

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 1637 OF 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI LOHIT BORAH

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1637 / 2015

U/S 279/338/304(A) OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI LOHIT BORAH

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI BROJEN BARUAH

OFFENCE EXPLAINED ON : 01.11.2016
EVIDENCE RECORDED ON : 11.01.2018, 06.09.2018, 25.01.2021

ARGUMENT HEARD ON : 25.01.2021
JUDGMENT DELIVERED ON : 30.01.2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 15.08.2015 at about 06:20 P.M, while informant's father-in-law Sri Seniram Hazarika was going to his home from Dolohat Tea Garden after watching a football match and arrived in front of the gate of said tea garden, at that time one Maruti Omni van bearing registration No. AS 07 G 9791 came from the backside in a very high speed and knocked said Seniram Hazarika

as a result of which he sustained severe injuries and subsequently succumbed to his injuries on the way to hospital. The informant then lodged an FIR about the occurrence before the In-charge of Dolohat police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 181/2015. After investigation, I.O of the case submitted charge sheet against accused Sri Lohit Borah for the offences punishable u/s 279/338/304(A) of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 279/338/304(A) of IPC are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined four witnesses, whereas the defence did not examined any witness. The accused person was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused person and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused person on 15.08.2015 at about 6.20 PM at Dolohat Bagan Gate under Laluk police station, drove his vehicle bearing registration no. AS 07 G 9791 on a public way in a rash or negligent manner and then knocked to one Seniram Hazarika and thereby caused hurt and also endangered his life, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused person on 15.08.2015 at about 6.20 PM at Dolohat Bagan Gate under Laluk police station, drove his vehicle bearing registration no. AS 07 G 9791 on the public way in a rash or negligent manner and then knocked one Sri Seniram Hazarika and thereby

caused grievous hurt to him and also endangered his life, and thereby committed an offence punishable u/s 338 of IPC?

(iii) Whether the accused person on 15.08.2015 at about 6.20 PM at Dolohat Bagan Gate under Laluk police station, drove his vehicle bearing registration no. AS 07 G 9791 in a rash or negligent manner and then knocked one Seniram Hazarika thereby causing his death not amounting to culpable homicide, and thereby committed an offence punishable u/s 304(A) of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1, 2 and 3:

6. For the sake of convenience and as because point no. 1, 2, 3 and 4 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, informant/PW-1 Sri Krishna Hazarika and PW-2 Sri Dibyajyoti Hazarika in their respective evidence-in-chief have alleged that at the time of occurrence they along with the victim were coming home by walking after watching a football match and at that time a Maruti van being driven by the accused came there and knocked said victim Seniram Hazarika due to which the victim fell down and sustained injury on his head and subsequently succumbed to the injuries on the way to hospital.

8. The aforesaid version of PW-1 and PW-2 show that the accused allegedly drove the aforesaid vehicle and knocked victim Seniram Hazarika ultimately causing his death. Therefore, it is necessary to find out that whether the aforesaid vehicle was being driven by the accused in a rash or negligent manner at the time of occurrence. If the answer is found in the affirmative then the aforesaid allegations will clearly attract the ingredients of offences mentioned in the aforesaid three points for determination.

9. In the above context, perusal of cross-examination of PW-2 shows that he has specifically stated that the victim suddenly tried to cross the road at the time of occurrence due to which the occurrence took place.

The PW-1 has also stated in his cross-examination that the victim suddenly tried to cross the road. The PW-1 and PW-2 have further added that the eye sight of victim was weak. Also, the vehicle was driven by the accused slowly as there was gathering on the road.

10. The fact that the accused was driving the vehicle slowly and the victim suddenly tried to cross the road which was already crowded, in my opinion, suggests that the collision took place as because the victim unexpectedly and without any warning came in front of the vehicle practically leaving no time for the accused to stop that vehicle or take other measure to avoid the collision. Situated thus, I find that the evidence deposed by PW1 & PW2 in their evidence in chief can in no way go to prove beyond reasonable doubt that there was any negligence or rash act on the part of accused which culminated into the collision between victim and offending vehicle as alleged.

11. To proceed with the remaining evidence, it is seen that PW-3 Sri Sanjib Sawasi in his evidence-in-chief has nowhere stated anything against the accused. In fact, PW-3 has specifically stated that he did not see any injured person in the place of occurrence and he also did not see that which vehicle was involved in the occurrence. As such, it is clear that the PW3 has no knowledge about the details of the alleged occurrence and he has not deposed any incriminating material against the accused.

12. Again, PW-4 Dr. Bhupen Saikia, who conducted post-mortem examination of the victim, in his evidence, has only described the injuries detected by him on the body of victim and the cause of death. Similarly, PW-5 ASI Satiram Goyari, who investigated this case, in his evidence, has only stated about the steps taken by him during investigation. Both the aforesaid witnesses are official witnesses and there is nothing specific in their evidences which in itself can show that the accused drove the aforesaid vehicle in a rash or negligent manner at the time and place of occurrence.

13. Considering the above discussion, I find that the witnesses examined by prosecution have failed to prove beyond reasonable

doubtsthat the aforesaid vehicle was being driven by the accused in a rash or negligent manner at the time and place of occurrence. As such, it is clear that the prosecution has failed to prove beyond reasonable doubts that the accused person has committed the offences as alleged in the FIR and noted in the points for determination.

DECISION: This point is therefore decided in the negative and goes against the prosecution.

14. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Lohit Borah has committed the offences under section 279/338/304(A) of IPC as alleged, and as such, the said accused is acquitted of the charges under section 279/338/304(A) of IPC and he be set at liberty forthwith.

The vehicle bearing registration no. AS 07 G 9791 seized vide exhibit – 2 seizure list (M.R No. 67/2015) be released to the custody of its registered owner and the documents seized be released to the custody of person in whose name those documents were issued.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 30th day of January, 2021.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**PROSECUTION EXHIBITS:**

- Exhibit.1 – FIR
- Exhibit.2 – Seizure list
- Exhibit.3 – Post-mortem report
- Exhibit.4 – Sketch map
- Exhibit.5 – Charge-sheet
- Exhibit.6 – MVI report

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. PW-1 – Sri Krishan Hazarika
2. PW-2 – Sri Dibyajyoti Hazarika
3. PW-3 – Sri Sanjib Sawasi
4. PW-4 – Dr. Bhupen Saikia
5. PW-5 – Sri Satiram Goyari

DEFENCE WITNESSES:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur