

BEFORE THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS , SONITPUR

Present :- Smti Sabita Bharadwaj , AJS

Judicial Magistrate 1st Class Sonitpur, at Tezpur

G.R. 911/2015

Under section 279/304(A) IPC

State of Assam

- *VERSUS* -

Krishna Bania

S/O- Late Ganesh Bania

Resident of Village Lakhopara

Police Station- Missamari

District- Sonitpur

-Accused person

Appeared

Learned App for State.....Mrs. Karabi Das

Learned Counsel for Defence..... Sanjay Das

Date of Evidences.....19.12-2015, 04.02.2016, 26.07.2016,
26.09.2016, 03.04.2019 13.05.2019

Date of Argument 20.05.2019

Date of Judgment..... 20.05.2019

JUDGMENT

1. Accused person viz. Krishna Bania stood for trial for the allegations of committing offences u/s 279/304(A) IPC.
2. The prosecution case in brief is that on 11-04-2015 the informant viz. Musstt Fulbanu Begum, wife of Md. Afajuddin, resident of Bangalgaon, Missamari lodged an "Ejahaar" before the Officer-in-charge Missamari Police Station stating inter alia as on 08-04-2015 at around 4.00 PM a 'Magic' vehicle bearing registration no. AS-12E-2411 ridden by the accused person had hit the informant's son and injured him severely.
3. On the basis of the 'Ejahaar' a case has been registered at Missamari P.S. Case no. 26/15 u/s 279/338 IPC and investigation was initiated and after completion of investigation charge sheet was submitted against accused person viz. Krishna Bania u/s 279/304(A) IPC.
4. On appearance of the above named accused person before the Court and also after furnishing the copies to him substance of offences u/s 279/304(A) IPC on being stated to the accused person by me and he pleaded not guilty and claimed trial.
5. The prosecution has examined 8 (eight) no. of witnesses and exhibited 7 (seven) nos. of documents. The examination of the accused person u/s 313 Cr.P.C. is recorded which is of complete denial. The accused person declined to adduce any evidence in support of his defence.
6. Be it mentioned here that while preparing the judgment it appears to me that the prosecution side has examined two numbers of witnesses namely Alam Mansur and Abdul Naushed as PW 4 due to inadvertent mistake. Therefore for the sake of better convenience the witness namely Alam Mansur is re-defined as PW 4(i).

POINT FOR DETERMINATION:-

(I) Whether on 08-04-2015 at about 4.00 PM at Bangalgaon had accused Krishna Bania driving vehicle bearing Registration No. AS-12E-2411 in a manner so rash and negligent as to endanger human life, or to be likely to caused hurt on injury to any other person?

(II) Whether on 08-04-2015 at about 4.00 PM at Bangalgaon had accused Krishna Bania caused death of the informant's son by ridding a vehicle bearing Registration No. AS-12E-2411 in a rash and negligent manner not amounting to culpable homicide?

7. I have carefully perused the entire materials available on case record and heard the arguments advanced by the Learned Counsels of both the sides and proceeded to decide as follows:

DISCUSSION , DECISIONS & REASONS THEREOF:-

8. Now to decide whether the prosecution side has successfully able to adduce sufficient evidence to prove the guilt of accused beyond reasonable doubt or not let the testimonies as deposed by the witnesses of prosecution are scrutinized and evaluated elaborately. If the testimony of PW 1/informant Phulmoni Begum taken into consideration then it is clearly apparent that she has narrated the entire prosecution story that on the day of alleged occurrence while her son viz. Nasir Hussain was walking towards a shop, then the 'Magic' vehicle, owned by the accused, knocked him down. But at the same time this witness of prosecution i.e. PW 1 Phulmoni Begum also clearly discloses that she was unaware of the fact that who had driven the said offending vehicle as she did not witness the alleged accident. Further, the testimonies of PW 3 Hussain Ali, PW 4 Abdul Naushed, PW 5 Lakhani Rai, PW 7 Biswajit Sarkar are not supportive to the case of prosecution as none of them had witness the occurrence of the alleged accident. Moreover, in this

instant case the prosecution has tried to produce PW 2 Alam Ali and PW 4(i) Alam Mansur as the eye witnesses of the alleged occurrence, but on careful scrutiny of the testimonies as deposed by PW 2 Alam Ali it is clearly apparent that he was unfamiliar to the driver of the offending vehicle, which was alleged to be the cause of occurrence of the alleged accident. Moreover PW 4(i) Alam Mansur also reveal the fact that on the day of alleged occurrence the accused was not driven the offending vehicle. Therefore, on going through the testimonies as deposed by above witnesses nowhere it appears that the accused was driven the offending vehicle on the day of alleged occurrence in a rush and negligence manner causing death to the victim.

- 9.** Hence, in my considered view the prosecution side has miserably failed to prove the guilt of the accused person beyond all reasonable doubt and the accused person is entitled to get the benefit of doubt.

Hence, all the points for determinations are decided in negative.

- 10.** In result accused person viz. Krishan Bania is acquitted from the charges u/s 279/304(A) IPC and set at liberty.

Bail Bonds (if any) shall be valid up to expiry of 6 (six) months from the date of this order and Judgement.

Given under the hand & seal of this Court on this 20th day of May 2019.

Sabita Bharadwaj
Judicial Magistrate 1st Class
Sonitpur, Tezpur

Appendix

Names of the witnesses of Prosecution:-

1. P.W.1- Phulmoni Begum
2. P.W.2- Alam Ali
3. P.W.3- Hussain Ali
4. P.W.4- Abdul Naushed
5. P.W.4(i)- Alam Mansur
6. P.W.5 - Lakhan Rai
7. P.W.6- Bhabakanta Nath
8. P.W.7- Biswajit Sarkar

Documents exhibited by Prosecution :-

1. Ext. 1 and Ext. 2- Seizure list.
2. Ext. 1(1) and Ext. 2(1)- Signature of witnesses.
3. Ext. 1(2) and Ext. 2(2)- Signature of ASI.
4. Ext. 5- Zimma Nama.
5. Ext. 5(1)- Signature of zimmadar.
6. Ext. 6- F.I.R.
7. Ext. 6(1)- Signature of S.I.
8. Ext. 7- Chargesheet.

9. Ext. 7(1)- Signature of ASI.

Names of the witnesses of Defence:- Nil

Documents exhibited by Defence :- Nil

Sabita Bharadwaj
Judicial Magistrate 1st Class
Sonitpur, Tezpur