

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIOGAON, ASSAM.**

**G.R. Case No. 2236/15**

**U/S 279/304-A/427 IPC**

**STATE OF ASSAM**

**-VS-**

**MR. RAJESH BORO, S/O SRI NARAYAN BORO,**

**R/O.:- GERUWA, P.S. BHURAGAON,**

**DIST.:- MORIGAON, ASSAM**

**..... ACCUSED PERSON**

**PRESENT: - SMTI. ANAMIKA BARMAN, LL.M., A.J.S.**

**JUDICIAL MAGISTRATE FIRST CLASS**

**MORIGAON, ASSAM.**

**FOR THE STATE: - MR. M. ISLAM, LEARNED A.P.P.**

**FOR THE ACCUSED: - MR. P. BORA, LEARNED ADVOCATE.**

**EVIDENCE RECORDED ON: - 28.12.2018, 12.04.2019, 27.05.2019,**

**ARGUMENT HEARD ON:- 02.08.2019, 17.08.2019, 30.10.2019,**

**JUDGMENT DELIVERED ON:- 07.11.2019.**

**JUDGMENT**

1. The brief of the prosecution story is that one Sri Hem Kanta Bhagabati lodged an ejahar before the Officer-in-charge, Jagiroad P.S. on 25.09.2015 alleging inter-alia that on 24.09.2015, at about 06:00 pm, his nephew and the only son of Sri Keshab Bhagabati, namely, Sri Shibanan Bhagabati (Sumu) was proceeding from Jagiraod towards Baghara in his new Pulsar A 220 motor cycle. When the victim reached Kumoui Chariali, a Tata Mobile Truck bearing registration No.AS01-BC-6128, which was proceeding from the opposite direction in a

rash and negligent manner, hit the bike of the victim from the front side as a result of which the victim expired at the place of occurrence itself. The said bike of the deceased also got damaged. Hence, the case.

2. On receipt of the ejahar, Jagiroad P.S. Case No.412/15 u/s279/304-A/427 IPC was registered and investigated into. On completion of the investigation, I/O filed charge-sheet against the accused Sri Rajesh Boro u/s279/304-A/427 of IPC.

3. On receipt of summons the accused person appeared before the court and copies of relevant documents were furnished to the accused person under section 207 of Cr. P.C. On finding sufficient materials to presume that the accused person had committed offences under Sections 279/304-A/427, particulars of offences under the said sections were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. In support of the case, prosecution examined 7 (Seven) witnesses. After closure of prosecution evidence, statement of the accused person u/s 313 of Cr.P.C. has been recorded wherein he took the plea of denial. Defence declined to adduce evidence. Heard the arguments put forward by the learned Counsels for both the sides as well as gone through the evidences available on record.

**Point for determination.**

- (i) Whether on 24.09.2015, at about 06:00 pm, Kumoui Chariali, the accused person drove a vehicle, being Tata Mobile Truck bearing registration No. AS01-BC-6128, on a public way in a manner so rash or negligent as to endanger human life, or to be likely to caused hurt or injury to any other person, and hence committed an offence u/s 279, IPC?*
- (ii) Whether on the same date, time and place, the accused person caused the death of Sri Shibanan Bhagabati (Sumu) by doing an act, namely, driving a Tata Mobile Truck bearing registration No.AS01-BC-6128, which was rash or negligent not amounting to culpable homicide, and hence committed an offence punishable u/s 304-A, IPC?*
- (iii) Whether on the same date, time and place, the accused person committed mischief by causing wrongful loss or damage to the property of the deceased*

*which valued more than Rs.50/-, and hence committed an offence punishable u/s 427 IPC?*

**Discussion, Decision and Reasons thereof:-**

5. In this case prosecution examined 7 (Seven) witnesses. One Sri Naruttam Deka is examined as PW-1, Sri Ajit Deka as PW-2, Sri Dibya Jyoti Bora as PW-3, Sri Indra Mohan Deka @ Indreshwar Deka as PW-4, the informant Sri Hem Kanta Bhagawati as PW-5, I.O Jayanta Senapati as PW-6 and I.O. Kamala Kanta Sarma as PW-7 to prove the charges against the accused person.

6. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief* PW-1, Sri Naruttam Deka, deposed that he does not know the informant but he knows the accused person standing on the dock. He further deposed that the incident had taken place about 2-3 (two to three) years prior to the date on his deposition at a placetowards the east of Kumoi Chariali in the evening. He heard that an accident had taken place there. He does not know how the accident had taken place, which vehicles were involved in the accident and who had suffered injury as a result of the said accident. Ext.-1 is the seizure list, Ext.-1(1) is the signature of PW-1. However, PW-1 has forgotten as to when and where he had given his signature on the Ext.-1.

7. *During his cross-examination*, PW-1 stated that he does not know for whose fault the incident had occurred.

8. *In his examination-in-chief* PW-2, Sri Ajit Deka, deposed that he does not know the informant and the accused person standing on the dock. He further deposed that he does not know anything about the incident. Ext.-1(2) is his signature. Defence declined to cross-examine PW-2 on his deposition.

9. *In his examination-in-chief* PW-3, Sri Dibyajyoti Bora, deposed that he does not know the informant and the accused person standing on the dock. He further deposed that he does not know anything about the incident. Ext.-1(3) is his signature. Defence declined to cross-examine PW-3 on his deposition.

10. *In his examination-in-chief* PW-4, Sri Indra Mohan Deka @ Indreshwar Deka, deposed that he does not know the informant and the accused person standing on the dock. He further deposed that about 2 (two) years prior to the date of his deposition in the evening

time a TATA Mobile vehicle had had met with an accident at Kumoi Rajakuchi main road. He heard that in that accident, a boy from Baghara got expired. He does not know anything else about the said incident. Ext.-1(4) is his signature.

11. *During his cross examination*, PW-3 stated that he had not seen the accident and as such he cannot say for whose fault the said accident had taken place. He does not know in which he had put his signature, i.e. Ext.-1(4).

12. *In his examination-in-chief* PW-5/informant, Sri Hema Kanta Bhagawati, deposed that he is the informant but he does not know the accused person. Ext.-2 is the Ejahar filed by him and Ext.-2(1) is his signature. He further deposed that the incident had taken place on 24.10.2015. On the date of the incident at about 07:00 pm, near Kumoi Chariali, while his nephew Lt. Sibanan Bhagawati was returning from Jagiroad, a Tata Mobile truck proceeding from the opposite direction with no head light on its right side, hit the nephew of the informant as result of which the nephew of the informant died on the spot. After the incident, he filed the case in the police station.

13. *During his cross examination* PW-5, stated that he had not seen the accident taking place but had seen the same only after its occurrence. He further stated that as he had not seen the accident himself, he cannot say exactly for whose fault the accident had taken place.

14. *In his examination-in-chief* PW-6/I.O., Sri Jayanta Senapati, deposed that on 24.09.2015 he was posted as an ASI at the Jagiroad traffic branch. On that day the informant Sri Hema Kanta Bhagawati filed a written FIR at Jagiroad P.S. The O.C. of Jagiraod P.S. registered the case as Jagiroad P.S case No. 412/15 u/s 279/304(A)/427 of IPC and endorsed the same to PW-5 for preliminary investigation. After taking the charge of investigation, PW-5 visited the place of occurrence and drew the sketch map. Ext.-3 is the sketch map, Ext.-3(1) is his signature. He recorded the statements of the witnesses. Ext.-1(5) is his signature on the seizure list prepared by him. Ext.-4 is another seizure list and Ext.-4(1) is his signature. He seized a new Pulsar Bike by preparing the Ext.-4 and a TATA mobile vehicle by preparing the Ext.-1. On 24.09.2015 he got the said TATA mobile vehicle examined by the MVI and on 18.10.2015 he collected the MVI report. Ext.-5 is the MVI report of the TATA mobile vehicle and Ext.-6 is the MVI report of the bike. On 18.10.2015 he collected the post mortem report of the deceased Sibanan Bhagawati. Ext.-7 is the post mortem report of the deceased Sibanan Bhagawati. After completing preliminary investigation he handed over the CD of the

case to the O.C. of Jagiroad P/S Sri K. K. Sarma. Defence declined to cross-examine the PW-6 on his deposition.

15. *In his examination-in-chief* PW-7/I.O., Sri Kamala Kanta Sarma deposed that on 25.09.2015 he has posted as an SI at the Jagiroad P.S. On that day one Sri Hema Kanta Bhagawati filed a written FIR and he registered the same as Jagiroad P.S case No. 412/15, u/s 279/304(A)/427 of IPC and endorsed the case to ASI Jayanata Senapati for preliminary investigation. On 31.10.2015 ASI Jayanta Senapati completed the preliminary examination and handed over the CR and the CD to him and on the basis of the CD PW-7 filed the charge-sheet against the accused Rajesh Boro u/s 279/304(A)/427 of IPC. Ext.-8 is the Charge-Sheet, Ext.-8(1) is the signature of PW-7. Defence declined to cross-examine PW-7 on his deposition.

## **JUDICIAL DETERMINATION**

### **RASH & NEGLIGENT ACT-MEANING**

16. The term 'rash' and 'negligence' has not been defined in the Code and both the words are not synonymous. Rashness is an act done in the hope that no untoward consequence will ensue though the person is aware of the likelihood of such consequence. On the other hand, negligence is acting with the awareness that harmful or mischievous consequences will follow. If a person does an act with utter indifference or the consequence of which he may be conscious, which he hoped may not take place, he is said to be rash. Negligence is failure to take that precaution which a reasonable and prudent person is expected to take.

### **BURDEN OF PROOF**

17. In a criminal trial, the burden of proving everything essential to the establishment of the charge against an accused always rest upon the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved.

18. On perusal of case record, it appears that prosecution managed to examine seven witnesses. The facts of the prosecution case are quite clear as I have already discussed the same. Now, the moot question arises as to whether prosecution was able to discharge its burden.

19. There are no independent eye witnesses to the said incident and none of the witnesses know the manner in which the incident had taken place or who was responsible for the same. Although, the informant/PW-5 deposed that a TATA Mobile truck, proceeding from the

opposite direction without headlight on the right side, hit the nephew of the informant as result of which the victim expired. However, in his cross-examination PW-5 deposed that he had not seen the incident himself and he could not say for whose fault the accident had taken place. The other prosecution witnesses merely heard about the accident.

20. The independent witnesses failed to identify the accused person as driving the offending vehicle on the date of the incident. This is the most vital point which the prosecution is required to prove. As such, it cannot be determined whether the accused person was responsible for the incident or not and whether the victim had died as a result of his rash & negligent act.

21. Thus, the evidence led by prosecution made it abundantly clear that they have not been able to prove the fact of rash and negligent driving. Yes, it is true that there may not be direct evidence of rashness and negligence in all cases, and the same can be inferred from attending facts and circumstances, but there is also no evidence of any such facts or circumstances, from which the rashness or negligence on the part of the accused person could be inferred. The degree of gross negligence and rashness required for bringing home the guilt of the accused person under these sections is, therefore, absent in the present case.

22. Again, from the evidence on record, no materials u/s 427 of IPC has also been found against the accused person.

23. Situated thus, I can hold safely that the prosecution failed to prove the guilt of the accused person beyond reasonable doubt to warrant the conviction against him.

**O R D E R**

In view of the conclusion made above, I hold the accused person not guilty of the offences u/s 279/304-A/427 of IPC and hence, he is acquitted of the offences U/S279/304-A/427 of IPC. The accused is set at liberty forthwith.

The bail-bond of the accused shall remain in force for a period of six months from the date of this order.

The judgment is delivered in the open Court in presence of the accused and his learned Counsel.

Given under my hand and the seal of this court on this 7<sup>th</sup> November, 2019.

Dictated and corrected by me

(Miss. Anamika Barman)

JMFC, Morigaon

**(ANAMIKA BARMAN)**

**Judicial Magistrate First Class**

**Morigaon, Assam**

## **APPENDIX**

### **PROSECUTION WITNESSES:**

1. P.W.-1, SRI NARUTTAM DEKA,
2. P.W.-2, SRI AJIT DEKA,
3. P.W.-3, DIBYAJYOTI BORA,
4. P.W.-4, INDRA MOHAN DEKA @ INDRESHWAR DEKA,
5. P.W.-5, HEMA KT. BHAGAWATI,
6. P.W.-6, I.O JAYANTA SENAPATI,
7. P.W.-7, I.O. KAMALA KANTA SARMA.

### **DEFENCE WITNESSES :**

**NIL**

### **EXHIBITED DOCUMENTS:**

**EXT.-1 IS A SEIZURE LIST,  
EXT.-1(1) IS THE SIGNATURE OF SRI NARUTTAM DEKA,  
EXT.-1(2) IS THE SIGNATURE OF SRI AJIT DEKA,  
EXT.-1(3) IS THE SIGNATURE OF DIBYAJYOTI BORA,  
EXT.-1(4) IS THE SIGNATURE OF INDRA MOHAN DEKA@INDRESHWAR DEKA,  
EXT.-1(5) IS THE SIGNATURE OF I.O. JAYANAT SENAPATI,  
EXT.-2 IS THE FIR,  
EXT.-2(1) IS THE SIGNATURE OF SRI HEMA KT. BHAGAWATI,  
EXT.-3 IS THE SKETCH MAP,  
EXT.-3(1) IS THE SIGNATURE OF I.O. JAYANAT SENAPATI,  
EXT.-4 IS A SEIZURE LIST.  
EXT.-4(1) IS THE SIGNATURE OF I.O. JAYANAT SENAPATI,  
EXT.-5 IS MVI REPORT OF THE TATA MOBILE VEHICLE,  
EXT.-6 IS THE MVI REPORT OF THE PULSAR BIKE,  
EXT.-7 POST MORTEM REPORT OF DECEASED SIBANAN BHAGAWATI,  
EXT.-8 IS THE CHARGE-SHEET,  
EXT.-8(1) IS THE SIGNATURE OF KAMALA KANTA SARMA.**

**(ANAMIKA BARMAN)  
JMFC, Morigaon  
Assam**