

**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. 1209/2015
U/s 279/338/304-A, IPC

State of Assam

-Vs-

Sri Bidyut Kanti Dhar

S/O: Sri Binod Bihari Dhar

R/O: Udalbakra, Bishnu Rabha Path

P/S: Lalganesh

District: Kamrup (Metro), Assam

.....Accused person

Date of offence explanation : 06.02.2016
Dates of recording evidence : 22.03.2016, 14.07.2016,
22.02.2018, 27.12.2018,
30.04.2019
Statement u/s 313, Cr.P.C. recorded on : 10.05.2019
Date of argument : 10.05.2019
Date of judgment : **10.05.2019**

Advocates appeared in the case:-

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

Sri Homen Das, Advocate, for the accused person

J U D G M E N T

1. Prosecution case has arisen out of an ejahar lodged on 24.06.2015 by one Smti. Rina Paul before the Officer-in-Charge, Laluk Police Station alleging that at about 4:15 PM on 20.06.2015, while her husband Sri Kanu Paul (aged 42 years) was going by walking on N.H. 52 by the side of the road from Laluk Chariali to Gobindapur, a Wagon R car bearing registration no. AS-07-E-0961 coming from Harmoti side, driven by its driver in high speed and negligently, hit her husband from front side,

causing grievous injuries to him. Immediately after the incident, the injured husband of the informant was shifted to Laluk Hospital but the doctor advised to take the injured to Lakhimpur and wherefrom it was further advised to take him to Guwahati as he sustained grievous injuries and on the way to Guwahati at 3:45 AM on 21.06.2015 her husband succumbed to his injuries. Hence, the case.

2. After receiving the FIR, the Officer-in-Charge of Laluk Police Station registered a case vide Laluk Police Station Case No. 138/2015, 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 Sri Bidyut Kanti Dhar 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 4:15 PM, on 20.06.2015, in between Laluk Chariali and Gobinpur, under Laluk Police Station, drove a Wagon R vehicle bearing registration number AS-07-E-0961 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 4:15 PM, on 20.06.2015, in between Laluk Chariali and Gobinpur, under Laluk Police Station, caused grievous hurt to Sri Kanu Paul by driving a Wagon R vehicle bearing registration

number AS-07-E-0961 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 4:15 PM, on 20.06.2015, in between Laluk Chariali and Gobinpur, under Laluk Police Station, caused the death of Kanu Paul, husband of informant Smti. Rina Paul, by driving a Wagon R vehicle bearing registration number AS-07-E-0961 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, Smti. Rina Paul (PW-1), Sri Mintu Ch. Paul (PW-2), Sri Mahadev Das (PW-3), Sri Kalachan Das (PW-4), Sri Sushanta Das (PW-5), Dr. Bhupen Saikia (PW-6) and Sri Bipul Kr. Gogoi (PW-7) and exhibited 6 (six) 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 Smti. Rina Paul, informant, has stated that on 19.06.2015 her husband Kanu Paul was going by walking from Laluk Centre by the road which goes to Harmoti. A vehicle came from the front side and knocked her husband. Somebody informed her about the occurrence through the mobile phone of her husband and thereafter she relayed the information to her 'borjona' (husband's elder brother) who stayed at Laluk. The family members of her 'borjona' went to the place of occurrence and shifted her husband to Laluk Medical and from there to Saumerpith Nursing Home at

Lakhimpur. From Saumerpith Nursing Home her husband was referred to Guwahati and on the way to Guwahati her husband succumbed to his injuries. She lodged an ejahar at Laluk Police Station after some days as she was busy in the treatment of her deceased husband. Ext-1 is the ejahar wherein Ext-1(1) is her signature. In her cross-examination, she has stated to have not visited the place of the occurrence and as such did not know how the occurrence had taken place.

8. PW-2 Sri Mintu Ch. Paul, younger brother of deceased, has stated that on the day of occurrence his nephew Apu Biswas informed him over phone that his elder brother met with an accident at Laluk and as such he is admitted in Saumerpith Nursing Home. He immediately rushed to the Saumerpith Nursing Home and met his elder brother there. His nephew Apu Biswas informed him that a Maruti vehicle had hit Kanu Paul. While Kanu Paul was shifted to Guwahati in an ambulance on the way at Balipara he succumbed to his injuries. Police took his signature at Laluk Police Station. Ext-2 is the paper in which he had put his signature wherein Ext-2(1) is his signature. In his cross-examination, he has stated that he cannot say how and for whose fault the occurrence took place

9. PW-3 Sri Mahadev Das has deposed that on the day of occurrence while his cousin brother Kanu Paul was doing evening walk and reached near the No.1 bridge, a Maruti car hit him on the road. As a result of the incident, his cousin brother sustained injuries. He was taken to the Laluk Hospital and thereafter to the North Lakhimpur for medical treatment but he succumbed to his injuries. Later, he had gone to the police station. The police asked him to put his signature on a piece of paper and accordingly he put his signature. Ext-2 is that paper, Ext-2(2) is his signature. He does not know the name of the person who was driving that Maruti car, but later on he came to know that the owner of the car was himself driving the car. In his cross-examination, he has stated that he did not witness the occurrence.

10. PW-4 Sri Kalachan Das has stated that the elder brother of his friend namely Mintu Paul met with an accident in which he died. He does

not know the name of the deceased. On being informed by his friend Mintu Paul over phone he went to Laluk Police Station and saw the dead body of the deceased there. He does not know which vehicle knocked the deceased and how the accident took place.

11. PW-5 Sri Sushanta Das has stated that Mintu Paul's elder brother died in an accident. He does not know how, where and which vehicle had done the accident.

12. PW-6 Dr. Bhupen Saikia has stated that he conducted post mortem on the dead body of Kanu Paul and found a dead body of an adult male of average built with rigour mortis present in all limbs; Laceration over both knees which were already stitched; Laceration of right temporal region of scalp already stitched and laceration occipital region of scalp already stitched; Abrasion over right buttock. In the brain, hemorrhage is seen in the right side of the brain mater and occipital region. All the injuries are ante mortem in nature. He further stated that as per his opinion the cause of death is due to head injury as a result of the injury sustained. Ext-3 is the post mortem report wherein Ext-3(1) is his signature.

13. PW-7 SI Bipul Kr. Gogoi has stated that during the course of investigation he visited the place of occurrence and found one Kanu Paul lying dead. He further stated that it has come out from his investigation that one Wagon R vehicle bearing registration No. AS-07-E-0961 was coming from Harmoti towards Laluk side and Kanu Paul was proceeding on opposite direction on walk and the incident took place in the middle of the road. Accordingly, he prepared a rough sketch map of the place of occurrence vide Ext-4 wherein Ext-4(1) is his signature. He seized the Wagon R car along with its document vide Ext-2 seizure list wherein Ext-2(3) is his signature. He has further stated that at the time of the occurrence the Wagon R car was driven by Bidyut Kanti Dhar (accused). During investigation, it has come to light that deceased Kanu Paul met with the accident when he was crossing the road. He recorded the statement of the witnesses and get the Wagon R case examined by MVI. Ext-5 is the MVI report. After committing the accident the driver fled away

but on 22.06.2015 victim Kanu Paul succumbed to his injuries in the hospital. On 24.06.2015 one Smti. Rina Paul lodged an ejarah at the Laluk Police Station in connection with the occurrence and the O/C of Laluk Police Station registered a case and entrusted him with the investigation of the case. After collecting the post mortem report and MVI report and upon getting sufficient materials against accused Bidyut Kanti Dhar he submitted charge-sheet against him u/s 279/338/304-A IPC. Ext-6 is the charge-sheet, Ext-6(1) is his signature. In his cross-examination, he has stated that the victim was taken to the hospital before he reached the place of the occurrence. Though there are shops near the place of occurrence but he has not shown the said shops in the sketch map. On reaching to the place of occurrence he found the offending vehicle in the middle of the road.

APPRECIATION OF EVIDENCE

14. The narrated facts of the witnesses adduced by the prosecution reflects that there is no eye-witness to the occurrence. Moreover the witnesses has also not able to winch forth the fact as to how the occurrence took place except the omnibus statement that one Wagon R vehicle hit the deceased when he was proceeding on walk from the opposite side. The I/O has however, given a hint that the occurrence took place as because the deceased had been crossing the road and that it was in the middle of the road that the occurrence took place.

15. To prove an offence of rash and negligence driving, the prosecution must prove the fact that accused was criminally rash in hazarding a dangerous or wanton act with knowledge that it is so and that it may cause injury or knowledge that such injury will probably be caused. The criminality lies in running the risk of doing such an act. Similarly, Criminal negligence is acting without consciousness that illegal mischievous effect will follow and the actor did not act exercising due caution incumbent upon him. In the instant case, there is not an iota of evidence to suggest that accused was either rash or negligent in his driving except the fact that the vehicle drove by accused that had hit the deceased. The

evidence of the prosecution reveals the fact that the incident occurred when deceased had been trying to cross the road and it was in the middle of the road that the occurrence took place. The occurrence took place in the National Highway where it is expected that vehicle to run in a moderate speed and whether the offending vehicle had excessive speed than what is desired in a national highway has not been established anywhere by the prosecution which they are duty bound to do. Criminality is not to be presumed, subject of course to some statutory exceptions but in absence of any material on record, no presumption of rashness or negligence can be drawn by invoking the maxim *res ipsa loquitur*.

16. In the instant case, there is not an iota of evidence to suggest that accused was either rash or negligent in his driving. The only fact that has come out impeccably that the collision took place when deceased was on walk and had been crossing the road. So, it has not been clear as to whether the victim was negligent or the accused was negligent in their respective duty to follow the road safety rules. In the absence of any concrete material as to who was negligent in driving the vehicle, no presumption of rashness or negligence can be drawn by invoking the maxim *res ipsa loquitur*, as is ordained in the decision of the Hon'ble Gauhati High Court published in [2012 (116) AIC 699] in *Madhu Sudhan Debnath vs State of Tripura*. Thus, I have not hesitation to hold that the prosecution has failed to bring home the charge under section 279/337/427 IPC against the accused person and as such all the three points are decided in negative against the prosecution.

ORDER

17. In view of the foregoing discussion, I am of the reasonable opinion that accused Sri Bidyut Kanti Dhar is acquitted of the charge under section 279/338/304-A of the Indian Penal Code and as such he is set at liberty forthwith. Consequently, the bail bond of the accused shall remain in force for a further period of six months from today.

18. The seized articles and the Wagon R vehicle be disposed of in due course as per law.

19. Given under my hand and the seal of this Court on this the 10th day of May, 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

Smti. Rina Paul (PW-1)
Sri Mintu Ch. Paul (PW-2)
Sri Mahadev Das (PW-3)
Sri Kalachan Das (PW-4)
Sri Sushanta Das (PW-5)
Dr. Bhupen Saikia (PW-6)
Sri Bipul Kr. Gogoi (PW-7)

PROSECUTION EXHIBIT

Ejahaar (Ext-1)
Seizure list (Ext-2)
Post mortem report (Ext-3)
Sketch map (Ext-4)
MVI report (Ext-5)
Charge-sheet (Ext-6)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

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