

G.R No-222 of 2013
(State of Assam Vs Sri Mahesh Gurung)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR: TEZPUR

G. R. Case No. 222 of 2013

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

Present: - **Sri N. J. Hague, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

Sri Mahesh Gurung

S/O:- Sri Narbahadur Gurung

R/O:- No-1, Namonigaon

P/S:- Rangapara

Dist:- Sonitpur, AssamAccused

Advocate appeared:

Mr. Nibha Devi, Addl. P.P..... For the State

Mrs. R. Khatoon, Ld. Advocate.....For the accused person

Evidence recorded on	:- 20.12.2018, 25.02.2019, 24.04.2019, 01.07.2019 & 20.12.2019
Date of Statement of defence	:- 18.11.2020
Argument heard on	:- 18.11.2020
Judgment delivered on	:- 18.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that on 25.01.2013, one Sri Rajen Narzary lodged an Ejarah before the O/C of Rangapara P.S through I/C of Chariduar O.P alleging inter alia that on 24.01.2013 at about 8:20 AM, while his son named Gabbar Singh Narzary (since deceased) was coming from Bhalukpong weekly market, suddenly one Bolero Pickup vehicle bearing Regd. No. AS-12/E-5210, which was coming in a rash and negligent manner, knocked his son and due to that his son sustained grievous injury and thereafter, the said vehicle fled away towards Balipara side. He also alleged that thereafter, his son was immediately taken to Bhalukpong Nursing Home and as the injured

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was in a critical condition, he was referred to Kanaklata Civil Hospital, Tezpur wherein his son was succumbed to his injuries. Hence, the prosecution case.

"INVESTIGATION"

2. On receipt of the Ejahar, Rangapara P.S Case No. 20 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 above-named 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 Cr.P.C 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 05 (Five) numbers of witnesses including the medical officer. The informant of this case could not be examined as he was reported to be died. 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 24.01.2013 at about 8:20 AM, accused drove the Bolero Pickup vehicle bearing Regd. No. AS-12/E-5210, in a rash and negligent manner and such driving of accused creates endanger to the life of Gabbar Singh**

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Narzary, who is the son of the informant and thereby committed an offence punishable u/s 279 of IPC?

- (ii.) **Whether on the same date, time and place, accused drove the Bolero Pickup vehicle bearing Regd. No. AS-12/E-5210 in a rash and negligent manner knocked the son of the informant named Gabbar Singh Narzary and due to such negligent driving of accused the informant's son 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 five numbers of witnesses. For the sake of proper appreciation of evidences let us reproduce the evidences of witnesses.
8. PW-1, Smt. Manju Basumatary deposed that she knows the informant as well as the accused person of this case. She deposed that the incident took place around 5 years back at about 8 AM and at the relevant time she went for marketing at Bhalukpong. Thereafter, one Bolero Pickup vehicle which was coming from Arunachal side, in a rash and negligent manner knocked one boy near Bhalukpong market and fled away from there. She further deposed that the said injured boy immediately taken to hospital but later she heard that the said boy succumbed to his injuries.
9. PW-1 in her cross-examination testifies that at the relevant time she was driving her own Tata Mobile vehicle from the opposite direction. She further deposed that she saw the accident as the road was straight. She also deposed that the Bolero vehicle was coming in 70 KMPH speed. She admitted the fact that she could not identified the driver of the said Bolero vehicle. She also could not remember the registration number of the said Bolero vehicle.
10. PW-2, Sri Raja Basumatary deposed that the incident took place in the year 2012 near Bhalukpong weekly market. He deposed that on the day of incident at about 8:30 AM, while he was proceeding from Balipara towards 12th Mile, he came to know that one Bolero Pickup vehicle knocked one boy. He deposed

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that many people gathered at the place of occurrence and later, said boy was immediately taken to Tezpur Civil hospital wherein the said boy succumbed to his injuries. After 3-4 days said Bolero vehicle surrendered before the police. Police seized the vehicle along with vehicular documents. He identified the seizure list as Ext-1 wherein Ext-1(1) is his signature. PW-2 in his cross examination testified that the day of the incident was market day. He deposed that he went to the place of occurrence after 10-15 minutes of the alleged accident. He also deposed that the investigating officer informed him that the offending Bolero vehicle surrendered before the police and police called him at the police station.

11. PW-3, Sri Baneswar Goyari deposed that he knows the informant and he died. He heard from the people that an accident occurred by accused named Mahesh Gurung in the year 2013 in between 8 AM to 8:30 AM near Bhalukpung weekly market. He further deposed that one Bolero Pickup vehicle which was coming from Arunachal towards Balipara side had knocked one boy named Singh Narzary and thereafter, fled away from the place of occurrence. Thereafter, he along with the other people informed the father of the victim and took the victim to hospital. Later said victim died at Tezpur Civil Hospital. He put his signature on the seizure list. Ext-1 is the seizure list and Ext-1(2) is his signature.
12. PW-3 in his cross examination deposed that the day of incident was a market day. He deposed that the offending vehicle was coming from Arunachal side. He was standing in front of his house. He deposed that the place of occurrence is about 130 meter away from his house. He further deposed that as he had seen the offending vehicle fled away from the place of occurrence but he could not identified the registration number of the said vehicle. He also deposed that he don't know when police came to the place of occurrence. He further deposed that he cannot say what was written in Ext-1.
13. PW-4, MVI Ranjit Kumar Borah deposed that on 25.01.2013 he was posted as MVI at DTO Office, Sonitpur and on that day he examined one vehicle bearing Regd. No. AS-12/E-5210 (Bolero Pickup) in connection with Bhalukpung OP

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GDE No 302 dated 24.01.2013. On examination, he found the following damages:- i) Left hand side head light was broken and the vehicle was mechanically in good condition at the time of road test examination. He identified his report as Ext-2 and Ext2(1) is his signature. PW-4 in his cross examination testified that on 25.01.2013 he examined the vehicle and seized documents of the said vehicle was handed to him by the I.O on that day.

14. PW-5, Dr. Palashmoni Keot, who is the medical officer of this case deposed that on 24.01.2013 he was posted at Kanaklata Civil Hospital, Tezpur as M& HO-1 and on that day, he conducted the post mortem examination on the dead body of Gabbar Singh Narzary and found the followings:- stout built by of age around 10 ½ years, dead body is examined. Body is not decomposed and the rigor mortis found to be present. Blood stained seen at the nostrils and ears. Both the temporal areas are swollen. Sweenj also seen on the posterior aspect in the occipital region. He further deposed that on examination of cranium and spinal canal:- Bilateral temporal scalp hematoma of size 3 x 4 cm. Occipital scalp hematoma 5 x 4 cm with occipital bone fracture. Membrane laceration in the post and anterior cranial fossa. Haemocranium found to be present. Contusion seen in the cerebellum and both cerebral hemispheres. Further, on examination of the thorax and abdomen, he found the same healthy. He deposed that the injuries are ante-mortem in nature. He opined that the cause of death is due to shock and haemorrhage as a result of head injury. Ext-3 is the post mortem report and Ext-3(1) is his signature.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

15. For the convenience of discussion and decision of all the points of determination, I would like to discuss all points together.
16. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are

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found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.

17. The prosecution case as alleged by the prosecution appears to be on 24.01.2013 at about 8:20 AM, while son of informant named Gabbar Singh Narzary (since deceased) was coming from Bhalukpong weekly market, suddenly one Bolero Pickup vehicle bearing Regd. No. AS-12/E-5210, which was coming in a rash and negligent manner, knocked his son and due to that his son sustained grievous injury and thereafter, the said vehicle fled away towards Balipara side. He also alleged that thereafter, his son was immediately taken to Bhalukpong Nursing Home and as the injured was in a critical condition, he was referred to Kanaklata Civil Hospital, Tezpur wherein his son was succumbed to his injuries. 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.
18. In this case prior entering into the discussion, decision and appreciation of the evidences, let have a look over the essential ingredients of offences u/s 279/304(A) of IPC to understand the acts prohibited by those provisions and punishable there under.
19. 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.
20. In order to convict a person under section 279 of IPC the following ingredients are to be proved- (a) that the accused was driving the vehicle; (b) that the accused was driving the vehicle on a public way; (c) that the accused was driving the vehicle rashly or negligently and (d) that it endangered human life or to likely to cause hurt or injury to any other person.
21. 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

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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.

22. Hence in order to decide the guilty of the accused person for committing an offence punishable under section-279/304(A) 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 Gabbar Singh Narzary.
23. From the aforesaid discussion and on going through the settled provisions of law, it divulges that to substantiate the essential ingredients of offences punishable u/s 279/304(A) of IPC, the prosecution needs to establish the rash and negligent act while driving alleged vehicle and causing injuries to his body for which the deceased Gabbar Singh Narzary yield to death. The prime and principle fact that needs to be proved is rash and negligent driving on the part of the accused that follows the alleged incident.
24. On conscience perusal of the evidences on record, it disclosed that PW-1, Smt. Manju Basumatary deposed that on the date of the alleged incident, while she went for marketing at Bhalukpong, one Bolero Pickup vehicle which was coming from Arunachal side, in a rash and negligent manner knocked one boy near Bhalukpong market and fled away from there. Thereafter, the said injured boy immediately taken to hospital but later she heard that the said boy succumbed

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to his injuries. Even though, PW-1 in her cross-examination claimed that she saw the accident as the Bolero vehicle which was coming in 70/90 KMPH speed but she could not identify the driver of said Bolero vehicle. She also could not remember the registration number of the said Bolero vehicle. PW-1 also did not utter any single words implicating the accused as she could not identified the driver of the said offending Bolero Pickup vehicle. The evidence of PW-1 does not expose anything upon which the rash and negligent driving of the accused may be proved as she could not remember the registration number of the offending vehicle.

25. PW-2 deposed that on the day of incident at about 8:30 AM, while he was proceeding from Balipara towards 12th Mile, he came to know that one Bolero Pickup vehicle knocked one boy and thereafter, the said boy was immediately taken to Tezpur Civil hospital wherein the said boy succumbed to his injuries. He deposed that he saw many people gathered at the place of occurrence. PW-2 in his cross examination testified that he went to the place of occurrence after 10-15 minutes of the alleged accident. The evidence PW-2 appears to be hearsay in nature as he only heard about the incident. PW-3 although claimed that the offending Bolero Pickupo vehicle, which was coming from Arunachal side had knocked the victim near Bhalukpong weekly market but the same was heard from the others. From the evidence of PW-3, nothing appears to be implicating against the accused person of this case as he is a hearsay witness. PW-4 is an official witness who examined the alleged vehicle bearing Regd. No. AS-12/E-5210 (Bolero Pickup) and on examination he found the said vehicle to be mechanically in good condition. He submitted his report as Ext-2 is his report and Ext-2(1) is his signature. PW-5 is also an official witness, who conducted the post mortem examination on the dead body of the victim opined that the cause of death is due to shock and haemorrhage as a result of head injury. He submitted his report as Ext-3 and Ext-3(1) is his signature.
26. On meticulous perusal of the entire case record, it disclosed that this court on several occasions issued summons upon the informant Rajen Narzary and consequently the E/O submitted report stating that the informant Rajen Narzary

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had expired and the address of the family members of the informant could not be traced out. Accordingly, the informant could not be examined in the event of his death.

27. From the evidences on record, it disclosed that deceased Gabbar Singh Narzary, who is the son 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.
28. The PW-1 in her evidence claimed that she witnessed the alleged incident and she supported the fact that one Bolero vehicle which was coming from Arunachal in rash and negligent manner hit the deceased Gabbar Singh Nurjery. PW-1 only says about one Bolero vehicle and in this case I.O has seized one Bolero vehicle. PW-2 in his evidence says that after $\frac{3}{4}$ days of incident the driver along with vehicle surrendered before the Police and Police seized the vehicle. As per the version of PW-2 accused is the driver of alleged Bolero vehicle. Hence, the identification of accused to be a driver of alleged Bolero vehicle discharged by prosecution side. Now question is whether the fact of driving the vehicle in 70/90 speed is a sufficient proof of rash and negligent driving? Rashness and negligence are the two very vital issues of the instant case, thus, it is imperative to understand on to what it is and in relation to speed of a vehicle, how these factors are to be assessed and ascertained. "Black's Law Dictionary describes 'negligence' as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or wilfully disregarding or others' rights."

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29. "Meaning of the word 'rash' as per Oxford Dictionary is 'acting or doing without considering the possible results'. Likewise, Oxford Thesaurus of English shows that contextually the word 'rash' may mean hasty, overhasty, foolhardy, incautious, careless, thoughtless, imprudent, over-adventurous, daredevil, ill-considered, unconsidered, unthinking, injudicious, wild, etc. Rashness and negligence are words having different connotations in law."
30. "Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike, rashness, where the immutability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him", as was observed in the judgment titled as **Sushil Ansal v. State, 2014 (3) SCALE 174.**
31. In the judgment titled as **State v. Parmodh Singh, 2009 CrLJ (NOC) 277,** it is observed: "Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact speed is no criteria to establish the fact of rash and negligent driving of a vehicle".
32. **In Shakila Khader v. Nauser Gama, AIR 1975 SC 1324,** it is observed:-
"When a driver leads to an accident, the main question is whether it was rash and negligent. But in deciding this speed is not the only criterion. The width of the road, density of traffic and attempt to overtake are also criteria".
33. It is, thus, evident that a set of various factors are to be considered to arrive at any conclusion regarding rashness and negligence and speed alone cannot be the deciding criteria. A person may be oblivious of the consequences even if driving at a slow speed and may cause accident, thus, the element of care, cautions, alertness and being alike, vigilant considerate and conscious to the circumstances and surroundings are the factors which would help determine the manner of driving.

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34. Now coming to the instant case in hand this court finds that as PW-1 the alleged vehicle was driven in 70/80 speed and the road where the alleged accident took place is straight. Admittedly, the road is a high way and that took straight and PW-1 did not depose any facts disclosing the actual state of affair under which the alleged accident occurred. The prosecution side failed to prove the element of care, cautions, alertness and being alike, vigilant considerate and conscious to the circumstances and surroundings, upon which the accused may be held guilty of rash and negligent driving. Furthermore, what due care that was failed to take care of by the accused at the time of driving. The evidence of PW-1 also deficient to establish such fact before this court.
35. PW-1 even failed to say exactly in which side of the road the alleged vehicle hit the deceased. The evidence presented by the PW-1 not appears to be fully supportive and implicating upon which any presumption regarding rash and negligent driving on the part of accused may be ascertained. The evidences offered by the other witnesses are not appears to be direct in nature and they only heard about the incident. The source of their knowledge about the alleged incident also not clarified during the time of deposing before this court in their testimonies.
36. 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 person upon which it may be acknowledged that the suspected occurrence happened due to reckless and inattentive driving of the accused named Mahesh Gurung.
37. The evidences offered by the prosecution side specifically failed to implicate the accused person with the alleged incident. The evidence of all the bystanders brands its gemstone clear that on the date of unproven incidence they found the wounded in a dead condition. To sum up the indications on record, it is seen that the prosecution side unsuccessful to present any conceivable eye witness to authenticate the entire case before this court under which involvement of the accused person with the alleged incident may be proved.

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FINDINGS

38. 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.
39. 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 and 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.
40. 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.
41. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 18th day of November, 2020.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1: Smt. Manju Basumatary

PW-2: Sri Raja basumatary

PW-3: Sri Baneswar Goyari

PW-4: MVI Ranjit Kr. Borah

PW-5: Dr. Palashmoni Keot, the M.O.

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 : Seizure List

Ext-1(1): Signature of PW-2

Ext-1(2): Signature of PW-3

Ext-2 : MVI Report

Ext-2(1): Signature of PW-4

Ext-3 : Post Mortem Report

Ext-3(1): Signature of PW-5

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**