

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**Crl. Rev. P. No. 75 of 2012**

Md. Maharam Ali alias Achai,  
Son of Md. Farid Ali,  
Resident of Srirampur, P.S. Kanchanpur, Dist: North Tripura.

.....Petitioner

**- VERSUS -**

The State of Tripura.

.....Respondent.

**B E F O R E**  
**THE HON'BLE MR. JUSTICE U. B. SAHA**

For the petitioner	: Mr. S. C. Majumder, Advocate. Mr. U. K. Majumder, Advocate.
For the State respondent	: Mr. R. C. Debnath, Addl. P.P.
Date of hearing & delivery of judgment and order	: <b>25.01.2016</b>
Whether fit for reporting	: <b>YES</b>

**Judgment and Order (Oral)**

The instant revision petition is filed against the judgment and order dated **28.09.2012** passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No. 35 of 2012, wherein, the Additional Sessions Judge, North Tripura, Dharmanagar affirmed the judgment and order of sentence dated **27.07.2012**, passed by the learned Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in Case No. G.R. 145 of 2010, whereby the accused petitioner, namely, Md. Maharam Ali alias Achai, was convicted under Section 279

of the IPC and sentenced to suffer SI for 6 (six) months and a fine of Rs. 1,000/- in default to suffer SI for 1 (one) month and further convicted him under Section 337 of the IPC and sentenced to suffer SI for 6 (six) months and a fine of Rs. 500/- in default to suffer SI for 1 (one) month.

[2] Heard Mr. S. C. Majumder, learned counsel assisted by Mr. U. K. Majumder, learned counsel appearing for the petitioner. Also heard Mr. R. C. Debnath, learned Addl. P.P. appearing for the respondent State.

[3] The prosecution story on the basis of which the trial Court convicted the petitioner and the appellate Court upheld the same is as follows:

[4] That on 22.07.2010 one Rabindranath Bhowmik of Shibnagar lodged an FIR with the O/C, Kanchanpur P.S. to the effect that on 06.07.2010 his daughter, namely, Bishnupriya Nath Bhowmik was going to Kanchanpur from his house to get private tuition and when she reached near the shop of Naresh Nath at Santipur, a vehicle bearing No. **TRO2C-1572 (Canter truck)** came from the opposite side in a very high speed, rashly and negligently and dashed his daughter. As a result, his daughter received grievous injuries and she was shifted to Kanchanpur hospital. As her condition was serious; she was referred to RGM Hospital, Kailashahar wherefrom she was again referred by the

attending doctor to GB Hospital, Agartala for treatment. It is also stated in the FIR that as the complainant was busy for the treatment of his daughter, there was delay in lodging the FIR.

[5] On receipt of the FIR, the O/C Kanchanpur P.S. registered a case being KCP P.S. Case No. 49 of 2010, under Sections 279/337 of the IPC and on completion of the investigation, charge sheet was submitted against the accused, namely, Maharam Ali alias Achai under Sections 279/337 of the IPC.

[6] The accused, namely, Maharam Ali alias Achai turned up and contested the case. He was supplied with copies of incriminating papers and on being examined under Section 251 of the Cr.PC., he pleaded not guilty and claimed to be tried.

[7] The prosecution examined as many as 14 witnesses to prove the case and upon closure of prosecution evidence the accused was examined under Section 313 of the Cr.PC to which he denied the veracity of all the prosecution evidence and also declined to adduce any defence evidence. The accused does not have any specific defence case other than total denial of the whole prosecution story.

[8]            Thereafter, hearing both sides the learned trial Court passed the impugned judgment and convicted and sentenced the accused petitioner namely, Maharam Ali alias Achai as stated supra.

[9]            Being aggrieved by the decision of the learned trial Court, the accused petitioner preferred an appeal before the learned Addl. Sessions Judge, Dharmanagar, North Tripura, which was registered as Criminal Appeal No. 35 of 2012. The learned Addl. Sessions Judge, Dharmanagar, after hearing the parties and considering the evidence on record, upheld the order of conviction and sentenced passed by the trial Court, dismissed the appeal preferred by the petitioner against the judgment of the trial Court and directing the accused petitioner to surrender before the learned trial Court within one month from today to serve out the sentence.

[10]           As the learned Appellate Court dismissed the appeal and directed the petitioner to surrender before the learned trial Court, the accused petitioner preferred the instant revision petition which on being admitted, he was granted bail by this Court.

[11]           Mr. Majumder, learned counsel appearing for the petitioner would contend that though the accident is admitted, there is no material available from the evidence

of the prosecution witnesses that the vehicle was driven at a high speed in rash and negligent manner and due to such negligence of the accused petitioner, the alleged accident occurred and the daughter of PW-1, Rabindranath Bhowmik, was hurt and injured, and subsequently, she was hospitalized.

[12] He has also contended that the negligence is to be specifically proved by the prosecution for establishing its case as the negligence means breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do or the doing of something which a prudent and reasonable man would not do.

[13] In the instant case, it is totally absent from the evidence of the prosecution witnesses that the accused petitioner failed to do something which was required to be done by him. Not only that, he also urges that mere accident is not enough to prove the offence under Section 279 of the IPC read with Section 337 of the IPC. The prosecution is to establish, firstly, the rash and negligent driving and, secondly, the negligent driving of the driver caused hurt to any person which is endanger to human life or the personal safety of others.

[14] He further stated that if the Court is of opinion that the evidence available on record is sufficient for conviction, then the Court may consider whether for the same act of causing hurt due to rash and negligent driving, the order of conviction and sentence can be passed both under Sections 279/337 of the IPC as recorded in the judgment of the learned Sub-Divisional Judicial Magistrate, which was upheld by the learned Additional Sessions Judge as the Appellate Court.

[15] Mr. R. C. Debnath, learned Addl. P.P. appearing for the respondent State while supporting the judgment of the learned trial Court as well as the Appellate Court would contend that there are full evidence regarding the injuries caused to the daughter of PW-1, particularly, from the victim, Bishnu Priya Nath Bhowmik (PW-10) and PW-5, who was a day labourer and going towards his house in the morning after completing his night duty of last July 2010.

[16] It has been further submitted that there is no doubt that when a person commits an offence punishable under Sections 279/337 of the IPC, then the conviction should be under Section 279 and sentence thereto but no conviction under Section 337 and sentence thereto can be provided in view of the judgment of the Gauhati High Court,

Agartala Bench, **in Md. Hiran Mia v. The State of Tripura, reported in 2010 CRI. L. J. 189.**

[17] Mr. Majumder, learned counsel appearing for the petitioner also submits that a person cannot be convicted under both the sections i.e. 279/337 of the IPC as both the offences is the outcome of same incident.

[18] Before appreciating the rival submission of the learned counsel appearing for the parties, it would be proper to appreciate the evidence of PWs 1, 5 and 10 which are as follows:

[19] PW-1, Rabindranath Bhowmik, has stated that on 06.07.2010 at about 6.00am in the morning his daughter was going to Kanchanpur for private tuition from Shibnagar and she was walking on the left side of the road and when she reached Santipur, one vehicle came from Laljuri side dashed his daughter in front of the shop of Naresh Nath and as a result, she fell at the left side of paddy land. The driver fled away from the place of occurrence when Naresh raised alarm. Then Naresh made him a phone call and he rushed to the place occurrence and arranged for shifting the victim to the hospital. He found the vehicle on the right side of its direction on the road. He noted down the number of the vehicle. At that time the owner of the vehicle came to the spot and assured him a

financial assistance for the treatment of his daughter. They shifted the victim to Kanchanpur hospital and she was referred to Kailashahar hospital for better treatment. Seeing her critical condition his daughter was again referred to G.B. Hospital, Agartala. He has also stated that he came to know the name of the driver as Moharam whose nick name is Achai. He further stated that the vehicle was found outside of the road on wrong side at the time of accident and there was clear negligence of the driver of the vehicle.

[20] PW-5, a day labourer was going to his house of last July 2010, in the morning time after completion of his night duty and found that the daughter of the complainant was (PW-1) going towards Kanchanpur for attending private tuition and at about 6.00am he found that a canter truck was proceeding towards Laljuri on the Kanchanpur to Laljuri road with a high speed. He also found that the truck dashed on the left shoulder of the girl i.e. the daughter of the complainant (PW-1) in a high speed and accordingly she fell down in a nearby drain. According to him, the victim girl was moving along the left side of the road. Seeing the accident he also raised alarm and the local people was assembled on the place of occurrence. The victim girl was given cold water on her head in the varandha of a shop. This witness also disclosed the registration number of the



vehicle as TRO2C-1572 and he was confident that accident occurred due to the negligence of the driver of the offending truck. He could not identify the name of the driver as the driver fled away when he raised alarm.

[21] PW-10, the victim Bishnupriya Bhowmik has stated in her evidence that on 06.07.2010 at about 6.00am in the morning she came out from her house and started to proceed along Kanchanpur –Laljuri road to attend private tutor towards Kanchanpur and she was coming on foot and she was keeping to the left side of the road. At that time one canter truck came from opposite direction in a very high speed and she was afraid and kept herself to the left side of the road but the vehicle dashed her at Santipur and as a result she was thrown to the nearby drain. Her relative namely Monoj Nath, who was there at the relevant time, called her parents and they came. She was shifted to Kanchanpur hospital for treatment and subsequently she was referred to Kailashahar hospital and from there to Agartala Hospital. Subsequently her father took her to Silchar hospital. The offending vehicle dashed on her chest and on her right hand and the vehicle was in a very high speed and she became afraid and scared and took to the extreme left side of the road but despite that, the driver of

the vehicle dashed her and it was clearly negligence and reckless driving by the driver.

[22] This Court has also noticed the provisions of Section 279 as well as 337 of the IPC while considering the order of sentence. Section 279 and 337 of the IPC are reproduced hereunder as that would be profitable for reaching to the proper conclusion regarding sentence:

**"227...Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".**

**"337...Causing hurt by act endangering life or personal safety of others — Whoever cause hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both".**

[23] Having heard the learned counsel for the parties and on going through the judgment of the Courts below as well as on review of the evidences of the prosecution witnesses, this Court is of the considered opinion that the prosecution has established its case beyond reasonable doubt. The learned trial Court has rightly convicted the accused under Section 279 of the IPC.

[24] But the question remains whether a Court can convict a person both under Section 279 and 337 of the IPC, for commission of the same act of offence and accordingly pass sentence under both the Sections.

[25] In *Md. Hiran Mia v. The State of Tripura*, (supra) the Gauhati High Court, Agartala Bench held that as the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under Section 279 of the IPC being higher and it is a grave offence than the offence prescribed under Section 337 of the IPC, the accused could be punished under Section 279 of the IPC only.

[26] In the instant case also like *Md. Hiran Mia* (supra) the trial Court convicted the accused petitioner under both the Sections i.e. 279/337 of the IPC and sentenced under the aforesaid Sections as stated supra.

[27] According to this Court, even if the accused is convicted for offence under Sections 279 and 337 of the IPC, the offences having been outcome of the same act, he could be punished for one offence only and that is under Section 279 of the IPC being higher. Therefore, this Court while maintaining the order of conviction under Section 279

of IPC, the order of conviction under Section 337 of IPC is set aside passed by the trial court and affirmed by the appellate Court. As aforementioned, that the quantum of sentence imposed by the trial Court for commission of offence under Section 279 of the IPC is the maximum, this Court is of the opinion that it would meet the ends of justice if the sentence is reduced to pay a fine of Rs. 1000/- within a period of one month from today, in default of payment of the fine money, the judgment of the trial Court affirmed by the Appellate Court shall stand operative and the trial Court shall take necessary step to re-arrest the accused petitioner to undergo the original sentence. The fine money, if realized, the same shall be paid to the PW-1, the complainant, the father of the victim girl who in turn would pay the said amount to his daughter, namely, Bishnupriya Nath Bhowmik (PW-10). Order accordingly.

[28] In the result, the petition is partly allowed to the extent indicated above. Send down the LCRs.

**JUDGE**

A.Ghosh.