

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Shri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam.

G.R. 2623/2016

Under section 279/304-A of the Indian Penal Code

State of Assam

-Vs-

Sri Bhabani Kumar Munda

.....Accused

Date of offence explanation : 12.10.2017
Dates of recording evidence of PWs : 07.02.2018, 22.10.2018,
22.04.2019, 06.05.2019
Date of recording of statement u/s 313, Cr.P.C: 11.10.2019
Date of argument : 12.02.2020
Date of judgment : **29.02.2020**

Advocates appeared in the case:-

Sri Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Sri Nabajyoti Chetia, Advocate, for the accused

J U D G M E N T

1. The prosecution story, in brief, is that one Sri Romen Das had lodged an ejahar at the Silonibari Police Outpost on 11.10.2016 alleging inter alia that on that day at about 6:00 PM when his father Hemendra Das went out on the road then on the road in front of their house a motorcycle driven in a rash and negligent manner had hit his father causing serious injuries to him for which he had to be admitted in the hospital and later he succumbed to his injuries. Hence, the case.

2. After receiving the ejahar, the In-charge of Silonibari Police Outpost made a G.D. Entry vide Silonibari Police Outpost G.D. Entry No. 269 dated 11.10.2016 at 10:00 PM and forwarded the same to the

Officer-in-charge of North Lakhimpur Police Station to register a case under proper section of law. The Officer-in-charge of North Lakhimpur Police Station, on receipt of the ejahar, registered it as NLPS Case No. 1044/2016 under section 279/304-A of the Indian Penal Code. The I/O after investigation had submitted charge-sheet u/s 279/304-A of the Indian Penal Code against the accused Bhabani Kumar Munda.

3. On receipt of the charge-sheet, cognizance of the offence under section 279/304-A of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. After the appearance of the accused person before the Court, copies were furnished to him as per section 207 Code of Criminal Procedure. The particulars of the offence under section 279/304-A of the Indian Penal Code were explained to the accused person to which he pleaded not guilty and claimed to face the trial.

POINTS FOR DETERMINATION:

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused Bhabani Kumar Munda had rashly and negligently drove the motorcycle involved in the accident ?

(b) Whether the accused Bhabani Kumar Munda by such rash and negligent driving had knocked down the victim Hemendra Das, the father of the informant causing his death ?

5. During the trial the prosecution side could altogether examine 7 (seven) PWs viz. Sri Ramen Das as PW-1, Sri Bhadreswar Gogoi as PW-2, Sri Rebot Morang as PW-3, Sri Gopal Das as PW-4, Md. Azgar Ali as PW-5, ASI Sati Ram Gayary as PW-6 and Inspector Nikhil Rajkhowa as PW-7. The prosecution had exhibited the ejahar as PW-1, signature of the informant therein as PW-1(1), Ext-2 as seizure list wherein signature of witness as Ext-2(1), Ext-3, extract copy of the G.D. Entry, Ext-4 rough sketch map of the police wherein Ext-4(1) is the signature

of PW-6, the I/O, Ext-5 is the inquest report wherein Ext-5(1) and Ext-5(2) are the signatures of PW-6, Ext-6 is the MVI Report, Ext-7 is the charge-sheet wherein Ext-7(1) signature of PW-7, the I/O. On closure of the prosecution witnesses all the incriminating materials surfaced thereon against the accused person were put to his explanation under section 313 Code of Criminal Procedure. The defence plea was in complete denial. I have heard the argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

6. Now to determine the aforesaid points of determination let us have a scrutiny of the evidence of the PWs on record.

7. Sri Ramen Das, the informant of this case deposed that on the date of incident i.e. 12.10.2016 at about 6:00 PM his father was going out by walking towards the shop at Dikho-Mukhiya Tiniali and at that point of time a motorcycle coming from Kimin side driven by the accused had hit his father for which he sustained injuries and was taken to North Lakhimpur Civil Hospital but on the way to the hospital he succumbed to his injuries.

8. PW-1 in his cross-examination stated that he didn't witness the incident and has no personal knowledge that due to whose fault the incident took place.

9. PW-2 Sri Bhadreswar Gogoi testified that on the date of occurrence he heard a hue and cry from outside and on going from his house could see a gathering of people at Dikho-Mukhiya Tiniali and saw Hemendra Das lying on the side of the road in an injured condition. He could hear from the people that a motorcycle had hit Hemendra Das and he could also see the said motorcycle at the spot. He further saw the accused there and could hear from the people that it was the accused who had driven the motorcycle. The people took Hemendra Das to hospital but he died on the way.

10. PW-2 in his cross-examination stated that he didn't witness the occurrence and has no personal knowledge that due to whose fault the accident occurred.

11. Now, the other PW i.e. PW-3 Sri Rebot Morang deposed that he don't know the accused and that he has a vegetable shop at Dikhow-Mukhuiya Tiniali i.e. the place of the occurrence and at the time of incident he was inside his shop. He could hear a hue and cry and as such went to the place of the occurrence and could see that the father of Romen Das was lying on the road as he was knocked down by a motorcycle. He further stated that he couldn't see any bike there and he doesn't know that that whose motorcycle had hit the victim.

12. PW-4 Sri Gopal Das testified that at the time of incident he was in his house which is at a distance of about 150 meters from the place of occurrence. He at the time of incident heard a hue and cry and went out and saw the father of Ramen Das viz. Hemendra Das was lying on the road as he met with an accident. A bike was lying about 100 meters away as it hit a tree. He along with others had caught the accused. There were two persons present in the motorcycle. The accused had told him that he doesn't know the name of other person present in the bike and that in fact that person was riding the motorcycle. PW-4 further stated that he informed the police who came to the spot and took the motorcycle and the accused to the police station. The victim Hemendra Das was taken to the Nowboicha Hospital by putting in an Auto vehicle in a serious condition but he got the information that the said victim succumbed to his injuries.

13. Now, PW-5 Md. Azgar Ali deposed that as he went for some work to Silonibari Police Outpost the police had taken his signature in Ext-2. He in his cross-examination stated that he does not know anything about the incident.

14. PW-6, ASI Satiram Gayary, the I/O deposed that he conducted the investigation of this case and in course of investigation he could find that the accused/rider of the motorcycle rode in an excessive

speed and as such it come beyond the road side and knocked down Hemendra Das.

15. PW-6, the I/O in his cross-examination stated that PW-4 Gopal Das in his statement u/s 161 of the Cr.P.C. before him didn't say about seeing the motorcycle lying near a tree about 100 meters away from the place of occurrence.

16. PW-7, Inspector Nikhil Rajkhowa deposed only about submitting the charge-sheet in this case.

17. So from the evidence of the PWs it can be seen that none had witnessed the incident. Also none had seen the accused committing the accident. The accused in his statement u/s 313 of the Cr.P.C. stated that he didn't commit any accident and in fact it was some other bike that had committed the accident but he was caught only out of suspicion.

18. The PW-4 Sri Gopal Das has stated about the motorcycle of the accused hitting a tree but none of the PWs including the I/O stated anything about the motorcycle of the accused hitting any tree. Also, the PW-6, the I/O, clarified that PW-4 in his statement u/s 161 of the Cr.P.C. didn't state anything about the motorcycle of the accused hitting any tree. So the evidence of PW-4 is found to be embellished in that regard.

19. PW-5, ASI Satiram Gayary, the I/O, also stated that from the version of the PWs he could come to know that the accused was riding his motorcycle in a excessive speed and it hit the victim coming down from the road. But from the evidence of the PWs whom the I/O examined it can be seen that none of the PWs has stated about the accused riding his motorcycle in an excessive speed and none of them had seen the accused knocking down the victim. So the said version of PW-5 i.e. the I/O that the accused rode the motorcycle in an excessive speed is not found to be reliable.

20. Now though the accident took place in public place but none had witnessed the accused committing any accident. Also, from the evidence on record it can be seen that none had stated about motorcycle being driven in a rash and negligent manner and also the PWs failed to state that how and due to whose fault the accident occurred.

21. In the given position it cannot be concluded that it was the accused who had in fact committed the accident or that the accident occurred due to the rash and negligent driving of the motorcyclist. Now since the elements of rash and negligent driving his not proved both the points for determination are held in negative.

22. So, the prosecution has failed to prove the offence against the accused u/s 279/304-A of the Indian Penal Code and as such he is acquitted from the said offences and is set at liberty.

Seized articles to be retained with the lawful owner.

Bail bonds are extended to for the further 6(six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 29th day of February, 2020.

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Ramen Das (PW-1)
Sri Bhadreswar Gogoi (PW-2)
Sri Rebot Morang (PW-3)
Sri Gopal Das (PW-4)
Md. Azjar Ali (PW-5)
ASI Sati Ram Gayary (PW-6)
Inspector Nikhil Rajkhowa (PW-7)

PROSECUTION EXHIBIT

Ejhar (Ext-1)
Signature of PW-1 [Ext-1(1)]
Seizure list (Ext-2)
Signature of PW-5 [Ext-2(1)]
Extract copy of G.D. Entry (Ext-3)
Signature of PW-7 [Ext-3(1)]
Rough sketch map of the P.O (Ext-4)
Signature of PW-6 [Ext-4(1)]
Inquest Report (Ext-5)
Signatures of PW-6 [Ext-5(1) and Ext-5(2)]
MVI Report (Ext-6)
Charge sheet (Ext-7)
Signature of PW-7 [Ext-7(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur