

**HIGH COURT OF TRIPURA**  
**AGARTALA**

**Crl. Rev. P No.1/2017**

**Shri Kankaj Das,**  
Son of Shri Kripasindhu Das,  
Resident of Village & P.O-Kalagangerpar,  
P.S-Kadamtala, Sub-Division-Dharmanagar,  
District-North Tripura.

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

Versus

**The State of Tripura.**

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

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

For Petitioner(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. R. Datta, Public Prosecutor.
Date of hearing	:	9 <sup>th</sup> October, 2020.
Date of Judgment & Order	:	<b>26<sup>th</sup> November, 2020.</b>
Whether fit for reporting	:	No.

**JUDGMENT AND ORDER**

**[1]** This criminal revision petition, filed under Section 397 read with Section 401 of the Code of Criminal Procedure 1973 (Cr. P.C herein), has been directed against the judgment and order dated 13.12.2016 passed by the learned Sessions Judge of North Tripura judicial district,

Dharmanagar in Criminal Appeal No.0000009 of 2016 whereby the learned Sessions Judge affirmed the judgment and order of conviction and sentence dated 02.05.2016 passed by the learned Chief Judicial Magistrate, North Tripura in case No. PRC 266 of 2013 convicting the accused petitioner under Section 279 and 304A IPC and sentencing him to suffer S.I for 6(six) months and fine of Rs.1000/- with default stipulation for offence punishable under Section 279 IPC and SI for 1(one) year and fine of Rs.2000/- with default stipulation for offence punishable under Section 304A IPC directing that the sentences would run concurrently.

**[2]** The brief facts which led to the filing of this petition are that Sri Ananta Acharjee, son of Late Amaresh Acharjee of Kadamtala, Dharmanagar lodged a written complaint with the Officer-in-Charge of Kadamtala police station on 20.05.2013 at 3.35 pm alleging, *inter alia*, that on 17.5.2013 at about 12 noon when his father Amaresh Acharjee was returning home, the speeding vehicle of the accused petitioner bearing registration No. TR-02A-2589 hit

him from behind as a result of which his father received serious injuries and collapsed on the road. He was immediately taken to the nearby health centre at Kadamtala wherefrom he was first referred to Dharmanagar hospital and from there, he was taken to Kailashahar district hospital and ultimately to Silchar Medical College and Hospital. After his treatment in Silchar Medical College and Hospital he was brought back home where he succumbed to his injuries on 20.05.2013 at 12 noon.

**[3]** Based on this FIR, Kadamtala PS case No. 41 of 2013 under Sections 279 and 304A IPC was registered and the investigation of the case was taken up.

**[4]** Sri Padma Sen Chakma, Sub-Inspector of Police of Kadamtala police station was entrusted with the investigation of the case and Sri Chakma having completed the investigation submitted challan No.42 of 2013 dated 22/7/2013 against the accused under Sections 279 and 304A IPC. The learned Chief Judicial Magistrate received the charge sheet, took cognizance of offence and summoned

the bailed out accused to appear before the Court. When the accused appeared, the substance of acquisition in terms of Section 251 Cr. P.C was explained to the accused. The accused pleaded not guilty and claimed a trial.

**[5]** During trial as many as 12 witnesses were examined and seven documents (Exhibit-1 to Exhibit-7) were taken into evidence on behalf of the prosecution. At the closer of the prosecution evidence, the incriminating circumstances appearing against the accused were explained to him. In reply, the accused petitioner pleaded innocence and claimed that the charges were foisted on him. Thereafter the learned trial Court on appreciation of evidence held that the accused petitioner drove his vehicle on public road recklessly and as a result of his rash driving, father of the first informant lost his life. The learned trial Judge having relied on the decision of the Apex Court in ***M.S Grewal and another Vrs. Deep Chand Sood and others***: reported in **(2001) 8 SCC 151** and the decision in ***Dalvir Singh Vrs. State of Haryana and Others***: reported in **AIR 2000 SC 1677** held the accused petitioner

guilty and sentenced him to suffer S.I for 6(six) months and fine of Rs.1000/- with default stipulation for offence punishable under Section 279 IPC and SI for 1(one) year and fine of Rs.2000/- with default stipulation for offence punishable under Section 304(A) IPC.

**[6]** In appeal, the learned Sessions Judge re-assessed the entire evidence recorded at the trial and held that at the time of occurrence the deceased was walking along the footpath of the road when the speeding vehicle of the accused petitioner dashed him from behind and smashed him. It was held by the learned Sessions Judge that the deceased had no fault and the occurrence took place as a result of careless driving of the offending vehicle by the accused petitioner. The learned appellate Court having found no infirmity in the judgment of the learned trial Court, affirmed the said judgment and order of the learned trial Court whereby the accused petitioner was convicted and sentenced for offence punishable under Section 279 and 304(A) IPC. Hence, this criminal revision petition.

**[7]** I have heard Mr. S. Lodh, learned advocate appearing for the accused petitioner and Mr. Ratan Datta, learned Public Prosecutor appearing for the State respondents. Appearing for the accused petitioner Mr. Lodh, learned counsel, has pointed out the flaws appearing in the judgment of the Courts below whereas Mr. Ratan Datta, learned Public Prosecutor argues that there is no ground to interfere with the concurrent findings of the Courts below.

**[8]** Mr. S. Lodh, learned counsel appearing for the accused petitioner has contended that the learned trial Court erroneously found the accused guilty without even considering that the basic ingredients of Section 279 and 304A IPC were not fulfilled in the case. According to Mr. Lodh, learned counsel this was really an accident and there is no proof of negligence or rashness on the part of the accused petitioner. It is also submitted by learned counsel that no proper investigation was carried out in the case as a result of which the learned Courts below should not have convicted the accused petitioner and sentenced him for the alleged offence. Further argument on behalf of the accused

petitioner is that some of the eye witnesses were withheld by the prosecution but no adverse interference was drawn by the learned trial Court against the prosecution on this ground. It was also contended on behalf of the accused petitioner that involvement of the accused was not proved at the trial. Even then, the learned trial Court found him guilty which was erroneously upheld by the learned appellate Court. According to Mr. Lodh, learned counsel, the main criteria for deciding whether the accident occurred due to rash or negligent driving is not only the speed but the width of the road, density of the traffic etc. In support of his contention learned counsel has referred to the decision of the Apex Court in ***Mrs. Shakila Khader and Others Vrs. Nausheer Cama and others;*** reported in ***(1975) 4 SCC 122.*** In order to establish his contention that high speed is a relative term and criminality is not to be presumed from high speed, learned counsel has further relied on the decision of the Apex Court in ***State of Karnataka Vrs. Satish;*** reported in ***(1998) 8 SCC 493.***

**[9]** Conversely, Mr. Ratan Datta, learned Public Prosecutor has contended that the trial Court on proper appreciation of evidence arrived at the conclusion of the guilt of the accused and committed no error of facts and law in convicting the accused petitioner and imposing the sentence on him which was rightly upheld by the learned appellate Court. Further contention on behalf of the prosecution is that the contradictions, if any, made by the witnesses in their depositions, were very minor in nature which did not affect the prosecution case in any manner whatsoever. According to Mr. Datta, learned Public Prosecutor, the witnesses who have been examined in the case are all vital witnesses some of whom are eye witnesses to the occurrence and based on their evidence, the learned trial Court convicted the accused petitioner and sentenced him. Further submission of learned Public Prosecutor is that under the revisional jurisdiction of the High Court, the concurrent findings of the Courts below can be interfered with only when it is shown to the Court that it will amount to miscarriage of justice unless the findings of the Courts



below are interfered with. It is submitted by Mr. Datta, learned Public Prosecutor that in view of the alarming growth in the rate of road accidents causing loss of life and limbs of innocent people, it would be appropriate to uphold the findings of the Courts below with regard to the conviction and sentence of the accused petitioner. It is contended by the learned Public Prosecutor that in view of the galloping rate of road accidents in India and its devastating consequences, the Apex Court in ***Dalbir Singh Vrs. State of Haryana***; reported in **(2000) 5 SCC 82** held that the benevolent provision of Section 4 of the Probation of Offenders Act, 1958 cannot be treated as applicable to the offence under Section 304A IPC and appropriate punishment prescribed under the law should be awarded to the convicts to deter the recurrence of such offence. It has been further argued by Mr. Datta, learned Public Prosecutor that evidently the accident took place as a result of carelessness of the accused petitioner in driving his vehicle. According to Mr. Datta, learned Public Prosecutor, it has been established that the accused of the instant case failed

to exercise due care which was expected of him and he drove the vehicle recklessly in total disregard of the safety of others as a result of which the accident occurred causing the death of the father of the informant for which he has been rightly convicted by the learned trial Court. In support of his contention Mr. Datta learned Public Prosecutor has relied on the decision of the Apex Court in ***M.S. Grewal and another Vrs. Deep Chand Sood and Others;*** reported in ***(2001) 8 SCC 151***. On the grounds aforesaid, learned Public Prosecutor has urged for dismissal of the revision petition.

**[10]** To reiterate the facts, PW-1, Ananta Acharjee who is the first informant of this case stated at the trial that offending vehicle of the accused petitioner hit his father from behind on the fateful day between 11 and 11.30 am when his father was proceeding towards Dharmanagar on foot from Kadamtala. Immediately after he was hit by the vehicle of the accused, Mitran Nath, Litan Nath and Chandan Malakar informed the PW about the occurrence over telephone. He immediately came to the hospital where his

injured father was brought from the place of occurrence. From there he was referred to Dharmanagar hospital and thereafter to Kailashahar hospital. Ultimately he was taken to Silchar hospital where the doctors told the informant that chance of survival of his father was very bleak. He was therefore brought home where he succumbed to his injuries. Obviously, PW-1 is not eye witness to the occurrence. He heard from the eye witnesses that his father was walking along the grass path by the side of the road when the speeding vehicle of the accused knocked him down and caused fatal injuries to him.

In his cross-examination, the PW told the Court that he did not have any parlance with his injured father with regard to the accident. According to him, he came to know about the details of the occurrence from Mitan Nath and Tapan Nath.

**[11]** The evidence of PW-2, Sanjoy Mallik is not of great relevance in as much as the PW did not witness the occurrence. He told at the trial that at the material time he

was at Dharmanagar and having been informed about the accident he met the victim at hospital. In his cross examination the PW told that he was not aware of the identity of the driver who drove the vehicle at the time of occurrence.

**[12]** Similarly, the evidence of PW-3 is not also of any use. He simply told at the trial that pursuant to the request of the first informant son of the deceased, he carried his injured father in his ambulance from kadamtala hospital to Dharmanagar hospital and from there to Silchar hospital. In his cross-examination the PW stated that he found injury on the back and head of the injured.

**[13]** PW-4, Smt. Arati Acharjee is the wife of the deceased. She also did not witness the occurrence because she was at home at that time. She came to know about the occurrence from Mitan Nath and Pintu Datta who witnessed the occurrence and carried the victim to Kadamtala hospital from the place of occurrence. She could not say as to how the accident took place.

In her cross-examination she asserted that so long she was in the hospital with her injured husband, nobody told her about the name of the driver and the number of his vehicle.

**[14]** The evidence of PW-5, Pintu Datta is of great relevance because he witnessed the occurrence from a very nearby place. The PW categorically stated at the trial that he saw the victim maintaining a distance of about two cubits from the motorable road and all along he was walking along the grass road. Suddenly the Magic Jeep of the accused appeared and hit him from behind. The PW with the aid of Tapan Debnath and Mitran Debnath took the victim to Kadamtala hospital. The statement of the PW in his examination-in-chief is as under:

*"I know the complainant Ananta Acharjee as he is my adjacent neighbour. The accident took place on 17.05.13 at about 12 to 12.30 am at Bargul area near the shop of Tapan Nath. On the said date and time myself was present near the place of occurrence. I have seen that one Magis vehicle was coming from Kadamtala side towards Dharmanagar side and the victim Ameresh Acharjee, the father of the*

*complainant Ananta Acharjee was walking on the grass road maintaining a distance of 2 cubits from the side of the road, Suddenly the said Magic vehicle dashed the victim from his back side. Then Tapan Debnath and Mitran Nath took the victim to the Kadamtala hospital with that Magic vehicle only. At the relevant point of time the offending Magic vehicle was being driven by the accused person present in the dock today; Subsequently, I have heard that the victim has succumbed to his injuries."*

In his cross-examination PW stated that at the relevant time two other vehicles also crossed the road. It was suggested to the PW that the vehicle of the accused was not involved in the accident which was denied by him. His evidence could not otherwise be impeached in cross-examination.

**[15]** PW-6, Nepal Malakar is also stated to be an eye witness to the occurrence. He stated in clear terms that the accident occurred at Bargul in front of the shop of Tapan Nath (PW-7) and he was present there at the time of occurrence. According to him the accident occurred due to the fault of the accused who knocked down the victim on

the grass road. The PW was cross-examined on behalf of the defence. Credibility of his statement made out in his examination-in-chief could not be shaken in cross-examination.

**[16]** PW-7, Tapan Debnath is another eye witness of the case and therefore, his evidence is of great relevance. He had a shop at Kadamtala- Dharmanagar road and the accident occurred in front of his shop. Therefore, he could see the occurrence. The PW has given a very vivid description of the occurrence. According to him the deceased was walking along the grass road when the Magic Jeep of the accused hit him from behind as a result of which he was thrown out at a distance of 03 feet from the road. The PW along with Mitran Nath had immediately taken the victim to Kadamtala hospital from where he was taken to Dharmanagar hospital. Ultimately, he was taken to Silchar hospital. The statement of the PW is as under:

*"I have been residing in the Deocherra area since one year. Prior to that I was residing at Bargul-Kadamtala area. At that time the complainant Ananta Acharjee was my adjacent*

*neighbour. I also knew his father, who is now deceased. The father of the complainant expired in a vehicular accident. The accident took place during the month of May 2013 at 12 noon of that day on the Kadamtala-Dharmanagar road in front of my shop. At that time the father of the complainant was coming by walking through the grass road present by the side of the place of occurrence. Suddenly a Magic vehicle which came from the bank side of the victim dashed him very badly and the vehicle threw the victim at a distance of about 3 feet from the road. Then myself and other people present at the place of occurrence arranged to send the victim to Kadamtala hospital through that vehicle only. Mitan nath, a person of that locality took the victim with that vehicle to the Kadamtala hospital. I have heard the victim also taken to Dharmanagar hospital and to Silchar hospital. I have also heard the victim subsequently succumbed to his injuries. The accused driver of that offending Magic vehicle was a person from Tarakpur area. But I cannot identify him either by name or by face."*

In his cross-examination the PW stated that his shop was on the western side of the road and the accident occurred on the other side across the road.



**[17]** PW-8, Kripasindu Das is a mere seizure witness in whose presence the offending vehicle was seized. Therefore, his evidence is of no use. Similarly, the statement of PW-9, Goutam Nath is also of no use because he is the scribe of the ejaher and he does not have any firsthand knowledge of the occurrence.

**[18]** PW-10, Kripamay Nama is another eye witness. He told at the trial that the accident occurred within 10 cubits from the shop of his father where he was present at the time of occurrence. The PW had seen the deceased walking along the grass road from Kadamtala side. The red coloured Magic Jeep of the accused came from behind him and hit him as a result of which he collapsed on the road. The PW along with others gave him water and then shifted him to hospital. The PW has categorically stated in his examination-in-Chief that the accused petitioner was then driving his vehicle at a very high speed. The PW had seen the driver at the time of occurrence who was later identified by him at the trial.

In his cross examination the PW stated that his father's shop was situated on the same side of the road with the shop of Tapan Debnath (PW-7) and the accident occurred on the other side across the road and the width of the road in between was about 20 cubits. In his cross examination, the PW categorically stated that he did not see actually how the vehicle hit the deceased. He could not also say which part of the vehicle hit the deceased.

**[19]** PW-11, Sri Mriganka Datta Biswas was a Medical Officer posted at Kadamtala Primary Health Centre where body of the deceased was brought for post mortem examination. The PW held the post mortem examination and opined in his report (Exbt.-4) that his death was caused due to cardio-respiratory failure resulting from head injury.

**[20]** PW-12, Padmasen Chakma is the Investigating Officer of the case who examined the material witnesses and recorded their statements under Section 161 Cr. P.C during investigation of the case. He also got the offending vehicle examined during his investigation by a Motor

Vehicles Inspector and procured the inspection report (Exbt.-7). The charges against the accused having been established in his investigation, the PW submitted charge sheet against the accused petitioner under Section 279 and 304A IPC. He was put to incisive cross examination on behalf of the accused. In his cross-examination he stated that he did not find any damage in the offending vehicle. He could not also ascertain which part of the vehicle actually hit the deceased.

**[21]** After hearing arguments, the learned trial Court convicted and sentenced the accused as above which was also upheld by the learned appellate Court. The aggrieved petitioner has therefore, presented the criminal revision petition before this Court.

**[22]** It has surfaced that PW-5, PW-6, PW-7 and PW-10 are the eye witnesses to the occurrence. Among them, PW-5 happened to be near the shop of Tapan Nath (PW-7). According to him he saw the victim walking along the grass road maintaining a distance of about two cubits from the

motorable road when the offending vehicle hit him. PW-6 did not give any detailed description of the occurrence. He said that he was present near the shop of Tapan Debnath at that time from where he had seen the accident and according to him the accident occurred due to the fault of the driver. According to him the vehicle of the accused went off the motorable road and hit the deceased on the grass road. Presence of PW-7, Tapan Debnath at the place of occurrence is not also denied by the accused. The PW had a shop at road side where he was present at the time of occurrence. There was no customer in his shop at the time of the accident. According to him, after the deceased was hit by the offending vehicle, he was thrown out three cubits away from road. PW-10 had also seen the accident from the shop of his father. Though in his examination-in-chief the PW stated that the vehicle was being driven at a very high speed by the accused petitioner, in his cross-examination he stated that he did not see exactly how the offending vehicle hit the deceased. Even if we keep aside the evidence of PW-10 it is established from the consistent evidence of

the PW-5 and PW-7 that the deceased was walking along the grass road two cubits away from the motorable road. Obviously therefore, there was no fault on his part. As a pedestrian he was rightly using the road. More over it is on record that he was 60 years' old. Quite naturally he would be very alert while using the public road. That apart, as resident of the locality he was quite aware of the traffic condition of the road. Evidently he was walking along the grass road to avoid any accident. It is known from the evidence of PW-10 that the road was very wide. Breadth of the road according to him was 20 cubits. Obviously in such a situation, the offending vehicle would not have hit the deceased on the grass road had the vehicle been in control of the accused driver. The speed of the vehicle can also be inferred from the evidence of PW-7 who has categorically stated in his examination-in-chief that as a result of the hit by the vehicle the deceased was thrown out three feet away from the motorable road. The evidence clearly indicates that the vehicle hit the deceased at a very high speed.

**[23]** With regard to the identity of the accused PW-10 who witnessed the occurrence from a very nearby place stated in his examination-in-chief that he had identified the accused at the place of occurrence. The PW also identified him at the doc in the course of trial. Evidently, the accused did not flee away from the place of occurrence. Therefore, there is no reason to doubt the evidence of PW-10 with regard to the identification of the accused.

**[24]** It is true that speed is not the only criterion for determining whether the accused is guilty of rash and negligent driving. In this regard the observation of the Apex Court in the case of ***Mrs. Shakila Khader and Others***(supra) which has been referred to by learned counsel of the accused petitioner is as under :

"6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic, and the attempt, as in this case, to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident.

*Even if the accident took place in the twinkling of an eye it is not difficult for the eyewitness to notice the car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road.*

\*\*\*\*\*”

**[25]** Therefore, though speed is not the only criteria to decide whether the driving which caused the accident was rash and negligent, speed is not excluded from the factors to be considered for deciding whether it was a case of rash and negligent driving. As in this case, the carelessness of the driver can be easily inferred from the fact that his vehicle went off of the road and hit the deceased. Evidently, the road was as wide as 20 cubits. Had the vehicle been in manageable speed and within the control of the driver, it would not have hit the deceased on the grass road. This apart, force or the hit can also be inferred from the evidence of PW-7 who has stated that as a result of such hit, the deceased was thrown out 03 feet away from the road.

[26] The decision of the Apex Court in **State of Karnataka Vrs. Satish**(supra) cannot be of any benefit to the accused in view of the fact that negligence of the accused petitioner in driving the vehicle has been clearly established.

[27] The plea taken by the accused with regard to identification of the accused does not seem plausible and satisfactory. It is quite apparent that the prosecution has been able to prove the charges against the accused under Sections 279 and 304A IPC beyond reasonable shadow of doubt and the trial Court was quite justified in arriving at the conclusion of guilt of the accused which was rightly upheld by the learned appellate Court.

[28] It is obvious that the accused petitioner did not care for the safety of the other commuters while driving his vehicle on public road as a result of which an innocent pedestrian lost his life.

[29] Consequently, this Court is of the considered view that the impugned judgment dated 13.12.2016 passed by



the learned Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No. 0000009 of 2016 does not call for any interference in revision. As a result, the criminal revision petition stands dismissed.

**[30]** The accused petitioner namely, Sri Kankaj Das who is on bail shall surrender before the trial Court within a period of one month from today to suffer the remaining part of the sentence, failing which the trial Court shall take steps according to law to make him undergo the sentence. The criminal revision petition is disposed of accordingly.

Send back the LCR along with a copy of the judgment.

**(S. G. CHATTOPADHYAY ), J**

*Dipankar*