

DISTRICT: SONITPUR

IN THE COURT OF JUDICIAL MAGISTRATE 1ST
CLASS, TEZPUR, SONITPUR

Present: Smt. Priyanka Saikia, AJS
Judicial Magistrate 1st Class Sonitpur, at Tezpur

G.R. Case No. 3213/2017
under Section 279,304(A) IPC

STATE OF ASSAM

-VERSUS-

BIPUL DEKA

S/O: LT DEBEN DEKA

R/O: UDMARI

PS: MANGALDOI,

DIST: DARRANG, ASSAM

.....ACCUSED PERSON

Date of evidence : 19.11.2018, 25.02.2020

Date of argument : 12.01.2022

Date of judgment : 12.01.2022

Advocate appeared for the State: Smt. Bandana Boro, Ld.

APP

Advocate appeared for the accused person: Sri. S.K.
Goswami

CASE NO: G.R. 3213 of 2017

JUDGMENT

1. The brief fact of the prosecution story is that, one Sri Moon Das had lodged an Ejahar before the O/C, Tezpur P.S. on 19.08.2017 reporting that on 13.08.2017 at about 05.00 A.M., his father namely, Jonaram Das was went for morning walk by his side. At Rangamati Bakultol, NH-15, one car (Indica) vide Registration No. AS-01-by-3171 had coming from the same direction at high speed and hit his father. As a result, his father was succumbed to death. Hence, this case.

2. On receipt of the FIR, Police registered a case as Tezpur P.S. Case No. 1677/2017 under Sections 279, 304(A) IPC and conducted investigation into the matter. On completion of the investigation, the police submitted the charge-sheet against the accused person under Sections 279, 304(A) IPC and forwarded to face trial before the Court.

3. On receipt of summon the accused person was appeared before the court. Copies of relevant documents were furnished to the accused person under Section 207 of Cr.P.C. After perusal of the relevant documents and hearing both sides particulars of offence under Sections 279, 304(A) IPC were explained to the accused by my learned Predecessor to which he pleaded not guilty and claimed to be tried.

4. Prosecution examined three witnesses in this case. Statement of the accused under Sec. 313 Cr.P.C. is also

dispensed with as nothing incriminating was found against the accused person. Defence plea even then remained of total denial. Heard the argument put forwarded by the learned Counsel for both the sides as well as gone through the evidences available on record.

5. Upon hearing both the parties and on perusal of the case record, the following point for determination was formulated by this Court.

POINTS FOR DETERMINATION

(A) Whether the accused person, on 13.08.2017 at about 05.00 A.M had drove his vehicle vide No.AS-01-by-3171 in a rash & negligent manner over the NH-15 and that creates endanger to the life of informant's father and thereby committed an offence punishable under Section 279 of IPC?

(B) Whether the accused person, at same data, around the same time and at the same place, caused the death of Jonaram Das by his rash and negligent driving and thereby committed an offence punishable under Section 304(A) of IPC?

6. I have heard the learned counsels on both side and have gone through the evidence on records which have been outlined below.

DECISION AND REASONS THEREOF

7. In this case prosecution examined 3 (Three) witnesses.

8. PW-1 (Moon Das) in his evidence stated that the incident was occurred 13.08.2017 at about 05.00 A.M.

when his father went for a morning walk at the national Highway towards Dhekiajuli by his own side, then a private car coming in a speed had hit his father and his father was died at spot. The driver of the offending vehicle fled away after hitting his father. Exhibit-1 is the FIR lodged by him, Exhibit (1) is his signature.

In his cross examination, he deposed that he was at home at the time of occurrence. He also did not know for whose fault the accident was occurred. He also did not know who had driven the car.

9. PW-2 (Krishna Das) has deposed in his chief examination that Jonaram Das was walking at 05.00 A.M. over the highway. One car came in a speed and hit the victim.

In his cross examination he deposed that at the time of accident, he was at home and hr did not say for whose fault the accident was occurred and who was the driver.

10. PW-3 (Jugen Das), has deposed in his chief examination that he had no knowledge about the accident. the incident happened around 1 year ago near his house. One four wheeler vehicle hit the victim and he was died at spot. He saw the offending vehicle rammed against a tree. Thereafter police came and seized the offending vehicle. Exhibit-2 is the Seizure list, Exhibit 2(1) is his signature.

In his cross-examination he deposed that he was on his duty at Krishna Mill at the time of incident. He was informed by his daughter over phone.

11. To sum up the witnesses on record, it is seen that not a single witness have witnessed the alleged incident.

The informant in his evidence although mentioned the vehicle, but, he in his cross-examination part clarified that he has not present at the time of the accident. She does not know how the accident is occurred.

12. Therefore, in the light of all the above said discussion and evidences on record, it is seen that not a single witness has implicated the accused with the alleged accident.

13. Hence, it can be safely concluded here by observing that informant's father due to road traffic accident. But, whether the said accident occurred due to rash and negligent driving of the accused? That fact remains not proved before this court. The prosecution side failed to adduce any cogent evidence under which the accused may be held guilty of commission of offences punishable under Section. 279, 304(A) of IPC.

14. It must be understood that the terms "rash" and "negligence" have not been defined in the IPC and both the words are not synonymous. Rashness is an act done in the hope that no untoward consequence will ensue though the person is aware of the likelihood of such consequence. On the other hand, negligence is acting with the awareness that harmful or mischievous consequences will follow. If a person does an act with utter indifference of the consequence of which he may be conscious, which he hoped may not take place, he is said to be rash.

Negligence is failure to take that precaution, which a reasonable and prudent person is expected to take.

15. As far as the death of Jonaram Das is concerned, all the PWs have concurred on this point. The defence too has not disputed it.

16. Now, from the evidence of the PWs it can be seen that none of them had implicated the accused to have committed this accident. Also none of them are eye witnesses and had not stated due to whose fault the accident was occurred.

17. So, from the evidence on record it can be seen nothing incriminatory has transpired against the accused person and in fact he has not even been implicated in this case by the PWs.

18. However, the offences under Sections 304(A) of IPC are predicated on the proof of rashness or negligence on the part of the accused person. Unfortunately for the prosecution, that has not been the case here. As such, the offences under Sections 304(A) of IPC also stand not proved.

19. Situated thus, all the points for determination are decided in the negative

ORDER

20. Accordingly, the accused person, Sri Bipul Deka is acquitted of the offences under Sections 279, 304(A) IPC and set at liberty forthwith.

21. The custody of the seized vehicle and its documents is made absolute in favour of the registered owner thereof.

22. The bail bond furnished by the surety is extended for a period of six months.

Given under my hand and seal of this court on this 12th day of January, 2022 at Sonitpur, Assam.

Priyanka Saikia, AJS
Judicial Magistrate 1st Class
Sonitpur, Tezpur

APPENDIX

1. Witnesses for Prosecution

PW-1: Sri Moon Das

PW-2: Sri Krishna Das

PW-3: Sri Jugen Das

2. Prosecution Exhibits

Exhibit 1: Ejahar

Exhibit 2: Seizure List

Priyanka Saikia, AJS
Judicial Magistrate 1st Class
Sonitpur, Tezpur