

(2010) 12 GAU CK 0027

Gauhati High Court (Agartala Bench)

Case No: Criminal Rev. P. No. 28 of 2003

Shri Rakhal Guha

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Penal Code, 1860 (IPC) - Section 279, 304A, 337, 338

Citation: (2011) 2 GLR 476

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: A.C. Bhowmik, D.C. Roy, M.R. Datta and M.K. Roy, for the Appellant; P. Bhattacharjee, Addl. P.P., for the Respondent

Final Decision: Dismissed

Judgement

B.D. Agarwal, J.


This revision application has been filed u/s 401 read with Section 397 of Code of Criminal Procedure, 1973 assailing the judgment dated 26.06.2003 passed by the learned Additional Sessions Judge, Belonia, South Tripura in Criminal Appeal No. 5 (2) of 2003, affirming the conviction of the Petitioner u/s 304A, 337 and 279 of the IPC, recorded by the learned Sub-Divisional Judicial Magistrate, Belonia, South Tripura in G.R. Case No. 153 of 2000. After affirming the conviction the learned appellate Court has also affirmed the sentence of one year R.I. for the offence u/s 304A and R.I. for three months for the offence u/s 337 of the IPC. However, the sentence of six months" R.I. recorded by the learned trial Court u/s 279 of the IPC was merged with the sentence u/s 304A of the IPC. Both the learned Court below held and directed that the sentences would run concurrently. Being aggrieved with the conviction and sentence recorded by the learned trial Court as well as by the learned appellate Court, the accused has preferred this revision application.

2. Heard Mr. A. C. Bhowmik, learned senior counsel assisted by Mr. D.C. Roy, learned Counsel for the Petitioner and Mr. P. Bhattacharjee, learned Additional Public Prosecutor for the Respondent-State. Also perused the impugned judgments and evidence tendered by the prosecution.

3. Facts in brief are that on 12.05.2000 at about noon time the accused Petitioner was driving a commander jeep(Taxi) bearing Registration No. TR-01-2826 from Belonia Town to Santirbazar. The Taxi was carrying 22 to 25 passengers. According to the learned Additional P.P., a Taxi had registered capacity of 9(nine) passengers only. Suddenly, the Taxi hit a tree and then overturned on the other side of the road and as a result of the accident almost all the passengers of the Taxi had sustained multiple injuries and three of the occupants later on succumbed to their injuries. One of the injured passenger of the said Taxi lodged a written FIR and after investigation charge sheet u/s 279/337/338/304A of the IPC was submitted. However, the Petitioner has been convicted u/s 279/337/304A of the IPC as indicated in the operative part of the judgment.

4. The accused-Petitioner is the son of the owner of the Taxi. The Taxi owner was examined as P.W.11, who had confirmed the fact that the Petitioner was driving the Taxi at the relevant time. In this way there is no confusion of the identity of the driver.

5. P. Ws 1, 2 and 3 are injured passengers. These passengers have given identical deposition and alleged that the Taxi was being driven at excessive speed with 22-25 passengers. These eyewitnesses also deposed that the accident took place at a sharp turn as the driver had lost the control of the vehicle after crossing a culvert.

6. To appreciate the evidence, vis--vis, fact of rash and negligent driving, I have also consulted the sketch map of the scene and noticed that besides there being sharp turning on the spot, a village road was also connected in between the culvert and the site of accident. In view of this fact, it was incumbent upon the driver to slow down the speed of the Taxi but there is no evidence that the driver had reduced the speed of the Taxi.

7. Mr. Bhowmik, learned senior counsel for the Petitioner heavily relied upon the opinion given by the Motor Vehicle Inspector, who has been examined as P.W.12. According to learned senior counsel, the accident took place due to mechanical failure. However, the Motor Vehicle Inspector has not easily supported the defence case. No doubt, according to P.W.12, the clinical inspection of the vehicle revealed that there was failure of steering system on motion and the tie was also found broken. In the same breath the Motor Vehicle Inspector has also opined that "when a driver uses the steering to control the direction of a vehicle, moving in heavy speed it may occasion the failure of the steering system". The Motor Vehicle Inspector has further observed that it is also possible that tie rod of the steering may get broken in sudden jerking of the vehicle. In the cross-examination P.W.12

has admitted the defence suggestion that the tie rod of the steering of a vehicle may get broken even if the vehicle is driven in a normal speed and it is not for foreseeable.

8. In my considered opinion, the views of the Motor Vehicle Inspector cannot override the ocular testimony of the passengers of the vehicle. In the case before me, none of the passenger witnesses has stated that the driver of the Taxi had detected that the steering was not working or that there was any other mechanical failure. On the other hand, P. Ws 1, 2 and 3 consistently deposed about passengers that the vehicle was running with excessive passengers. Keeping in mind, the topography of the place of accident and the ocular testimony, I hold that the Petitioner has been rightly convicted u/s 279/337/304A of the IPC and, as such, the convictions are hereby upheld.

9. Coming to the question of sentence Mr. Bhowmik, learned senior counsel submitted that the substantive sentence may be converted to fine. In support of his submission, learned senior counsel cited the judgment of the Hon"ble Supreme Court in the case of Manish Jalan V. State of Karnataka rendered in Criminal Appeal No. 1066 of 2008. In the aforesaid case, the sentence of the accused awarded under Sections 279/304A of the IPC was converted into fine of Rs. 1,00,000/-.

10. After going through the aforesaid judgment, I am of the view that substantive sentence was converted to fine on different facts; firstly, in the afore cited case the Appellant was driving a tanker, whereas the case before me the Petitioner was driving a passenger Taxi. Secondly, in the cited case, the accident took place due to hit and collusion with a scooter, whereas in the present case the driver hit a tree and that to at a point where there was a sharp turning. Not only that the speed of the Taxi was such that after hitting the tree it again came to the other side of the road. Thirdly, the sentence was converted to fine on the basis of an affidavit filed on behalf of the victim and do not suo moto by the Court. In the case before me, no such application has been filed by any injured or victims. Keeping in mind the entire scenario, I am not persuaded to interfere with the sentence.

11. In the result, the revision application stands dismissed.