

**IN THE COURT OF THE JUDICIAL MAGISTRATE 2nd COURT,
TAMLUK, PURBA MEDINIPUR.**

Present: Sri Indranil Ghosh,
Judicial Magistrate 2nd Court,
Tamluk, Purba Medinipur (JO Code WB01366).

GR Case No. 245 of 2002

T.R. 573 of 2022

CIS Reg. No. 1371 of 2022

CNR No. WBEM04-002448-2022

In the matter of: -

State

Prosecution.

-vs-

Madhab Chandra Pradhan.

Accused Person.

**(Arising out of Panskura PS Case Number 47 of 2002
dated 29.04.2002)**

Under Sections 279/304A of the Indian Penal Code, 1860

Date of delivery of Judgment: on this 21st day of December, 2023

J U D G M E N T

Prefatorial Profile: -

The gravamen of this case is under Sections 279/304A of the Indian Penal Code, 1860. Before I mention the nuances of the issues that have arisen for consideration, it would be apposite to take stock of the background facts, as the factual canvass would provide clarity of the situation under adjudication. The fascicule of facts, indispensable to comprehend the backdrop of the prosecution, has its origin in the written complaint filed by the de-facto complainant namely, Sheikh Kasem Ali. Acting on the said complaint, Panskura police station started investigation based on the allegations ventilated in the complaint.

The thumbnail sketch of the prosecution's case is that on 29.04.2002 at about 10:00 a.m. the accused with truck vide no. WB29 1528 dashed

Sheikh Rahamat Ali and minor Amirul Islam in high speed. As a result of that they sustained serious injury and Sheikh Rahamat Ali succumbed to such injuries.

Investigation, cognizance, supply of copy and transfer of the case record: -

SI Moyajjem Hossain of Panskura Police Station investigated the matter, recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973, visited the place of occurrence, prepared rough sketch map and index, seized some articles and on completion of investigation *prima facie* materials against the accused person was found and charge-sheet being number 70 of 2002 dated 18.08.2002 was submitted in this case under Sections 279/337/338/304A of the Indian Penal Code, 1860 against the accused person. Then after submission of charge sheet as a progressing action, cognizance of the offence was taken against the accused person for allegedly committing the aforementioned offences, copy was served under Section 207 of Code of Criminal Procedure, 1973 and the case was transferred to this court for trial.

Plea: -

After considering the materials available on record, plea was done under Sections 279/304A of the Indian Penal Code, 1860 against the accused person named in the charge-sheet. The substance of accusation was read over and explained to the accused person to which the accused person pleaded not guilty of committing those offences and claimed to be tried by this court. As the offences charged with, was triable by this Court and was within the jurisdictional domain of this court the trial of this case was initiated by recording the evidences of the prosecution.

Evidence Adduced: -

The prosecution could adduce two (02) witnesses among nine (09) witnesses who are named in the charge-sheet. Two witnesses namely, Sheikh Kasem Ali and Sheikh Moharam were examined in full as P.W. 1 and P.W. 2 respectively but cross-examination of P.W. 2 was declined. The the signature of P.W. 1 on the written complaint was marked as Exhibit P/1 on behalf of the prosecution. No other witness has been examined on behalf of the prosecution. Subsequently after considering every possible facet and in order to hoist the motto of Section 309 of the Code of Criminal Procedure, 1973, the prosecution evidence was

closed and the accused person's examination under Section 313 of the Code of Criminal Procedure, 1973 was dispensed with. In examination under Section 313 of the Code of Criminal Procedure, 1973, the accused person embraced the theory of innocence and did not adduce any evidence on his behalf. Thereafter, argument was heard from both sides.

Points for Ruminations: -

After exhausting the above procedures, the case was posted for hearing of arguments. On completion of arguments as per requirement of Section 354 of the Code of Criminal Procedure, 1973, it is the incumbent duty of this court to formulate the points for determination and assign reasons for harbouring to any conclusion on those points. After considering every possible facets in this case and considering the materials available the points for determination are arrayed as under: -

- 1) Whether the prosecution has established the guilt of the accused person?
- 2) Whether the accused person is liable to be convicted under Sections 279/304A of the Indian Penal Code, 1860?

Decision with reasons: -

Point number 01 and 02: - For brevity, both the inter-related points is taken up together for discussion and adjudication. Ld. Advocate for the accused person during the course of argument submitted that the prosecution has miserably failed to prove the charges framed against the accused person and for that reason the accused person must be acquitted. Ld. A.P.P. representing the prosecution raised cavil against the contention of Ld. Advocate for the accused person albeit with all his fairness candidly submitted that there are not adequate materials on record against the accused person.

It is not only axiomatic but settled position of law in our criminal jurisprudence that the accused person always has a presumption of innocence in his favour and the rule of evidence which has received judicial sanction is, the prosecution must prove the guilt of the accused person, i.e., it must establish all the ingredients of the offence with which he/she is charged.

P.W. 1 reiterated the contents of the written complaint but during cross-examination, he failed to say the contents of the written complaint, he could not identify the accused person, failed to say the number of the

offending vehicle. P.W. 2 could not say anything material about this case.

Though the P.W. 1 and P.W. 2 deposed in this case but such fact *ipso facto* cannot lend any support to the prosecution. The failure of the witnesses to identify the accused person and the failure to state the number of offending vehicle and about the alleged accident itself is the ultimate death knell of the prosecution case and the evidence of P.W. 1 is nothing but an example of hearsay evidence as per the settled notion of the Evidence Act.

There is no cogent evidence on record to establish that the accused person committed any act which would come within the purview of Sections 279/304A of the Indian Penal Code, 1860. The prosecution also did not bring any other witness. The investigation officer of this case was not also examined. This Court has no hesitation to hold that the evidence of witnesses pertaining to alleged callous and cavalier act of the accused person is an example of hearsay evidence and this Court cannot rely on such evidence at all. The profile of the prosecution case has been gleaned through.

The case of the prosecution garners no support from the version of the prosecution witnesses. From the above set of facts, this Court is thoroughly convinced that the statements of the witnesses are not unerringly pointing towards the guilt of the accused person. Considering all the aspects and after appreciation of all the materials produced before this Court in the form of oral evidence, this Court has no other alternative but to hold that the evidence of the prosecution witnesses suffers from material lacuna in so far as against the accused person.

Before parting, it can certainly be opined that the benefit arising out of the lack of evidence should go in favour of the accused person. This Court has no other alternative but to hold that there is no iota of ingredient to constitute the offence under Sections 279/304A of the Indian Penal Code, 1860. So, in this case the accused person is not liable to be punished since the charge against him has not been proved by the prosecution. Thus, the above points under determination are therefore answered in the negative.

Hence, it is hereby

ORDERED

that the sole accused person namely, **Madhab Chandra Pradhan** is found to be not guilty of committing offence under Sections 279/304A of the Indian Penal Code, 1860 and he is hereby acquitted under Section 255 (1) of the Code of Criminal Procedure, 1973.

The accused person is on Court bail. Bail bond shall remain in force for the next six months as per the mandate of section 437A Cr.P.C.

Seized article, if any, be dealt with as per the provision of law after the completion of period of appeal.

The victim/de-facto complainant has right to prefer an appeal under Section 372 of the Code of Criminal Procedure, 1973 and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.

As per the dictum of Hon'ble High Court, Calcutta in the case of **Sabitri Bhunya vs The State of West Bengal and Others**, let a copy of this Judgment be sent each to the District Magistrate, Purba Medinipur and Ld. Secretary, DLSA, Purba Medinipur at once for due intimation to the victim/de-facto complainant (Sheikh Kasem Ali).

Inform all concerned at once.

Note in the relevant registers at once.

Update the CIS.

Let the soft copy of the judgment be uploaded in the CIS within 48 hours from this day as per Rule 186 A of the Cr. R.O of the Hon'ble High Court, Calcutta.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the record be sent to the record room after expiry of appeal period as per due provision of law.

Dictated & Corrected by me.

Sd/-

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Judicial Magistrate 2nd Court,
Tamluk, Purba Medinipur.
(JO Code WB01366)

(INDRANIL GHOSH)
Judicial Magistrate 2nd Court,
Tamluk, Purba Medinipur.
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