

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

CRIMINAL REVISION PETITION NO. 36 OF 2008

*Sri. Arup Kumar Phukan,
Son of Late Manidhar Phukan,
Resident of Kakapathar,
P.O. & P.S. Kakopathar
District-Tinsukia, Assam*

----- *Petitioner*

– *VERSUS* –

The State of Assam

----- *Respondent*

BEFORE
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

Advocate for the Petitioner : Mr. NNB Choudhury.

**Advocate for Respondent : Mr. BJ Dutta, learned Additional
Public Prosecutor, Assam**

Date of hearing & Judgment : 12th of December, 2017.

JUDGMENT & ORDER (ORAL)

Heard Mr. NNB Choudhury, learned counsel for the accused revision-petitioner. Also heard Mr. BJ Dutta, learned Additional Public Prosecutor, appearing for the State respondent.

[2] This is a case where we are dealing with the loss of five precious lives of teenagers in a motor vehicular accident allegedly resulting from rash and negligent driving on the part of the accused revision-petitioner.

[3] The date of occurrence, i.e., 17.09.2005, was Biswakarma Puja and the boys who died in the accident were celebrating Biswakarma Puja. At the instance of the accused revision-petitioner, they boarded in the 407 mini

bus driven by the accused revision-petitioner for a joy ride. The vehicle was allegedly driven in excessive speed resulting in toppling over the National Highway No. 52, causing death of the aforesaid five teenagers, most of whom were students, and also injuring few of the commuters including PW3, PW4 and PW5.

[4] On the basis of the above facts, an FIR was lodged. A police case was registered, investigation was carried out, and finally, on completion of investigation, a charge-sheet under Section 279/337/338/304(A) of the IPC was laid against the accused revision-petitioner.

[5] In the instant case, the learned trial court examined as many as 12 witnesses, including the Investigating Police Officer and the Doctor, who performed the post-mortem examination of the deceased.

[6] I have perused the evidence on record as well as the judgment of the learned trial court, dated 06.08.2007 in GR Case No. 875/2005, passed by the learned Additional Chief Judicial Magistrate convicting the accused revision-petitioner under Sections 279/337/338/304(A) of the IPC.

[7] I have also perused the judgment of the learned appellate court which affirmed the judgment of the learned trial court vide, judgment and order, dated 24.12.2017, in Criminal Appeal No. 54(3)/2007.

[8] The evidence on record makes it appear that the judgment of the learned trial court as well as that of the learned appellate court is based on evidence of 4 (four) witnesses, i.e., PW3, PW4, PW5 and PW6, who were all commuters in the aforesaid mini bus. They have also alleged that the vehicle was driven in excessive speed. One of the witnesses, i.e., PW4 deposed that

the vehicle was driven at a speed of 60 kmph. The fact remains that the accident took place when the vehicle was taking a turn on the National Highway No. 52. Taking a turn, on the National Highway No. 52 with a speed of 60 kmph, is not conceivable. The fact remains that the accident is not denied. The further fact is that the accused revision-petitioner has admitted to have driven the mini bus at the relevant point of occurrence. The death of five person and injuries to others are not at all disputed in the evidence and rather the evidence of the prosecution witnesses consistently state that the accident took place causing death of the aforesaid five persons and injuring many others due to rash and negligent driving of mini bus with excessive speed.

[9] The learned counsel for the accused revision-petitioner has referred to the decisions of the Hon'ble Supreme Court in the cases of 1. *Madhu Sudhan Debnath Vs. State of Tripura*, reported in *2012 STPL 16828 Gauhati*, 2. *State of Karnataka Vs. Satish*, reported in *(1998) 8 SCC 1999* and 3. *Munindra Gazamer Vs. State of Assam*, reported in *2005 3 GauLR 618*, wherein it has been held that excessive speed cannot be taken as a ground for rash and negligent driving. But the fact and circumstances of the cases, referred to above, are not similar with that of the present case, because, in most of the cases referred to by the learned counsel for the accused revision-petitioner the cause of accident is not same with the present case. The vehicle, in the instant case, met with an accident by toppling itself in the National Highway No. 52, which is wide enough to avoid any accident. That apart, in none of the cases, referred to by the learned counsel for the revision-petitioner, the vehicle met with an accident while taking a turn with a speed of 60 kmph.

[10] In the case of *Ambica Quarry Works etc Vs. State of Gujrat and others*, reported in *AIR 1987 SC 1073*, paragraph -18, it has been observed by the Hon'ble Supreme Court that ".....the ratio of any decision must be understood in the background of facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

[11] That being so, in the considered view of this Court, the judgments, referred to by the learned counsel for the accused revision-petitioner, do not appear to be applicable in the present case.

[12] On the other hand, the Hon'ble Supreme Court in the case of *Kuldeep Singh Vs. State of Himachal Pradesh*, reported in *(2008) 14 SCC 795* deals with a case of almost similar in nature with the case at hand.

[13] In the instant case, we have found that the accident took place due to the vehicle taking a turn in high speed, which in the considered view of this Court, amounts to negligence on the part of the accused revision-petitioner. Further the fact that the 407 mini bus which met with an accident was capable of carrying 20 persons but there were around 40/50 passengers in the mini bus, at the relevant time of the accident, which is beyond its capacity. Therefore, it appears that the negligence on the part of the accused revision-petitioner was not based on an error of judgment. It is also not a simple lack of care on the part of the accused revision-petitioner. Such negligence, in fact means the conduct which falls below the standard established for the protection of others against unreasonable risk or harm. In the instant case, it appears that driving a 407 mini bus with around 40/50 passengers with a speed of 60 kmph, and taking a turn on the road with that speed, is definitely a

conduct, which is below the established standard for a driver and amounts to taking an unreasonable risk.

[14] That being the evidence, coupled with the aforesaid legal position, in the considered view of this Court, the judgments of the learned trial court as well as the learned appellate court do not suffer from any illegality, impropriety and incorrectness so far recording of the order of conviction under Sections 279/304(A) of the IPC is concerned, requiring any interference by this Court. This Court finds that recording of conviction is not required under Sections 337/338 of the IPC as it is not relevant in view of the fact that the accused revision-petitioner is found convicted for an offences of the same nature under Sections 279/304(A) of the IPC.

[15] Considering the fact that the offence took place in the year 2005 and the accused revision-petitioner has fought a prolonged legal battle, instead of substantive sentence of imprisonment, this Court is of the view that if the fine imposed upon the accused revision-petitioner is enhanced, it will meet the ends of justice. Accordingly, the accused revision-petitioner is sentenced to pay a fine of Rs. 50,000/- against each of the death caused, totalling Rs. 50,000/- X 5= Rs. 2,50,000/-.

[16] On receipt of such amount, the learned trial court will disburse the same in favour of the legal guardians of each of the deceased. This order is for commission of the offence under Section 304(A) of the IPC. So far the offence under Section 279 of the IPC is concerned, the accused revision-petitioner is directed to pay a fine of Rs. 500/-. The accused revision-petitioner will surrender before the learned trial court within 2 (two) months from today to serve out the sentences, and in default of payment of fine under Section

304(A) of the IPC, the accused revision-petitioner will undergo simple imprisonment for one year.

[17] Criminal revision petition is, accordingly, partially allowed.

[18] Send back the LCR along with a copy of this judgment.

JUDGE

Nilakshi