

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.659/2016

State

Versus

Md. Saddam Hussain

(Under sections 279/337/304(A)/427 IPC)

Offence explained on : 21.12.2017
Evidence recorded on : 12.02.2019, 19.06.2019,
24.07.2019, 15.11.2019,
Statements recorded on : 10.03.2021
Arguments heard on : 10.03.2021
Judgment delivered on : 22.03.2021
Advocate for the Prosecution : Mr. Jangki Doley
Advocate for the Accused : Mr. Rajib Gogoi

J U D G E M E N T

1. Accused stood for trial for commission of offence u/s 279/337/304(A)/427 IPC.

2. The informant Md. Ataur Rahman lodged an ejahar stating

inter alia on 24.03.2016 at about 8:40 a.m., his cousin brother Hasibul Islam along with his friend Afjalur Rahman was proceeding towards Sonapur Higher Secondary School riding a bicycle. The accused was riding a Bolero pickup van bearing registration no. AS-07-C-7666 in a rash and negligent manner and knocked him down, as a result of which Hasibul Islam expired at the place of occurrence and Md. Afjalur Rahman sustained to grievous injuries. The cycle belonging to the victim Hasibul Islam also got damage. Hence, this case.

3. On receipt of the ejahar, Incharge of Bongalmara outpost forwarded the ejahar to Bihpuria Police Station and thereafter Officer-in-Charge of Bihpuria Police Station registered the case as Bihpuria P.S. case no. 159/2016 u/s 279/338/304(A)/427 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 279/337/304(A)/427 of the Indian Penal Code against the accused namely Md. Saddam Hussain.

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 279/337/304(A)/427 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 nine (9) 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 24.03.2016 at about 8:40 a.m., near Sonapur Higher Secondary School drove a vehicle bearing registration no. AS-07-C-7666 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 hurt to the victims namely Hasibul Islam and Md. Afjalur Rahman 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 337 of IPC?

Point No 3: Whether the accused on the same date, time and place caused death of the cousin brother of the informant Hasibul Islam 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?

Point No 4: Whether the accused on the same date, time and place committed mischief by causing wrongful loss and damage to the cycle belonging to the victim Hasibul Islam valued at more than Rs.50/- only 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. **P.W-1, Md. Ataur Rahman** is the informant of this case. In his evidence he corroborated the facts about the road accident involving his cousin brother Hasibul Islam. Further his evidence

shows that the accused was driving the vehicle which knocked down the victims. The accused person did not deny the fact that he was driving the vehicle which met with an accident. The other witnesses also corroborated about the incident. All the evidence of the witnesses goes to show that the accused was driving the vehicle which knocked down the victim, as a result of which one of the victim expired. Now it is to be seen whether the incident took place due to rash and negligent driving on the part of the accused.

9. P.W-1 though in the ejahar alleged that the accused was driving the vehicle in a rash and negligent manner and he was wearing a headphone but in his cross-examination he admitted that he has not seen the occurrence. Therefore, the evidence of P.W-1 cannot prove the fact of rash and negligent driving by the accused.

10. P.W-2 Md. Ashraful Rahman @ Islam corroborated the evidence of P.W-1 and stated that he is an eye witness to the occurrence. On the day of occurrence while the victims were proceeding towards their school in a bicycle, he saw a Bolero vehicle suddenly turned towards the right side in order to avoid cows passing by the road and ultimately hit the victims. The witness was cross-examined and confronted with his previous statement. The contradictions were also proved by the Investigating Officer who was examined as P.W-9. Whatever evidence is given by this witness was not stated before the Investigating Officer at the time of recording the statement under section 161 of the Code of Criminal Procedure. He nowhere stated that he witnessed the occurrence of the incident. Thus, it appears that the evidence of P.W-2 stating that he is an eye-witness of the occurrence appears to be doubtful. P.W-2 is the cousin brother of the victim Hasibul Islam and it appears that he is an interested witness.

11. P.W-3 Aminur Ahmed @ Rahman, P.W-4 Habibullah

and P.W-5 Shamsul Haque in their evidence stated that on the date of occurrence while they were at their respective home, they heard hue and cry and came running to the place of occurrence and saw one person falling on the ground, who was bleeding heavily. The offending vehicle was lying down on the other side. The evidence of P.W-3, P.W-4 and P.W-5 clearly shows that they did not witness the occurrence of the accident. They reached the place of occurrence after the incident occurred and they also did not witness who was driving the offending vehicle. Thus, their evidence cannot prove that the accused person was driving the vehicle in a rash and negligent manner.

12. P.W-6 Abjanur Rahman is one of the victims of the incident and he described as to how the incident took place. He stated that on the date of occurrence, he along with Hasibul Islam and Ashraful Islam were proceeding towards the school riding a bicycle. The bicycle suddenly struck a stone and they fell down in front of a vehicle which knocked them down. The evidence of this witness shows that the deceased along with two others were riding the bicycle which fell down on the road and the victims fell down in front of the vehicle. The witnesses remained silent that the driver of the offending vehicle was at fault and that he was driving the vehicle in a rash and negligent manner.

In his cross-examination, P.W-6 stated that the vehicle would not have struck them if they would not have fallen down in front of the vehicle. Any person who rides a bicycle with three persons, there is every likelihood of losing balance. The evidence of P.W-6 clearly shows that the bicycle lost control as three persons were riding on it. The evidence of P.W-6 shows that the offending vehicle was not at fault and that the allegation that the accused was driving the vehicle in a rash and negligent manner has been totally negated by this witness.

13. P.W-7 Dr. Parimal Das is the Medical Officer of this case and in his evidence stated that on 24.03.2016 he was posted as Senior Medical and Health Officer in the North Lakhimpur Civil Hospital and on that day he conducted post mortem of victim Hasibul Islam. He proved the post mortem examination report as Exhibit 2 and found injuries on the body of the deceased. He opined that the death was due to head injury received by the victim. The evidence of P.W-7 has not been denied by the defence.

14. P.W-8 Dr. Dipen Boruah deposed that he examined one Md. Mafjaluz Jamal and on examination he found injuries on the victim. The defence nowhere denied this fact. However, the evidence of P.W-7 and P.W-8 cannot prove the allegation of rash and negligent driving on the part of the accused.

15. P.W-9 Lintu Borah is the Investigating Officer of this case. He described the steps taken by him during investigation. He proved the sketch map as Exhibit 4, the seizure list as Exhibits 5 and Exhibit 6 and the chargesheet as Exhibit 7. His evidence can at best support the prosecution case, but he alone cannot prove the guilt of the accused. The Investigating Officer proved the contradictions and omissions of the witnesses. In the instant case, the prosecution has successfully proved that on 24.03.2016 there was a road accident involving the offending vehicle which met with an accident but witnesses examined by the prosecution clearly shows that the incident occurred due to trillion riding which struck a stone and the victims fell down in front of the vehicle resulting in occurrence of the incident.

14. Considering the evidence in entirety, it appears that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts. Hence I am constrained to hold that 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. Md. Saddam Hussain. Accordingly, accused is acquitted of the charge u/s 279/337/304(A)/427 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. WITNESSES OF PROSECUTION:**

1. P.W-1 : Md. Ataur Rahman
2. P.W-2 : Md. Ashraful Rahman @ Islam
3. P.W-3 : Md. Aminur Ahmed @ Rahman
4. P.W-4 : Md. Habibullah
5. P.W-5 : Md. Shamsul Haque
6. P.W-6 : Md. Abjanur Rahman
7. P.W-7 : Dr. Parimal Das
8. P.W-8 : Dr. Dipen Borah
9. P.W-9 : Lintu Borah

B. EXHIBITS OF PROSECUTION:

1. Exhibit 1 : Ejahar
2. Exhibit 1(1) : Signature of P.W-1 in the ejahar.
3. Exhibit 2 : Post mortem report.
4. Exhibit 2(1) : Signature of P.W-7 in the post mortem report.
5. Exhibit 3 : Medical Report
6. Exhibit 3(1) : Signature of P.W-8 in the medical report
7. Exhibit 4 : Sketch Map
8. Exhibit 4(1) : Signature of P.W-9 in the sketch map
9. Exhibit 5 : Seizure List
10. Exhibit 5(1) : Signature of P.W-9 in the seizure list
11. Exhibit 6 : Seizure List

- 12.Exhibit 6(1) : Signature of P.W-9 in the seizure list
- 13.Exhibit 7 : Chargesheet
- 14.Exhibit 7(1) : Seal and signature of Sri Dhaneswar Das which is identified by P.W-9
- 15.Exhibit 7(2) : Signature of P.W-9 in the chargesheet

C. WITNESS OF DEFENCE: NIL

D. EXHIBITS OF DEFENCE: NIL

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