

APPENDIX -12

<p style="text-align: center;">IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR</p> <p style="text-align: center;">Present: Smt. Priyanka Saikia, JMFC</p> <p style="text-align: center;">(Date of the Judgment)</p> <p style="text-align: center;">28-11-2022</p> <p style="text-align: center;">(CASE NO- G.R. 498/2014)</p> <p style="text-align: center;">(Details of FIR/Crime and Police Station)</p>	
Complainant	State of Assam or Md. Abdul Hussain
Represented By	Smti. Bandana Baro, Learned APP
Accused person	Sri Sunil Lohar S/o- Sri Biran Lohar Village- Sessa P.S.- Tezpur District- Sonitpur, Assam
Represented by	Sri N. Sarma

APPENDIX -13

Date of offence	28-02-2014
Date of FIR	02-03-2014
Date of charge sheet	27-05-2014
Date of offence explanation	09-06-2015
Date of commencement of evidence	22-11-2016
Date on which judgment is reserved	14-11-2022
Date of judgment	28-11-2022
Date of the sentencing order, if any	NIL

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Sri Sunil Lohar	NIL	26-05-15	Section 279, 304(A) of IPC	Acquitted	NIL	NIL

APPENDIX -14**LIST OF PROSECUTION / DEFENSE / COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Abul Kasem	Other witness
PW2	Md. Abdul Hussain	Informant
PW3	Babul Ali	Other witness
PW4	Dhan Patangia	Other witness
PW5	Dr. Sanjay Roy	Medical witness
PW6	Sri Pradip Kr. Borah	Police witness

B. Defense Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENSE/ COURT EXHIBITS**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext. 1	Seizure list
2	Ext. 1(1)	Signature
3	Ext. 2	Ejahaar
4	Ext. 2(1)	Signature
5	Ext. 3	Post Mortem Report
6	Ext. 3(1) and Ext. 3(2)	Signatures
7	Ext. 4	Sketch map
8	Ext. 4(1)	Signature
9	Ext. 5	Seizure list
10	Ext. 5(II)	Signature
11	Ext. 6	MVI report
12	Ext. 6(1)	Signature
13	Ext. 7	Zimma nama
14	Ext. 8	Charge sheet
15	Ext. 8(1)	Signature

B. Defense:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

J U D G M E N T

1. The brief fact of the prosecution story is that, one Abdul Hussain had lodged an Ejahar before the O/C, Tezpur P.S. on 01.03.2014 reporting that on 28.02.2014, at about 01.00 P.M., when his mother namely Rabia Begum went to market, one truck filled with sand bearing registration No. AS-12-A-6570 coming at high speed from Tezpur University towards Tezpur town, negligently hit her at Paruwa. As a result, informant's mother fell down on the ground and died at the spot. Hence, this case.

2. On receipt of the FIR, Police registered a case as Tezpur P.S. Case No. 235/2014 under Sections 279, 304(A) of 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) of 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) of IPC were explained to the accused by my learned Predecessor to which he pleaded not guilty and claimed to be tried.

4. In support of the case, prosecution examined 6 (Six) no's of witnesses. After closure of prosecution evidence, the statement under Section 313 of Cr.P.C. is recorded, in which his plea is total innocent. Defense declined to adduce evidence. 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 points for determination was formulated by this Court.

POINTS FOR DETERMINATION

(A) Whether the accused person, on 28.02.2014, at about 01.00 P.M. had drove one Truck bearing registration No. AS-12-A-6570 at Paruwa in a rash and negligent manner on a public way and thereby committed an offence punishable under Section 279 of IPC?

(B) Whether the accused person, at around the same time and at the same place, caused the death of Rabia Begum 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.

DISCUSSION, DECISION AND REASONS THEREOF

7. In this case prosecution examined 6 (Six) witnesses.

8. PW-1 (Md. Abul Kasem) in his evidence stated around 3-4 years back at about 1 PM, at Bhitor Paruwa Centre, the deceased Rabia Begum was getting down from a Tempo at Bhitor Paruwa Centre. While the deceased was going, the accused drove the truck and knocked her down as a result the deceased fell down on the ground. The child who was along with the deceased shouted and on hearing, he came near the place of occurrence and the deceased was lying dead. Exhibit 1 is the seizure list, Exhibit 1(1) is his signature.

In his cross-examination, PW-1 stated that at the time of incident the road was busy. The offending truck was on a moderate speed. He has seen the accused drove the offending truck. At the time of incident, he was talking with some other person.

9. PW-2 (Md. Abdul Hussain) was the informant and stated in his evidence that on 14.02.2014 at about 12.45 PM, his mother was coming back from KCH, then she stopped at Paruwa centre in a shop. While she was coming out of from a shop, a truck came and knocked down his mother, as a result she died on the spot. His sister Halima Khatoon was along with his mother at the time of incident. He came to know about the accident from other villagers

and immediately came to spot and saw the dead body of his mother. Exhibit 2 is the FIR, Exhibit 2(1) is his signature. Exhibit 1 is the seizure list, Exhibit 1(1) is his signature.

In his cross examination he deposed that he has filed the ejahar after 1 month of the incident, however, he has not mentioned the reason of delay. He has not seen the accident himself.

10. PW-3 (Babul Ali) has deposed in his evidence that he has no knowledge about the incident.

11. PW-4 (Dhan Patangia), has deposed in his evidence that the incident took place about 4-5 years ago in the evening. PW-4 has engaged the accused person as his driver for the vehicle. On the date of incident, he was called to Mahabhairab Out Post as his truck was brought by seizure. He got to know that a lady when got down from an auto, she came under the rare wheels of the truck and she died. He did not see the incident. After that the truck was seized.

In his cross examination he deposed that as he was not present at the time of occurrence, he has not seen who had drove the offending vehicle. The road was a highly busy and all vehicles were driven slowly. As per his knowledge, the deceased by her negligence came under the vehicle.

12. PW-5 (Dr. Sanjay Roy) in his evidence stated that he examined the deceased and did post-mortem upon her. He found that right arm severed from the shoulder, left arm and forearm crushed. Both the kidney, lungs, heart, intestine are detached from the body and multiple lacerated injury over body and crushed injury of skull. In his opinion, the cause of death is haemorrhage and shock as a result of injury.

In his cross examination he deposed that the injury can be caused by some other reason and it might be caused by accident.

13. PW-6 (Sri Pradip Kr. Borah) in his evidence stated that on 02-03-2014, he was posted as I/C at Mahabhairab out-post. On 28-02-2014, at about 1.00 PM when he was at Mahabhairab out-post, he was informed via wireless that one accident was occurred at Bhiton Parua Chariali Centre. Instantly he went to the place of occurrence and after investigation he prepared a sketch map. There was GD entry regarding the incident vide no. 578 dated 28-02-2014. At that time the situation was extreme that people were gathered there, therefore the concerned DC and ADC were also present there. He had seized the offended vehicle in presence of the concerned DC and ADC. The victim was spot death and thereafter the body of the victim was inquest. On the same day the driver of the offended vehicle was appeared before the police station and police had taken the seized vehicle to the police station. As the

driver was injured by the mass therefore he was examined by the medical authority. On the day after the incident the driver of the offended vehicle was examined and arrested. The owner of the offended vehicle had appeared along with related documents of the vehicle. Accordingly, he had seized the documents. On 01-03-2014, the informant Md. Abdul Hussain had lodged an ejahar regarding the incident therefore he endorsed the case to the Tezpur P.S. The offended vehicle was sent for MVI report and the driver was allowed to go on bail. He collected the MVI report and post mortem report and allowed zimma of the offended vehicle to the owner. After completion of his investigation he had submitted charge sheet against the driver of the vehicle under Sections 279, 304(A). P.Ext.4/PW6 is the sketch map. P.Ext.4(1)/PW6 is his signature. P.Ext.1/PW6 is the seizure list. P.Ext.1(3)/PW6 is his signature. P.Ext.5/PW6 is the seizure list of documents. P.Ext.5(II)/PW6 is his signature. P.Ext.6/PW6 is the MVI report. P.Ext.7/PW6 is the zimma nama. P.Ext.3/PW6 is the post mortem report. P.Ext.8/PW6 is the charge sheet. P.Ext.8(1)/PW6 is his signature.

In his cross-examination he deposed that he had entered the GD entry at 1.46 PM on 28-02-2014. He reached the place of occurrence at 1.55 PM. He did not prepared the inquest report and also not in the case record. The date of the FIR was not mentioned also the date of the incident was not mentioned in the FIR. FIR was registered on 01-03-2014 at Mahabhairab out-post and on

02-03-2014 at Tezpur P.S. It is true that the sketch map was prepared by him on the day of incident. Case was registered on 02-03-2014. No GD entry was mentioned in the sketch map and after the registering the case the sketch map was prepared. He had not mentioned the date when he prepared the sketch map. It is not a fact that the sketch map was prepared by him in the police station to show that the incident was occurred. He had not mentioned about GD entry in the charge sheet. It is a fact that he had examined the witnesses on the day of occurrence. In the charge sheet it was mentioned that he went to the place of occurrence after receiving the FIR. The seizure list of the documents of the vehicle was prepared after receiving the FIR. In MVI report it was reflected the date of GD entry was made on 01-03-2014 vide no. 578. In 161 statement of PW 1, he had stated that when the victim was coming from the shop she was hit by the offended vehicle but in evidence he had deposed that when the victim was getting down from the tempo she was hit. He did not recorded statement of the prime witnesses who was with the victim at the time of incident. The post mortem was sent vide GD entry 1362 dated 28-02-2014 by Tezpur P.S. It is not a fact that he did not investigated the matter properly and without having any sufficient material he had submitted charge sheet.

14. Other witnesses are stated in their evidence that they were not present at the time of the accident.

15. 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.

16. It is quite evident that there is no material whatsoever to suggest that the accused person was rash at the time of the incident.

17. Prosecution also failed to bring the eye witness Halima Khatoon, the daughter of the deceased.

18. That being said, I want to point out here that when PW-1 was cross-examined, he stated that the offending vehicle was in a moderate speed. The learned Assistant Public Prosecutor has argued that this was clearly an act of negligence on the part of the accused person and it was because of this that the incident occurred.

19. In the absence of proof of either rashness or negligence on the part of the accused person, the offence under Section 279, IPC stands not proved.

20. As far as the death of Rabia Begum is concerned, all the PWs have concurred on this point. The defense too has not disputed it.

21. So from the evidence of the PWs above mentioned it can be seen that none of the said PWs have implicated the accused person to be the driver of the offending vehicle and said him to have committed this accident.

22. 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.

23. 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.

24. However, the offences under Section 304(A) 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 Section 304 (A) of IPC also stand not proved.

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

ORDER

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

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

28. The bail bond furnished by the surety is extended for a period of six months from today by virtue of Sec. 437A Cr.P.C.

Given under my hand and seal of this court on this 28th day of November, 2022 at Sonitpur, Assam.

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