

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

North Lakhimpur, Lakhimpur

PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS

Judicial Magistrate First Class,

Lakhimpur, North Lakhimpur

G.R. Case No.264/2017

State

Versus

Kalam Ali

(Under sections 279/338/304(A) IPC)

Offence explained on : 19.03.2019
Evidence recorded on : 16.07.2019, 03.09.2019,
05.11.2019
Statements recorded on : 15.03.2021
Arguments heard on : 15.03.2021
Judgment delivered on : 22.03.2021
Advocate for the Prosecution : Mr. Jangki Doley
Advocate for the Accused : Mr. Pulak Gogoi

J U D G E M E N T

1. Accused stood for trial for commission of offence u/s 279/338/304(A) IPC.

2. The informant Musstt. Sukurjan Nesa lodged an ejahar

stating *inter alia* on 18.01.2017 at about 11:00 a.m., her husband Akbar Ali alongwith other persons were travelling in a new vehicle of the accused towards Boginadi market. While the said vehicle reached the turning near Podumani in the National Highway, the vehicle lost control due to rash and negligent driving on the part of the driver and the vehicle got turtled and fell on the road side. As a result of which, the husband of the informant received grievous injuries. He was immediately shifted to North Lakhimpur Civil Hospital where he was brought dead. As the informant was busy performing the funeral rituals of her husband, there was a delay in lodging the ejahar. Hence, this case.

3. On receipt of the ejahar, the Officer-in-Charge of Boginadi Police Station and thereafter Officer-in-Charge of Boginadi Police Station registered the case as Boginadi P.S. case no. 16/2017 u/s 279/338/304(A) IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 279/337/304(A) of the Indian Penal Code against the accused namely Md. Kalam Ali.

4. Thereafter, cognizance has been taken and summon have been issued to the accused. On appearance of accused, necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record substance of accusation u/s 279/338/304(A) IPC is read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Prosecution in support of its case has examined only five (5) witnesses.

6. Accused is examined under section 313 Cr.P.C., wherein he denied the allegations levelled against him. Accused denied adducing evidence in defence.

7. I have heard the arguments advanced by the learned counsel for the accused and Ld. A.P.P. Perused the materials

available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

POINTS FOR DETERMINATION:

Point No 1: Whether the accused on 18.01.2017 at about 11:00 a.m., near Podumani in the National Highway 15 drove a vehicle on the public way in a manner so rash and negligent as to endanger human life and thereby committed an offence punishable u/s 279 of IPC?

Point No 2: Whether the accused on the same date, time and place caused grievous hurt to the informant by driving the vehicle so rashly and negligently as to endanger human life and the personal safety of others and thereby committed an offence punishable u/s 338 of IPC?

Point No 3: Whether the accused on the same date, time and place caused death of the husband of the informant Akbar Ali by driving a vehicle in a rash and negligent manner not amounting to culpable homicide and thereby committed an offence punishable u/s 304(A) of IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. The informant in the ejahar alleged that due to a road accident her husband Akbar Ali expired. The informant as well as other witnesses corroborated this fact. The evidence of witnesses clearly proves that the husband of the informant was traveling in a vehicle and met with an accident and received serious injuries, as a result of which, the husband of the informant succumbed to his injuries. Now it is to be seen as to whether

the accused was driving the offending vehicle and for his fault the occurrence took place. In order to prove an offence under sections 279/338/304(A) of the Indian Penal Code prosecution is required to prove that the accused was driving the offending vehicle in a rash and negligent manner.

9. P.W-1, Md. Ajjur @ Aziz Ali is a seizure witness. In his evidence he stated that on the date of occurrence while he was traveling on the road he saw a gathering and a vehicle in upside down position. On inquiry he came to know that many people were injured except Jamal Ali. He saw the police personnel present at the place of occurrence who seized the offending vehicle and took his signature. Evidence of P.W-1 clearly shows that he arrived at the place of occurrence after the accident occurred and he himself admitted in his cross-examination that he does not know how the occurrence took place. Thus, his evidence clearly shows that he does not know how the occurrence took place and for whose fault the accident occurred.

10. P.W-2 Jamal Ali is the victim as well as seizure witness of the alleged incident. In his evidence he stated that on the date of the occurrence while he was traveling in a vehicle driven by the accused, the vehicle got turtled while the driver was trying to save cows crossing the road.

P.W-2 in his cross-examination stated that the accident took place as the driver tried to save the cows as well as the vehicle was coming from the opposite direction. His evidence shows that the driver was not driving the vehicle at high speed and that there was any lapse on the part of driver. Thus, P.W-2 failed to implicate the accused having driven the vehicle in a rash and negligent manner.

11. P.W-3 Musstt. Sukurjan Nesa is the informant of this case and in her evidence she stated that she does not know

how the occurrence took place. Though in her first information report, she stated that the occurrence took place due to rash and negligent driving on the part of the accused but in her evidence she stated that she does not know how the accident took place. Thus, it appears that the witness could not implicate the accused having driven the vehicle in a rash and negligent manner.

12. P.W-4 Md. Rafiqul Ali is one of the victims of the alleged accident. He stated that while he was traveling in the vehicle some cows suddenly appeared and in order to save the cows the vehicle met with an accident.

In his cross-examination, he stated that no such incident could have occurred if the cows could not have come in front of the vehicle. Evidence of P.W-4 clearly shows that there is no fault on the part of the accused. The evidence of this witness does not show that the accused / driver was driving the vehicle in a rash and negligent manner.

13. P.W-5 Md. Ramjan Ali is another victim of the alleged incident. In his evidence he stated how the occurrence took place. His evidence clearly shows that in order to save the cows which were crossing the road, the accused was compelled to take a turn resulting in turtling the vehicle. Further the witness stated that the accused was driving the vehicle carefully and not in high speed. There is no fault on the part of the accused which resulted in the accident. Thus this witness could not implicate the accused that the occurrence took place due to the fault of the accused.

14. In this case the witnesses could not implicate the accused having committed the offence and hence the accused deserves to be acquitted from the charges levelled against him. Hence I am constrained to hold that the accused deserves to get the benefit of doubt and is accordingly acquitted.

ORDER

15. In view of the above discussions, I am of the considered opinion that, prosecution has failed to establish the case against accused namely Md. Kalam Ali. Accordingly, accused is acquitted of the charge u/s 279/338/304(A) IPC levelled against him in this instant case.

16. Set the accused at liberty forthwith.

17. The bail bond for the accused is extended for a further period of six (6) months.

18. The case is disposed of on contest accordingly.

Given under my hand and seal on this 22nd day of March, 2021
at North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur

APPENDIX**A. WITNESS OF PROSECUTION:**

1. P.W-1 : Md. Ajjjur @ Aziz Ali
2. P.W-2 : Md. Jamal Ali
3. P.W-3 : Musstt. Sukurjan Nesa
4. P.W-4 : Md. Rafiqul Ali
5. P.W-5 : Md. Ramjan Ali

B. EXHIBITS OF PROSECUTION:

1. Exhibit 1 : Seizure List
2. Exhibit 1(1) : Signature of P.W-1 in the seizure list.
3. Exhibit 1(2) : Signature of P.W-2 in the seizure list.

C. WITNESS OF DEFENCE: NIL**D. EXHIBITS OF DEFENCE: NIL**

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur