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immediately taken to Dhekiajuli CHC for his treatment where the doctor acknowledged to be brought dead.

"INVESTIGATION"

2. On receipt of the Ejahar, Dhekiajuli P.S Case No. 455 of 2013, u/s 279/304(A) of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s 279/304(A) of I.P.C against the accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s 207 of CrPC was furnished to the above-named accused person. After hearing both side, particulars of offences u/s 279/304(A) of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as 04 (Four) numbers of witnesses including the informant. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s 313 CrPC and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.

6. **The points for determination in this case are:-**

- (i.) **Whether on 21.08.2013, at about 08:00 PM, at a place called Juradia Centre under Dhekiajuli PS, accused drove the vehicle bearing Regd. No. AS-01/AC-1054 (TATA DI), in a rash and negligent manner and such driving of accused creates endanger to the life of Gangaram Gour, and thereby committed an offence punishable u/s 279 of IPC?**

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- (ii.) **Whether on the same date, time and place, accused drove the vehicle bearing Regd. No. AS-01/AC-1054 (TATA DI) in a rash and negligent manner and hit the informant's husband Gangaram Gour, who was walking over national highway-31 and due to such negligent driving of accused informant's husband died and thereafter committed an offence punishable u/s 304(A) of IPC?**

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the Ejahar examined four numbers of witnesses including informant. I have carefully travelled through the testimonies of each witnesses in the backdrop of the entire case. PW-1, Smt. Jhaji Gour being the informant deposed that on the date of alleged incident, at about 8 PM someone informed her over phone from Juradia that her husband met with an accident. Thereafter, she immediately went to the place of occurrence and found her husband had already taken to hospital by the local public. She deposed that she did not go to the place of occurrence immediately after the accident and her husband died on the way near Sirajuli. She also deposed that thereafter the local people took the deceased to police station and the police took the dead body to civil hospital on the next day. She lodged the Ejahar after few days of the alleged occurrence wherein she put her thumb impression. Later she came to know that one TATA Sumu vehicle had knocked her husband and caused him dead. But she did not know who drove the said vehicle. PW-1 in his cross examination deposed that at the time of incident she was at home, so she cannot say how the accident took place. She also deposed that she did not see the driver.
8. PW-2, Sri Bholu Panikar deposed that he knows the informant but he does not know the accused of this case. He also deposed that on 21.08.2013 at about 7:30 PM while he was going to his home from Dhekiajuli on his motor cycle, suddenly a TATA mobile vehicle was going just before him and when reached Joradia Centre on NH-15, the said vehicle hit one person who was walking through the road. He also deposed that soon after the incident the Tata mobile

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vehicle fled away from the place of occurrence and the injured died after 10-15 minutes of the incident at the place of occurrence. Police caught the Tata Mobile vehicle and he saw the vehicle at Dhekiajuli PS. PW-2 in his cross examination deposed that at the time of occurrence it was dark. He also deposed that he was at a distance of 50 meters from the place of occurrence at the time of incident. The road condition was not good at that time. He deposed that he does not know who was the driver of the said vehicle.

9. PW-3, Sri Birsha Munda deposed that the incident took place in the year 2013 at Juradia Centre but he himself did not witness the accident. He heard that one Truck had knocked one person.
10. PW-4, Ranjib Baruah, the MVI deposed that on 21.08.2013 he was posted as MVI at Tezpur and on that day he received a requisition in connection with Dhekiajuli PS Case No- 455/13, u/s 279-304(A) IPC for examination of a DI-207 bearing Regd. No. AS-01/AC-1054. Accordingly, on 05.09.2013 he examined the vehicle at Dhekiajuli PS and found the following damages- right hand side bumper dented. Remarks:- the vehicle was road tested and mechanically found alright. Accordingly, he submitted his report as Ext-1 and Ext-1(1) is his signature.

APPRECIATION OF EVIDENCES

11. In the foregoing discussions we have already discussed that the prosecution side offered both ocular as well as documentary forms of evidences to validate the facts that on the date of incident accused person of this case in a rash and negligent manner driving vehicle bearing Regd. No. AS-01/AC-1054 (TATA DI), hit the husband of informant, who was walking on foot and due to that informant's husband sustained grievous injuries and following which he died at civil hospital. All aforesaid contentions are appearing to be the accusations levelled against the accused person. The prosecution side has got the burden of prove to establish all the aforesaid accusations beyond any the reasonable doubt.
12. In the light of criminal jurisprudence predominant in the country the burden lies upon the prosecution to establish the guilt of the accused person by way of

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proving the indictments beyond any shadow of doubt. In this case the charges u/s-279/304(A) of IPC was explained against the accused person and for the sake of proper appraisal of the evidence on record, let us discussed all the points for determinations together.

13. To prove the aforesaid said contentions the prosecution side examined as many as 04 (Four) numbers of witnesses including the informant of this case. On careful perusal of the evidences on record, it disclosed before this court that prosecution side failed to examine any single eye witness to the alleged incident. PW-1 being the informant of this case testified that on the date of occurrence someone from Juradia informed her over phone that her husband met with an accident and thereafter, she went there and found her husband to be brought dead. In her cross examination, she testified that she does not know how the accident occurred and also does not know who drove the vehicle at the time of occurrence. The evidence PW-1 appears to be hearsay in nature.
- 14.** PW-2 deposed that occurrence took place on 21.08.2013 at about 7:30 PM, while he was going to his home from Dhekiajuli on his motor cycle, suddenly a TATA mobile vehicle was going just before him and at Joradia Centre over NH-15 hit one person who was going on foot, as a result of which the said person died after 10-15 minutes of the incident at the place of occurrence. PW-2 in his evidence in chief claimed that he witnessed the alleged incident. But in his cross examination, he clearly testified that he was at a distance of 50 meters from the place of occurrence and the road condition was not good at that time. He also deposed that he does not know who drove the vehicle. PW-2 did not utter any single words implicating the accused. He also not deposed anything about rash or negligent driving of accused. PW-3 deposed before this court that he heard about the incident.
- 15.** PW-4 is an official witness who examined the alleged vehicle bearing Regd. No. AS-01/AC-1054 (DI-207) and on examination he found the motor cycle to be mechanically fit. He submitted his report. Ext-1 is his report and Ext-1(1) is his signature.

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- 16.** To sum up the evidences on record, it released before this court that the prosecution side unsuccessful to offer any credible evidence against the accused upon which it may be acknowledged that the suspected occurrence happened due to reckless and inattentive driving of the accused Habij Uddin. Neither the informant nor any other independent onlookers have seen the alleged incident. The evidences of all the bystanders brands its gemstone clear that on the date of unproven incidence they found the wounded lying on the road and thereafter the injured was shifted to hospital and at the time of shifting the injured on the way the injured died.
- 17.** To sum up the indications on record, it is seen that the prosecution side unsuccessful to present any plausible eyewitness to authenticate the entire case before this court. None independent witnesses have deposed anything impeaching against the accused person.
- 18.** It is apparent from the Ejahar that it is a case of section-279/304(A) of I.P.C and now it required to look upon as to what facts needs to establish by the prosecution side to prove the guilty of the accused person for commission of offence punishable under section-279/304(A) of I.P.C.
- 19.** There are two parts in Section-304(A) of I.P.C. The first relates to causing of death of any person by any rash act of accused. The second part comes in operation when the death is caused due to negligent acts, but in both cases, it should not amount to culpable homicide. The prosecution has either to prove the first part or the second part but there may be cases where both the parts may come in operation simultaneously if the evidence suggest that the act of the accused was not only rash but also negligent which resulted in the death of someone. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is and that it may cause an injury but without intention, to cause injury or knowledge that it will probably be caused. The criminality lies in taking the risk of doing such an act with recklessness or being indifferent at to the consequences. Reckless driving or driving in a manner dangerous to public is rashness.

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- 20.** Hence in order to decide the guilty of the accused person for committing an offence punishable under section-304(A)/279 of I.P.C the court needs to appreciate that offences accomplished either by committing a rash act or negligent act. In this case to decide the guilty of accused, rash and negligent acts on the part of the accused required to establish from the evidences of prosecution side and it is the burden to prosecution to prove the rash and negligent driving of alleged vehicle by the accused person that results the death of deceased Gangaram Gour.
- 21.** In view of evidences on record, we have already observed that neither the informant nor any other witnesses have witnessed the alleged incident. From the evidences on record, it disclosed that deceased Gangaram Gour, who is the husband of the informant died due to road traffic accident. Whether his death was caused due to rash and negligent driving of the accused person? To answer the pertinent question prosecution side failed to adduce any cogent and direct evidence before this court. The prosecution side failed to prove the indictments against the accused person by way of not presenting any convincing evidence and that enforced this court to resolve that the prosecution side failed to prove the guilty of the accused person beyond any reasonable doubt.

FINDINGS

- 22.** On meticulous appreciation of evidences presented by all the witnesses this court finds their testimonies to be full with lots of shortcomings and accordingly their evidences are appearing to be deficient in holding the accused guilty of commission of alleged offences.
- 23.** Under the above surroundings, it can be securely determined here that all the substantial onlookers of the prosecution side not seem to be corroborative, coherent, supportive about the entire case of prosecution side and that renders their testimonies doubtful and untrustworthy. Hence the accused person is not found guilty of commission of offences under section-279/304(A) of I.P.C. In the result the accused is acquitted from the charges under section-279/304(A) of I.P.C.

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- 24.** The accused person sets at liberty forthwith. The validity of the bail bond of the accused person extended for six months till the accused filed a fresh surety under section-437A of Cr.P.C whichever is earlier.
- 25.** Judgment is pronounced in the open court, which is given under my hand and seal of this court on 07th day of July, 2020.

(Sri N. J. Hoque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Smt. Jhaji Gour, the informant

PW 2: Sri Sri Bhola Panikar

PW 3: Sri Birsha Munda

PW 4: Sri Ranjib Barua, the MVI

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 : MVI Report

Ext 1(1): Signature of PW 4

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur