

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

G.R CASE NO: 528 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI GANESH KAMAN

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

GR CASE NO: 528 / 2017

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI GANESH KAMAN

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED:MR. R. GOGOI

OFFENCE EXPLAINED ON : 27/08/2018
EVIDENCE RECORDED ON : 30/01/2021, 21/08/2019, 05/11/2019,
06/02/2020, 01/03/2021
ARGUMENT HEARD ON : 06/03/2021
JUDGMENT DELIVERED ON : 06/03/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 24.02.2017 at about 3.30 PM, while informant's brother Hasen Ali was coming back to his house in Kadam Tenga Basti from Gogamukh through NH-15, at that time the rider of motorcycle bearing registration No. AS 07 H 1454 came there by riding the said motorcycle in a very high speed and negligent manner and thereafter knocked informant's said brother from the backside causing

severe injuries due to which informant's said brother ultimately expired. The informant thereafter lodged an FIR about the occurrence before the In-charge of Chauldhowa police-out-post.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 32/2017. After investigation, I.O of the case submitted charge sheet against accused Sri Ganesh Kaman for the offences punishable u/s 279/304(A) of IPC. Copies of relevant documents were furnished to accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offence punishable u/s 279/304(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 six witnesses, whereas the defence did not examined any witness. Finding no incriminating materials against the accused persons their cross-examination u/s 313 of CrPC was dispensed with. 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 on 24.02.2017 at about 3.30 PM in Kadam Tenga Basti area, rode his motorcycle bearing registration No. AS 07 H 1454 in the NH-15 in a rash or negligent manner and thereby hit informant's brother Hasen Ali causing severe injuries which ultimately resulted into his death, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused on 24.02.2017 at about 3.30 PM in Kadam Tenga Basti area, rode his motorcycle bearing registration No. AS 07 H 1454 in a rash or negligent manner and knocked informant's brother Hasen Ali 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 AND 2:

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

7. As regards the aforesaid points for determination, PW-2/informant Md. Asmat Ali, PW-3 Md. Muskan Ali and PW-5 Md. Sariful Islam in their respective evidence have stated that at the time of occurrence they heard that a road traffic accident took place in Kadam Tenga Basti area in which the motorcycle is involved, but they do not know that how the occurrence/accident took place. In this context, PW-1 Md. Saibul Islam in his evidence-in-chief has stated that he do not know anything about the occurrence.

8. Therefore, perusal of the evidence deposed by above named four witnesses show that they do not have any knowledge about the manner in which the alleged occurrence took place. Hence, there is nothing in their evidence which can show that the accused is involved in the aforesaid accident.

9. In the above context, PW-6 Sri Bijay Pegu in his evidence-in-chief has stated that he is the owner of offending motorcycle bearing registration No. AS 07 H 1454. On the day of occurrence, the accused borrowed his aforesaid motorcycle and later on he came to know that the accused met with an accident by riding the aforesaid motorcycle. Subsequently, police interrogated him and took his signature in the seizure list. During his cross-examination, PW-6 has specifically stated that he did not see the aforesaid occurrence and he only heard about the same from others.

10. Now, perusal of the above evidence deposed by PW-6 reveals that he knows that the accused was riding the offending motorcycle during the relevant time but he has not stated anything about the manner in which the said motorcycle was ridden by the accused. To be more specific, there is nothing in the evidence of PW6 which the show that the accused rode the offending motorcycle in a rash or negligent manner at the time of occurrence. Hence, it is clear that there is no incriminating material in the version of PW6 which can attract the ingredients of the offences punishable under section 270/304(A) of I.P.C. Moreover, the version stated by PW6 is totally hearsay as he has not seen the accused riding the motorcycle, and hence, the same cannot be relied upon unless corroborated by some other reliable evidence.

11. In view of the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused has committed the offences as alleged.

DECISION: Point no.1 & 2 are therefore decided in the negative and goes against the prosecution.

ORDER

12. 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 Ganesh Kaman has committed the offences under section 279/304(A) of IPC as alleged, and as such, the said accused is acquitted of the charges under section 279/304(A) of IPC on benefit of doubt and he be set at liberty forthwith.

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 06th day of March, 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 - Zimmanama

PROSECUTION WITNESSES:

1. PW-1 – Md. Saibul Islam
2. PW-2 – Md. Asmat Ali
3. PW-3 – Md. Muslem Ali
4. PW-4 – Dr. Dhruvajyoti Borgohain
5. PW-5 – Md. Sariful Islam
6. PW-6 – Sri Bijoy Pegu

DEFENCE EXHIBITS:

NIL

DEFENCE WITNESSES:

NIL

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