

G.R No-434 of 2013
(State of Assam Vs Sri Kunja Prasad Baruah)

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

G. R. Case No. 434 of 2013

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

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

State of Assam

-Vs-

Sri Kunja Prasad Baruah

S/O:- Late Bhogeswar Baruah

R/O:- Borbhogia

P/S:- Nagaon

Dist:-Nagaon, AssamAccused

Advocate appeared:

Mr. Niranjana Saikia, Asst. P.P..... For the State

Mr. Pulin Biswas & Ors, Ld. Advocates.....For the accused person

Evidence recorded on	:- 16.07.2016, 19.03.2019, 22.08.2019, 23.09.2019, 06.02.2020 & 06.03.2020
Date of Statement of defence	:- 05.02.2021
Argument heard on	:- 05.02.2021
Judgment delivered on	:- 05.02.2021

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 25.02.2013, one Sri Chandan Basumatary lodged an Ejarah before the O/C of Tezpur P.S alleging inter alia that on 22.02.2013 at about 10 PM, while his mother named Kameswari Basumatary along with his uncle Defran Basumatary and aunty Maful Basumatary were proceeding from Thelamara towards the house of their relatives in a vehicle bearing Regd. No-AS-01/AG-0632 driven in a rash and negligent manner met with an accident at Batamari over National Highway-37(A) and due to that all of them sustained grievous injuries. It is also alleged that thereafter, the injured persons were immediately taken to Kanaklata Civil

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Hospital, Tezpur where the doctor acknowledged his mother named Kameswari Basumatary to be brought dead.

"INVESTIGATION"

2. On receipt of the Ejahar, Tezpur PS Case No. 235 of 2013, under section-279/338/304(A)/427 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet under section-279/338/304(A)/427 of I.P.C against the accused person named Sri Kunja Prasad Baruah.

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-279/338/304(A)/427 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 06 (Six) numbers of witnesses including the informant and medical officers of this case. 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 22.02.2013 at about 10 PM at a place called Batamari over NH-37(A), accused drove the vehicle bearing Regd. No. AS-01/AG-0632, in a rash and negligent manner and such driving of accused creates endanger to the life of Kameswari Basumatary, Defran Basumatary and Maful

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Basumatary and thereby committed an offence punishable u/s-279 of IPC?

- (ii.) Whether on the same date, time and place, accused drove the vehicle bearing registration no. AS-01/AG-0632, in a rash and negligent manner and such driving of accused creates endanger to the life of victims, Kameswari Basumatary, Defran Basumatary and Maful Basumatary and further sustained grievous injuries on their persons and thereby committed an offence punishable u/s-338 of IPC?
- (iii.) Whether on the same date, time and place, accused drove the vehicle bearing Regd. No.-AS-01/AG-0632 in a rash and negligent manner lots its control and met with an accident and due to such negligent driving of accused informant's mother named Kameswari Basumatary died and thereafter committed an offence punishable u/s-304(A) of IPC?
- (iv.) Whether on the same, date and time, accused drove the vehicle bearing Regd. No.-AS-01/AG-0632, in a rash and negligent manner lots its control and met with an accident and caused mischief of the said vehicle amounting to Rs. 50/- or more and thereby committed an offence punishable u/s-427 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the Ejahar examined six numbers of witnesses including informant and the medical officers of this case. Let us reproduce the evidences of prosecution side for the sake of proper appreciation of evidences. PW-1, Sri Rajib Borah deposed before this case that he knows the accused person of this case. He also deposed that the incident took place around three years back and on the day of incident, the wife of accused informed him that the Indigo vehicle which the accused was driven met with an accident near Koliabhomura Bridge. Thereafter, he immediately went to B.J. Hospital, Tezpur and found the accused along with informant's mother and the informant's uncle and aunty there. He admitted that he don't know how the accident took place. He deposed that the accused informed him

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that one truck had knocked his vehicle. PW-1 in his cross-examination testified that he don't know for whose fault the accident occurred.

8. PW-2, Sri Chandan Basumatary being the informant of this case deposed that he knows the informant as well as the accused of this case. He also deposed that the incident took place on 22.02.2013 at night. He also deposed that on the day of incident, he came to know that while his mother Kameswari Basumatary was proceeding from Thelamara towards Uluoni in a vehicle along with Defran Basumatary and Maful Basumatary meet with an accident near Tezpur Dolabari. He admitted that he was not with them at the time of incident. He also deposed that as per the versions of his uncle and aunty that the said vehicle was driven in a rash and negligent matter for which the said vehicle lost its control and rolled down on the road. After receiving the information, he immediate went to the place of occurrence and from there he went to B.J. Hospital, Tezpur wherein he found his mother to be dead and his uncle and aunty sustained injuries over their body. He deposed that the accused is the friend of his uncle. Later, he lodged the ejahar. He identified his ejahar as Ext-1 and Ext-1(1) is his signature.
9. PW-2 in his cross-examination testified that he had not witnessed the alleged accident. He only heard about the accident. He deposed that he lodged the ejahar after two days of the alleged incident.
10. PW-3, Sri Deepal Basumatary deposed that the informant is his brother and the accused is known to him. He also deposed that the accident occurred in the year 2013 one day at night at about 11 PM near Tezpur Batamari over national highway. He deposed that the daughter of his uncle informed him over phone that the vehicle wherein his mother was travelling met with an accident and later succumbed to her injuries. He also deposed that his uncle and aunty were also with his mother in the said vehicle. He deposed that police conducted the inquest of the dead of his mother wherein he put his signature. He identified the inquest report as Ext-2 and Ext-2(1) is his signature. PW-3 in his cross-examination testified that he had not seen the alleged accident for which he cannot say how the accident took place.

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11. PW-4, Dr. Jiten Borkakati being the medical officer of this case deposed that on 23.02.2013, he was posted as Superintendent at B.J. Hospital, Tezpur and on that day, he examined one Kunja Prasad Baruah and found the followings:- head injury and soft tissue injury. He deposed that the nature of injury was fresh. He also deposed that on the same day, another person named Defran Basumatary was also examined and on examination he found the followings:- head injury and soft tissue injury. He deposed that the nature of injury was fresh. He identified his reports as Ext-2 and Ext-3 wherein Ext-2(1) and Ext-2(2) are his signatures.
12. PW-5, Mr. Ranjib Baruah deposed that on 22.02.2013 he was posted as MVI at Tezpur and on that day, he received a requisition in connection with GDE No-387 dated-22.02.2013 for examination of Indigo CS bearing Regd. No-AS-01/AC-0632. Accordingly, on 01.03.2013 he examined the said vehicle at Borghat OP and found the followings: (i) Complete body shell damaged, (ii) Wind shield and framed, (iii) Four Nos of doors with window glasses, (iv) Rear wind shield glass, (v) Both fender, (vi) Both middle post, (vii) Frong passenger seat, (viii) Left hand side and right hand side suspension, (ix) Interior hood, (x) Front bumper, (xi) Wiring harness, (xii) Left hand side head light assembly, (xiii) Bonat and front show, (xiv) Radiator ac condenser, (xv) Wiper assembly, (xvi) Both side running board, (xvii) Both side rear view mirror, (xviii) Steering assembly, and (xix) Suspected engine and chassis framed. He identified his report as Ext-4 wherein he put his signature as Ext-4(1). PW-5 in his cross examination testified that the written requisition was not seen before the court.
13. PW-6, Dr. Biswajit Das who is the another medical officer of this case who conducted the post mortem examination of the dead body of Kamaleswari Basumatary on 22.02.2013 at KCH, Tezpur. On examination of the dead body, he found the rigor mortis to be present. He also found as follows:- (i) Two lacerated wound seen in the left side of neck, size 3 x 1 cm and 5x1 cm, (ii) A deep lacerated wound seen in the left side of the face extending from angle of nose to left ear (tragus), size-15 x 5 cm, (iii) A deep lacerated wound size-10x4x2 CM. seen over forehead extending up to lateral corner of the left eye.

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(iv) A deep lacerated wound seen over forehead, size 5x4x3 cm (left side just above lateral border of the left eyebrow under the frontal bone fractured), (v) Fracture seen in the left zygomatic bone/nasal bone/maxillary bone, (vi) Brain is congested and blood seen over brain matters. The injuries are antimortem in nature. He opined that the death was due to haemorrhage and shock due to head injury. He identified his report as Ext-5 and Ext-5(1) is his signature.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

14. For the convenience of discussion and decision of points of determination, I would like to discuss all points together.
15. 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.
16. The prosecution case as alleged by the prosecution appears to be that on 22.02.2013 at about 10 PM, while his mother named Kameswari Basumatary along with his uncle Defran Basumatary and aunty Maful Basumatary were proceeding from Thelamara towards the house of their relatives in a vehicle bearing Regd. No-AS-01/AG-0632 driven in a rash and negligent manner met with an accident at Batamari over National Highway-37(A) and due to that all of them sustained grievous injuries. It is also alleged that thereafter, the injured persons were immediately taken to Kanaklata Civil Hospital, Tezpur where the doctor acknowledged his mother named Kameswari Basumatary to be brought dead.
17. 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

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evidences, let have a look over the essential ingredients of offences u/s-279/338/304(A)/427 of IPC to understand the acts prohibited by those provisions and punishable there under.

18. It is apparent from the ejahar that it is a case of section-279/338/304(A)/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-279/338/304(A)/427 of I.P.C.
19. 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.
20. Section-337 of Indian penal Code relates to the fact of causing hurt or endangering life or personal safety of others. Merely, because the vehicle in question was being driven in a high speed does not speak of either negligent or rashness by itself. High speed is a relative term; it is for the prosecution to bring on record the materials which would establish what is mean by high speed on the facts and circumstances in this case. The essential ingredients of offence u/s-337 of IPC is appears to be same and identical of the offence punishable u/s-279 of IPC. Section-337 of IPC warrants proving that the accused did some act rash and negligently that create endangered to the life or personal safety of others the person and the person was hurt due to some acts in consequences thereof.
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 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

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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 as 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-279/338/304(A)/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 motor cycle by the accused person that results the death of deceased named Kameswari Basumatary.
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- 279/338/304(A)/427 of IPC, the prosecution needs to establish the rash and negligent act while driving alleged Scorpio vehicle and causing injuries to his body for which the deceased Kameswari Basumatary 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. For the purpose of proper appreciation of the evidences on record, let us discussed all the points for determination together. On conscience perusal of the evidences on record, it disclosed that PW-1, Sri Rajib Borah deposed before this court that on the day of alleged accident, the wife of accused informed him that accused met with an accident near Koliabhumura bridge for which he went to B.J. Hospital, Tezpur wherein he found the accused along with the relatives of the informant in injured condition. But he admitted that he has no personal knowledge as to how the accident occurred as he could not say as to whose fault the accident happened. The evidence of PW-1 appears to be hearsay in nature as he heard about the incident from others. From the evidence of PW-1, nothing appears to be implicating against the accused as he does not know

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how the accident occurred. PW-1 did not utter any single words implicating the accused.

25. PW-2 Sri Chandan Basumatary being the informant of this case deposed that on the day of alleged incident, his mother Kameswari Basumatary along with his uncle and aunty namely, Sri Defran Basumatary and Smt. Maphul Basumatary were proceeding from Thelamara towards Uluoni and when they reached near Tezpur Dolabari, the vehicle wherein they were sitting as a passengers met with an accident due to rash and negligent driving by the driver of the vehicle. However, PW-2 in his cross-examination categorically admitted that he had not witnessed the alleged accident and he only heard about the same. He also deposed that the ejahar was lodged after two days of alleged incident. The evidence of PW-2 also appears to be hearsay in nature as he had not seen the alleged accident.
26. On meticulous perusal of the testimony of PW-2 (Informant), it disclosed that although PW-2 in his ejahar claimed that the rash and negligent driving on the part of the accused and causing the alleged incident but in his evidence he failed to support the rash and negligent driving of the accused and also he did not depose anything directly against the accused person. PW-1 admitted during his cross examination that he lodged the ejahar after two days of the alleged incident and he did not assign any reason of delay in lodging the ejahar.
27. PW-3 Sri Deepak Basumatary deposed before this court that in the year 2013 one day at about 11 PM, his uncle's daughter informed him over phone that the vehicle wherein his mother was travelling met with an accident at Batamari, Tezpur and due to that his mother died. He also deposed that as per the version of his uncle the accused was the driver of the said offending vehicle. Although, PW-3 claimed that his uncle informed him that accused drove the offending vehicle at the time of occurrence. But, in his cross-examination he clearly admitted that he had not witnessed the alleged incident for which he could not say how the accident occurred on the said fateful day. The evidence of PW-3 appears to be hearsay in nature as he heard about the incident from

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his niece. From the evidence of PW-3, nothing appears to be implicating against the accused as he had not seen the accident.

28. PW-4, Dr. Jiten Borkakti being the official witness of this case who examined the victims and found the injuries as follows:- head injury and soft tissue injury. He submitted his reports. Ext-2 and Ext-3 are the medical reports and Ext-2(1) and Ext-3(1) are his signatures. PW-5 is an official witness who examined the alleged vehicle bearing Regd. No. AS-01/AC-0632 and on examination he found the said vehicle could not be tested mechanically due to some damages. He submitted his report. Ext-4 is his report and Ext-4(1) is his signature.
29. PW-6, Dr. Biswajit Das being the medical officer of this case who performed the post mortem examination upon the body of victim and found the rigor mortis was present and the injuries are anti-mortem in nature. He further opined that the death was due to haemorrhage and shock due to head injury. He identified his report as Ext-5 and Ext-5(1) is his signature.
30. To sum up the evidences on record this court finds that the prosecution side appears to be 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 Sri Kunja Prasad Baruah. Neither, the informant nor any other independent onlookers have seen the alleged incident. The evidences of all the witnesses made it 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 where the doctor acknowledged him to be brought dead. 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 of the independent witnesses have deposed anything impeaching against the accused person.
31. From the evidences on record, it disclosed that deceased Kameswari Basumatary, who is the mother 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 that pertinent question prosecution side failed

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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

32. 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.
33. 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-279/338/304(A)/427 of I.P.C. In the result the accused is acquitted from the charges under section-279/338/304(A)/427 of I.P.C.
34. 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.
35. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 06th day of February, 2021.

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

ANNEXURE

1. Witnesses for Prosecution:-

- PW-1:- Sri Rajib Borah
- PW-2:- Sri Chandan Basumatary, Informant
- PW-3:- Sri Deepak Basumatary
- PW-4:- Dr. Jiten Borkakati
- PW-5:- Mr. Ranjib Baruah, the MVI
- PW-6:- Dr. Biswajit Das, M.O.

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

- Ext-1 :- FIR
- Ext-1(1):- Signature of PW-2
- Ext-2 :- Injury Report
- Ext-2(1):- Signature of PW-4
- Ext-3 :- Injury Report
- Ext-3(1):- Signature of PW-4
- Ext-4 :- MVI Report
- Ext-4(1):- Signature of PW-5
- Ext-5 :- Post Mortem Report
- Ext-5(1):- Signature of PW-6

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

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