

APPENDIX-12**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR
TEZPUR**

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.
Chief Judicial Magistrate,
Sonitpur, Tezpur

[Date of the Judgment]
28.11.2022

[GR Case No-1935 of 2014]

(FIR NO-102/2014 DATED-11.08.2014/ACCIDENT CASE AND SOOTEA POLICE
STATION)

COMPLAINANT :	STATE OF ASSAM OR Md. Miskin Ali, S/O:- Md. Hussain Ali, R/O:- Upper Koroiani, P/S:- Sootea, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Sri Ghanashyam Chetry, S/O:- Late Motilal Kharka @ Chetry, R/O:- Upper Koroiani, P/S:- Sootea, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Girindra Bora, Ld. Counsel Mr. Suranjan Bora, Ld. Counsel

APPENDIX-13

Date of Offence	11.08.2014
Date of FIR	11.08.2014
Date of Charge Sheet	31.08.2014
Date of Offence Explanation	02.11.2015
Date of commencement of evidence	02.01.2016
Date on which judgment is reserved	17.11.2022
Date of Judgment	28.11.2022
Date of the Sentencing Order, if any	NIL

ACCUSED DETAILS :

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Sri Ghanashyam Chetry	NIL	NIL	Section-279/304(A) of IPC	Acquitted	NIL	NIL

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No-1935 of 2014

State of Assam
-Vs-
Sri Ghanashyam Chetry

.....Accused Person

Under section-279/304(A) of I.P.C

Present:

*Sri Nabajit Bhatta AJS. MA, LL.B.
Chief Judicial Magistrate, Sonitpur at Tezpur*

28th day of November, 2022

Mr. N. K. Mishra, Addl. P.P

..... Advocate for the State

Mr. G. Bora, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 02.01.2016, 14.03.2016, 10.04.2019
05.09.2022 & 17.10.2022

Date of Argument : 17.11.2022

Date of Judgment : 28.11.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 11.08.2014 informant, namely, Md. Miskin Ali lodged an FIR before the O/C of Sootea Police Station to the effect that on 11.08.2014 at about 08:30 AM, while his brother, namely, Abu Taleb (Since deceased) was going towards Sootea Centre from his house by riding his bicycle, suddenly, one Dumper vehicle bearing Regd. No-AS-01/G-0272 driven in a rash and negligent manner had knocked his brother from backside near L.B. Road, Aamlathi Aatigaon and due to that his brother sustained grievous injuries. Thereafter, his injured brother was immediately taken to Biswanath Chariali Civil Hospital for treatment wherein the doctor declared his brother to be brought death. Hence, the prosecution case.
2. The instant case was registered under section-279/338/304(A) of Indian Penal Code and police investigated the same. After completion of the

investigation police submitted the charge-sheet against the accused, namely, Sri Ghanashyam Chetry under section-279/304(A) of I.P.C.

3. That my Ld. Predecessor in Office took cognizance of offence against the accused person. On appearance of the accused, copies of the relevant documents were furnished to the accused person and particulars of offences under section-279/304(A) of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in Office to which the accused pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as six (06) numbers of witnesses including the informant, medical officer and the investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of accused person has been recorded U/S-313 of Cr. P.C.

5. **POINTS FOR DETERMINATION:-**

- (i.) Whether on 11.08.2014 at about 08:30 AM at a place called L.B. Road, Aamlathi Aatigaon under Sootea PS, the accused person drove Dumper vehicle bearing Regd. No-AS-01/G-0272 so rash and negligent manner which is endanger to the life of informant's brother, Abu Taleb and thereby committed an offence punishable under section-279 of I.P.C?
- (ii.) Whether on the same date, time and place, accused drove the Dumper vehicle bearing Regd. No-AS-01/G-0272, in a rash and negligent manner had knocked the informant's brother, Abu Taleb from backside and due to such negligent driving of the accused resulted the death of informant's brother and thereby committed an offence punishable under section-304(A) of I.P.C.?

6. Heard argument from both sides. On perusal of the evidences on record and case diary the very findings are as follows.

DISCUSSION, DECISION AND REASONS THEREOF

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Md. Miskin Ali as PW-1. The PW-1 in his evidence-in-chief has stated that he does not know the accused person of this case. He further stated that the incident took place around one and half years back and on the date of incident one day at about 08:30 AM, while his brother Abu Taleb was going towards Sootea for his work from his house by riding his bicycle, suddenly, one dumper vehicle had knocked his brother from backside near Aamlathi Aatigaon. He also stated that on being came to know about the incident over phone he immediately went to the place of occurrence and in the meantime his was already shifted to Civil Hospital wherein he found his brother to be dead. He stated that he came to know from the people that the dumper vehicle was in a high speed. He further stated that the road was clear. He also stated that while his brother was getting from the Pakka road towards a nearby shop then the offending vehicle knocked his brother from backside. Thereafter, he lodged the ejahar. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1).
8. PW-1 in his cross-examination has stated that he could not remember the date of accident. He stated that on the date of the incident he was already went for his work at about 07:00 AM and he came to know about the incident at about 09:00 AM.
9. PW-2, Sri Bapati Hazarika in his evidence-in-chief has stated that he does not know the informant and the accused person of this case. He further stated that at the time of incident he was fishing on the river and on hearing hulla infront of his house, he went there and came to know that one dumper had knocked one person. He also stated that he had not

found the victim and offending vehicle at the place of occurrence. He stated that he came to know from the people that the victim was shifted to hospital through 108 Ambulance. The cross-examination of PW-2 was declined by defence side.

10. PW-3, Md. Noor Mahammad in his evidence-in-chief has stated that he knows the informant but he does not know the accused of this case. He further stated that the incident took place around two years back and on the day of the incident during morning time he was proceeding from his home towards Sootea side for the purpose of his work then he saw many people gathered on the road at Aamlathi Aati. He further stated that the people who were present there informed him that one dumper vehicle had knocked Abu Taleb while he was riding in his bicycle. He stated that later he heard that the victim was succumbed to his injuries.
11. In cross-examination, PW-3 has stated that when he went to the place of occurrence he had not found the offending vehicle. He also stated that he could not say how the incident had occurred.
12. PW-4, Md. Abdul Kadir in his evidence-in-chief has stated that the informant is his sister-in-law but he does not know the accused person of this case. He further stated that the incident took place in the year 2014 and on the date of alleged incident the people who were present at the place of occurrence told him that one dumper vehicle had knocked his sister-in-law and due to that the victim succumbed to his injuries. He stated that he had not seen the alleged incident. The cross-examination of PW-4 was declined by defence side.
13. PW-5, Dr. Ranjan Kumar Das being the medical Officer of this case stated in his evidence that on 11.08.2014, he was posted at Kanaklata Civil Hospital, Tezpur as Senior Medical and Health Officer and on that day he has performed post mortem of deceased dead body of Abdul Taleb in connection with Sootea PS GDE number-238 dated-11.08.2014.

On completion of the post mortem of the deceased he found the death was caused due to haemorrhage and shock. He stated that all the injuries present over the body were ante-mortem in nature. The detailed of post mortem has been reflected in my report i.e. Wounds- position and character-Multiple abrasions on the back of the right shoulder, waist and back of the abdomen; Liver- ruptured in the middle lobe and right lobe; Spleen- ruptured (5 cm X 6 cm X 4 cm); Wals rib and Cartilage-fractured of the left cervical rib on 3rd rib; Left lung- ruptured on the lower lobe. He identified the post mortem report as P. Ext-2 wherein he put his signatures as P. Ext-2(1).

14. PW-5 in his cross-examination has stated that he has mentioned in his report that all the injuries were ante mortem in nature. He also stated that there is a possibility that the injuries sustained by the deceased make caused by falling on hard substance. He also stated that by falling on hard substance there is a possibility of hemorrhage.
15. PW-6, ASI Nilakanta Singha being the Investigating Officer of this case has stated in his evidence-in-chief that on 11.08.2014, he was posted as ASI at Sootea PS and on that day the O.C. of Sootea PS Homendra Hira received information of accident over phone and he had registered a GD entry No-234, dated-11.08.2014 and subsequently, he was endorsed for investigation. He identified the certified copy of GD entry as P. Ext-3. He stated that during his investigation, he visited the place of occurrence and drew up the sketch map. He identified the sketch map as Ext-4 wherein he put his signature as Ext-4(1). He also stated that during investigation, he also recorded the statement of the informant and other witnesses. He stated that the injured was forwarded to the hospital for treatment and he died subsequently. He stated that he seized one Hero bicycle (green colour). He further identified the seizure list as P. Ext-5 wherein he put his signature as P. Ext-5(1). On the same day a formal

ejahar was lodged by one Miskin Ali and after that the O.C. of Sootea PS registered a case vide Sootea PS Case number-102/14 dated-11.08.2014 u/s 279/338/304(A) of IPC. He further stated that in this case, victim Abul Taleb was died at hospital and his post mortem was done. Later on he collected the post mortem report of the deceased. He also seized one truck (Dumper) bearing registration number-AR-01G-0272. He identified the seizure list as P. Ext-6 wherein he put his signature as P. Ext-6(1). He stated that the seized vehicle was examined through Motor Vehicle Inspector and collected the MVI report. Thereafter, he apprehended the accused person namely Ghanashyam Chetry when he surrendered before him and forwarded him before the Hon'ble court. He also stated that after completion of investigation, SI Pradip Hazarika submitted charge-sheet against the accused, namely, Ghanashyam Chetry u/s- 279/304(A) of IPC. He identified the charge sheet submitted by SI Pradip Hazarika as P.Ext-7 and P.Ext-7(1) is the signature of SI Pradip Hazarika which is known to him.

16. PW-6 in his cross-examination has stated that he was posted at Sootea PS since 2014 to 2017 as ASI and he was endorsed to investigate the case on 11.08.2014. He further stated that he visited the place of occurrence at about 9:00 AM on the same day. He stated that he prepared a sketch map at the place of occurrence. He also stated that he had not seen the dumper truck at the place of occurrence. He stated that he had not seen the driver of dumper truck at the place of occurrence. He further stated that he had only seen a gathering at the place of occurrence. He also stated that he seized one bicycle from the place of occurrence. He prepared the inquest report. But the signature was done by O.C. of Sootea PS. He stated that post mortem report was collected by him. He also stated that he seized the vehicle (dumper) from the one Tsering Dorjee.

17. I have minutely perused the evidences on record including the cross examination of the witnesses. In this case prosecution side has examined six numbers of witnesses including the informant, the medical officer and investigating officer in support of this case. In this case, PW-1 is the informant of this case. PW-2, PW-3 and PW-4 are the independent witnesses. PW-5 and PW-6 are official witnesses i.e. Medical Officer and Investigating Officer.
18. PW-1 in his evidence has stated that at the time of incident while his brother Abu Taleb was going towards Sootea from his house by riding his bicycle, suddenly, one dumper vehicle had knocked his brother from backside near Aamlathi Aatigaon and on being came to know about the incident over phone. His brother shifted to Civil Hospital wherein he found his brother to be dead. He stated that he came to know from the people that the dumper vehicle was in a high speed. Hence, from the evidence of PW-1, it is seen that PW-1 appears to be the hearsay witness of this case as he went to the place of occurrence after the incident had occurred. He even failed to identify the driver of said offending vehicle and also failed to say the registration number of offending vehicle. Hence, from the evidence of PW-1 nowhere found that the offending vehicle was driven by accused person in a rash and negligent manner at the time when the accident happened. From the evidence of PW-1 nothing incriminating materials found against the accused person.
19. PW-2 appears to be a hearsay witness as he came to know about the incident from others. PW-2 also not seen the offending vehicle and the injured at the place of occurrence. PW-3 also came to know from the others that on the date of incident one dumper vehicle had knocked the victim and on the same day in the evening he came to know that the victim succumbed to his injuries. PW-4 also appears to be a hearsay

witness as he admitted in his evidence that he had not seen the alleged incident. He only came to know from the people who present at the place of occurrence that one dumper vehicle had knocked the victim. Hence, from the evidences of PW-2, PW-3 and PW-4, it is seen that all three witnesses appears to be the hearsay witnesses in this case as they only came to know about the incident from others. They even did not state a single word regarding the implication against the accused person of this case. From their evidences, it also appears that they did not state that the offending vehicle was driven by accused person in a rash and negligent manner.

20. PW-5 is the medical officer of this case who conducted the post mortem examination of the victim and submitted post mortem report as P. Ext-2. He in his evidence opined that the death of deceased was caused due to shock and haemorrhage. PW-6 is the Investigating Officer who investigated the case and exhibited extract copy of GDE vide No-234 dated-11.08.2014 as Ext-3, sketch map as Ext-4, seizure list of bicycle as Ext-5, seizure list of dumper as Ext-6 and charge sheet as Ext-7.
21. It appears that none of the prosecution witnesses have stated that the alleged dumper vehicle was driving by the accused person at the time of incident in a rash and negligent manner which is the main ingredient of Sec.279 I.P.C. So, there was nothing incriminatory materials against the accused person. All the witnesses have also failed to say the manner of driving of the alleged vehicle by the driver and the registration number of offending vehicle. Apart from the rash and negligent driving of the driver has been not proved by any prosecution witnesses. From the evidences of PWs nothing implicating found against the accused person. Hence, section-304(A) of IPC will also not come in application since rash and negligent act is the basic ingredient which must have resulted into the death of deceased. The prosecution has to prove beyond reasonable

doubt that the death of the deceased was the proximate and immediate result of the negligence or rashness without the intervention of another's negligence. Thus, the failure on the part of the prosecution side to bring forward any vital eye witnesses of this case had devastated the prosecution hope to bring home the charge levelled against the accused person.

22. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused U/S: 279/304(A) of Indian Penal Code. Hence, the accused person, namely, Sri Ghanashyam Chetry is not found guilty.

ORDER

Accused person, namely, Sri Ghanashyam Chetry is acquitted from the Charges under section-279/304(A) of I.P.C. and set at liberty forthwith.

Bail-bond of the accused person is extended for six months in view of section-437A of Cr.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 28th day of November, 2022 at Tezpur.

(Sri Nabajit Bhatta)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Dictated and Corrected by me

Chief Judicial Magistrate,
Sonitpur: Tezpur

APPENDIX -14
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Md. Miskin Ali	OTHER WITNESS
PW-2	Sri Bapati Hazarika	INFORMANT
PW-3	Md. Noor Mahammad	OTHER WITNESS
PW-4	Md. Abdul Kadir	OTHER WITNESS
PW-5	Dr. Ranjan Kumar Das	MEDICAL WITNESS
PW-6	ASI Nilakanta Singha	POLICE WITNESS

B. Defence 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/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext-1/PW-1	Ejhar
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-5	Post Mortem Report
4	Ext-2(1)	Signature of PW-5
5	Ext-3/PW-6	extract copy of GDE vide No-234 dated-11.08.2014
6	Ext-4/PW-6	Sketch Map
7	Ext-4(1)	Signatures of PW-6
8	Ext-5/PW-6	Seizure List of Bicycle

	Ext-5(1)	Signature of PW-6
	Ext-6/PW-6	Seizure List of Dumper vehicle
	Ext-6(1)	Signature of PW-6
	Ext-7/PW-6	Charge Sheet
	Ext-7(1)	Signature of SI Pradip Hazarika

B. Defence:

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

Chief Judicial Magistrate,
Sonitpur: Tezpur