

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.No.21 of 2023

Abdul Ohab
@ Abul Ahab,
S/O- Sri Siraj Miah,
Resident of Jatanbari Muslim Para,
P.S.- NTB, Gomati Tripura.

.... Appellant(s)

Versus

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

....Respondent(s)

For Appellant(s)	:	Mr. K. Pandey, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	30.08.2024
Date of delivery of Judgment and Order	:	31.08.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is directed challenging the judgment and order of conviction and sentence dated 29.08.2023 delivered by Learned Sessions Judge, POCSO, Gomati District, Udaipur, in connection with case No.ST (Type-II) 15 of 2021. By the said judgment, and order of conviction and sentence, Learned Sessions Judge has found the appellant to be guilty and convicted him to suffer SI for one month and to pay fine of

Rs.500/- under Section 279 of IPC I.D. to suffer S.I. for a further period of 7 days. The convict was further sentenced to suffer S.I. for a period of six months and to pay fine of Rs.500/- under Section 338 of IPC, i.d. to suffer S.I. for a further period of seven days and under Section 304-A IPC, the convict was sentenced to suffer S.I. for a period of one year and to pay fine of Rs.3,000/-, i.d. to suffer S.I. for a further period of one month and it was further ordered that all the sentences shall run concurrently.

02. Heard Learned Counsel, Mr. K. Pandey representing the appellant and also heard Mr. S. Ghosh, Learned Additional P.P. for the State-respondent.

03. In course of hearing of argument, Learned Counsel for the appellant first of all drawn the attention of the Court that the Learned Trial Court below in absence of cogent evidence on record has found the appellant to be guilty for which the interference of the Court is required. It was further submitted that in the FIR, there was no whisper showing the involvement of the pick-up van responsible for the alleged accident. Referring the evidence of PW1, Learned Counsel for the appellant drawn the attention of the Court that from the evidence of said witness, it is clear that at the time of alleged accident, he was not present to the place of occurrence, rather in his examination-in-chief, he stated that the FIR was scribed

by him but during cross-examination, he stated that Exhibit-1 was written by his nephew, one Surajit Debbarma. There was no explanation from the side of prosecution in this regard.

Furthermore, according to Learned Counsel, said PW1, i.e. the father of the victim was not present to the place of occurrence at the time of alleged occurrence of offence, so, no reliance can be placed upon his evidence.

In respect of PW2, he stated that this witness was also not present to the P.O. at the time of accident. So, no reliance can be placed upon his evidence.

Similarly, PW3 Bijoy Reang was also not present to the P.O. at the time of accident because in his examination-in-chief he stated that when he went to the P.O., that time he found the dead body of a young boy, but did not see the pick-up vehicle to the alleged place of occurrence.

Referring the evidence of PW4, Learned Counsel for the appellant further submitted that the said witness is a SPO and that witness stood witness for all the seizure lists and during cross-examination, the said witness stated that the Bolero Truck was seized from the road at Baidyapara, Jatanbari. But the I.O. seized the vehicle from the residence of alleged appellant, which was totally contradictory. There was no explanation in this regard from the side of the prosecution.

PW5, PW6 were declared hostile by the prosecution. No benefits were derived by the prosecution from their evidence.

PW7 is the only one eye witness, i.e. the pillion rider, who according to the prosecution was on the bike driven by Sakni Debbarma(deceased) and this witness during his examination, could not say anything about the number of the offending Bolero vehicle as well as the name of the driver and for the first time, he identified the accused in the Court in the dock. So, no reliance also could be placed upon the evidence of said witness.

Similarly, PW8 Siddijoy Reang is another seizure list witness. He was also not present to the place of occurrence at the time of accident. So, regarding involvement of the appellant, according to Learned Counsel, prosecution could not adduce any independent public witness to support the case of the prosecution.

Similarly, PW9 Kwthar Jamatia was also not present to the place of occurrence at the time of accident.

PW10 was the owner of the offending Maxi Truck. From his evidence, no benefit could be derived by the prosecution.

PW11, Dinesh Jamatia is the owner of the bike who during cross-examination specifically stated that police did not seize the motor bike from his possession.

PW12, Dr.Milan Bhakta Jamatia examined one of the victim, Nakfang Jamatia, i.e. PW7 and submitted his injury report and also conducted post mortem over the dead body of deceased Sakni Debbarma.

PW13 another seizure list witness.

PW14 is the MVI.

Referring the evidence of said witness, Learned Counsel stated that no damage was found on the vehicle bearing No.TR-01Z-1719 and referring the said evidence Learned Counsel further drawn the attention of the Court that had there been any accident, in that case there might be some sort of damages to the said vehicle or atleast scratch mark to the said Bolero Maxi Truck, from which it is clear that the alleged offending vehicle, Maxi Truck was not involved with the accident. Further referring the evidence of PW16, Learned Counsel submitted that from the evidence of the I.O. it was clear that the I.O. could not collect any material showing involvement of the appellant with the alleged offence although he laid charge sheet against him. But the Learned Court below without proper appreciating the evidence on record found the appellant to be guilty. Further according to Learned Counsel for the appellant, the deceased had no driving licence which was admitted by the father of the deceased and just for the purpose of gaining compensation, this criminal case was filed without any basis and more so, the appellant in course of his

examination under Section 313 of Cr.P.C. specifically stated that on the alleged day of occurrence of offence, he did not ply the vehicle because the vehicle was seized from his residence, whereas, one of the police personnel i.e. PW4 stated that the offending vehicle was seized on the road at Baidyapara. There was no explanation in this regard from the side of prosecution and finally, on conclusion of argument, Learned Counsel for the appellant submitted that the prosecution has failed to prove the charge beyond reasonable doubt against the appellant but the Learned Court below without proper appreciating the evidence on record found the appellant to be guilty for which interference of the Court is required and Learned Counsel urged for allowing this appeal by setting aside the judgment.

04. Per contra, Learned Counsel for the State-respondent, Mr. S. Ghosh taking part in the hearing submitted that he only relies upon the evidence of PW7 and urged for passing appropriate order for fair ends of justice.

05. I have heard arguments of both the sides. In this case, the prosecution was set into motion on the basis of an FIR laid by one Neheru Debbarma, being the father of the deceased to O.C. Nutanbazar P.S. alleging inter alia that on 02.02.2021 at about 8 a.m., his son Sakni Debbarma along with his friend Nakfang Jamatia, son of Ratna Singh Jamatia were coming from his house to Nutanbazar riding a bike

bearing No.TR-01-AE-5014 and when they reached Takumbari, that time a pick-up van loaded with dry fish came in a very high speed from the opposite direction and dashed against the bike of his son. As a result of which, his son fell down from the bike and the car ran over his body. His son died on the spot and his friend Bablang also sustained grievous injuries. The Fire Service staff of Jatanbari went there and brought both of them to Nutanbazar Hospital and the doctor referred the other person i.e. Bablang to Udaipur Tepania Hospital.

He further stated that after the occurrence of the accident the vehicle fled away at a very high speed and the incident occurred due to rash and negligent driving on the part of the driver. In the FIR, he could not mention the number of the offending pick-up van. On the basis of that FIR, O.C. Nutanbazar P.S. registered NTB P.S. case No.6/2021 under Section 279/338/304(II) of IPC and Section 184 of M.V. Act and the I.O. after completion of investigation laid charge sheet against the present appellant before the Court of jurisdictional Magistrate and thereafter, the case was committed to the Court of Learned Sessions Judge, Gomati District, Udaipur, who after hearing both the sides framed charge against the appellant under Section 279/338/304(II) of IPC and the same was explained to the appellant in Bengali to which he pleaded not guilty. To substantiate the charge, prosecution as already stated has adduced 15 nos. of witnesses and prosecution also

relied upon some documents which were marked as Exhibits in this case and finally, on conclusion of trial, the Learned Sessions Judge found the appellant to be guilty and convicted him thereon for which this present appeal has been preferred by the appellant. Now let us see the evidence on record adduced by the prosecution before the Learned Trial Court below to substantiate the charge against the appellant.

06. PW-1 Neheru Debbarma is the informant of the case. He deposed that on 02.02.2021 a vehicular accident took place at Takumbari and due to that his son Sakni Debbarma succumbed to injuries. According to PW1, on that day in the morning at around 8 a.m. his son along with his friend Nakfang Jamatia were coming on road by riding a motor bike and when they reached at Takumbari, that time a Bolero Truck bearing No. TR-01-AE-5014 came from the opposite direction and dashed against their motor bike for which they sustained grievous injuries on their person and his son succumbed to injuries to the place of occurrence and his friend Nakfang Jamatia was brought to hospital and he could know from the local people that one Abdul Ohab was the driver of the Bolero Truck at the time of accident. He laid the complaint to O.C., Nutan bazar P.S. which was prepared by him with his own handwriting marked as Exhibit-1 and his signature marked as Exhibit-1/1. He further stated police seized some documents of the vehicle in his presence and he stood as witness on the

seizure list. He identified his signature on the seizure list marked as Exhibit-2/1. He also stated that police took his signature on the Inquest Report of the dead body of his deceased son and marked as Exhibit-3/1.

During cross-examination, he stated that he is unable to say as to why police obtained his signature earlier marked as Exhibits but further volunteered that police obtained his so many signatures in connection with the accident. He also stated that Exhibit-1 was written by his nephew Surajit Debbarma. He again stated that on the day of accident, his son, Sakni Debbarma did not attain the majority and at the time of accident there was no driving licence in the name of his deceased son and he did not see the occurrence of offence. He further admitted that he filed the case before the Tribunal claiming compensation due to death of his son in that accident.

07. PW2, Khagendra Reang deposed that about one year back one day in the morning, he was going to his work place when an accident took place behind him. After the accident, he rushed to the P.O. and found one boy succumbed to his injuries and another person sustained injuries on his person. He further stated that one pick-up vehicle dashed against the motor bike and thereby the rider succumbed to injuries and pillion rider received injuries. He further stated

that before his arrival to the place of occurrence, the driver fled away.

During cross, he stated that he did not see the accident.

08. PW3 is another public witness, who deposed that about one year back on a day in the morning at about 8 o'clock a vehicular accident took place when there was head on collision between pick-up vehicle and motor bike and after the accident from his co-villagers he could know that a boy of tender age succumbed to death due to the vehicular accident and after the accident, he visited to the place of occurrence and found the dead body of that young boy but he did not see any pick-up vehicle as well as the motor vehicle to the place of occurrence. Police seized the motor bike in his presence and the witness identified his signature on the seizure list marked as Exhibit-4/1.

During cross nothing came out relevant.

09. Similarly, PW4 is SPO of police deposed that on 02.02.2021 he was posted as SPO under Nutanbazar Police Station. On that day, SI of police Jiban Ch. Das being the I.O. seized one Bolero Maxi Truck in his presence by preparing seizure list. He stood as witness on the seizure list and identified his signature marked as Exhibit-5/1. He further stated that the I.O. seized registration certificate of the said

Bolero vehicle bearing No.TR-01-Z-1719 and other relevant documents along with Insurance Certificate and his signature was obtained as witness in the seizure list marked as Exhibit-6/1. He also stated that I.O. seized two written declarations produced by one Dhinesh Jamatia and Mizamur Rahaman by preparing seizure list on 25.03.2021 and marked his signature as witness marked as Exhibit-7/1.

During cross-examination, he stated that the Bolero was seized on the road at Baidyapara, Jatanbari, but he could not say about the contents of the seizure list.

10. PW5 Dulal Das and PW6 Priska Azim only deposed that about one year back an accident took place, but they could not say anything about the prosecution case and those witnesses were declared hostile by the prosecution.

11. PW7 is the victim Nakfang Jamatia deposed that about one year back one day in the morning he along with Sakni Debbarma were coming towards Nutanbazar by riding a motor bike and on the road when they reached nearby Nutanbazar, that time they met with an accident when one Bolero pick-up vehicle came from the opposite direction knocked down their motor bike. As a result, Sakni Debbarma succumbed to his injuries. He received multiple injuries on his person and his right leg was fractured. He further stated that offending Bolero vehicle was coming from the opposite

direction with high speed and it was on the wrong side of the road at the time of accident and due to its coming to the wrong side the accident took place. After the accident, he was shifted to the hospital for treatment and thereafter, he was referred to District Hospital at Udaipur for better treatment. He also stated that Sakni Debbarma was the rider of the motor bike and he was the pillion rider and identified the appellant.

During cross-examination he stated that Sakni Debbarma did not have his driving licence.

12. PW8, another seizure list witness. He deposed that on 02.02.2021 in the morning, a vehicular accident took place at Panchafa Para and one person died in the said accident. He saw one Fire Service vehicle came to the P.O. and rescued the dead body and he heard from the local people that one vehicle suddenly came on the road and after knocking the motor bike down, it ran away. Police obtained his signature on the seizure list and identified his signature marked as Exhibit-4/2.

During cross nothing came out relevant.

13. PW9 Kwthar Jamatia also deposed that on 02.02.2021 Sakni Debbarma and Nakfang Jamatia met with a vehicular accident on the road at Takumbari and after the accident, he came to know the fact from the local people. Due to accident, Sakni Debbarma has expired and Nakfang Jamatia received injuries. Police seized Registration Certificate,

Insurance Certificate of the motor bike in connection with this case. He stood as witness on the seizure list and identified his signature marked as Exhibit-2/2.

He was declined to cross-examination by the appellant.

14. PW10 Mizanur Rahaman deposed that he was the owner of Bolero Truck bearing No.TR-01-Z-1719 and in the year 2019, the Maxi Truck was sold to Abul Ohab but ownership was not changed to Abul Ohab. He submitted written declaration to the police in connection with the case. The declaration was seized by police and identified the declaration marked as Exhibit-8 and his signature marked as Exhibit-8/1. He identified his another signature on the seizure list marked as Exhibit-7/2.

He was declined to cross-examination by the appellant.

15. PW11 another seizure list witness deposed that he is the owner of the motor bike bearing No.TR-01-AE-5014. He submitted his written declaration to the police in connection with the case and that declaration was seized by the police and identified his signature on the seizure list marked as Exhibit-9 and 9/1. He identified his signature on another seizure list marked as Exhibit-7/3 and further identified his signature on

the seizure list in respect of Registration Certificate, Insurance Certificate of the motor bike marked exhibit-2/3.

During cross-examination he stated that police did not seize the motor bike from his possession in connection with the case and in the declaration, he did not mention anything about the source of information with regard to accident. He further stated that save and except Registration Certificate and Insurance Certificate, he did not produce no other document of the motor bike to the police in connection with the case.

16. PW12 Dr. Milan Bhakta Jamatia deposed that on 18.03.2021 he was posted as Medical Officer in charge at Nutanbazar CHC, Amarpur, Gomati Tripura. On that day he examined one patient, namely Nakfang Jamatia, resident of Parasmani Para, PS Karbook in connection with Nutanbazar PS case No.2021NTB 006 dated 02.02.2021 u/s 279/338/304(II) IPC and Section 184 of M.V. Act.

On examination he had found the following injuries:

- 1) One cut injury right knee measuring 4 to 5 cm X 1 to 2 cm.
- 2) fracture right petella
- 3) Multiple swelling and abrasion over forehead.
- 4) Cut injury lower lip

Nature of injury grievous injury in nature.

Age of injury 1 to 2 hours.

He identified the injury report of Nakfang Jamatia marked as Exhibit-10 series (two pages). He further stated that after preliminary treatment the patient was referred to District Hospital at Udaipur for better treatment. He again stated that he conducted postmortem examination over the dead body of one Sakni Debbarama and on examination, he found the following injuries:

Internal injuries- a) laceration of soft 13.5 X 5 cm cavity deep present over the forehead. It is present obliquely over the forehead Margins of the wounds are irregular and continues on reflection on the scalp.

b) Sub scalp scalp haematoma present over the in frontal and parital region.

c) Communicated fracture present over the frontal and parital region with fracture and anterior cranial fossa.

d) fracture line shows infiltration of blood. Maninges torned over the frontal region

e) Extradural haematoma present over the right and left parital region.

f) Subdural haematoma present over the by lateral Pareto temporal region.

g) Part of brain missing over from frontal content

h) Difused subarachnoid hemorrhage present over which the brain bone fragment embroided in the brain.

External Injuries: 1) Laceration of size measuring 13.5 X 5 cm X cavity deep present over the forehead margin of wounds are confuses.

2) Multiple reddish abrasion of size varying from 2cm X 1 cm present over left side of the forehead over an area 8 cm X 7 cm lateral to injury No. 1.

3) Reddish abrasion of size 4cm X 2cm present over the right side of forehead 3 cm above middle right supra orbital region.

4) Laceration of size 3cm X .5 cm X soft tissue deep present over left eyelid

5) Raddish abrasion of size 3cm X 2 cm present left lower eye lid and extra to the left side of forehead

6) Multiple abrasion (reddish) size of varying from 2cm X 1cm to 4 cm to 8 cm present over frontal aspect of right knee over an area of 8cm X 8 cm.

7) Multiple reddish abrasion of size varying from 2cmX 1 cm to 4 cm X 3 cm present over frontal aspect left knee.

8) Reddish abrasion of size 1cm X 1.5 cm present over middle medullas of left leg.

All injuries are ante mortem.

Specimen of liver, kidney, heart and spleen handed over to police for forensic examination.

He stated that the cause of death is blunt trauma on head. Duration of death is 4 to 5 hours and he identified the postmortem report along with his signature marked as Exhibit-11 series and Exhibit-11/1 series.

17. PW13 is a constable of police. He deposed that on 08.08.2021 the I.O. seized relevant documents of vehicle bearing registration No.TR-01-Z-1719 in his present at Nutanbazar PS in connection with the case by preparing seizure list and obtained his signature as a witness. The witness identified his signature on the seizure list marked as Exhibit-6/2. He further stated that on 25.03.2021 the I.O. also seized a written declaration submitted by one Dinesh Jamatia and one Mizanur Rahaman by preparing seizure list wherein he stood as witness and identified his signature marked as Exhibit-7/4.

During cross he stated that he was not conversant with the contents of the seized documents.

18. PW14, Sourav Chowhan, MVI deposed that on 25.02.2021 he was posted as Inspector of Motor Vehicle in the Office of District Transport Office, Gomati District, Udaipur. On that day, he conducted mechanical inspection/examination of a

vehicle bearing registration No.TR-01-Z—1719 in connection with Nutanbazar PS case No.6 of 2021 NTB 006 dated 02.02.2021 under Section 279/338/304(II) of IPC and 184 of M.V. Act at Nutanbazar PS complex. On inspection he had found the following condition of the vehicle:

- I) Break assemble were serviceable;
- II) Steering was serviceable;
- III) Horns was in operative condition;
- IV) Lights were in working condition;
- V) All the tyre were properly inflated
- VI) All other important parts of the vehicles were in serviceable condition.

No damage was found with the vehicle while inspection.

He submitted his report and identified the report dated 26.02.2021 marked as Exhibit-12 and his signature marked as Exhibit-12/1 series.

He further examined another vehicle bearing registration No.TR-01-AE-5014 on 23.03.2021 at Nutanbazar PS complex and found the following conditions of the vehicle:

- I) Break assemble were serviceable.
- II) Steering was serviceable;

- III) Horns was in operative condition;
- IV) Lights were in working condition;
- V) All the type were properly inflated;
- VI) All other important parts of the vehicles were in serviceable condition.

He also found damage on the following parts:

- 1) Handle;
- 2) Front indicators;
- 3) Leg guard;
- 4) Front fork;
- 5) Engine block;

He submitted his report and identified his report dated 24.03.2021 marked as Exhibit-13 having his signature marked as Exhibit-13/1 series.

During cross nothing came out relevant.

19. PW15 Nazir Miah deposed that he wrote an ejahar as per the narration of Neheru Debbarma and identified the ejahar marked as Exhibit-1.

During cross-examination he stated that Exhibit-1 does not contain certificate that it was read over and explained to the informant Neheru Debbarma and he did not put his signature as a scribe on the ejahar.

20. PW16, S.I. Jiban Ch. Das, is the I.O. of this case. He deposed that on 02.02.2021 he was posted as S.I. Police at Nutanbazar P.S. On receipt of an ejahar laid by one Neheru Debbarma, O.C. Nutanbazar P.S. registered NTP P.S. case No.06 of 2021 under Section 279/338/304(Part-II) of IPC and Section 184 of the M.V. Act. He identified the printed FIR form filled up in the computer while making registration and identified the same filled up by R.O. containing his signature marked as Exhibit-13 and Exhibit-13/1. He further identified the ejahar containing the signature of R.O. marked as Exhibit-1/2. He also stated that prior to the registration G.D. entry was placed by himself in connection with the alleged vehicular accident on the basis of that G.D. entry vide No.07/2021. On the basis of it a preliminary enquiry was done and subsequently after the registration of a specific case, he took up the charge of the investigation of this case, he visited P.O., prepared hand sketch map with index, seized the vehicles involved in the accident, examined some witnesses and recorded their statements and after the completion of investigation, he laid charge sheet against the accused appellant. He identified the hand sketch map with separate index marked as Exhibit-14 and 14/1. He also seized the offending vehicle bearing No.TR-01Z-1719 Bolero MAX by preparing seizure list marked as Exhibit-5 containing his signature marked as Exhibit-5/2. He seized one Pulser Motor

Bike bearing registration No.TR-01AE-5014 by preparing seizure list dated 02.02.2021 marked as Exhibit-4 containing his signature as Exhibit-4/3. He also seized the relevant documents including Insurance Certificate of the offending Bolero Maxi by preparing separate seizure list marked as Exhibit-6 and his signature marked as Exhibit-6/3 and the documents of the vehicle by another seizure list marked as Exhibit-2 and his signature marked as Exhibit-2/4. He also seized the viscera of the dead body by preparing seizure list marked as Exhibit-15 and his signature marked as Exhibit-15/1.

He further stated that during investigation he procured the M.V.I. report of both the vehicles and after completion of investigation, he laid the charge sheet.

During cross-examination, he volunteered that on the day of accident the Insurance Certificate of the bike was valid till 10.12.2021. He did not seize the driving licence of the deceased Sakni Debbarma in connection with this case which also he did not mention in the charge sheet and further volunteered that from the statement of witnesses and other circumstances, it was revealed that on the alleged date and time the rider of the Pulsar Bike was deceased Sakni Debbarma and pillion rider was Nakfang Jamatia who also sustained injury and the number of the Motor Bike was TR-01AE-5014 and the

offending Bolero vehicle was TR-01Z-1719 loaded with grocery items which came from the opposite direction dashed against the Pulser Motor Bike. He could not say as to whether at the time of investigation it was not revealed to him as to whether the deceased had valid driving licence or not and after seizure, the offending Bolero and the Pulser Motor Bike were in the custody of Nutanbazar P.S. till producing them before the M.V.I. During the custody of vehicles at P.S., no repairing was done.

These are the sum and substance of the evidence on record of the prosecution to substantiate the charge levelled against the appellant.

21. I have heard arguments of both the sides at length and discussed the evidence on record in detail above. From the evidence on record, it appears that at the time of accident, excepting PW7 no other witnesses were present to the P.O. In the FIR the informant did not whisper anything mentioning the number of the offending Bolero Maxi Truck. He also stated that he was not present to the P.O. at the time of accident. In his examination-in-chief he stated that he laid the FIR but during cross-examination he stated that the ejahar was scribed by one of his nephew, Surajit Debbarma. There was no explanation from the side of the prosecution. PW2, Khagendra Reang also appeared to the P.O. after the accident. So, it was

not possible on his part as to how the accident occurred. Similarly, PW3 was not present to the P.O. at the time of accident. He appeared to the P.O. after the accident. So, virtually there is no scope to place any reliance upon the evidence of PW3. Similarly, PW4 another seizure list witness. More interestingly, he stated that the Bolero was seized on the road at Baidyapara, but according to I.O. the vehicle was seized from the residence of alleged appellant. There was no explanation in this regard from the side of the prosecution. PW5 and PW6 could not say anything about the prosecution case. From their evidence, prosecution could not derive any benefit. PW7 is the victim. He stated about the fact of accident. But he could not say the number of the vehicle, even from his evidence, it appears that for the first time he identified the accused appellant before the Court. So, from his evidence it cannot be conclusively said that the appellant had driven the vehicle. Admittedly, there was no dispute on record regarding the fact of accident on the alleged day. PW8 is another seizure list witness. He was also not present to the P.O. at the time of alleged accident. PW9 Kwthar Jamatia also appeared to the P.O. after the accident. So, no reliance could be placed upon their evidence. PW10 is the owner of the Bolero Maxi pick-up van. He was not present to the P.O. at the time of accident. So, no reliance can be placed upon his evidence regarding the fact of accident on the alleged day. PW11 was also not present

to the P.O. He is the owner of the motor bike. PW12, Medical Officer. PW13 is the constable of police. PW14 is the M.V.I. From his evidence, he specifically stated that in course of his examination he did not find any damage on the alleged offending vehicle. Now the question remains had there been any sort of accident, in that case, at the time of examination of the vehicle, definitely he could find some sort of damage or scratch or mark on the body of the offending pick up van, although he found some damages on the motor bike. PW15 is the scribe, who scribed the ejahar and PW16 is the I.O.

22. In a case of this nature, burden lies upon the prosecution to prove the charge beyond reasonable doubt against any accused. Here in the given case, if we meticulously go through the examination, it appears that at the time of alleged accident excepting PW7 no other witnesses were present to the P.O. All the witnesses who deposed about the accident appeared to the P.O. after the accident. So, they did not see that the present appellant to drive the vehicle and those witnesses also could not disclose the number of the offending Maxi Truck, nor they have found the appellant to the alleged P.O. at the time of accident. One of the witnesses, PW4 stated that the vehicle was seized at Baidyapara but the I.O. seized the vehicle from the residence of the appellant. These loopholes were not explained by the prosecution at the time of hearing of argument before this Court. More so, the M.V.I.

stated that he did not find any damage to the Maxi Truck, in course of his examination.

23. In course of hearing of argument, Learned Counsel for the appellant relied upon one citation of the Hon'ble Supreme Court in **P. Sasikumar vs State rep. by the Inspector of Police** dated 08.07.2024 reported in **(2024) SCC OnLine SC 1652** wherein Hon'ble the Apex Court in para No.12 observed as under:

12. It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has been made in Court by PW-1 and PW-5. The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper. However, the High Court has believed the testimony of PW-5 who has identified accused no.2 under similar circumstances! The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: Kunjumon v. State of Kerala, (2012) 13 SCC 750)."

In the given case no TI Parade was conducted by I.O, for proper identification of the appellant as the driver of

the offending alleged pick-up van. So, until and unless it is proved beyond doubt that the present appellant had driven the vehicle on the alleged day at the time of accident, there is no scope to presume him to be guilty with alleged occurrence of offence.

24. Here in the given case, it appears that Learned Court below at the time of delivery of judgment has failed to appreciate the evidence on record properly, because in this case, prosecution could not place any material before the Court and beyond reasonable doubt that the present appellant was the driver of the offending truck at the time of alleged accident and prosecution also failed to satisfy the Court that the alleged offending Maxi Truck was driven by the appellant at the time of alleged accident. The informant although was not present to the P.O., in course of his examination stated that the alleged offending vehicle was carrying dry fish but the I.O. stated that the vehicle was loaded with grocery items. But in this regard, no details of grocery items were submitted to substantiate the prosecution allegation. The prosecution also failed to explain this at the time of hearing of argument. The appellant, in course of his examination under Section 313 of Cr.P.C. stated that on the alleged date he was at his home and he did not come out from his residence along with the alleged offending pick-up van. Moreover, none of the witnesses of the prosecution, in course of their examination disclosed that they

have found the appellant to the P.O. along with the offending vehicle at the time of accident or soon after the accident, although all of them appeared to the P.O. later on. The only eye witness PW7 could not whisper about the details of the alleged-appellant in course of his examination. Rather from his evidence, it appears that for the first time he identified the appellant before the Court. More so, as already stated no TIP was conducted for identification of the accused-appellant by the prosecution. So, after going through the evidence on record, it appears that Learned Court below at the time of delivery of judgment did not consider all those aspects for which in my considered view, the interference of this Court is required.

25. Situated thus, on the face of evidence on record, it appears that the evidence of the prosecution suffers from infirmity and on the face of evidence on record the present appellant deserves to be acquitted on benefit of doubt which I hereby do.

26. In the result, the appeal filed by the appellant is hereby allowed. The judgment and order of conviction and sentence dated 29.08.2023 delivered by Learned Sessions Judge, POCSO, Gomati District, Udaipur, in connection with case No.ST (Type-II) 15 of 2021 is hereby set aside and accordingly, the appellant is hereby acquitted on benefit of

doubt and he is set at liberty. His surety also stands discharged from the liability of bail bond. The case is thus, accordingly disposed of.

Send down the LCRs along with copy of the judgment for immediate compliance.

Pending application(s), if any, also stands disposed of.

JUDGE



**MOUMITA
DATTA**
Purnita

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DATTA
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