

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
BISWANATH CHARIALI

G. R. Case No. 322 of 2015

Under section 279/337/338/427/304(A) of I.P.C

(Arising out of Behali PS Case No. 72 of 2015)

State of Assam

–Vs–

Naren Saikia

S/O Sri Mukhteswar Saikia

R/O Lehugaon, Biswanath Chariali ...Accused Person

Present

Smt. Neha Saikia, LL.M., A.J.S.

Judicial Magistrate First Class,

Biswanath Chariali

For the State: Sri Golap Hazarika, Addl. Public Prosecutor

For the accused: Sri Pranjal Pratim Borah, Ld. Advocate

Offence Explained on: 09.07.2019

Evidence recorded on: 18.12.2019, 27.02.2020

Argument heard on: 17.11.2020

Judgment delivered on: 25.11.2020

J U D G M E N T

1. The case of the prosecution in brief is that on 07.06.2015 at about 11 PM mid-night, a TATA Magic vehicle bearing No. AS12 E6285 coming from Bedeti towards Biswanath Chariali was knocked down by a truck bearing No. AS12 D3291 on NH15 road resulting into the death of the driver of the Magic Vehicle. The informant Sri

Tufan Sharma being the registered owner of the Magic Vehicle lodged this case against the driver of the offending vehicle Sri Naren Saikia. He further alleged that the accident was caused by the offending vehicle due to rash and negligent driving because of which a person died and the other persons accompanying him were grievously hurt and also the vehicle was damaged. Hence is the case.

2. On receiving the FIR, O/C Behali PS registered the same as Behali PS Case No. 72/2015 under section 279/337/338/304-A/427 of IPC
3. On completion of investigation, police submitted charge sheet against the accused person, Naren Saikia u/s 279/337/338/304-A/427 of IPC. When the case came up for trial, copy of the relevant documents was furnished to him and the particulars of the offences under section-279/337/338/304-A/427 of IPC was explained to the accused person to which the accused pleaded not guilty and claimed to be tried. Thereafter, summons were issued to the PWs.

POINTS FOR DETERMINATION

- (i.) Whether the accused person, Naren Saikia on 07.06.2015 at about 11.30 PM on NH 15 drove his truck on public road in a rash and negligent manner so as to endanger human life or to be likely to cause hurt or injury to deceased Gopal Razak and other passengers and thereby committed an offence under section 279 of IPC, as alleged?
- (ii.) Whether the accused person on the same date, time and place drove the aforesaid vehicle in such a rash or negligent manner resulting into the simple injuries of the passengers in the Tata Magic Vehicle and thereby committed an offence under section 337 of IPC, as alleged?

- (iii.) Whether the accused person on the same date, time and place drove the aforesaid vehicle in such a rash or negligent manner resulting into the grievous injuries of the passengers of the Tata Magic Vehicle and thereby committed an offence under section 338 of IPC, as alleged?
- (iv.) Whether the accused person on the same date, time and place drove the aforesaid vehicle in such a rash or negligent manner resulting into the death of the deceased Gopal Razak and thereby committed an offence under section 304-A of IPC, as alleged?
- (v.) Whether the accused person on the same date, time and place drove the aforesaid vehicle in such a rash or negligent manner resulting damage of the vehicle of the Informant and thereby committed an offence under section 427 of IPC, as alleged?

4. Thereafter, summons was issued to the witnesses. The prosecution side in order to prove its case examined only two witnesses finding no any materials against the accused person. After hearing both the sides and considering the nature of offences, the prosecution evidence was closed and further proceeding was closed u/s 258 CrPC.

ARGUMENTS

5. I have heard both the parties. The learned counsel for the accused has submitted that the prosecution has failed to prove that the accused had driven the aforesaid vehicle in a rash and negligent manner. The learned counsel for the accused person further submitted that there is no material against the accused person as such the accused person needs to be acquitted.

DISCUSSIONS, DECISIONS AND REASONS THEREOF

For the sake of convenience, all the points for determination are discussed together.

6. In support of this case, the prosecution side adduces evidence of two witnesses only. PW-2, Tufan Sharma stated in his evidence that the incident took place in the year 2015 at about 11 AM when a truck bearing No. AS12 D3291 coming at a very high speed knocked down his vehicle near Borgang Forest Tiniali. The driver died on spot as the truck hit the driver side. Ext. 1 is the ejahar that he lodged. Ext. 1(1) is his signature, Ext. 2 is the seizure list and Ext. 2(1) is his signature. In his cross examination, he stated that he was at his house when the accident took place and he was informed by the Police. PW-1, Mridul Hazarika stated that the incident took place in the year 2015 at 8 PM. He heard a noise outside his house and saw that an accident took place between a truck and another vehicle but he had not seen any injured persons. In his cross examination, he admit that he had not seen the incident himself.

7. On perusal of the evidence of the two witnesses, particularly, the evidence of the informant, it is found that an accident no doubt has taken place but it is nowhere establish that the accused of this case has committed this offence. Moreover, PW-2, was present in the place of occurrence soon after the accident took place did not find any injured person but saw the two vehicles near the road. If the ejahar is thoroughly examined, it is alleged that many passengers in the Magic sustained grievous injuries and even the vehicle also got damaged but nothing came out from the evidence of the two witnesses as stated above. Even on thorough examination of the case record, it is found that a person died on that accident but again the accused of this case cannot be held guilty of committing the offence of rash and negligent driving. Again the time of occurrence of the incident was also not properly known to any of the witnesses. Therefore, it can be said that in this present case at hand as already stated, the vital ingredients of rash and negligent

driving does not come out from the evidence on record. Therefore, Section 279/337/338/427/304(A) IPC does not arise.

8. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. But in this case, as already stated the vital ingredients of rash and negligent driving does not come out from the evidence on record. Therefore sec 304-A IPC also does not arise. There is no doubt that the victim died due to the accident but prosecution could not give a clear picture as to how the accused was responsible for rash and negligent driving.
9. Hence, from the evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person drove the offending vehicle at the relevant time in a rash or negligent manner beyond reasonable doubt in respect of the alleged offences. The incident that took place which resulted into the death of the deceased victim Gopal Razak appeared to be an accident and but no mens rea of rash and negligent driving of the vehicle by accused revealed and therefore prosecution case could not be established and I come to my judicious finding that prosecution has been miserably failed to establish its offence u/s 279/337/338/304-A/427 IPC against the accused and I found him not guilty and he is acquitted.

ORDER

10. Considering the discussions made above, it can be safely presumed that the prosecution has failed to bring home the guilt of the accused person, namely, Naren Saikia under section- 279/337/338/304(A)/427 of IPC beyond all reasonable doubt. Hence, the accused person is acquitted of the said charge and set at liberty forthwith.

11. The bail bond shall remain in force for the next six months as per provision of sec-437-A Cr.P.C.

12. Judgment is prepared in separate sheets, delivered in open court in presence of both the parties.

Given under my Hand and Seal of this Court on this the 25th day of November, 2020.

(Smt. Neha Saikia)
Judicial Magistrate First Class,
Biswanath Chariali

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

PW 1 : Mridul Hazarika

PW 2 : Tufan Sharma

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

Ext 1 : Ejahar

Ext. 1(1) : Signature in the ejahar of PW 2

Ext 2 : Seizure List

Ext 2(1) : Signature of PW 2

5. Defence Exhibits : NIL

6. Material Exhibits : NIL

Judicial Magistrate First Class

Biswanath Chariali