witnesses of the accident and he has stated that on 04.10.2014 in the morning at about 0600 hours he was proceeding towards Chebri Bazar on foot. At that time one red coloured Alto car proceeding towards Teliamura from Khowai side with high speed and dashed Ranjit Das. Due to the sudden impact, the front glass of the vehicle was broken. For a moment the driver stopped the vehicle and thereafter he fled away with his vehicle. At the time of accident, PW-13 was at a distance of 20/30 ft. away from the alleged place of occurrence. Initially, Ranjit Das was shifted to Chebri Hospital and therefrom to Khowai Hospital where he expired. He identified his signature on the seizure list by which the broken pieces of glass of the offending vehicle were seized and identified as Exbt.PO-5. In cross-examination nothing could be elicited from PW-19.

PW-20, Smt. Swarna Debbarma is a seizure witness of Exbt.MO-5. She identified her signature on the seizure list [Exbt.9].

PW-21, Sri Shib Sankar Tripura, a Sub-Inspector of Police was posted at Khowai PS. He received the written requisition of one Doctor Arnab Debbarma of Khowai Hospital who had informed that the dead body of the victim required post mortem examination. On receipt of

such requisition, he entered that information in the police station diary (vide GD Entry No.134 dated 04.10.2014) at 6.45 a.m. He went to Khowai Hospital. He prepared the inquest report of the dead body of Ranjit Das who was identified by his elder brother Rajib Das. He prepared the inquest report and took signatures of the persons who had witnessed the proceeding of inquest. He has shortly narrated how he conducted the investigation by recording the evidence, preparing the hand sketch map and by causing the seizures of the wearing apparels of the deceased but he was not effectively cross examined by the defence.

PW-22, Sri Ashish Dey, was a seizure witness of the red coloured Maruti vehicle and put his signature on the seizure list dated 09.10.2014 (Exbt.3).

PW-23, Sri Rathindra Deb has stated that while he was returning home two police personnel called him in the house of one Raj Kumar Acharjee of their locality. There were some other police personnel as well. He is also the witness to the seizure of the red coloured Maruti vehicle. He has not stated anything more which can have any effect on the prosecution case.

PW-24, Sri Sankar Acharjee, has stated that he heard about the accident and he used to know the appellant. He has not stated anything of material importance.

PW-25, Sri Manik Sarkar, who was a journalist, has stated that on 17.10.2014 he visited Khowai PS and in his presence, the person gave a declaration in writing in connection with a motor accident. There was no cross-examination at all.

PW-26, Sri Bijan Sutradhar, has stated about the damage that the vehicle had suffered. He has stated that the appellant had stated that the vehicle had dashed a tree and as a result, the glass was broken. In the cross-examination he has stated that he did not visit the garage with Sudip on 08.10.2014.

PW-27, Sri Santosh Malakar, has stated that one red coloured Maruti vehicle was kept in his house in the morning time but it was taken away before he arrived in the house. He did not state anything material either in the examination-in-chief or in the cross-examination.

PW-28, Sri Khagesh Marak, saw the red coloured Maruti vehicle moving towards south side of his house. He did not reveal anything more.

PW-29, Dr. Arnab Debbarma, has stated that on 04.10.2014 when he was posted at Sub-Divisional Hospital as the Medical Officer he conducted the post mortem examination on the dead body of Ranjit Das in connection with Khowai PS GD Entry No.134 dated 04.10.2014. After conducting the post mortem examination, he has given the opinion that the death was caused due to the hypo-volemic shock due to massive haemorrhage and due to head injury. He has identified the post mortem examination report (Exbt.12). In the cross-examination, he has not stated anything of material importance.

PW-30, Sri Abhijit Deb, produced the relevant documents of the vehicle in Khowai PS on 20.10.2014 and those were seized by preparing a seizure list (Exbt.11). He identified his signature as the witness to seizure. There was no cross-examination.

PW-31, Sri Sanjoy Mallik, is also another witness to the seizure of the papers relating to the red coloured Maruti vehicle.

PW-32, Sri Amar Barma, has stated that he was witness to the seizure of the broken glass from the place of the accident on 27.10.2014 and he stood witness to such seizure by signing on the seizure list (Exbt.4).

PW-33, Sri Ranjit Debbarma is one of the Sub-Inspectors of Police posted at Khowai PS. On that day, he seized the broken pieces of glass at Paschim Chebri at about 0845 hours. He identified his signature on the seizure list (Exbt.8). He has stated that in the GD Entry he recorded the crux of the statement of Sujit Das and Biswajit Roy. In the cross-examination, he has stated that PW-19 did not state to him that in the early morning he noticed a red coloured Maruti vehicle gave dash to a person at Paschim Chebri.

PW-34, Sri Haripada Bhowmik, was working in the Maruti Workshop. He had issued the reply in response to the requisition sent by the Officer-in-Charge, Khowai PS on 03.11.2014. He has confirmed that the front wind shield of the vehicle was broken and the body of the vehicle was damaged. The mechanic did their work in the garage. He has identified the official pad of Jain Udyog and the delivery challan (respectively Exbt.9 and Exbt.10). He did not say anything in the cross-examination which can be considered as material for purpose of determining the appeal.

PW-35, Sri Palash Datta, Sub-Inspector of Police has identified the hand-writing of the Officer-in-Charge of the police station on the FIR form (Exbt.13). He has also identified the various other

entries as produced in the trial. The latter part of the investigation was carried out by him and he filed the chargesheet No.29/15 dated 31.5.2015 under Sections 279/304 Part-II of the IPC and also under Sections 177/181/183/184/ 192(A) of the MV Act. He did not reveal anything which can be considered to be beneficial either for the prosecution case or for the defence. As stated earlier, the documents as introduced and as reflected in the deposition of the witnesses are admitted in the evidence.

09. The relevant part of the impugned judgment has been reproduced hereinbefore and on scrutiny of the records it is found that except stating that the vehicle was being driven in the 'high speed', no negligence has been attributed to the driver of the vehicle. In the written ejahar, it has been denoted that Ranjit Das, son of the informant was 'crossing' the road in the early morning. The apex court in **Satish** (supra) has categorically laid down the law that unless the material of negligence and rashness is produced, the statement that the vehicle was being driven in 'high speed' is not sufficient to come to an inference that the vehicle was being driven rashly and negligently by applying the evidentiary tool of res ipsa loquitor. In this case, the prosecution had left the element of evidence and as a result, two suppositions have surfaced to be probables. One, the vehicle was being driven with high speed. As the speed is relative term, it cannot be attributed by itself as negligence or rashness and the other, the vehicle was being driven in an uncontrollable speed and when the deceased was crossing the road, the driver had failed to control the vehicle for that speed. The second view cannot be inferred for lack of evidence. Hence, this court has to give the benefit to the appellant. The appellant is therefore acquitted from the

charge on benefit of doubt. Consequently, the impugned judgment and order are set aside. Since it has been stated by Mr. Basak, learned Legal Aid Counsel that the appellant is on bail, the liability of the sureties is discharged.

In the result, the appeal is allowed.

Send down the LCRs forthwith.

JUDGE

