

IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE

SONITPUR AT TEZPUR.

PRESENT : Mrs. A. Rahman, A.J.S.,

Addl. Chief Judicial Magistrate, Sonitpur.

For the prosecution Sri. P. Baruah..... A P.P.

For the accused persons Sri. Swami Nath.....Advocate.

Ref. : G.R. Case No. 7064 of 2016.

State of Assam

-vs-

Pranab Kr. Borah

.....Accused person

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

Offence explained on05.09.18

Evidence recorded on.....06.05.19,

Arguments heard on31.05.19

Judgment delivered on.....31.05.19

J U D G M E N T

1. The prosecution initiated the case on receipt of FIR filed by Sri. Prafulla Nath alleging therein that on 18.12.16 at about 7.40 Pm his brother Sri. Bhuban Nath was moving towards home, after marketing at Rongamati Bokultala Bazar, by riding a bicycle over NH 15. While he was moving a motorcycle bearing registration no. AS-12F-9726 moving

towards Dhekiajuli, plied in a rash and negligent manner, hit his brother near Barwari Puja Mandap at NH 15. For the said incident his brother sustained severe injuries and the cycle got damaged. That his brother was taken to TMCH for treatment wherein he succumbed to death. Hence, this case.

2. The Officer-in-charge, Tezpur Police Station, registered the F.I.R as Tezpur P.S. case No. 2312/16 **u/s 279/304(A)/427 of I.P.C.** and caused investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against accused Pranab Kr. Borah for commission of offences **u/s 279/304(A)/427 of I.P.C.**
3. In due course, the accused person, Pranab Kr. Borah, appeared before the Court and the copies of relevant documents were furnished to him as per section 207 Cr.P.C. Having found a prima-facie case against the accused person **u/s 279/304(A)/427 of IPC**, the particulars of offence under the said sections of law were explained to the accused person, to which he pleaded not guilty and claimed to be tried.
4. The prosecution, in support of its case, examined as many as two witnesses. Statements u/s 313 Cr.P.C. of accused Pranab Kr. Borah was dispensed with. The accused person has also declined to adduce any defense evidence. I have heard the arguments of the learned counsels.

POINTS FOR DETERMINATION :

- (i) **Whether accused, Pranab Kr. Borah on 18.12.16 at about 7.40 Pm, on NH 15, drove a bike bearing registration no. AS-12F-9726, in a manner so rash and negligent, endangering human life, and thereby committed an offence punishable u/s 279 of the I.P.C. ?**
- (ii) **Whether the accused person, on the same date, place and time, while driving the vehicle, rashly and negligently, had caused death to victim, not amounting to culpable homicide by hitting him and thereby, committed an offence punishable u/s 304(A) of the I.P.C ?**
- (iii) **Whether the accused, on the same day, place and time, had committed mischief by damaging the bicycle of victim, and thereby committed offence u/s 427 of IPC?**

DISCUSSION, DECISION AND REASONS THEREOF:

5. Now, let me discuss the evidence on record to decide the above points.
6. **PW1, Homeswar Nath** had stated that informant Prafulla Nath and victim Bhuban Ch.Nath are known to him but he does not know the accused. That the incident took place in the year 2016 in the month of December. On that day at about 7.30 pm when he was at home, he heard a loud sound in front of his house, on the road. Thereafter, he immediately rushed to the place of occurrence and saw that Bhuban Ch Nath and an another person were lying on the road. From the circumstances he could gather that victim was hit by the motor cycle plied by the person who was lying on the road. Since it was dark, so he could not see or identified the person riding the motor cycle.

In cross-examination he stated that he had not witnessed the occurrence of the incident. That he does not know for whose fault the incident took place.

7. **PW2, Prafulla Nath, informant of this case,** had recognized the accused. He stated that the incident took place in the year 2016. On that day, he was in his shop situated at Bihoguri locality. In the evening at about 8 PM, his wife informed him over phone that his elder brother Bhuban Ch. Nath had met with an accident on the road. Thereafter, immediately he went to the place of occurrence and with the help of other persons he took his brother to the hospital for treatment. That on the way to hospital, his brother succumbed to death. For the said incident, he filed the FIR. Ext.1, wherein Ext 1(1) is his signature.

In cross-examination he stated that at the time of the incident he was at his shop, so he had not witnessed the incident. That he does not know for whose fault the incident took place.

8. From the discussion of the aforesaid evidences, it is found that PW1 could not recognize the accused person. PW2 although had recognized the accused person, but has not implicated him for commission of the offence in question. Both of them have specifically stated that they don't know, who was at fault for the incident. That besides neither of them could explain under what facts and circumstances the incident took place.

9. In view of the above, I am of the considered opinion that the prosecution has failed to bring home the guilt of the accused Pranab Kr. Borah for commission of offences u/s 279/304(A)/427 of I.P.C. beyond all reasonable doubts.
10. Therefore, accused Pranab Kr. Borah is acquitted of the said offences and he be set at liberty forthwith. His bail bond stands cancelled and the bailer is discharged from the liability.
11. Seized vehicles be handed over to their registered owners, in due course.
12. Signed, sealed and delivered in the open Court on this 31th day of May, 2019, at Sonitpur.

(Smt. A. Rahman)

Addl. Chief Judicial Magistrate,

Sonitpur :: Tezpur

APPENDIX

WITNESSES FOR THE PROSECUTION :

PW1, Homeswar Nath

PW2, Prafulla Nath

WITNESSES FOR THE DEFENCE :

NIL.

DOCUMENTS EXHIBITTED :

Ext.1....FIR

Ext.2....Seizure List.

(Smt. A. Rahman)

Addl. Chief Judicial Magistrate,

Sonitpur :: Tezpur

ORDER

31.05.19-

Accused, Pranab Kr. Borah is present.

Today is fixed for Judgment.

From the materials available on record, I find and hold that the prosecution has failed to bring home the guilt of the accused Pranab Kr. Borah for commission of offences u/s 279/427 of I.P.C. beyond all reasonable doubts.

Therefore, accused Pranab Kr. Borah is acquitted of the said offences and he be set at liberty forthwith. His bail bond stands cancelled and the bailer is discharged from the liability.

Seized vehicles be handed over to their registered owners, in due course.

Judgment prepared on separate sheets and kept with the record.

(Smt. A. Rahman)

Addl. Chief Judicial Magistrate,

Sonitpur :: Tezpur

