

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. Rev. P. No. 37 of 2022

1. Sri Goutam Das,

.....*Petitioner*

-VERSUS-

1. The State of Tripura.

..... *Respondent*

B E F O R E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. K. Deb, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing and delivery of judgment and order	:	19.07.2022
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

Heard Mr. K. Deb, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Additional Public Prosecutor, appearing for the respondent-State.

[2] By means of filing this revision petition under Section-397 of the Code of Criminal Procedure, 1973 against the judgment dated 31.05.2022, passed in Criminal Appeal No.12 of 2021 by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur, partially upholding the judgment dated 29.09.2021 in PRC(SP) 12 of 2020 passed by the J.M. 1st Class, Court No.3 Udaipur, Gomati Tripura, whereby and whereunder the petitioner was convicted to suffer imprisonment for two months with a fine of Rs.2,000/- with default stipulations.

[3] The facts in brief are that a written complaint has been lodged against the petitioner who was riding a two wheeler bearing No. TR-03-E-6653, by one Suman Chanda, stating inter alia, that her mother was dashed by the petitioner and as a result, sustained injuries on her person. The complaint was reduced into an FIR and a charge sheet was filed under Section-279 read with Section-338 of IPC and Section-184 of M.V. Act. Trial commenced by registering a case being numbered as PRC SP 12 of 2020, whereby and whereunder the judgment dated 29.09.2021 was passed by the J.M.1st Class, Court No.3, Udaipur, Gomati Tripura, holding the petitioner guilty as aforesaid.

[4] Being dissatisfied with the same judgment, the present petitioner preferred an appeal which was registered as criminal appeal No.12 of 2021, whereby the appellate Court upheld the sentence under Sections-279/338 of IPC to suffer imprisonment as aforesaid.

[5] After hearing the parties and perusal of the evidence on record and also the observation made by the learned Judicial Magistrate, 1st Class, the learned Court of Addl. Sessions Judge, has observed as under:

“After considering the evidences of prosecution witnesses as above this Court finds that the learned trial court committed no error in finding the convict-appellant guilty for the offences punishable under Sections-279/338 of the IPC and under Section-184 of the MV Act. But the trial Court should not pass the sentence of fine of Rs.1,000/- (Rupees one thousand) only against the appellant under Section-184 of the MV Act being contrary to law as pronounced by the Hon’ble Supreme Court in the case of the State of Arunachal Pradesh Vrs. Ramchandra Rabidas @ Ratan, criminal appeal No.905 of 2010 with Criminal Appeal No.906 of 2010 the State of Tripura Versus Ramchandra Rabidas @ Ratan Rabidas, 2019 SCC Online SC 1317 wherein it was held that “8. Section-26 of the General Clauses Act, 1897 provides, “where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.” It is well settled that an act or an omission can constitute an offence the IPC

and at the same time, be an offence under any other law. The finding of the High Court that the prosecution of offenders under two statutes i.e. the MV Act and the IPC, is unsustainable and contrary to law, is therefore set aside.”

[6] Being aggrieved by and dissatisfied with the impugned judgment and order dated 31.05.2022 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur, upholding the judgment and order dated 29.09.2021 awarded by the learned J.M. 1st Class, Court No.3, Udaipur, Gomati Tripura, the present petition has been preferred by the petitioner.

[7] In support of the case of the petitioner Mr. K. Deb, learned counsel appearing for the petitioner has submitted that both the courts below have erred in the matter of correctness, legality and propriety while passing the judgments and sentence to the present petitioner. The Courts below committed serious error of law by conducting the trial and consequences there too, the conviction have been recorded.

[8] Mr. Deb, learned counsel has further contended that PWs-2 and 3 as considered the star witnesses by the Courts below neither of the witnesses stated that the petitioner was driving in rash or negligently. The Courts below have failed to appreciate the mine ingredients of Sections-279/338 of the IPC as simple accident does not attract those provisions unless a vehicle involves in high speed or in a manner which is dangerous to the public which the respondent has miserably failed to establish.

[9] He has averred that the vehicle inspection report (mechanical inspection) dated 25.09.2019, no damage of the offending vehicle was found which can be easily presumed that the vehicle was not in high speed or rush and negligent or otherwise it ought to have been met with even little or small damage. More so, in the said report, the date of alleged

accident was also not given which gives a reasonable doubt about the inspection report.

[10] He has further contended that the discrepancies in the inspection report and ejahar constitute serious doubt about this accident. PW-6 during in her statement stated that the accused person was detained by the localities but said statement was not there in her 161 statement, more so, she could not identify the accused person.

[11] The investigating officer did not take any endeavour to procure the evidence of shop owners of the place of occurrence whereas, he volunteers and explanation that they were reluctant in giving witness, which is an irresponsible statement from an investigating officer. It has also not been considered by the courts below that the accident took place in front of a medical shop where the owner of the shop as PW-10 was present and become hostile and disowned the entire statement made before the I.O.

[12] Mr. Deb, has further argued that the courts below have failed to appreciate the evidence on record in consonance with the statutory provision and thereby committed a serious injustice to the present petitioner and thereby committed a serious prejudice in appreciation of evidence towards the petitioner. Hence, the conviction and sentence is liable to be set aside.

[13] The Appellate Court ought to have been come to a conclusion that the proceeding before the learned Court below was vitiated by non-affording the natural justice to the petitioner as there was no specific documentary evidence with regard to the probabilities as to when and how the accident has been occurred.

[14] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case against the petitioner. It is settled proposition of law that the charge framed against the accused-person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. This Court has no hesitation to say that in the revision, appreciation of the factual issues is not permissible.

[15] In terms of the above, the present petition stands allowed setting aside the findings arrived at by the learned courts below. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A.Ghash

