

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

G.R CASE NO: 1408 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI NARAYAN KHARGHARIA

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

GR CASE NO: 1408 / 2017

U/S 279/427/304(A) OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI NARAYAN KHARGHARIA

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI NABAJYOTI CHETIA

OFFENCE EXAPLAINED ON : 08/02/2018
EVIDENCE RECORDED ON : 05/01/19, 02/08/19, 14/10/19,
09/01/20, 22/01/20
ARGUMENT HEARD ON : 10/02/2020
JUDGMENT DELIVERED ON : 11/02/2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 08.05.2017 at about 3.20 PM, while informant's husband Dulal Baruah was coming to home on the motorcycle of his co-villager Sri Birinchi Baruah and reached Sawkuchi area, at that time the accused by driving an EON vehicle bearing registration no. AS 07 F 9816 came from the backside in a very high speed and negligent manner and hit the aforesaid motorcycle as a result of

which said Birinchi Baruah and informant's husband fell down from the motorcycle and sustained injury. Thereafter, informant's husband was taken to North Lakhimpur Civil Hospital from where he was referred to GMCH for further treatment but he succumbed to injuries on that night while going to Guwahati. The informant subsequently lodged an FIR about the occurrence before the O/C of Narayanpur police station.

2. On receipt of the F.I.R, a case was registered being numbered as Narayanpur P.S Case No. 74/17 and after investigation I.O of the case submitted charge sheet against accused Sri Narayan Khargharia for the offences punishable u/s 279/427/304(A) of IPC. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 279/427/304(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 examine any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also 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 08.05.2017 at about 2.30 P.M at Sawkuchi village under Narayanpur police station, drove his Eon vehicle bearing registration No. AS 07 F 9816 in a rash or negligent manner on the public road and then hit informant's husband Dulal Baruah causing injury to him and thereby endangering his life, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused person on 08.05.2017 at about 2.30 PM at Sawkuchi village under Narayanpur police station, with the intention to cause, or knowing that he is likely to cause wrongful loss or damage to Sri Birinchi Baruah, caused destruction of the motorcycle bearing registration

No. AS 07 D 0711 belonging to said Sri Birinchi Baruah, and thereby committed an offence punishable u/s 427 of IPC?

(iii) Whether the accused person on 08.05.2017 at about 02.30 PM at Sawkuchi village under Narayanpur police station, hit informant's husband Dulal Baruah by his EON car bearing registration No. AS 07 F 9816, while driving that car in a rash or negligent manner, and thereby caused death of informant's husband not amounting to culpable homicide, and thereby committed an offence punishable u/s 304(A) of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1, 2 & 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, PW-1/informant Smt. Moni Dutta Baruah in her evidence-in-chief has stated that on 08.05.2017 at about 3.30 PM, while her husband was coming to home as a pillion rider in the motorcycle of one Sri Birinchi Baruah and reached Sawkuchi area at that time one EON vehicle came there and hit the aforesaid motorcycle as a result of which her husband fell down. Her husband was then taken to North Lakhimpur Civil Hospital from where he was referred to Guwahati, but he succumbed to injuries on the way.

8. PW-2 Sri Dibyajyoti Khargharia in his evidence-in-chief has stated that he heard that a person died in a road accident at Sawkuchi area. PW-3 Sri Rupeswar Borah in his evidence-in-chief has stated that about 2 years back he heard that a collision took place between the car of accused and the motorcycle of informant's husband. The informant's husband died in that accident.

9. PW-4 Sri Bishnu Baruah in his evidence-in-chief has stated that about 2 years back informant's husband met with an accident at Sawkuchi village. He then went to the place of occurrence and saw informant's husband in an

injured condition. Thereafter, he along with others took informant's husband to hospital.

10.PW-5 Sri Ramen Goswami in his evidence-in-chief has stated that about 2 years back while informant's husband was going to home by riding his cycle at that time one EON vehicle came from the backside and hit informant's husband as a result of which informant's husband expired. The accused was driving the EON vehicle at the time of occurrence.

11.PW-6 Dr. Hridayananda Baruah in his evidence-in-chief has stated that on 09.05.2017 he conducted post-mortem examination on the body of deceased Dulal Baruah and found injuries on left side of frontal bone and left shoulder and also on the frontal area of head. The patient died due to coma following head injuries.

12. During their cross examination, PW-1, PW-2, PW-3, PW-4 and PW-5 have specifically stated that they have not seen the alleged occurrence. As such, it is clear that the aforesaid version stated by PW-1 to PW-5 in their respective evidence-in-chief as narrated above are hearsay evidence and the same cannot be believed unless corroborated by some other reliable evidence. It is also noticeable that except PW-5 none other witnesses have stated that who was driving the aforesaid offending vehicle at the time of alleged occurrence. Further, though PW-5 in his evidence-in-chief has stated that the accused was driving the Eon vehicle at the time of alleged occurrence, but in his cross-examination the PW-5 has specifically admitted that he did not mentioned in his statement before police that the accused was driving the Eon vehicle. In my opinion, the aforesaid allegations made by PW-5 is a material aspect of the alleged occurrence, and hence, the PW-5 should have stated the same before I.O. As such, omission of PW-5 to mention the aforesaid allegation before I.O is a material contradiction in view of section 162 of CrPC which creates doubt as regards the credibility of the version stated by him in his evidence-in-chief.

13. Moreover, even if it is presumed that the aforesaid allegation made by PW-5 is correct then also there is nothing in the evidence of PW-5 which can specifically show that the accused was rashly or negligently

driving the vehicle at the time of alleged occurrence. Needless to mention here that none of the witnesses examined by prosecution have stated anything about destruction of any property by accused at the time of alleged occurrence.

14. Considering the entire discussion made above, it is evident 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.& 3 are therefore decided in the negative and goes against the prosecution.

ORDER

15. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Narayan Khargharia has committed the offences punishable under section 279/427/304(A) of I.P.C as alleged, and as such, the above named accused person is acquitted of the charges under section 279/427/304(A) of I.P.C 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.

The vehicle and documents seized vide M.R No. 28/17 be released to the custody of accused Sri Narayan Khargharia as per law. The motorcycle seized vide M.R No. 40/12 be released to the custody of registered owner and documents be released to the person whose name appears therein.

This judgment is given under my hand, and seal of this court on this the 11th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

- (A) PROSECUTION EXHIBITS
Exhibit.1 – F.I.R
Exhibit.2 – Seizure list
- (B) DEFENCE EXHIBITS
Nil
- (C) PROSECUTION WITNESSES
P.W. 1 – Smt. Moni Dutta Baruah
P.W. 2 – Sri Dibyajyoti Khargahria
P.W. 3 – Sri Rupeswar Borah
P.W. 4 – Sri Bishnu Baruah
P.W. 5 – Sri Ramen Goswami
P.W. 6 – Dr. Hridayananda Baruah
- (D) DEFENCE WITNESSES
Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur