

IN THE COURT OF JUDICIAL MAGISTRATE FIRST

CLASS, GOHPUR, SONITPUR

PR Case No.228/2020

Under Sections 279, 304 A, Indian Penal Code

STATE OF ASSAM

.....**PROSECUTION**

-VERSUS-

Mr. PANIRAM PAYEK

S/O Lt. KANU PAYEK

URIALINE GOHPUR T.E.

P.S.- GOHPUR

DIST.- BISWANATH

.....**ACCUSED PERSON**

PRESENT: Mr. RAJ SEKHAR DUARA, JUDICIAL MAGISTRATE
FIRST CLASS, GOHPUR, SONITPUR

ADVOCATE FOR THE PROSECUTION: Ms. SANTANA
BHUYAN, APP

ADVOCATES FOR THE ACCUSED: Mr. D. DUTTA

Ms. S.S. BARUAH

PARTICULARS OF

OFFENCE EXPLAINED ON:	23.03.2021
EVIDENCE RECORDED ON:	10.12.2021
ARGUMENTS HEARD ON:	04.01.2022
JUDGMENT DELIVERED ON:	17.01.2022

JUDGMENT

FACTUAL SCENARIO

1. The Prosecution's case can be surmised as: one Mr. Prem Bahadur Pradhan had lodged an F.I.R. dated 01.09.2019, before the Officer- in- charge, Gohpur Police Station, alleging inter alia that on 30.08.2019, at around 11:00 a.m. in the morning, when his mother, Ms. Savitri Devi Pradhan was waiting by the roadside at Bailjan to board a bus to go to Tezpur, a truck coming from Gohpur and heading towards Ghahigaon, which was driven at high speeds and in a negligent manner lost control and hit his mother from the front. His mother was grievously injured and later succumbed to her injuries at a medical facility at Jamuguri. Hence, the instant case.

INVESTIGATION BY POLICE AND CHARGESHEET

2. On receipt of the F.I.R., the Officer-in-charge, Gohpur P.S. had registered the same as Gohpur P.S. Case No. 360/19 dated 01.09.2019 under Sections 279, 304 A of the Indian Penal Code and conducted investigation into the matter. On conclusion of such investigation, the police submitted charge-sheet against the accused person, Mr. Paniram Payek under Sections 279, 304 A of the Indian Penal Code.

APPEARANCE OF THE ACCUSED AND TRIAL

3. In due course, the accused person appeared in compliance with the summons issued by this Court. Thereafter, copies of the relevant documents as mandated by Section 207, Cr.P.C were furnished to him. Subsequently, particulars of offence under Sections 279, 304 A of the Indian Penal Code were read over and explained to the accused person to whom he pleaded not guilty and claimed to be tried.

4. During trial, to substantiate their case, the prosecution examined 3 (three) witnesses and exhibited 1 (one) document after which evidence for prosecution was closed. Subsequently, all the incriminating materials brought out in the prosecution evidence were put forth to the accused persons and his statement as mandated by Section 313, Criminal Procedure Code was recorded, to which the accused

replied in negative, denying his involvement in the instant case. Defense declined to adduce any evidence to support their case.

POINTS FOR DETERMINATION

5. Upon hearing both the parties and on perusal of the case record, the following points for determination have been formulated by this court to arrive at a definite finding.

- i. Whether the accused person, Mr. Paniram Payek on or about the 30th day of August, 2019 at around 11:00 a.m. at Balijan, Gohpur on a public way, rode his truck bearing registration no. AS-01-BC-9971 in a manner so rash and negligent so as to endanger human life and thereby committed an offence punishable under Section 279, I.P.C.?***
- ii. Whether the accused person, on or about the same date, time and place caused the death of Ms. Savitri Devi Pradhan by doing a rash or negligent act not amounting to culpable homicide and thereby committed an offence punishable under Section 304 A, IPC?***

6. I have carefully deliberated upon the evidence brought on record and have keenly heard the arguments advanced by the learned counsels of both sides. The defense has argued that the no case has been made out against the accused which could entail his conviction under the alleged offences and thus, has prayed for his acquittal. The evidence brought forth is as under:

EVIDENCE

7. P.W.1, Mr. Prem Bahadur Pradhan, the informant, in his examination- in- chief has deposed on 30.08.2019 at around 10:00 a.m. in the morning, there was an accident at the main road at Balijan market, wherein his mother while trying to cross the road was hit by a pick-up truck. He deposes that his mother and sister were waiting for a passenger vehicle to go to Lakhimpur. He adds that his sister had successfully crossed the road but when his mother tried to cross it, she was hit by the truck. She sustained grievous injuries in the process and later succumbed to her injuries. **Exhibit-1** is the F.I.R. and **Exhibit 1(1)** is his signature over it. During his cross-examination, he affirmed that he was in Bangalore on the day of the incident and had returned home a day later. He also stated that if his mother had not turned back while she was in the middle of the road, the accident would not have happened. He concludes by stating that he had heard that the accused was not at fault for the accident.

8. P.W.2, Mr. Madhab Seal, has deposed that in the year 2019 at around 12:00-1:00 p.m. in the afternoon, there was an accident at Balijan Tiniali, wherein a mother and daughter were crossing the road. The daughter successfully crossed the road but when the mother tried to cross it, she was hit by a truck coming from Gohpur towards Lakhimpur. He added that when the old woman tried to cross the road, her daughter had warned her not to cross it. When the old woman tried to turn back in the middle of the road, a truck had hit her. The old woman sustained grievous injuries in the accident and later succumbed to them. When he was cross-examined, he answered that if the old woman had not turned back in the middle of the road, the accident would not have happened. He also added that the accused was not at fault for the accident.

9. P.W.3, Mr. Nabajyoti Borah, has deposed that around 2-3 years back, in the afternoon, there was an accident at Balijan Tiniali in which a truck had hit an old woman on the main road, in which the woman lost her life. During his cross-examination, he affirmed that he had only heard about the accident and had not witnessed it.

DISCUSSION, DECISION AND REASONS THEREOF

10. Points for determination no (i) and (ii): In the present case, it becomes imperative at the outset to address that the only eyewitness examined by the prosecution, who is P.W.2, Mr. Madhab Seal has not implicated the accused and in fact testified that the accident was not because of the accused person's fault. He elucidates further by adding that if the old woman/ victim had not turned back in the middle while she was crossing the road, the accident would not have happened. Secondly, the informant, P.W.1, Mr. Prem Bahadur Pradhan, son of the deceased, who as per his deposition is a here-say witness has testified on similar lines as that of P.W.2's narrative of events and has not implicated the accused in any manner. Now, it is clear from the depositions of all the three witnesses that the victim, Lt. Savitri Devi Pradhan had indeed succumbed to her injuries, which were sustained in an accident. However, in the absence of anything which can attribute her death to the rash or negligent act of the accused i.e. without any proof that the rash or negligent act of the accused was the proximate cause of the death of the victim, which is the *sine qua non* for an offence under Section 304 A, as in section 279, I.P.C. and found wanting in this case, the accused cannot be adjudged to be responsible for the commission of the alleged offences. Situated thus, **these points are decided in negative.**

DECISION

11. Now the cardinal principle of criminal jurisprudence in India and the standard of proof in any criminal case is that the guilt of an accused has to be proved beyond reasonable doubt thereby assigning the prosecution with the principal duty to prove such guilt. In the instant case, based on the holding of this Court in the above points for determination, it is clear that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. It is also apparent from the evidence of all the witnesses that there are no incriminating materials to constitute an offence punishable under Sections 279, 304 A of the Indian Penal Code.

ORDER

12. In view of the above deliberation and the decision arrived therein and after thorough consideration of all the materials on record, the accused person, Mr. Paniram Payek is **acquitted** under Sections 279, 304 A of the Indian Penal Code and hereby set at liberty, forthwith with regards to the instant case.

13. The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today in compliance with Section 437 (A) Criminal Procedure Code.

14. The Case is accordingly disposed of on contest.

15. The Judgment is pronounced in open Court in presence of the accused and his counsel.

16. Given under my hand and seal of this court on this 17th day of January, 2022 at Gohpur.

Typed by me

(Raj Sekhar Duara)
Judicial Magistrate First Class
Gohpur, Sonitpur

SONITPUR DISTRICT JUDICIARY

APPENDIX

PROSECUTION WITNESSES:

P.W.1- Mr. Prem Bahadur Pradhan

P.W.2- Mr. Madhab Seal

P.W.3- Mr. Nabajyoti Borah

DEFENCE WITNESS: NONE

PROSECUTION EXHIBIT:

Exhibit 1: F.I.R. dated 01.09.2019

DEFENCE EXHIBIT: NONE

(Raj Sekhar Duara)
Judicial Magistrate First Class
Gohpur, Sonitpur