

**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. 1337/2015**

Under section 279/304-A of the Indian Penal Code

**State of Assam**

**-Vs-**

**Sri Rajib Pegu**

S/O: Late Narayan Pegu

R/O: Hekerajan

P/S: Boginadi

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 03.11.2015  
Dates of recording evidence : 07.12.2017, 01.08.2018,  
26.11.2018, 18.06.2019,  
22.07.2019  
Date of recording of statement u/s 313, Cr.P.C: 12.09.2019  
Date of argument : 16.10.2019  
Date of judgment : **31.10.2019**

**Advocates appeared in the case:-**

Smti. Ajanta Sharma Baruah, Addl. P.P., for the State

Sri Rajib Gogoi, Advocate, for the accused person

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

1. The factual matrix of the prosecution case in brief is that on 12.07.2015 one Sri Sanjay Gogoi lodged an ejarah with the Officer-in-Charge, Boginadi Police Station alleging that at about 9:30 PM on

09.07.2015 while his younger brother Sri Ajit Gogoi (aged 21 years) came out from the house to National Highway 15 situated in front of their house, at that time, the rider of the Glamour motorcycle bearing registration number AS-22B-1847, riding the same from Gogamukh side towards Lakhimpur side in rash and negligent manner and with high speed knocked down his brother causing grievous hurt to him. Immediately after the occurrence the injured was shifted to Boginadi Adarsha Hospital but the Doctors considering the grievousness of the injuries referred him to North Lakhimpur Civil Hospital and while undergoing treatment there at about 8:30 PM on 11.07.2015 the injured succumbed to his injuries. There was delay in lodging of the ejarah as the informant was busy with the medical treatment of his injured brother. Hence, the case.

2. After receiving the FIR, the Officer-in-Charge of Boginadi Police Station registered a case vide Boginadi Police Station Case No. 64/2015, u/s 279/304-A IPC. The investigation in this case was carried out, and after the completion of investigation, the investigating officer submitted charge-sheet u/s 279/304-A IPC against accused person Sri Rajib Pegu to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence u/s 279/304-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 279/304-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 person, at about 9:30 PM, on 09.07.2015, at village Nogaon, Kadam, under Boginadi Police Station, drove a Galmour motorcycle bearing registration number AS-22-B-1847, on National Highway 15, 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 person, at about 9:30 PM, on 09.07.2015, at village Nogaon, Kadam, under Boginadi Police Station, caused the death of Ajit Gogoi, younger brother of informant Sri Sanjay Gogoi by driving Galmour motorcycle bearing registration number AS-22-B-1847, on National Highway 15, in a rash and negligent manner not amounting to culpable homicide, and thereby committed an offence punishable u/s 304-A, IPC ?

5. During trial the Prosecution side could altogether examine 8 PWs, namely, Sri Sanjay Gogoi (PW-1), Smti. Maniki Gogoi (PW-2), Sri Moina Gogoi (PW-3), Sri Badhin Gogoi (PW-4), Sri Satyajit Regon (PW-5), Sri Gobinda Bonia (PW-6), Sri Raju Chutia (PW-7), ASI Bolindra Boruah (PW-8) and exhibited 5 (five) 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, DECISIONS 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 Sanjay Gogoi, informant, has stated that the occurrence had taken place about two years ago (from 07.12.2017), at about 9:30 PM on the road in front of their house. He was inside the house but his younger brother Ajit Gogoi had come out on the road after having dinner. On hearing the hue and cry from outside that some accident had taken place, he came out of their house and saw that his younger brother was lying on the road in injured condition and a gathering of people at the spot. He came to know that a motorcycle hit his brother. They brought his younger brother to North Lakhimpur Civil Hospital for medical treatment, but he succumbed to his injury in the hospital. He had sustained head injury. He lodged an ejahar at Boginadi Police Station regarding the occurrence. Ext-1 is the ejahar wherein Ext-1(1) is his signature. In his cross-examination, he has stated that he did not come to know whose motorcycle had hit his brother. He could not say as to who had written down the ejahar and also could not say about the content of the ejahar.

8. PW-2 Smti. Maniki Gogoi, mother of the informant and the deceased, has stated that the occurrence had taken place about three years ago (from 01.08.2018), at about 8:00 PM, on the 'pucca' road in front of their house. She was inside her house. She heard the shouts of her husband's nephew Ramen Gogoi as 'morile, morile' and then she went outside to see a gathering of people on the road in front of their house. Ramen Gogoi told her that her son Ajit Gogoi had been hit by a motorcycle and he might or might not survive. On hearing this fact, she became unconscious. After 2/3 days, she regained her senses and had come to know that her son Ajit Gogoi had already expired. She also came to know that on the night of the occurrence as her son Ajit Gogoi had come out on the road after having dinner, a motorcycle hit him. Her son Sanjay Gogoi and other villagers took her son Ajit gogoi first to Boginadi Hospital. From Boginadi Hospital, her son Ajit Gogoi was taken to Chaboti Hospital, North Lakhimpur, where he expired.

9. PW-3 Sri Moina Gogoi, an independent witness, has stated that the occurrence had taken place about 3 years ago (from 26.11.2018) in the night at about 8-9 PM on the National Highway near his house. On hearing that an accident had taken place, he went out from his house to the place of occurrence. He saw a gathering of people on the spot. He came to know that a boy of their village named Ajit Gogoi aged about 20-21 years had been hit by a vehicle and the police had taken that boy to the hospital. On the following day, he came to know that the said boy had died as a result of the accident. Later on, in the afternoon, he went along with the villagers for performing the funeral of that boy. He does not know who was driving the offending vehicle.

10. PW-4 Sri Badhin Gogoi, uncle of the informant and the deceased, has stated that the occurrence had taken place about 2 years ago (from 26.11.2018) in the night at about 10 PM on the National Highway at Boginadi Nagaon. On hearing the people shouting that an accident had taken place, he came out of his house and saw a gathering of people at the place of occurrence. The police personnel were also present there. He came to know from the people that Ajit Gogoi had met with an accident. Before he reached the place of occurrence, Ajit Gogoi had already been taken away by somebody. On the following day, he came to know that Ajit Gogoi had died as a result of accident. He had gone to his funeral ceremony. He does not know how the accident had taken place.

11. PW-5 Sri Satyajit Regon, an independent witness, has stated that the occurrence took place about 3 years ago (from 18.06.2019) in the night time in the Nogaon area of Boginadi. At the time of the occurrence he was in his house and heard that an accident took place and thereafter, he went to the hospital to see injured Ajit Gogoi. He saw Ajit Gogoi in injured condition and told him that a motorcycle knocked him on the road in front of his house. Later on, he heard that Ajit Gogoi succumbed to his injuries. In his cross-

examination, he has stated that he had heard about the occurrence. He does not know how the occurrence took place.

12. PW-6 Sri Gobinda Bonia, an independent witness, has stated that the occurrence took place about 2/3 years ago (from 18.06.2019). The accused had taken his motorcycle for riding and somewhere met with an accident. He could not say under what condition the accident took place. Ext-2 is the seizure list wherein Ext-2(1) is his signature. In his cross-examination, he has stated that accused Rajib Pegu knows how to ride motorcycle and possess driving license. Prior to the occurrence there was no allegation against the accused for committing motor vehicle accident. He does not know how the occurrence took place.

13. PW-7 Sri Raju Chutia, an independent witness, has stated that the occurrence took place about 3/4 years ago (from 18.06.2019) in the Boginadi Bazar area. At that time he was in his shop and he came to know that an accident took place, but he does not know how the accident took place. In the mean time, the injured had already been shifted to the hospital and later on, he heard that injured Ajit Gogoi succumbed to his injuries. The police called him to the police station and took his signature on a piece of paper. Ext-2 is the seizure list wherein Ext-2(3) is his signature. In his cross-examination, he has stated that he does not know how the occurrence took place.

14. PW-8 ASI Bolindra Boruah, Investigating Officer, has stated that during the course of investigation, he examined informant Sanjay Gogoi at the police station and recorded his statement, proceeded to North Lakhimpur Civil Hospital and came to know that injured Ajit Gogoi has already expired at the hospital while undergoing medical treatment and as such he conducted inquest over the dead body of the deceased and sent the dead body for post mortem examination. He has further stated that

thereafter, he proceeded to the place of the occurrence and prepared a sketch map of the same, examined the witnesses found at and around the place of the occurrence, searched for the motorcycle involved in the accident and on 14.07.2015 the registered owner of the motorcycle bearing registration no. AS-22-B-1847, on being informed, along with the accused appeared with said motorcycle at the police station and then he seized the motorcycle along with its documents and arrested the accused and thereafter allowed him to go on bail, examined the seized motorcycle through the MVI, Lakhimpur and on completion of the preliminary investigation, he submitted the case diary to the Officer-in-charge of Boginadi Police Station and later SI Utpal Changmai submitted charge-sheet against the accused u/s 279/304-A, IPC. Ext-3 is the sketch-map of the place of the occurrence, Ext-4 is the MVI Report and Ext-5 is the charge-sheet.

**APPRECIATION OF EVIDENCE**

15. The perusal of the evidence discussed above clearly established that there was no eye-witness to the occurrence. It has established from the version of PW-6 Sri Gobinda Bonia, it was his Motor-cycle bearing Registration No. AS-22-B-1847 rode by accused at the relevant time of the occurrence. Ext-2 seizure list also substantiates that it was the motor-cycle rode by accused Rajib Pegu that caused the accident. But there is no material in prosecution case which could establish the fact that accused was driving it in a rash and negligent manner. There is not even any indirect evidence suggesting the location of the vehicle and the deceased at the time of the occurrence and what was the speed of the motor-cycle at the time of the occurrence so as to make a conjecture as to how the occurrence could have taken place. But the prosecution has utterly failed to prove its case in all these counts, and as such I have no hesitation to hold that the

prosecution case has no force to prove the guilt of the accused under section 279/304-A of the IPC against the accused.

**ORDER**

16. In view of the foregoing discussion, I hereby hold that prosecution has failed to bring home the charge under section 279/304-A of the Indian Penal Code against accused Rajib Pegu and as such he is acquitted of the offence and set at liberty forthwith. The bail-bond of the accused shall remain in force for a further period of six months.

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

18. The judgment is delivered and operative part of the same is pronounced in the open court on this 31<sup>st</sup> day of October, 2019.

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

Dictated & corrected by me-

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

Transcribed & typed by-

Sri Narayan Chetri, Stenographer

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

**WITNESSES FROM THE PROSECUTION SIDE**

Sri Sanjay Gogoi (PW-1)  
Smti. Maniki Gogoi (PW-2)  
Sri Moina Gogoi (PW-3)  
Sri Badhin Gogoi (PW-4)  
Sri Satyajit Regon (PW-5)  
Sri Gobinda Bonia (PW-6)  
Sri Raju Chutia (PW-7)  
ASI Bolindra Boruah (PW-8)

**PROSECUTION EXHIBIT**

Ejahaar (Ext-1)  
Seizure list (Ext-2)  
Sketch-map (Ext-3)  
MVI Report (Ext-4)  
Charge-sheet (Ext-5)

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBIT**

Nil

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