

(2005) 06 CAL CK 0006**Calcutta High Court****Case No:** C.R.R. No. 1618 of 2003 and C.R.A.N. No. 1568 of 2003

Bidyut Kumar Karak @ Bidyut
Karak

APPELLANT**Vs**

State of West Bengal and
Another

RESPONDENT**Date of Decision:** June 30, 2005**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 401, 482
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2006) 2 CHN 311**Hon'ble Judges:** Sadhan Kumar Gupta, J**Bench:** Single Bench**Advocate:** Tapas Midya and A.B. Chakraborty, for the Appellant; Minati Gomes, for the Respondent**Final Decision:** Allowed**Judgement**

Sadhan Kumar Gupta, J.

This revisional application has been filed u/s 401 read with Section 482 of the Cr.PC against the order dated 09.07.2003 passed by the learned Judicial Magistrate, 3rd Court, Bishnupur, District-Bankura in G.R. Case No. 38 of 2003 arising out of Joypur Case No. 5 of 2000 u/s 279/ 304A IPC. Case of the petitioner is that, the abovementioned criminal case was started on the basis of the written complaint submitted by one Pirupada Dey on 22.02.2000 stating therein that his brother-in-law Hari Nandi was travelling by S.B.S.T.C. bus bearing No. WB-39-3604. Said Hari Nandi was travelling on the roof of the bus and in so doing, he received injury on his head by a branch of a tree and he was sent to Joypur Primary Health Centre for treatment by the public. Subsequently, he was transferred to Bishnupur Hospital and from there to the P.G. Hospital, Kolkata where he expired on 26.7.2003. It has been alleged in the written complaint that due to the rash and negligent driving on the

part of the driver as well as due to the negligence of the conductor of the said bus, the victim sustained injury. On the basis of the said written complaint, the case was investigated and after investigation chargesheet u/s 279/ 304A, IPC was submitted against the driver as well as the conductor of the said bus. On 9.7.2003 the case was fixed for recording the plea of the accused persons. On that day, after hearing both the sides, Id. Magistrate was of the opinion that there was no case against the driver of the vehicle u/s 279/304A, IPC and as such he was discharged from the case. But the Id. Magistrate at the same time was of the opinion that there was prima facie case against the conductor u/s 304A of the IPC. So the substance of accusation u/s 304A of the IPC was read over and explained to the accused/petitioner who pleaded not guilty and so the Id. Magistrate fixed a date for recording evidence. Being aggrieved and dissatisfied with the said order of the Id. Magistrate, this revisional application has been preferred alleging therein that the Id. Magistrate was not at all justified in holding that there is a prima facie, case u/s 304A of the IPC against the accused/conductor.

2. I have heard the submissions of the Id. Advocate for the petitioner and the Id. Advocate for the State. It is the admitted position that the deceased at the relevant time was travelling by the roof of the bus and while doing so he was hit on his head by a branch of a tree and as a result of that he sustained injury and ultimately died. The very basis of the prosecution case is that the driver was driving the said vehicle in a rash and negligent manner and as such the accident took place. But it appears from the order of the Id. Magistrate that he was of the opinion that there was no prima facie case of rash and negligent driving against the driver of the said vehicle. So the very basis of the case goes. Considering that aspect, the Id. Magistrate was pleased to discharge the main accused, that is the driver of the vehicle. But at the same time he was pleased to proceed against the conductor presumably on the basis of the statements as made u/s 161. Cr.PC wherein some of the witnesses have stated that it was the conductor who suggested the deceased to travel on the roof of the bus. Even if it is accepted that the conductor gave such proposal to the deceased, then also it can not be said that a prima facie case u/s 304A of the IPC has been made out so far as the conductor is concerned. No criminal liability can be attached with this act allegedly done by the conductor. At best it can give rise to a civil responsibility. We cannot shut our eyes to the fact that the concerned passenger also contributed to the negligence, if any, by voluntarily travelling on the roof of the said bus. Under such circumstance, I have got no hesitation to hold that under no stretch of imagination it can be said that a prima facie case has been made out against the present petitioner who was the conductor of the said bus. As such, I think that the Id. Magistrate was not at all justified in proceeding against the petitioner/ conductor of the said bus for the alleged offence u/s 304A of the IPC. To my mind, since the driver of the bus has been absolved of the offence of rash and negligent driving, the conductor cannot be directed to face trial for the offence u/s 304A of the IPC. I have got no hesitation to hold the order of the Id. Magistrate

certainly suffers from material irregularity and in my considered opinion, if the proceeding is allowed to be continued against the petitioner, then certainly it will cause failure of justice and it will be nothing but an abuse of the process of the Court. As such, I think that it is a fit case where this Court should interfere into the impugned order, as passed by the Id. Magistrate by setting aside the order.

3. Considering all these things, the revisional application is allowed on contest. The impugned order dated 9.7.2003 passed by the Id. Judicial Magistrate, 3rd Court, Bishnupur, Bankura in G. R. Case No. 38 of 2000 is set aside and the petitioner Bidyut Kumar Karak @ Bidyut Karak be discharged from the case immediately. CRAN application thus discharged of.

4. Send a copy of this order to the Id. Court below immediately for his information and necessary action.