

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

PRESENT: SRI KAUSHIK KUMAR SHARMA

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

GR: 530/13

U/S 279/338 of IPC

STATE OF ASSAM.....PROSECUTION

v.

Sri Ranjit Rabha.....ACCUSED

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

For Defence...Smti Savita Devi, Ld. Advocate.

Evidence Recorded on: 07.2.15, 20.3.15,

Argument heard on: 08.5.15

Judgment delivered on: 08.05.15

J U D G M E N T

1. The prosecution's case , in nutshell, is that, on 21.07.13, at about 9 AM, , the accused, Sri Ranjit Rabha, had driven a bus," bhola baba", bearing number AS 12E 5239, in a rash and negligent manner, and hit, Sri Khageswar Hazarika, from behind, causing his death. Further, the bicycle, on which the deceased was riding, got damaged in the process. Hence, the case.
2. The informant, Sri Son Hazarika, had lodged the FIR on 25.07.13, at Halem police station. The police had registered Halem P.S Case No. 28/13 u/s 279/304A/427 of IPC . After investigation, the police had submitted charge sheet u/s 279/304A/427 of IPC against the accused.

3. The particulars of the offences u/s 279/304A/427 of IPC were explained to the accused, to which he pleaded not guilty and claimed to be tried.
4. The prosecution had examined 6 witnesses. After the closure of the prosecution's evidence, the accused was examined u/s 279/304A/427 of IPC, where he had denied commission of any offence. The defence side adduced no evidence. Heard arguments.

POINTS FOR DETERMINATION:

- a) Whether the accused, Sri Ranjit Rabha, had driven the bus, namely, "bhola-baba, on NH-52, on 21.07.13, in a rash or negligent manner, as to endanger human life or to be likely to cause hurt or injury to any other person?
- b) Whether the accused, had caused death to Lt. Khageswar Hazarika, by driving the bus on NH-52, not amounting to culpable homicide, in such a rash and negligent manner as to endanger human life or the personal safety of others?
- c) Whether the accused had committed mischief, to the extent of Rs.50/- or more, by causing damage to the bicycle of the deceased, by hitting it while driving the bus, on the date and time.

d) DISCUSSION AND DECISION BASED ON REASON:

5. PW1, Sri Samiran Bhuyan, in his examination in chief has stated that on the date of occurrence, there was a sound in front of his house, at Tokoubari. When he came out he saw that Sri Khageswar Hazarika, who was coming on his cycle after selling milk, was lying on the road. He came to know that a bus, namely, "bhola-baba", had hit Khageswar Hazarika. He also stated that

Khageswar Hazarika, was lying in a deceased condition. Thereafter police was called, who took the dead-body to the police station. The cycle was seized by police. He had signed on the seizure list as witness. ExT 1 is the seizure list and Ext 1(1) is his signature.

6. In his cross examination he stated that at the time of the incident, he was in the courtyard of his house on the front side. He stated that he saw after hearing the sound. He stated that the bus and the deceased were moving in the same direction. He stated that the mark of the tyre of the bus was present on the grass portion of the left side of the road. He stated that he cannot say, for whose fault the incident had occurred. There were number of vehicles plying on the road. The police had told him that the cycle was taken. He had signed on the seizure list in the police station.
7. PW2, Sri Sun Hazarika, the informant, in his examination in chief has stated that the deceased was his father. His father had met with the accident near Tokoubari center, on NH-52, when he was coming after selling milk. He stated that at the time of the incident, he was in his house, about 1km, away from the place of occurrence. He came to know that a bus, namely, "Bhola Baba", had caused accident of his father. He came to know about the incident, when he was in his house. He found his father in a deceased state on the place of occurrence. Post mortem was done. Ext 2 is his FIR and Ext 2(1) is his signature. He had signed on the seizure list. Ext 1(2) is his signature.
8. PW3, Sri Mohini Bora, in his examination in chief has stated that he recognizes the informant but not the accused. He stated that at the time of the incident, he was in the field. He came to know that a bus, namely, " bholababa" had hit Khageswar Hazarika. He had seen the people rushing towards the place of occurrence. He

had also visited the place of occurrence. The accident had occurred in front of Pub-Boroi LP School, on the NH-52.

9. In his cross examination, he stated that he did not see the incident. He cannot say, for whose fault the accident had occurred.
10. PW4, Sri Bap Hazarika, in his examination in chief, he recognizes the informant but not the accused. He stated that when his father, was coming after selling milk, a bus had hit his father from back side, at Ganugaon(Tokoubari), on NH-52. As a result, of the accident, his father had died instantaneously. He stated that he was in his house, at the time of the incident.
11. In his cross examination, he has stated that he had not seen for whose fault the accident had occurred. He denied the suggestion that the accident had occurred due to the fault of his father.
12. To a question put by Court, PW4 has stated that he did not see the incident.
13. PW5, Sri Puniram Hazarika, in his examination in chief has stated that he recognizes the informant but not the informant. He stated that his father, Khageswar Hazarika, was being hit from the backside, when he was coming from selling milk. He stated that he was in his house at the time of the incident. He stated that a bus, having name as "bhole baba", had hit his father.
14. In his cross examination, he has stated that his father was being hit on the grass, on the side of the road. He also stated that he had not seen, for whose fault the accident had occurred. He stated that he does not know, how much quantity of the milk was being carried by his father. He denied the suggestion that the accident was caused as his father was carrying milk in a high quantity, as he had lost the balance. He stated that he did not see the incident.

15. PW6, Sri Pradip Saikia, in his evidence has stated that he had not seen the incident. His house is situated 1.5KM away from the place of occurrence. He had come to the police station.

APPRECIATION OF EVIDENCE:

16. The evidence of PW1, PW2, PW3, PW5 and PW6, lend no assistance to the prosecution to prove the charges brought out against the accused. This is because, none of them had seen the incident, and they are not in a position to state as to how the incident had occurred. They were not in apposition to say, for whose fault the accident had occurred. Hence, from their evidence, nothing can be ascertained, as to whether the accused was driving the car, in a rash or negligent manner, so as to constitute offence u/s 279/ 338 of IPC.
17. PW1, has stated that he had seen the tyre-marks on the left side of the grass. But the fact that he came out after hearing the noise of the accident, shows that he cannot say how the tyre-marks were imprinted on the grass. In other words, merely because tyre marks were seen on the grass portion on the left side of the road, is not a sufficient evidence to prove that the accused had driven the bus in a negligent or rash manner. Moreover, the bus was also plying on the left side of the road, in which the deceased was riding on. Further, PW1 has stated that he cannot say, for whose fault the accident had occurred.
18. In the light of the evidence on record, both oral and documentary, I am of the view that, apparently, the bus was being driven by the accused, but prosecution has failed to prove that the accused was driving the bus in a rash or negligent manner. Therefore, the offences punishable u/s 279/ 304A of IPC are not proved.

19. Moreover, the prosecution could not prove that the accused had the intention to commit mischief or the knowledge that mischief would be committed by him. Hence, in my view, the damage caused to the bicycle was merely due to accident, without the element of mens rea.
20. Hence, the offence punishable u/s 427 of IPC is also not proved, beyond reasonable doubt.
21. Hence, in the light of the above, I am of the considered view, that prosecution has failed to prove the guilt of the accused u/s 279/304A/427 of IPC, beyond reasonable doubt, and is acquitted from the charge u/s 279/304A/427 of IPC.
22. The judgment is pronounced in the open court on this 08th of May, 2015. The judgment is prepared under my hand and seal of this Court .
23. The bail bonds shall remain operative till 6 months from the date of this order and shall stand cancelled after the expiry of 6 months.
24. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M Gohpur.

ANNEXURE

LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION

EXT.1: Seizure list

EXT 2: FIR

S.D.J.M, Gohpur.