

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. 834/2013
under Section 279,304(A), 427 IPC

STATE OF ASSAM

-VERSUS-

UTPAL DAS

S/O: LT MANMOHAN DAS

R/O: MADHUPUR

PS: BISWANATH CHARIALI,

DIST: SONITPUR, ASSAM

.....ACCUSED PERSON

Date of evidence : 28.12.2017, 24.07.2018, 11.11.2021

Date of argument : 07.01.2022

Date of judgment : 10.01.2022

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

APP

Advocate appeared for the accused person: Ratul

Barmudoi and Kishore

Deka

CASE NO: GR 834 of 2013

JUDGMENT

1. The brief fact of the prosecution story is that, one Smti Nilakshi Devi had lodged an Ejahar before the O/C, Jamuguri P.S. on 16.04.2013 reporting that on same day at about 08.20 A.M., his brother namely, Manoj Nath ride a motor cycle going Biswanath from Tezpur. At Kusumtola Centre, one car (Indica) vide Registration No. AS-01-AE-5853 had coming at high speed and hit the motor cycle on NH-52. As a result, his brother got grievous injury and he was provided primary treatment at Dholabill forthwith but for advance treatment he was sent to Tezpur. Thereafter, he was referred to Gauhati and in Down Town Hospital, Guwahati, he was succumbed to death. Hence, this case.

2. On receipt of the FIR, Police registered a case as Jamuguri P.S. Case No. 44/2013 under Sections 279, 304(A), 427 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), 427 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), 427 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

(I) Whether the accused person, on 16.04.2013, at about 08.20 A.M. had drove his vehicle vide No.AS-01-AE-5853 in a rash & negligent manner over the N.H-52 and that creates endanger to the life of informant's brother and thereby committed an offence punishable under Section 279 of IPC?

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

(III) Whether the accused person, on same date, at around the same time and place, committed mischief causing wrongful loss or damage to the informant's brother and thereby committed an offence punishable under section 427 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 (Sri Raju Biswakarma) in his evidence stated that the incident was occurred on $\frac{3}{4}$ years ago in front of his shop at Kusumtola. When he reached at his shop, he saw that police personnel were present there and taken a bike in a vehicle. In his cross examination he stated that he had not witnessed the accident. He also stated that he did not say for whose fault the accident was occurred.

9. PW-2 (Smti Nilakshi Devi) has deposed in her chief examination that Exhibit 1 is the FIR, Exhibit (1) is her signature. She had lodged the FIR in the year 2013. One of her relative has informed her that her brother met with an accident and the offending vehicle was Swift D'zire.

In his cross examination she deposed that at the time of accident, she was at Bihaguri. She did not say for whose fault the accident was occurred.

10. PW-3 (Tarun Kalita), has deposed in his chief examination that he had no knowledge about the accident.

In his cross examination he deposed that he did not say for whose fault the accident was occurred and also could not say who had drove the offending vehicle.

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

The informant in her evidence although mentioned the vehicle, but, she in her cross-examination part clarified that she has not seen any 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 brother 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), 427 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 Manoj Nath 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. The accused is also facing allegations of an offence under Section 427 IPC. However, there is not an iota of evidence to suggest that the accused person caused wrongful loss or damage to the informant or any other person. This negates the offence under Section 427, IPC as well.

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

ORDER

21. Accordingly, the accused person, Sri Utpal Das is acquitted of the offences under sections 279, 304(A), 427, IPC and set at liberty forthwith.

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

23. 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 10th day of January, 2022 at Sonitpur, Assam.

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

APPENDIX

1. Witnesses for Prosecution

PW-1: Raju Biswakarma

PW-2: Nilakshi Devi

PW-3: Tarun Kalita

2. Prosecution Exhibits

Exhibit 1- Ejahar

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