

**G.R Case No-2135 of 2014**  
**(State of Assam Vs Md. Abdul Kadir Sheikh)**

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

**G. R. Case No-2135 of 2014**

Under section-279/304(A) of Indian Penal Code

Present:- **Sri N. J. Haque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

-Vs-

Md. Abdul Kadir Sheikh

S/O:- Md. Bulu Sheikh

R/O:- Partab Gorh Tea Estate

P/S:- Biswanath Chariali

Dist:- Biswanath, Assam .....Accused

**Advocate appeared:**

Mrs. Karabi Das, Asst. P.P..... For the State

Mr. Kishor Deka, Ld. Advocate.....For the accused person

Evidence recorded on	:- 30.03.2019, 06.12.2021 & 11.01.2022
Date of Statement of defence	:- 11.01.2022
Argument heard on	:- 11.01.2022
Judgment delivered on	:- 11.01.2022

**J U D G M E N T**

**History of Prosecution's Case**

1. Prosecution case appears to be in a nutshell is that one Sri Khagen Chandra Baruah lodged an Ejahar before the O/C of Tezpur P.S alleging inter-alia that on 28.07.2014 while his son Athonu Baruah (since deceased) along with his friend were proceeding from Parowa Chariali towards Mission Chariali in a Pulsar Motor Cycle bearing Regd. No-AS-12/Z-1297, suddenly one truck bearing Regd. No-AS-07/C-5629 which was proceeding from Nagaon towards Tezpur, in a rash and negligent manner had knocked the motor cycle near Army Elephant Hall, Mission Chariali from backside and due to that his son died on the spot.

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**"INVESTIGATION"**

2. On receipt of the Ejahar, Tezpur P.S Case No-1020 of 2014, u/s-279/304(A) of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-279/304(A) of I.P.C against the above-named accused person.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the above-named accused person. After hearing both side, particulars of offences u/s-279/304(A) of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused person examined as many as 04 (Four) numbers of witnesses including the informant and the Investigating Officer in support of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused person was examined u/s-313 of Cr.P.C and his pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.

6. **The points for determination in this case are:-**

- (i.) Whether on 28.07.2014 near Army Elephant Hall, Mission Chariali under Tezpur PS, accused drove the Truck bearing Regd. No-AS-07/C-5629, in a rash and negligent manner and such driving of accused creates endanger to the life of Athonu Baruah, who is the son of the informant and thereby committed an offence punishable u/s-279 of IPC?
- (ii.) Whether on the same date, time and place, accused drove the truck bearing Regd. No-AS-07/C-5629 in a rash and negligent manner knocked the Pulsar Motor Cycle bearing Regd. No-AS-12/Z-1297 and due to such negligent driving

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of the accused causing grievous injury upon the body of the victim, named, Athonu Baruah, who is the son of informant and also resulted the death of the above-named victim and thereafter accused committed an offence punishable u/s 304(A) of IPC?

**EVIDENCES OF PROSECUTION SIDE**

7. In this case prosecution side to prove the contentions of the Ejahar examined four numbers of witnesses including informant and medical officer of this case. For the sake of proper appreciation of evidences, let us reproduce the evidences of the prosecution witnesses. PW-1, Sri Khagen Ch. Baruah being the informant of this case deposed before this court that the incident took place on 28.07.2014 at about 10 PM near Gajraj Cinema Hall, Mission Chariali. He further deposed that on the date of the alleged incident, he was at Jorhat. He also deposed that on the date of alleged incident, while his son named Atanu Baruah was proceeding from Parowa towards Mission Chariali by riding his motor cycle along with friend who is sitting as a pillion rider and thereafter, one truck had knocked the motor cycle of his son from back side and due to that both of them sustained grievous injuries. He also deposed that his son succumbed to his injuries on the spot. Thereafter, he lodged the ejahar. He identified the ejahar as Ext-1 wherein he put his signature as Ext-1(1). PW-1 in his cross-examination testified that he had not witnessed the alleged incident.
8. PW-2, Sri Prabin Baruah deposed before the court that he knows the informant of this case. He also deposed that the incident took place in the year 2014 and at the relevant time, he was at his house. He further deposed that on being came to know about the accident, he went to the place of occurrence i.e. Mission Chariali. He also deposed that on the said accident the son of informant died. The cross-examination of PW-2 was declined by the defence side.
9. PW-3, Md. Rijuwan Hoque being the injured of this case deposed before the court that he knows the informant but he does not know the accused of this case. He also deposed that the incident took place around 6 years back at about 10:30 PM near Army Cinema Hall and at the time of incident, his friend Athonu Baruah and he were proceeding towards Dekargaon Railway Station through the Pulsar bike of Athonu Baruah. He further deposed that at that time one truck hit them from backside and

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due to that they fell down and truck went over Athonu Baruah. He further deposed that Athonu died on the spot and he sustained injuries on several parts of his body. He further deposed that he took treatment at Mission Baptist Hospital, Tezpur. He also deposed that he does not know who drove the alleged truck. He further deposed that the alleged truck in a speed manner hit them from back side. PW-3 in his cross-examination denied the fact that no such truck hit them from backside.

10. PW-4, Sri Padma Kt. Das being the Investigating Officer of this case deposed before the court that on 01.09.2014, he was posted as ASI at Tezpur PS and O.C. Hari Deka Tezpur P.S. received an information of accident and he has entered GD entry vide No-23 dated 01.09.2014 and subsequently, he was endorsed for investigation. He also deposed that during his investigation, he visited the place of occurrence and drew up the sketch map. He identified the sketch map as Ext-2 wherein he put his signature as Ext-2(1). He also deposed that during investigation, he also recorded the statement of the informant and the other witnesses. Thereafter, he called the accused person to appear before the police station and accordingly, the accused person appeared before the PS and allowed him to go on bail. He further deposed that the injured was forwarded to hospital for treatment and he died subsequently. He deposed that he also seized two numbers of vehicles from the place of occurrence. He further deposed that he seized one motor cycle and one truck. He also identified that seizure lists as Ext-3 and Ext-4 wherein he put his signatures as Ext-3(1) and Ext-4(1). He further deposed that the both vehicles were examined through Motor Vehicle Inspector. He deposed that one person died due to the alleged accident and with post mortem report of the deceased. He deposed that after investigation, he handed over the case diary to the O/C of Tezpur P.S. He also deposed that as per the record SI Giridhar Borah submitted charge sheet u/s-279/304(A)/337 of IPC. He identified the charge sheet as Ext-5 and Ext-5(1) is the signature of SI Giridhar Borah.
11. PW-4 in his cross-examination testified that he did not state in the seizure list that the name of the person from whom the truck was seized. He also deposed that he recorded the statement of the witnesses on the date of alleged incident. He further deposed that at the time of incident none from the family of deceased was present

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at place of occurrence. He denied the fact that he did not record the statement of the witnesses as per law.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

12. For the convenience of discussion and decision of both the points of determination, I would like to discuss all points together.
13. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.
14. The prosecution case as alleged by the prosecution side appears to be that on 28.07.2014 while his son Atanu Baruah (since deceased) along with his friend were proceeding from Parowa Chariali towards Mission Chariali in a Pulsar Motor Cycle bearing Regd. No-AS-12/Z-1297, suddenly one truck bearing Regd. No-AS-07/C-5629 which was proceeding from Nagaon towards Tezpur, in a rash and negligent manner had knocked the motor cycle near Army Elephant Hall, Mission Chariali from backside and due to that his son died on the spot.
15. All aforesaid contentions are appearing to be the accusations levelled against the accused person. The prosecution side has got the burden of prove to establish all the aforesaid accusations beyond any the reasonable doubt. In this case prior entering into the discussion, decision and appreciation of the evidences, let have a look over the essential ingredients of offences u/s-279/304(A) of IPC to understand the acts prohibited by those provisions and punishable there under.
16. It is apparent from the ejahar that it is a case of section-279/304(A) of I.P.C and now it required to look upon as to what facts needs to establish by the prosecution side to prove the guilty of the accused person for commission of offence punishable under section-279/304(A) of I.P.C.
17. In order to convict a person under section-279 of IPC the following ingredients are to be proved- (a) that the accused was driving the vehicle; (b) that the accused was

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driving the vehicle on a public way; (c) that the accused was driving the vehicle rashly or negligently and (d) that it endangered human life or to likely to cause hurt or injury to any other person.

18. There are two parts in Section-304(A) of I.P.C. The first relates to causing of death of any person by any rash act of accused. The second part comes in operation when the death is caused due to negligent acts, but in both cases, it should not amount to culpable homicide. The prosecution has either to prove the first part or the second part but there may be cases where both the parts may come in operation simultaneously if the evidence suggest that the act of the accused was not only rash but also negligent which resulted in the death of someone. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is and that it may cause an injury but without intention, to cause injury or knowledge that it will probably be caused. The criminality lies in taking the risk of doing such an act with recklessness or being indifferent at to the consequences. Reckless driving or driving in a manner dangerous to public is rashness.
19. Hence in order to decide the guilty of the accused person for committing an offence punishable under section-279/304(A) of I.P.C the court needs to appreciate that offences accomplished either by committing a rash act or negligent act. In this case to decide the guilty of accused, rash and negligent acts on the part of the accused required to establish from the evidences of prosecution side and it is the burden to prosecution to prove the rash and negligent driving of alleged truck by the accused person that results the death of deceased named Athonu Baruah.
20. From the aforesaid discussion and on going through the settled provisions of law, it divulges that to substantiate the essential ingredients of offences punishable u/s- 279/304(A) of IPC, the prosecution needs to establish the rash and negligent act while driving alleged truck and causing injuries to the body of the victim for which the victim named Athonu Baruah yield to death. The prime and principle fact that needs to be proved is rash and negligent driving on the part of the accused that follows the alleged incident.
21. On conscience perusal of the evidences on record, it disclosed that PW-1, Sri Khagen Ch. Baruah being the informant of this case deposed before this court that the incident took place on 28.07.2014 at about 10 PM near Gajraj Cinema Hall,

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Mission Chariali. He further deposed that on the date of the alleged incident, he was at Jorhat. He also deposed that on the date of alleged incident, while his son named Atanu Baruah was proceeding from Parowa towards Mission Chariali by riding his motor cycle along with friend who is sitting as a pillion rider and thereafter, one truck had knocked the motor cycle of his son from back side and due to that both of them sustained grievous injuries. He also deposed that his son succumbed to his injuries on the spot. PW-1 in his cross-examination admitted that he had not witnessed the alleged incident. The evidence of PW-1 appears to be hearsay in nature as he heard about the incident from others. PW-1 also did not utter any single words implicating the accused as he had not seen the alleged accident. He also not deposed anything about rash or negligent driving of accused.

22. PW-2, Sri Prabin Baruah deposed before the court that the incident took place in the year 2014 and at the relevant time, he was at his house. He further deposed that on being came to know about the accident, he went to the place of occurrence i.e. Mission Chariali. He also deposed that on the said accident the son of informant died. The evidence of PW-2 also appears to be hearsay in nature as he came to know about the incident from others.
23. PW-3 being the victim of this case deposed that the incident took place around 6 years back at about 10:30 PM near Army Cinema Hall and at the time of incident, his friend Athonu Baruah and he were proceeding towards Dekargaon Railway Station through the Pulsar bike of Athonu Baruah. At that time one truck hit them from backside and due to that they fell down and truck went over Athonu Baruah and due to that Athonu died on the spot and he sustained injuries on several parts of his body. He further deposed that he took treatment at Mission Baptist Hospital, Tezpur. He admitted that he does not know who drove the alleged truck. He further deposed that the alleged truck in a speed manner hit them from back side.
24. On meticulous perusal of the testimony of PW-4, it disclosed that although PW-3 being the victim of this case in his evidence claimed that at the time of accident one truck hit them from backside and due to that they fell down and truck went over Athonu Baruah and due to that Athonu died on the spot and he sustained injuries on several parts of his body but in the same time he failed to depose anything directly against the accused person as he does not know who drove the alleged

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truck on that date of alleged incident. He further claimed in his evidence that the alleged truck in a speed manner hit them from back side but in the same time he also failed to depose that the registration number of the vehicle, which was driven by the accused person on the date of alleged incident. The Court failed to collect any implicating material against the accused from the evidence of PW-3 to prove rash and negligent driving on the part of the accused. PW-2 even failed to clarify the exact speed of the offending vehicle. He also did not depose anything directly against the accused person in this case as he does not know who drove the vehicle at the time of accident. So, it is very difficult to ascertain whether the accused actually was the driver of the offending vehicle who caused the alleged incident as from the testimony of PW-3 not disclosed anything upon which rash and negligent driving of the accused may be established. PW-4, the official witness who exhibited the sketch map, seizure lists and charge sheet as Ext-2, Ext-3, Ext-4 and Ext-5 in this case.

25. To sum up the evidences on record, it released before this court that the prosecution side found to be unsuccessful in offering any credible evidence against the accused person upon which it may be acknowledged that the suspected occurrence happened due to reckless and inattentive riding of the accused named Md. Abdul Kadir Sheikh. Neither, the informant nor any other independent onlookers have seen the alleged incident. The evidences of all the bystanders brands its gemstone clear that on the date of unproven incidence they found the wounded lying on the road and thereafter the injured was shifted to hospital where the doctor acknowledged to be brought dead.
26. In this case the victim himself not deposed anything implicating against the accused person. The testimonies of the prosecution witnesses not appears to be clear and cogent and in presence of inconsistencies disclosed from her evidence, it is hard to opine that alleged truck was actually driven in a rash and negligent manner.
27. To sum up the indications on record, it is seen that the prosecution side unsuccessful to present any plausible eye witness to authenticate the entire case before this court. None independent witnesses have deposed anything impeaching against the accused person.

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28. In view of evidences on record, we have already observed that neither the informant nor any other witnesses have witnessed the alleged incident. From the evidences on record, it disclosed that deceased Athonu Baruah, who is the son of the informant died due to road traffic accident. Whether his death was caused due to rash and negligent driving of the accused person? To answer the pertinent question prosecution side failed to adduce any cogent and direct evidence before this court. The prosecution side failed to prove the indictments against the accused person by way of not presenting any convincing evidence and that enforced this court to resolve that the prosecution side failed to prove the guilty of the accused person beyond any reasonable doubt.

**FINDINGS**

29. On meticulous appreciation of evidences presented by all the witnesses this court finds their testimonies to be full with lots of shortcomings and accordingly their evidences are appearing to be deficient in holding the accused guilty of commission of alleged offences.
30. Under the above surroundings, it can be securely determined here that all the substantial onlookers of the prosecution side not seem to be corroborative, coherent, and supportive about the entire case of prosecution side and that renders their testimonies doubtful and untrustworthy. Hence the accused person is not found guilty of commission of offences under section-279/304(A) of I.P.C. In the result the accused is acquitted from the charges under section-279/304(A) of I.P.C.
31. The accused person sets at liberty forthwith. The validity of the bail bond of the accused person extended for six months till the accused filed a fresh surety under section-437A of Cr.P.C whichever is earlier.
32. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 11<sup>th</sup> day of January, 2022.

**(Sri N. J. Hoque)  
Chief Judicial Magistrate,  
Sonitpur: Tezpur**

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1 :- Sri Khagen Ch. Baruah, Informant  
PW-2 :- Sri Prabin Baruah,  
PW-3 :- Md. Rijuwan Hoque, Victim  
PW-4 :- Sri Padma Kt. Das, I.O.

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:**

Ext-1 :- FIR  
Ext-1(1) :- Signature of PW-1  
Ext-2 :- Sketch Map  
Ext-2(1) :- Signature of PW-4  
Ext-3 :- Seizure List  
Ext-3(1) :- Signature of PW-4  
Ext-4 :- Seizure List  
Ext-4(1) :- Signature of PW-4  
Ext-5 :- Charge Sheet  
Ext-5(1) :- Signature of SI Giridhar Borah

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

**Chief Judicial Magistrate  
Sonitpur, Tezpur**