

G.R No-416 of 2014
(State of Assam Vs Md. Mainul Haque Choudhury)

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

G. R. Case No. 416 of 2014

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

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

State of Assam
 –Vs–
 Md. Mainul Haque Choudhury
 S/O:- Md. Nur Islam
 R/O:- No-1, Dolabari
 P/S:- Tezpur
 Dist:-Sonitpur, AssamAccused

Advocate appeared:

Mr. N. K. Mishra, Addl. P.P..... For the State
 Mr. Salim Khan & Ors, Ld. Advocate.....For the accused person

Evidence recorded on	:- 01.12.2017, 06.09.2018 & 11.01.2019
Date of Statement of defence	:- 20.02.2021
Argument heard on	:- 20.02.2021
Judgment delivered on	:- 20.02.2021

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 03.04.2014, one Md. Mainul Haque Choudhury lodged an Ejahar before the O/C of Tezpur P.S alleging inter-alia that on 02.04.2014 at about 6 PM, when he went towards his home by driving vehicle bearing Regd. No-AS-12/K-2167, which belongs to his owner, thereafter, he met Md. Mainul Ali and his wife named Miss Punu Begum along with their minor daughter named Aliya. It is also stated that thereafter, all of them were travelling with him in his vehicle and he dropped them to their house. It is also stated that after dropping them to their house, said Md. Moinul Ali was talking with him in front of his vehicle over some domestic matter. It is further stated that after completion of their discussion, when he started his vehicle, he heard sound from the below part

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of his car and on coming out of his vehicle, he saw the minor child of Md. Moinul Ali with full of blood. Thereafter, the said minor child was immediately taken to B.K. Memorial Hospital for her treatment and from there she was shifted to Mission Hospital, Tezpur and later, referred to Guwahati for her better treatment where the doctor acknowledged the injured girl to be brought dead.

"INVESTIGATION"

2. On receipt of the Ejahar, Tezpur P.S Case No. 386 of 2014, 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, who lodged the ejahar in this case.

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 04 (Five) numbers of witnesses in support of this case. The prosecution side declined to examine the informant pleading that the informant of this case made accused subsequently by the police and there is no other ejahar filed by the police at the time of initiating the investigation. The entire investigation was conducted on the basis of the ejahar lodged by the accused as an informant. On perusal of the case record, it disclosed that the parents of the deceased already examined and entire prosecution case sets in motion on the basis of the ejahar lodged by the accused. Now, the informant has made an accused in the charge sheet and there is no other ejahar lodged by the police to substantiate the fact converting the informant as accused. Hence, under the aforesaid circumstances, the examination of informant is dispensed with as per the prayer of the prosecution as well as considering the entire circumstances of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court.

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Hence, the evidence of prosecution side is closed. Accused person is examined u/s-313 Cr.P.C and his pleas of denial are 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 02.04.2014 at about 6 PM, at a place called No-1, Dolabari under Tezpur PS, accused drove the Indigo CS vehicle bearing Regd. No-AS-12/K-2167, in a rash and negligent manner and such driving of accused creates endanger to the life of a minor girl named Aliya, who is the daughter of one Mainul Ali and thereby committed an offence punishable u/s-279 of IPC?
 - (ii.) Whether on the same date, time and place, accused drove the Indigo CS vehicle bearing Regd. No-AS-12/K-2167 in a rash and negligent manner knocked the minor victim girl Aliya and due to such negligent driving of accused the victim girl 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 and medical officer of this case. For the sake of proper appreciation of evidences, let us reproduce the evidences of the prosecution witnesses. PW-1, Md. Mainul Ali deposed that he knows the accused person of this case. He also deposed that the occurrence took place in the month of April, 2013 at about 5:30 PM and on the date of alleged incident, he along with his wife and his 22 months old daughter Alia went to the market with the accused in his vehicle bearing Regd. No-AS-12/K-2167 (Indigo CS) and when they returned back to their house, his wife went inside the house and he was talking with the accused after getting down from the vehicle. He also deposed that after some time accused moved the vehicle in order to go to his house, suddenly he heard the sound coming from the front wheel then he saw that his daughter was under the vehicle and she

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was under the wheel and sustained grievous injury. Thereafter, they took the victim girl to B.K. Memorial Hospital, Tezpur in the vehicle of accused and from there she was shifted to Mission Hospital and on the same day, considering the seriousness injury sustained by his daughter, she was shifted to GMCH, where she died on the same day. He further deposed that post mortem of his daughter was conducted at GMCH. Thereafter, he lodged the ejahar at the police station but the police informed him that the accused already lodged an ejahar on the basis of said incident. He deposed that he informed the matter to police and police recorded his statement.

8. PW-1 in his cross-examination testified that the accused is his friend. He deposed that when they returned back from the market his wife and his daughter went to his house but again his daughter came back near the vehicle. He further deposed that he was talking with the accused standing near the vehicle for about 5 minutes and the accused was sitting in the driving sit and he was standing outside. He also deposed that the accused while talking with him started the vehicle and after talking with the accused when he turned back two steps then he heard the sound. He further deposed that when he came back from Guwahati accused informed him that he had lodged the ejahar and he had gone through the said ejahar. Moreover, he deposed that he went to the police station after two days of the alleged incident. He further deposed that he was not aware that his daughter was at the place of occurrence at that time. He admitted the fact that it was not within the knowledge of him and the accused that his daughter was under the wheel.
9. PW-2, Miss. Fatema Begum deposed before this court that she knows the informant, who is the accused of this case. She deposed that the incident took place in the month of April, 2013 at about 6 PM and on that day, she along with her husband and her daughter aged about 22 months went to the market in the vehicle of the accused driven by him and returned back to the house. She also deposed that after getting down, she went to her house and her husband was talking with the accused near the vehicle and the accused was sitting on the driving sit. She deposed that her daughter was near the vehicle and thereafter, she heard one sound near the vehicle and went outside of her house and her husband took her

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daughter who was severely injured condition and her husband gave her daughter to her. She also deposed that they took their daughter in the vehicle of the accused to B.K. Memorial Hospital and then to Mission Hospital from where she was shifted to GMCH, where she died. She deposed that post mortem was conducted at GMCH and police came to her home and recorded her statement. PW-2 in her cross examination testified that police came to their house on the 03rd day of the incident and recorded the statement of her and her husband. She further deposed that after getting down from the vehicle, she went to her home but her daughter did not come with her. She admitted that as she was inside her house, she had not seen the alleged incident. She further deposed that the accused also accompanied with them to GMCH. She also deposed that she thought that her daughter was with her husband.

10. PW-3, Md. Ali Hussain deposed before this court that he knows the accused of this case. He also deposed that the accident took place in the year 2014 and on the day of incident during the evening time, he was talking with one Md. Ataur Rahman Choudhury at his house. He deposed that the informant and the accused after talking with each other came towards a vehicle which was parked in front of his house and thereafter, when the accused started his vehicle a hue and cry situation arose at there. He further deposed that when the informant's daughter aged about 2 ½ years was playing under the vehicle, the informant's daughter comes under the wheel of the said vehicle. Thereafter, the said victim girl was taken out under the vehicle and was taken to hospital for her treatment but the victim girl succumbed to her injuries. PW-3 in his cross-examination testified that the he along with the mother and father of the victim were not aware that the said victim girl was playing under the vehicle. He admitted that the accused was innocent and the accident occurred not due to the fault of the accused.
11. PW-4, Hazi Ataur Rahman Choudhury deposed before this court that he knows the informant and the accused, who is the driver of Swift Dzire vehicle. He deposed that the incident took place in the year 2014 at about 6-6:30 PM and at the relevant time, he heard hue and cry while he was sitting inside the house of Ali Hussain. He also deposed that when he came out, he saw a minor girl was lying on the road in

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an injured condition. Later, he came to know that the Swift Dzire which was driven by the accused knocked the said minor girl. He deposed that the offending Swift Dzire vehicle was also present at the place of occurrence. He heard that the injured girl died. PW-4 in his cross-examination testified that he arrived at the place of occurrence after the incident had occurred.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

12. For the convenience of discussion and decision of both the points of determination, I would like to discuss all points together.
13. 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.
14. The prosecution case as alleged by the prosecution side appears to be that on 02.04.2014 at about 6 PM, when accused was going towards his home by driving the vehicle bearing Regd. No-AS-12/K-2167, which belongs to his owner, thereafter, he met Md. Mainul Ali and his wife named Miss Punu Begum along with their minor daughter named Aliya. It is also stated that thereafter, all of them were travelling with him in his vehicle and he dropped them to their house. It is also stated that after dropping them to their house, said Md. Moinul Ali was talking with him in front of his vehicle over some domestic matter. It is further stated that after completion of their discussion, when accused started his vehicle, he heard sound from the below part of his car and when he came out from his vehicle, he saw the minor child of Md. Moinul Ali with full of blood. Thereafter, the said minor child was immediately taken to B.K. Memorial Hospital for her treatment and from there she was shifted to Mission Hospital, Tezpur and later, referred to Guwahati for her better treatment where the doctor acknowledged the injured girl to be brought dead.

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15. 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.
16. 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.
17. 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.
18. 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.
19. 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 named Aliya.

20. 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 motor cycle and causing injuries to the body of the victim for which the victim named Aliya 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.
21. On conscience perusal of the evidences on record, it disclosed that PW-1, Md. Mainul Ali, being the father of the victim girl deposed that in the month of April, 2013 at about 5:30 PM, while he along with his wife and his 22 months old daughter Alia went to the market with the accused in his vehicle bearing Regd. No-AS-12/K-2167 (Indigo CS) and when they returned back to their house, his wife went inside the house and he was talking with the accused after getting down from the vehicle. Suddenly, he heard the sound coming from the front wheel then he saw that his daughter was under the vehicle and she was under the wheel of the said vehicle and sustained grievous injury. Thereafter, the victim girl was taken to B.K. Memorial Hospital, Tezpur in the vehicle of accused and from there she was shifted to Mission Hospital and considering the seriousness of injury sustained by his daughter, she was shifted to GMCH, where she died on the same day. However, in his cross examination admitted that he was not aware that his daughter was at the place of occurrence at the time of incident and it was not within the knowledge of him and the accused that his daughter was under the wheel. PW-1 also did not utter any single words implicating the accused as he has no knowledge that his daughter was under the wheel of the offending vehicle. The evidence of PW-1 does not expose anything upon which the rash and negligent driving of the accused may be proved. He also not sure about the fact for whose fault the accident occurred. Hence, it is seen that the evidence of PW-1 not appears to be fully truthful upon which his evidence may be relied upon.

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22. PW-2, Miss. Fatema Begum being the mother of the victim girl deposed before this court that in the month of April, 2013 at about 6 PM, she along with her husband and her daughter aged about 22 months went to the market in the vehicle of the accused driven by him and when they returned back to their house, she went to her house and her husband was talking with the accused near the vehicle and the accused was sitting on the driving sit. She deposed that her daughter was near the vehicle and thereafter, she heard one sound near the vehicle and went outside of her house and her husband took her daughter who was severely injured condition. Thereafter, their daughter was taken in the vehicle of the accused to B.K. Memorial Hospital and then to Mission Hospital from where she was shifted to GMCH, where she died. However, PW-2 in her cross examination admitted that as she was inside her house, she had not seen the alleged incident. The evidence of PW-2 appears to be hearsay in nature as she has not seen the alleged incident. PW-2 also did not utter any single words implicating the accused. The evidence of PW-2 does not expose anything upon which the rash and negligent driving of the accused may be proved.
23. PW-3, Md. Ali Hussain deposed before this court that on the date of alleged incident during the evening time, he was talking with one Md. Ataur Rahman Choudhury at his house. Thereafter, he heard commotion near a vehicle which was parked in front of his house and further heard that the informant's daughter aged about 2 ½ years comes under the wheel while she was playing under the vehicle. PW-3 in his cross-examination admitted that the accused was innocent and the accident occurred not due to the fault of the accused. PW-4, Hazi Ataur Rahman Choudhury deposed before this court that on the date of alleged incident in between 6 PM to 6:30 PM, he heard hue and cry while he was sitting inside the house of Ali Hussain and when he came out, he saw a minor girl was lying on the road in an injured condition. Later, he came to know that the Swift Dzire, which was driven by the accused knocked the said minor girl. PW-4 in his cross-examination testified that he arrived at the place of occurrence after the incident had occurred. The evidence of PW-3 and PW-4 appears to be hearsay in nature as they have not seen the alleged incident and they only arrived at the place of occurrence after the incident occurred.

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PW-3 and PW-4 also did not utter any single words implicating the accused person as PW-3 admitted that the incident not took place for the fault of the accuse person. The evidence of both the witnesses does not expose anything upon which the rash and negligent driving of the accused may be proved.

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 Md. Mainul Haque Choudhury. Neither, the parents of the deceased girl 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 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 Aliya, who is the daughter of PW-1 and PW-2 died due to road traffic accident. Whether her 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 20th day of February, 2021.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Md. Mainul Haque

PW-2:- Miss Fatema Begum

PW-3:- Md. Ali Hussasin

PW-4:- Hazi Ataur Rahman Choudhury

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits: NIL

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**