

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,  
NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur, Assam

**G.R. 792/2013**

U/s 279/338/304-A, IPC

**State of Assam**

**-Vs-**

**Md. Dilu Ahmed**

S/O: Md. Monoruddin Ahmed

R/O: Pachim Chandmari

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 12.05.2016  
Dates of recording evidence : 27.07.2017, 04.01.2018,  
04.09.2018, 26.03.2019,  
29.04.2019, 21.05.2019  
Statement u/s 313, Cr.P.C. recorded on : 28.05.2019  
Date of argument : 01.06.2019  
Date of judgment : **15.06.2019**

**Advocates appeared in the case:-**

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. Minakhi Dutta Gohain Baruah, Advocate, for the accused person

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

1. Prosecution case has arisen out of an ejahar lodged on 28.05.2013 by one Sri Dipak Pawe before the Officer-in-Charge, North Lakhimpur Police Station alleging that at about 1:30 PM on 24.05.2013, while his nephews, namely, Sri Dipjyoti Pawe and Sri Champak Pawe were waiting by the side of the road with their motorcycle near Durga Mandir and talking to each other, at that time, a passenger carrying tempo vehicle bearing registration No. AS-07-C-5647 driven by its driver with high speed and in a rash and negligent manner forcibly hit his cousins as a result

they sustained grievous injuries and were admitted in the hospital and later on Sri Dipjyoti Pawe succumbed to his injury. On the other hand, Sri Champak Pawe was undergoing medical treatment in the hospital in critical condition. Hence, the case.

2. After receiving the FIR, the Officer-in-Charge of North Lakhimpur Police Station registered a case vide North Lakhimpur Police Station Case No. 339/2013, u/s 279/338/304-A, IPC. The investigation in this case was carried out, and after the completion of investigation, the investigating officer submitted charge-sheet u/s 279/338/304-A, IPC against accused Md. Dilu Ahmed to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence u/s 279/338/304-A, IPC was taken as per section 190(1)(b), Cr.P.C. After the appearance of the accused person before the Court, copies were furnished to him as per section 207 Cr.P.C. The particulars of the offence u/s 279/338/304-A, IPC were explained to the accused person to which he pleaded not guilty and claimed to face the trial.

**POINTS FOR DETERMINATION :**

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused, at about 1:30 PM, on 24.05.2013, near Durga Mandir, under North Lakhimpur Police Station, drove a tempo vehicle bearing registration number AS-07-C-5647 on N.H. 52 in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, and thereby committed an offence punishable u/s 279, IPC ?

(b) Whether the accused, at about 1:30 PM, on 24.05.2013, near Durga Mandir, under North Lakhimpur Police Station, caused grievous hurt to Sri Champak Pawe by driving a tempo vehicle bearing registration number AS-07-C-5647 on N.H. 52 in a rash and negligent manner, and thereby committed an offence punishable u/s 338, IPC ?

(c) Whether the accused, at about 1:30 PM, on 24.05.2013, near Durga Mandir, under North Lakhimpur Police Station, caused the death of Dipjyoti Pawe, nephew of informant Sri Dipak Pawe, by driving a tempo vehicle bearing registration number AS-07-C-5647 on N.H. 52 in a rash and negligent manner not amounting to culpable homicide, and thereby committed an offence punishable u/s 304-A, IPC ?

5. During the trial the Prosecution side could examine 7 (seven) witnesses, namely, Sri Dipak Pawe (PW-1), Smti. Bhadra Pawe (PW-2), Sri Champak Pawe (PW-3), Sri Achyut Kr. Pawe (PW-4), Inspector Dina Bandhu Bhuyan (PW-5), Dr. Manu Ram Taung (PW-6) and Sri Gunaram Pawe (PW-7) and exhibited 7 (seven) documents (Shown in the Annexure appended below). The defence side has cross-examined prosecution witnesses. On closure of the prosecution witnesses all the incriminating materials surfaced thereon against the accused person were put to his explanation under section 313 Code of Criminal Procedure. The defence plea was in complete denial. I have heard the Argument of both sides and thereupon come to the following finding:

**DISCUSSION, DECISION AND REASONS THEREOF :**

6. Let me, first of all, re-produce herein below the gist of the testimonies of the witnesses examined by the prosecution in this case.

7. PW-1 Sri Dipak Pawe, informant, has stated that at the time of occurrence his nephews Dipjyoti Pawe and Champak Pawe were waiting by the side of the road on their own side near Durga Mandir at Pahumora Bamundoloni when a tempo coming from Pahumora side driven in a high speed hit both his nephews and fled away from there. Many people assembled at the place of occurrence. His house is situated near the place of occurrence and upon hearing the sound of accident he came out and saw the occurrence. He along with other persons took both of his nephews to hospital and at the hospital his nephew Dipjyoti Pawe succumbed to his injuries. His cousin Champak Pawe underwent medical treatment in the hospital for 2/3 days. Since he was busy in treatment as such he lodged the ejahar on 28.02.2013. Ext-1 is the ejahar lodged by

him wherein Ext-1(1) is his signature. The police seized his pulsar bike and he put his signature in the seizure list. Ext-2 is the seizure list wherein Ext-2(1) is his signature. In his cross-examination, he has stated that he has seen the accused for the first time while deposing before the Court on 27.07.2017. He had not seen the tempo vehicle at the time of knocking his cousins. After the accident his cousin Dipjyoti Pawe expired. On the day of the accident, police came to the place of occurrence and examined them and took the dead body for performing post mortem examination. He had not seen the accident as he was inside his house at that point of time.

8. PW-2 Smti. Bhadra Pawe, mother of the victims, has stated that on the day of occurrence her sons Dipjyoti Pawe and Champak Pawe were waiting and talking to each other and at that time a tempo vehicle came and hit her sons Dipjyoti and Champak as a result her son Dipjyoti succumbed to his injuries. At the time of occurrence she was present in her house. She had heard about the occurrence from the nearby people of the place of occurrence. In her cross-examination, she has stated that he had not seen how the occurrence had taken place.

9. PW-3 Sri Champak Pawe, victim, has stated that on the day of occurrence, he and his elder brother, were returning home from college by riding motorcycle. The motorcycle was driven by his elder brother Dipjyoti Pawe and near Durga Mandir turning a tempo vehicle came from the opposite direction with high speed and hit their motorcycle and he was flung off to some distance and his elder brother fell down along with the motorcycle and sustained fracture at different place of his leg. Thereafter, they were taken to hospital. He sustained injuries on his cheek, head, knee etc. and undergone medical treatment in the hospital for 10-12 days. Later, he came to know that his elder brother Dipjyoti Pawe succumbed to his injuries. In his cross-examination, he has stated that the motorcycle rode by deceased was purchased just on the previous day of the occurrence. He has also clarified that his elder brother Dipjyoti Pawe did not possess driving license. He admitted that at the time of the occurrence the road near the Durga Mandir turning was in a very bad

condition. The motorcycle by which he was pillion riding was at the speed of around 50-60 kilometers per hour but he could not say anything about the conjectural speed the tempo vehicle that knocked their vehicle down.

10. PW-4 Sri Achyut Kr. Pawe has stated that he does not know anything about the accident.

11. PW-5 Inspector Dina Bandhu Bhuyan, Investigating Officer, has stated that during the course of investigation he visited the place of occurrence and inspected the same and prepared a rough sketch map of the place of occurrence and he seized an auto vehicle and a motorcycle from the place of occurrence. He further stated that before his arrival at the place of occurrence, injured Dipjyoti Pawe was shifted to hospital and on 25.05.2013 he succumbed to his injuries and accordingly he conducted inquest over the dead body and sent it to North Lakhimpur Civil Hospital for conducting postmortem examination. He further stated that the accused surrendered before the police station and accordingly he interrogated him and thereafter released him on bail. Thereafter, he collected the postmortem report of the deceased and on completion of the investigation he submitted charge-sheet against the accused. He has further stated that it has come out from his investigation that the accident took place due to the fault of the auto rickshaw driver in which Dipjyoti Pawe died. Ext-2 is the seizure list by which the motorcycle was seized. Ext-3 is the rough sketch map of the place of the occurrence, Ext-4 is the seizure list by which auto vehicle was seized. Ext-5 is the inquest report done on the dead body of the deceased. In his cross-examination, he has stated that witness Dipak Pawe did not tell him about the registration number of the motorcycle. The motorcycle which met with the accident was driven by deceased Dipjyoti Pawe but no driving license of the deceased was submitted to him.

12. PW-6 Dr. Manu Ram Tayung, Medical Officer, has stated that at 1:00 PM, on 25.05.2013, he examined Dipjyoti Pawe and found Lacerated injury in right frontal region of size 2" x ½" x ½". Bow shaped deformity of right lower limb and swelling above the knee joint. Lacerated injury found in right lower end of femur and ankle joint. He further stated that

the injuries were ante-mortem in nature and as per his opinion, the cause of death was massive hemorrhage and shock following Road Traffic Accident. Ext-7 is the post mortem report and Ext-7(1) is his signature.

13. PW-7 Sri Gunaram Pawe has stated that at about 12:30 PM about 7/8 years ago hearing loud sound in the turning situated in between Ganesh Mandir and Durga Mandir he rushed to the place of occurrence and saw that a motorcycle was lying fallen there and Dipjyoti was also lying fallen near the motorcycle. At the time of occurrence Dipjyoti was coming by riding the motorcycle from Lakhimpur side towards Pahumara side and an auto-rickshaw coming from the opposite direction and a head-on-collision took place between the auto vehicle and the motorcycle and the said auto vehicle was also there at the place of accident. As Dipjyoti asked water from him he served water to him. Champak asked to lift him. The motorcycle which met with the accident was lying on the left side of the road and the auto was in the middle of the road after the occurrence. Champak was lying by the side of the road and Dipjyoti in the middle of the road. He brought Dipjyoti to the side of the road. Dipjyoti told him that he was hungry and shouted 'O mother'. He saw injury on the leg and head of Dipjyoti. Champak sustained simple injury. He informed the family members of the injured boys and accordingly they came to take the injured boys to the hospital and later on he came to know that Dipjyoti succumbed to his injuries. In his cross-examination, he has stated that he was at his house when he heard the sound. He could not say how the occurrence took place. As deceased Dipjyoti had passed Metric Examination so on that day itself the motorcycle was purchased to him. Deceased Dipjyoti was aged about 16/17 years and he did not possess driving license.

#### **APPRECIATION OF EVIDENCE**

14. From the evidence on record there appears no denial of the fact that deceased Dipjyoti Pawe had not died in the accident and Champak Pawe did not sustain grievous injuries in the said occurrence. On perusal of the content of Ext.1 FIR as well as the version of PW-1 Dipak Pawe and PW-2 Smti Bhadra Pawe shows that at the time of the occurrence both

Dipjyoti Pawe and Champak Pawe had been conversing by the roadside when the Tempo vehicle drove by accused had knocked them down. But victim PW-3 Champak Pawe, who was very much present on the motor-cycle that was rode by his elder brother deceased Dipak Pawe, has admitted that at the time of the occurrence it was Dipak Pawe who had been riding the motor-cycle and when the motor-cycle reached near the curve at Durga Mandir area suddenly the tempo vehicle hit their motor-cycle from the front. He admitted the fact that Dipak Pawe did not have driving licence. I/O Inspector Dina Bandhu Bhuyan has also confirmed this fact as the driving licence of Dipjyoti was not given to him. According to PW-7 Gunaram Pawe at the time of the occurrence deceased Dipjyoti did not possess a driving licence and he was just a youth of 16 or 17 years old. PW-3 Champak Pawe has admitted that their motor-cycle was at a speed of around 50 or 60 Km per hour and the road condition of the place of the occurrence was very bad. But except stating that the offending Tempo vehicle was at high-speed he could not conjecture about its speed. Ext.3 Rough Sketch-map of the place of the occurrence shows that the occurrence took place in the middle of the road. PW-7 Gunaram Pawe who came to the place of the occurrence immediately after the occurrence has also confirmed the fact that the Tempo was in the middle of the road after the occurrence.

15. The accident took place at National High-way which was in a very bad condition and the motor-cycle was rode at a speed of 50 or 60 kilometer by a rider (deceased Dipjyoti Pawe) who did not possess a valid driving license means he was not qualified to ride a motor-cycle and did not have the know-how of driving. Except stating that the Tempo was on speed PW-3 Champak Pawe who was also the eye-witness to the occurrence could not state anything about the degree of the speed given the fact that he could assess the speed of their own vehicle. Given the bad road condition, riding a motor-cycle at 50 or 60 speed is also not a moderate speed. PW-1 and 2 tried in vain to suggest that deceased Dipjyoti and victim Champak had been talking and not riding the motor-cycle but this confusion has been cleared by victim Champak himself. Now it has been clearly established that deceased Dipjyoti did not

possess a valid licence, but despite this fact he was pillion riding his brother victim Champak Pawe in a bad road in 50 or 60 Kmph speed negates the rashness on the part of the accused given the fact that the accident took place in the middle of the road (vide Ext.3). The rash and negligence driving on the part of accused fully not established because there is nothing in evidence to show that his vehicle was at excessive speed or that he came to the side of the motor-cycle while knocking it down. Considering the above, I am of the conclusive opinion that the prosecution has failed to bring home the charge under section 279/338/304-A of the Indian Penal Code.

**ORDER**

16. In view of the foregoing discussion, I found accused Md Dilu Ahmed not guilty of the offence under section 279/338/304-A of the Indian Penal Code and as such he stands acquitted from this case. Accordingly accused Md. Dilu Ahmed is set at liberty forthwith and consequently his bail-bond stands cancelled and surety stands discharged. The Bail-bond of Md. Dilu Ahmed shall remain in force for another six months.

17. The seized articles and the seized vehicles be disposed of in due course as per law.

18. Given under my hand and the seal of this Court on this the 15<sup>th</sup> day of June, 2019.

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Transcribed & types by-  
Sri Narayan Chetri, Stenographer

Contd..... Appendix

**A P P E N D I X**

**WITNESSES FROM THE PROSECUTION SIDE**

Sri Dipak Pawe (PW-1)  
Smti. Bhadra Pawe (PW-2)  
Sri Champak Pawe (PW-3)  
Sri Achyut Kr. Pawe (PW-4)  
Inspector Dina Bandhu Bhuyan (PW-5)  
Dr. Manu Ram Taung (PW-6)  
Sri Gunaram Pawe (PW-7)

**PROSECUTION EXHIBIT**

Ejhar (Ext-1)  
Seizure list (Ext-2)  
Sketch map (Ext-3)  
Seizure list (Ext-4)  
Inquest report (Ext-5)  
Charge-sheet (Ext-6)  
Post mortem report (Ext-7)

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBIT**

Nil

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur