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G.R No-3010 of 2015
(State of Assam Vs Md. Shaher Ali)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 3010 of 2015

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

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

State of Assam
-Vs-
Sri Shaher Ali
S/O:- Late Maizkhamir Ali
R/O:- Bagchung
P/S:- Tezpur
Dist:-Sonitpur, AssamAccused

Advocate appeared:

Mr. Nibha Devi, Addl. P.P..... For the State
Mr. Raktim Baruah, Ld. Advocate.....For the accused person

Evidence recorded on	:- 17.06.2017, 11.01.2018, 19.01.2019, 11.09.2018 & 26.11.2020
Date of Statement of defence	:- 26.11.2020
Argument heard on	:- 26.11.2020
Judgment delivered on	:- 26.11.2020

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 06.11.2015, one Sri Mintu Baruah lodged an Ejahar before the O/C of Tezpur PS through I/C of Salonibari Police Outpost alleging inter alia that on 04.11.2015 at about 6:30 PM, while his father Tilak Baruah (since deceased) was proceeding towards Borjhar through National Highway-15, suddenly one motor cycle bearing Regd. No- AS-12/N-2239 (Discover) which was coming from Mission Chariali side, in a rash and negligent manner, knocked his father from his backside in front of Dekargaon High School and due to that his father sustained head injury. Thereafter, his father was immediately taken to Mission Hospital, Tezpur for his treatment and from there he

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was referred to Guwahati for his better treatment where the doctor acknowledged to be brought dead.

"INVESTIGATION"

2. On receipt of the Ejahar, Thelamara P.S Case No. 1502 of 2015, 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 informant and investigating officer. 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 Cr.P.C 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 04.11.2015 at about 6:30 PM, at a place called Dekargaon High School under Tezpur PS, accused drove the Discover Motor Cycle bearing Regd. No-AS-12/N-2239, in a rash and negligent manner and such driving of accused creates endanger to the life of Tilak Baruah and thereby committed an offence punishable u/s 279 of IPC?**
- (ii.) **Whether on the same date, time and place, accused flock the Discover Motor Cycle bearing Regd. No-AS-**

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12/N-2239 in a rash and negligent manner knocked the father of the informant named Tilak Baruah and due to such negligent driving of accused the informant's father 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 including informant. For the sake of proper appreciation of evidences let us reproduce the evidences of witnesses. PW-1, Sri Mintu Baruah being the informant deposed that he does not know the accused of this case. He also deposed that the incident took place on 04.11.2015. He further deposed that on the day of incident, he came to know that his father met with an accident over National Highway near Dekargaon High School and thereafter, he immediately went to the place of occurrence and found his father in an injured condition. He also found one motor cycle lying on the road. He deposed that he took his father to Mission Hospital, Tezpur for his treatment and from there he was referred to Guwahati for his better treatment but on the way his father succumbed to his injuries. He admitted the fact that he does not know who drove the motor cycle. Later, he lodged an ejahar before Salonibari Police Outpost. He identified his ejahar as Ext-1 and Ext-1(1) is his signature. PW-1 in his cross examination testified that he was not present at the time of alleged incident. He deposed that he cannot say for whose fault the accident took place.
8. PW-2, Sri Sujit Neog deposed that he knows the informant and the accused person of this case. He deposed that the occurrence took place in the year 2015, November at about 6:30 PM and at the relevant time, he was coming from Borjhargaon and when he reached in front of Dekargaon High School on the highway the accused riding a bike, who was going towards Borjhargaon from mission Chariali side hit one person who was going on foot. He deposed that the bike was on speed. He further deposed that the injured (Indra Da) sustained injury on his head and he was taken to Mission Hospital and later, he came to know that the injured succumbed to his injuries. He deposed that police seized one bike vide Ext-2 wherein he put his signature as Ext-2(1). Police took his statement at the police station.

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9. PW-2 in his cross examination testified that at the time of occurrence it was dark. He admitted that fact that he had not seen the accident at the time of occurrence but after that he went closer to the injured. He also admitted the fact that as he had not seen the alleged incident, so he cannot say for whose fault the incident took place.
10. PW-3, Md. Noor Alam, who is a seizure witness of this case, deposed that the accused of this case is his father. He deposed that the seized Discover motor cycle is his uncle's motor cycle. He further deposed that police seized the vehicular documents along with driving licence of his father in presence of him. He identified the seizure list as Ext-3 and Ext-3(1) is his signature.
11. PW-4, Mubarak Ali, who is also a seizure witness, deposed that he knows the accused person of this case. He deposed that the accident took place in the year 2015 and at the relevant time he was at his house. He deposed that after four days of the alleged incident, he along with the son of the accused went to the police station wherein, the driving licence of the accused along with R/C, insurance seized in connection with this case. He put his signature on the seizure list. Ext-3 is the seizure list and Ext-3(2) is his signature. PW-4 in his cross examination deposed that he cannot say the registration number and the owner of the motor cycle.
12. PW-5, Sri Bhaba Kt. Das (Retired SI), who is the investigating officer of this case deposed that on 04.11.2015, he was posted at Salonibari OP as Attach Officer and on that day, I/C of Salonibari OP received an telephonic information from unknown person stating that a motor accident took place in front of Dekargaon High School on NH-15. On receiving the same, I/C of concerned OP made an GDE vide No. 103 dated 04.11.2015 and forwarded to O/C of Tezpur PS for registering a case. On receiving the same O/C of Tezpur PS registered case vide Tezpur PS Case No-1502/15 u/s 279/304(A) IPC. Thereafter, he along with I/C Umar Faruk along with staffs went to the place of occurrence and found the motor cycle bearing Regd. No-AS-12/N-2239 and the victim Tilak Baruah who receipts grievous injuries on his head. Thereafter, the victim was immediately shifted to Mission hospital, Tezpur. He also deposed that he has drawn rough sketch map at the place of occurrence marked as Ext-4 wherein Ext-4(1) is his signature. He also recorded the statement

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of the witnesses at the place of occurrence, seized the offending motor cycle along with registered documents and took the same to the police outpost. He further deposed that on 05.11.2015 at morning hour's complainant Mintu Baruah informed them that victim died at Hayat Hospital, Guwahati. He also deposed that the offending motor cycle was sent for MVI examination and later collected the MVI report. The deceased was also undergone post mortem at Guwahati and later, he collected the post mortem report and inquest report from Dispur PS vide Ext-2 and Ext-3 and Ext-2(2) and Ext-3(3) are his signatures. On completion of the investigation, he has submitted charge sheet against the accused person u/s 279/304(A) of IPC. Ext-5 is the charge sheet and Ext-5(1) is his signature.

APPRECIATION OF EVIDENCES

13. For the convenience of discussion and decision of both the points of determination, I would like to discuss all points together.
14. 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 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.
15. The prosecution case as alleged by the prosecution appears to be that on 04.11.2015 at about 6:30 PM, while his father Tilak Baruah (since deceased) was proceeding towards Borjhar through National Highway-15, suddenly one motor cycle bearing Regd. No- AS-12/N-2239 (Discover) which was coming from Mission Chariali side, in a rash and negligent manner, knocked his father from his backside in front of Dekargaon High School and due to that his father sustained head injury. Thereafter, his father was immediately taken to Mission Hospital, Tezpur for his treatment and from there he was referred to Guwahati for his better treatment where the doctor acknowledged to be brought dead.

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16. 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. 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.
17. 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.
18. 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.
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.
20. 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

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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 Tilak Baruah.

21. 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 Tilak Baruah 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.
22. On conscience perusal of the evidences on record, it disclosed that PW-1, Sri Mintu Baruah deposed that on 04.11.2015, he came to know that his father met with an accident over National Highway near Dekargaon High School and thereafter, he immediately went to the place of occurrence and found his father in an injured condition. He also found one motor cycle lying on the road. He deposed that he took his father to Mission Hospital, Tezpur for his treatment and from there he was referred to Guwahati for his better treatment but on the way his father succumbed to his injuries. He admitted the fact that he did not know who drove the motor cycle. PW-1 in her cross-examination clearly testified that he did not know who flock the offending motor cycle and as such the evidence of PW-1 appears to be hearsay in nature and don't have any personal knowledge about the incident.
23. PW-2 deposed that in the year 2015, November at about 6:30 PM while he was coming from Borjhargaon, he saw the accused riding his motor cycle and knocked down one pedestrian and due to that the injured sustained head injury and thereafter, the victim was taken to Mission Hospital, Tezpur and later, he came to know that the injured succumbed to his injuries. PW-2 in his cross examination admitted that he had not seen the accident as, he cannot say for whose fault the incident took place. Although, he claimed in his evidence-in-chief that he saw the accused knocked one pedestrian but in his cross examination, he clearly admitted that he had not seen the alleged incident as at the time of occurrence it was dark. From the evidence of PW-2, nothing appears to be implicating against the accused

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as he had not seen the alleged incident. PW-3 and PW-4 are the seizure witnesses who put their signatures on the seizure list. Both PW-3 & PW-4 have not deposed anything against the accused person of this case. PW-5 is the investigating officer, who proved the entire investigation exhibiting the charge sheet and sketch map of place of occurrence.

24. To sum up the evidences on record, it released before this court that the prosecution side found to be unsuccessful in offering any credible evidence against the accused person upon which it may be acknowledged that the suspected occurrence happened due to reckless and inattentive riding of the accused named Tilak Baruah. 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 Guwahati where the doctor acknowledged to be brought dead.
25. To sum up the indications on record, it is seen that the prosecution side unsuccessful to present any plausible eye witness to authenticate the entire case before this court. None independent witnesses have deposed anything impeaching against the accused person.
26. 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 Tilak Baruah, who is the father 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

27. 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

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evidences are appearing to be deficient in holding the accused guilty of commission of alleged offences.

28. 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.
29. 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.
30. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 26th day of November, 2020.

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

ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Sri Mintu Baruah, the informant

PW 2: Sri Sujit Neog,

PW 3: Md. Noor Alam

PW 4: Md. Mubarak Ali

PW 5: Sri Bhaba Kt. Das, the I.O

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 : FIR

Ext 1(1): Signature of PW 1

Ext 2 : Seizure List of Motor cycle

Ext 2(1): Signature of PW-2

Ext 2(2): Signature of PW-5

Ext 3 : Seizure List of vehicular documents

Ext 3(1): Signature of PW-3

Ext 3(2): Signature of PW-4

Ext 3(3): Signature of PW-5

Ext 4 : Sketch Map

Ext 4(1): Signature of PW-5

Ext 5 : Charge Sheet

Ext 5(1): Signature of PW-5

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

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