

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE(M),
GOHPUR**

PRESENT: SRI KAUSHIK KUMAR SHARMA

S.D.J.M(M), GOHPUR

GR: 514/09

U/S 279/304A of IPC

STATE OF ASSAM.....PROSECUTION

v.

Sri Pulak Deka.....ACCUSED

Ld. Advocates: For Prosecution.....Smti Bornali Chetia, Ld.APP

**For Defence.....Smti Mousumi Borthakur, Ld.
Advocate**

Evidence Recorded on : 14.12.11, 02.7.12, 08.7.13

Argument heard on: 26.5.15

Judgment delivered on: 26.5.15

J U D G M E N T

1. The prosecution's case is that on 25.10.09t Sri Karma Killo was returning tp his hostel, after attending Puja ceremony. At that time, the accused, Sri Pulak Deka, driving, a Maruti 800 car, bearing registration no. AS-25B 9376, in a rash and negligent manner at full speed, had smashed Karma Killo, who had succumbed to his injuries and died on the spot. Hence the case.
2. The informant, Sri Arun Killo, the father of the deceased, had lodged the FIR on 25.10.09, at Halem police station. The police had registered Halem P.S Case No. 43/09 u/s 279/304A of IPC.

After investigation, the police had submitted charge sheet u/s 279/304A of IPC.

3. On appearance before Court, the particulars of offences u/s 279/304A of IPC were explained to the accused to which he pleaded not guilty and claimed to be tried.
4. The prosecution had examined 4 witnesses. The attendance of the informant and one witness could not be secured by the prosecution , even after repeated attempts, as their whereabouts was not known. Thereafter, prosecution has closed its evidence. The accused was examined u/s 313 CrPC. The defence side did not adduce any evidence. Heard arguments.

POINTS FOR DETERMINATION:

- a) Whether the accused had driven the vehicle, on the NH-52, in such a rash or negligent manner, as to endanger human life or to be likely to cause hurt injury to any other person, as alleged?
- b) Whether the accused had caused death of Sri Karma Killo, not amounting to culpable homicide, by hitting him, while driving the vehicle, in a rash or negligent manner , as alleged?

DISCUSSION AND DECISION BASED ON REASON:

5. PW1, Sri Manohar Sahu, in his examination in chief has stated that on the day of occurrence near Misamari center, he had the sound of brake of a car. When he reached the place of occurrence, he saw that a Maurti car had hit a boy. The car was, later on, taken to the police station, and the boy had succumbed to his injuries.
6. In his cross examination, he has stated that he had not seen the incident. He does not know how it had occurred.
7. PW2, Sri Nripen Sarma, in his examination in chief has stated that in 2009, during Durga Puja, when he was going to watch a *mela* in Misamari, he had heard the noise of brake. When he proceeded further, he saw that a boy was being hit by a car. The boy was taken to the hospital, and the car was being seized by police. Ext 1 is the seizure list and Ext 1(1) is his signature.

8. In his cross examination, he has stated that he had not seen the accident. He does not know how the accident had occurred.
9. PW3, Sri Sohan Sahu, in his examination in chief has stated that he had gone to see the Durga puja in Misamari in the year 2009. He stated that a Maruti car, came at a high speed and was moving towards Gohpur. At that time, the car had hit a young boy on the road. The outraged public tried to break the car. The boy had succumbed to his injuries.
10. In his cross examination, he has stated that the accident had occurred at about a distance of about $\frac{1}{2}$ KM away from the Misamari center. He was present at the puja *mandap*. There was darkness at the time of the incident. He was at a distance of about 70/80 feet away from the place of occurrence. He stated that he did not see how the accident had occurred. He had, later on, came to the place of occurrence. He did not see how the car had hit the boy.
11. PW4, Dr. J.C. Roy, in his examination in chief has stated that he had conducted the post mortem of K. Killo on 25.10.09. He stated that the death was caused by shock and hemorrhage, as a result of injuries sustained. Ext 1 is the PM report and Ext 1(1) is his signature.

Appreciation of evidence:

12. The evidence of the PWs lend no support to the prosecution's case, to prove that the accused had driven the car in a rash or negligent manner. None of the witnesses has stated that they had seen the occurrence. All of them has stated that they had not seen the incident. From the evidence, it is clear that the accident had occurred near Misamari center, on the highway, and that the deceased boy was being hit by a Maruti car, but it is not proved that the car was being driven in a rash or negligent manner. PW3, had stated that the car was being driven at a high speed. But his evidence cannot be relied upon, as he, himself, stated that he did not see the accident and cannot say how it had occurred.

13. Thus, the offences u/s 279 and 304A of IPC are not proved, as the essential ingredient of the offence u/s 279/304A of IPC, i.e. rash or negligent driving is not proved. It appears to me that the requisite *mens rea* was not present.
14. Hence, in the light of the above evidence, I am of the considered view that prosecution has failed to prove the guilt of the accused u/s 279/304A of IPC. Hence, the accused is acquitted from all the charges of this case, and is set at liberty forthwith.
15. The judgment is pronounced in the open court on this 26th of May, 2015. The judgment is prepared under my hand and seal of this Court
16. The bail bond shall remain operative till 6 months from the date of this order and shall stand cancelled after the expiry of 6 months.
17. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M(M), Gohpur.

LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION:

EXT. 1: PM report.

EXT.2: SEIZURE LIST

S.D.J.M(M), GOHPUR.