

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST**

**CLASS, GOHPUR, SONITPUR**

**PR Case No.296/2018**

**Under Sections 279, 304 A, 427, Indian Penal Code**

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STATE OF ASSAM

.....**PROSECUTION**

**-VERSUS-**

Mr. BIPUL ROY

S/O Mr. ADIRAM ROY

NIZ SARIHA

P.S.- PATACHARKUCHI

DIST.- BARPETA

.....**ACCUSED PERSON**

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

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**FOR THE PROSECUTION:** Ms. SANTANA BHUYAN,  
A.P.P.

**FOR THE ACCUSED:** Mr. T. CHATTERJEE

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## **PARTICULARS OF**

<b>OFFENCE EXPLAINED ON:</b>	09.08.2019
<b>EVIDENCE RECORDED ON:</b>	11.09.2019, 14.11.2019, 06.12.2019, 03.01.2020, 04.02.2020, 25.11.2021
<b>ARGUMENTS HEARD ON:</b>	12.01.2022
<b>JUDGMENT DELIVERED ON:</b>	18.01.2022

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## **JUDGMENT**

### **FACTUAL SCENARIO**

1. The Prosecution's case can be surmised as: one Md. Amir Qureshi had lodged an F.I.R. dated 03.06.2017, before the I/C, Ghahigaon Outpost, alleging inter alia that on 28.05.2017 at around 09:30 a.m. in the morning, when his father, Babua Qureshi and his elder brother, Sabbir Qureshi were travelling from Gohpur towards Ghahigaon in their motorcycle bearing registration no. AS-01- R- 1417, a Bolero coming from the opposite side, which was driven at high speeds and in a negligent manner collided with their motorcycle head on, near Khatarbari at Gohpur. His father and brother were severely injured and both of them, subsequently succumbed to the injuries sustained. Hence, the instant case.

## **INVESTIGATION BY POLICE AND CHARGESHEET**

**2.** On receipt of the F.I.R., I/C Ghahigaon outpost forwarded it for registration before the Officer-in-charge, Gohpur P.S. who registered the same as Gohpur P.S. Case No. 125/17 dated 04.06.2017 under Sections 279, 304 A, 427 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. Bipul Roy under Sections 279, 304 A, 427 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, 427 of the Indian Penal Code were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

**4.** During trial, to substantiate their case, the prosecution examined 7 (seven) witnesses and exhibited 3 (three) documents 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. Bipul Roy on or about the 28<sup>th</sup> day of May, 2017 at around 9:30 a.m. at Khatarbari, Gohpur on a public way, rode his vehicle bearing registration no. AS-15-C-6045 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 Mr. Babua Qureshi and Sabbir Qureshi by doing a rash or negligent act not amounting to culpable homicide and thereby committed an offence punishable under Section 304 A, IPC?***

***iii. Whether the accused person, on or about the same date, time and place committed mischief by causing loss or damage to the motorcycle of the deceased persons to the amount upwards of Rs.50 and thereby committed an offence punishable under Section 427, I.P.C.?***

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 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, Amir Qureshi, the informant of this case, in his examination- in- chief has deposed that around 4 years back when the time was around 10 a.m. in the morning, there was an accident near the Brahmajan Cooperative Society, where his father who was riding his motorcycle was hit, head on by a Bolero coming from Tezpur. His father had died on the spot. He added that he was informed about the accident by the people from his village. **Exhibit-1** is the F.I.R. and **Exhibit 1(1)** is his signature. During his cross- examination, he affirmed that he had not witnessed the accident.

**8.** P.W.2, Mr. Umesh Dulal has deposed that there was an accident around 4 years back, at around 1:00-1:30 p.m. in the afternoon, at SRT Brahmanjan, between a motorcycle with two riders travelling towards Biswanath and a Bolero pick up coming from Tezpur. He stated that the bike tried to overtake another vehicle in front of it and then it hit the Bolera Pick up. He stated that the two persons on the bike died on the spot. When he was cross- examined, he first confirmed that the motorcycle was 10 meters away from him at the time of the accident. He then answered that the accident happened because of the recklessness of the rider of the motorcycle as he tried to carelessly overtake the vehicle in front of him.

**9.** P.W.3, Mr. Manik Saikia had deposed that around 4 years back, there was an accident at around 11:30 a.m.- 12:00 p.m. in the afternoon at Khatarbari Tiniali. He deposes that one Tempo Van carrying Bamboo coming from Gohpur side tried taking a turn from the NH 15 towards Bekijan when a motorcycle with two riders hit the vehicle and toppled over. He states that one of the riders died on the spot while the other was taken to the hospital. During his cross-examination, he affirmed that the accident had happened because of the fault of the rider of the motorcycle who tried

overtaking the van in front of it in a negligent manner and subsequently it hit the Bolero car.

**10.** P.W.4, Mr. Uttam Ghimire had deposed that around 4 years back, there was an accident at around 11:30 a.m.-12:30 p.m. in the afternoon at SRT, Khatarbari, involving a motorcycle and a Bolero car. He then deposed that when he reached the place of occurrence, he saw the dead body of a person. Defense had declined his cross- examination.

**11.** P.W.5, Mr. Babul Hussain had deposed that there was an accident around 4 years back at around 9:30- 10:00 a.m. in the morning at Khatarbari Tiniali involving a motorcycle and a Bolero car. He stated that he received a call that Babua Qureshi had met with an accident. He was then called to the police station where he saw the body of Babua Qureshi which was later taken for post-mortem. **Ext. 2** is the Inquest Report and **Ext.2 (1)** is his signature.

**12.** P.W.6, Mr. Akhtar Qureshi, had deposed that there was an accident around 4 years back at Brahmajan Tiniali during the day involving a motorcycle and a Bolero pick up. The person riding the motorcycle was his uncle Ayyub Qureshi, who was going towards Halem, when a Bolero Pickup truck coming from the side of Tezpur towards Lakhimpur had hit his motorcycle. In consequence of the accident, his uncle who

was riding the motorcycle died on the spot and his cousin, Sabbir Quereshi who was the pillion rider, succumbed to his injuries at a Hospital in Guwahati, the next day. **Ext. 2** is the Inquest Report and **Ext.2 (2)** is his signature. **Ext. 3** is the Inquest Report of Sabbir Qureshi and **Ext.3 (1)** is his signature. During his cross- examination, he stated that he had not witnessed the accident and had reached the place of occurrence only two hours later.

**13.** P.W.7, Mr. Dipak Kalita had deposed that around 4 years back, there was an accident at around 8:00- 8:30 p.m. at Gohpur, involving a motorcycle and a Bolero car. He then deposed that the Bolero was travelling from Tezpur towards Lakhimpur and the motorcycle from the opposite side when it hit a vehicle carrying bamboo and then it hit the Bolero pickup. He concludes by stating that the rider of the motorcycle lost his life in the accident. During his cross-examination, he averred that he had not witnessed the accident and had only heard about it.

### **DISCUSSION, DECISION AND REASONS THEREOF**

**14. Points for determination no (i),(ii) and (iii):** In the present case, it becomes imperative at the outset to address that out of the seven witnesses examined by the prosecution, only two had witnessed the accident. P.W.2, Mr. Umesh Dulal and P.W.3, Mr. Manik Saikia, the only two eyewitnesses, have

not implicated the accused in any manner and have in fact testified that the accident was not because of the accused person's fault. They elucidated further by adding that the accident happened because of the recklessness of the rider of the motorcycle as he tried to carelessly overtake the vehicle in front of him and subsequently it hit the Bolero of the accused. Now, it is clear from the depositions of the witnesses that the victims, Lt. Babua Qureshi and Lt. Sabbir Qureshi had indeed succumbed to their injuries, which were sustained in an accident. However, in the absence of anything which can attribute their 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 victims, 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**

**15.** 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, 427 of the Indian Penal Code.

### **ORDER**

**16.** 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. Bipul Roy is **acquitted** under Sections 279, 304 A, 427 of the Indian Penal Code and hereby set at liberty, forthwith with regards to the instant case.

**17.** 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.

**18.** The Case is accordingly disposed of on contest.

**19.** The Judgment is pronounced in open Court in presence of the counsel of the accused and the Id. A.P.P.

**20.** Given under my hand and seal of this court on this 18<sup>th</sup> 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- Amir Qureshi  
P.W.2- Mr. Umesh Dulal  
P.W.3- Mr. Manik Saikia  
P.W.4- Mr. Uttam Ghimire  
P.W.5- Md. Babul Hussain  
P.W.6- Md. Akhtar Qureshi  
P.W.7- Mr. Dipak Kalita

### **DEFENCE WITNESS: NONE**

### **PROSECUTION EXHIBITS:**

Exhibit 1: F.I.R. dated 03.06.2017  
Exhibit 2: Inquest report of Lt. Babua Qureshi  
Exhibit 3: Inquest report of Lt. Sabbir Qureshi

### **DEFENCE EXHIBIT: NONE**

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