

**G.R No-485 of 2016**  
**(State of Assam Vs Sri Nandu Dulal Ghosh)**

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

**G. R. Case No. 485 of 2016**

Under section 279/304(A)/427/338 of I.P.C

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

State of Assam

-Vs-

Sri Nandu Dulal Ghosh

S/O:- Late Hirenmoi Ghosh

R/O:-Kalakuchi

P/S:-Missamari

Dist:-Sonitpur, Assam .....Accused

**Advocate appeared:**

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

Mr.G. Sarkar & P. Das, Ld. Advocates.....For the accused person

|                              |  |
|------------------------------|--|
| Evidence recorded on         | :- 31.03.2018, 03.12.2018, 05.02.2019<br>31.12.2019 & 19.02.2020 |
| Date of Statement of defence | :- 20.07.2020  |
| Argument heard on            | :- 20.07.2020  |
| Judgment delivered on        | :- 20.07.2020  |

**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 18.02.2016, one Sri Patit Pawan Ghosh lodged an Ejarah before the O/C of Thelamara P.S alleging inter alia that on 17.01.2016 at about 5 PM, while his brother Sudarshan Ghosh was sitting as a pillion rider along with the FIR named accused person in his new Hero motor cycle and going towards Thelamara from Kolakuchi and near Naharbari Tiniali, accused drove the motor cycle speedily and hit another motor cycle bearing Regd. No. AS-12/C-0405, which was coming from opposite direction. As a result of which, his brother sustained grievous injuries all over

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his body. Thereafter, the injured was immediately taken by local people to T.M.C.H, Tezpur where the doctor acknowledged to be brought dead.

**"INVESTIGATION"**

2. On receipt of the Ejahar, Thelamara P.S Case No.12 of 2016, 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)/427/338 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 CrPC was furnished to the above-named accused person. After hearing both side, particulars of offences u/s 279/304(A)/427/338 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. 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 17.01.2016 at about 5 PM, at a place called Naharbari Tiniali, accused flock the new Hero Motor Cycle, in a rash and negligent manner and such driving of accused creates endanger to the life of Sudarshan Ghosh, who was sitting back side of the**

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**motor cycle and thereby committed an offence punishable u/s 279 of IPC?**

- (ii.) Whether on the same date, time and place, accused flock the new Hero Motor Cycle in a rash and negligent manner and such driving of accused creates endanger to the life of Sudarshan Ghosh, who was sitting back side of the motor cycle and further sustained grievous injuries and thereby committed an offence punishable u/s 338 of IPC?**
- (iii.) Whether on the same date, time and place, accused flock the motor cycle in a rash and negligent manner hit another motor cycle bearing Regd. No. AS-12/C-0405 and due to such negligent driving of accused causing grievous injuries to body of informant's brother Sudarshan Ghosh and also resulted with the death of Sudarshan Ghosh and thereafter accused committed an offence punishable u/s 304(A) of IPC?**
- (iv.) Whether on the same, date and time, accused flock the motor cycle, in a rash and negligent manner, hit the another motor cycle vehicle bearing registration no. AS-12/C-0405, which was coming from opposite direction and caused mischief of the motor cycle amounting to Rs. 50/- or more and thereby committed an offence punishable u/s 427 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 Patit Pawan Ghosh being the informant deposed that he knows the accused of this case. He also deposed that the incident took place around two years back in between 03:30 PM to 04:00 PM. He further deposed that on the day of

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incident, the accused took his brother Sudarshan Ghosh along with him in his motor cycle and going towards Thelamara and later he heard that at Naharbari Tiniali an accident took place between his bike and some other's bike; as a result of which his brother sustained grievous injuries. Thereafter, he immediately went to the place of occurrence and later went to Tezpur Medical College and Hospital. He also deposed that his brother succumbed to his injuries on the very of day of incident. Later, he lodged the ejahar. Ext-1 is the written ejahar and Ext-1(1) is his signature. PW-1 in his cross examination deposed that he cannot say the registration number of the motor cycle. He also deposed that he cannot say how the accident took place. He lodged the ejahar after one month of the alleged incident.

8. PW-2, Sri Gobin Dey deposed that he does not know the informant and the accused of this case. He also deposed that the incident took place around two years back in between 4 PM to 5 PM and at the relevant time, while he was in a shop situated at Naharbari Tiniali, he heard a sound and on hearing the same he immediately came out and saw two bikes along with three injured persons were lying on the ground. Out of them two injured were sent for medical treatment by them through ambulance. He deposed that police seized the motor cycles in connection with this case and prepared seizure list wherein he put his signature. Ext-2 is the seizure list and Ext-2(1) is his signature. PW-2 in his cross examination deposed that he did not see the alleged incident.
9. PW-3, Sri Gobind Bora deposed that he knows the accused person. He deposed that the incident took place in the year 2016 during evening time at Naharbari over national highway and at the relevant time an accident took place between two bikes. He also deposed that at the time of accident, he was in his shop and he heard the sound of accident from his shop. He deposed that police took his signature after two days of alleged incident. But he did not know what things police seized from there.
10. PW-4, Sri Prasanta Mahanta deposed that the accused is acquainted with him as he regularly passes near his house. He deposed that the incident took place in the year 2016 in front of his house but he does not remember the date of

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alleged accident. On hearing a sound, he came out of his house and found that two motor cycles were lying on the road and three persons were lying in injured condition. He admitted that he does not know how the accident took place.

11. PW-5, Askar Ali deposed that he knows the accused person and the accident took place in the year 2016 at about 5:30 PM at Nahabari tiniali over national highway. He also deposed that he heard a sound from 50 meters away from the said Tiniali where he was playing carom and thereafter, he immediately went to the place of occurrence and saw two Glamour motor cycles were lying on the road. He further deposed that the accused along with one person were also lying in an injured condition on the road and one of them sustained grievous injury. Thereafter, they informed the police and later police came and took the injured to civil hospital for their treatment. He deposed that he did not identify how many injured were there. Police seized the motor cycles and prepared seizure list wherein he put his signature. Ext-2 is the seizure list and Ext-2(2) is his signature. He also deposed that on the day of incident, two bikes were head on collision with each other. PW-5 in his cross examination deposed that he cannot say how the accident took place.

**APPRECIATION OF EVIDENCES**

12. 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 riding his new Hero motor cycle wherein the brother of the informant Sudarshan Ghosh was sitting as a pillion rider and head on collision with another motor cycle bearing Regd. No. AS-12/C-0405, which was coming from opposite direction and due to that informant's brother 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.

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13. 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 proving the indictments beyond any shadow of doubt. In this case the charges u/s-279/304(A)/338/427 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.
14. To prove the aforesaid said contentions the prosecution side examined as many as 05 (Five) 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 informed him that his brother, who accompanied with the accused met with an accident at Naharbari Tiniali and thereafter, he went there and found his brother to be brought dead. In his cross examination, he testified that he does not know how the accident occurred. The evidence of PW-1 appears to be hearsay in nature.
15. PW-2 deposed that he heard a sound and on hearing the same he immediately came out and saw two bikes along with three injured persons were lying on the ground. In his cross examination, he testified that he did not see the accident. PW-3 is one seizure witness who put his signature on the seizure list deposed before this court that he heard about the incident. PW-4 simply deposed that he saw the injured and the alleged bike over the road but he does not know how the incident took place.
16. PW-5 appears to be a seizure witness deposed that he heard a sound from 50 meters away from the said tiniali where the accident happened at about 5:30 PM when he was playing carom and thereafter, he immediate went to the place of occurrence and saw two Glamour motor cycles and the accused along with one person were also lying in an injured condition on the road and one of them sustained grievous injury. But in his cross examination, he testified that he does not know how the accident took place. PW-5 also did not utter any single words implicating the accused although he claimed that he was 50 metres away from

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the place of occurrence. He also not deposed anything about rash or negligent driving of accused.

17. 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 riding of the accused named Sri Nandu Dulal Ghosh. 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 T.M.C.H, Tezpur where the doctor acknowledged to be brought dead.
18. 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.
19. It is apparent from the Ejahar that it is a case of section-279/304(A)/338/427 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)/338/427 of I.P.C.
20. 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

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the consequences. Reckless driving or driving in a manner dangerous to public is rashness.

21. Hence in order to decide the guilty of the accused person for committing an offence punishable under section-304(A)/279/338/427 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 Sudarshan Ghosh.
22. Section-427 of IPC relates to the facts of causing damage to the amount of Rs. 50/- in this case, the prosecution side failed to adduce any evidence upon which that the Court may presumed any damages caused by the accused which is Rs. 50/- or upwards. The prosecution side failed to adduce any evidence to substantiate the Section-427 of IPC.
23. 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 Sudarshan Ghosh, who is the brother 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**

24. 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.

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25. 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)/338/427 of I.P.C. In the result the accused is acquitted from the charges under section-279/304(A)/338/427 of I.P.C.
26. 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.
27. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 20<sup>th</sup> day of July, 2020.

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

**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW 1: Sri Patit Pawan Ghosh, the informant

PW 2: Sri Gobin Dey

PW 3: Sri Gobind Bora

PW 4: Sri Prasanta Mahanta

PW 5: Askar Ali

**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

Ext 2(1): Signature of PW 2

Ext 2(2): Signature of PW 5

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

**Chief Judicial Magistrate**  
**Sonitpur, Tezpur**