

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO. 2606/2015

State

Vs.

**Sri Rudra Sing Pumah
Son of Late Joymon Pumah
Resident of village- Deusal
P.S.- Jagiroad,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.

For the defense: Mr. G.S. Deka, Mr. T. Boro, Advocates

Offences explained u/s: 279/338/304A of IPC
Evidence recorded on: 28-2-2019, 17-5-2019, 1-8-2019 & 1-11-2019
Statement of defense recorded on: 15-11-2019
Argument heard on: 15-11-2019
Judgment delivered on: 30-11-2019

JUDGMENT

1. The prosecution case in brief is that one assistant sub inspector of police Sri Upen Ch. Bordoloi lodged an ejarah in the Jagiroad police station on 10-11-2015 alleging therein that on 6-11-2015 at about 5.35 p.m., in front of Jagiroad Paper Mill Hospital gate, on the national highway no. 37, one Sri Rudra Sing Pumah, rider of CBZ motorcycle bearing registration No. AS-01U-9435, while coming from Deusal towards Jagiroad side by riding the said motorcycle at a high speed and negligently, knocked down one Sri Gopi Chetry, aged about 40 years, from behind. As a result of the impact Sri Gopi Chetry fell down on the concrete road and sustained injuries and the rider Sri Rudra Sing Pumah also fell down from the motorcycle and sustained

injuries. Both the injured were taken to HPC Hospital and given treatment therein. Due to severe nature of injuries sustained by Sri Gopi Chetry, he was taken to GMCH, Guwahati for medical treatment and while undergoing treatment at GMCH, he died at about 9.00 p.m on 7-11-2015.

2. The said ejahar was received on 10-11-2015 and a Jagiroad police station case No.497/2015 under sections 279/338/304A IPC was registered and one sub inspector of police Md. Abdul Hannan Laskar was assigned to investigate the case by the officer-in-charge of the said police station. On completion of investigation, police submitted charge sheet against the accused Sri Rudra Sing Pumah under sections 279/338/304A IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused person under section 207 CrPC. Particular of offences under sections 279/338/304A of IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 6 (six) witnesses namely ASI Sri Upen Ch. Bordoloi, Sri Kartik Bordoloi, Sri Bhaskar Mohan Boruah, Sri Bhupen Deka, Sri Som Bahadur Mogar and Sri Gautam Chetry, as PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6, respectively. The accused, while under examination under section 313 CrPC, admitted the occurrence and stated that the victim Gopi Chetry came in front of his bike in a drunken state and dashed against his motorcycle. However, the accused did not admit that the occurrence took place due to his own fault. The defense refused to adduce any evidence on its behalf.

5. I have heard the arguments of Mrs. Alakananda Kakati, learned APP as well as Mr. Gopendra Singha Deka, assisted by Mr. Tapan Boro, learned defence counsels. I have also perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused, on or about 6-11-2015 at about 5.35 p.m. in front of Jagiroad Paper Mill Hospital Gate on the 37 N.H., under Jagiroad police station, drove the CBZ motorcycle bearing registration No. AS-01U-9435 in a manner so rash and negligent as to endanger human life

- or as to be likely to cause hurt or injury to any other person and thereby committed an offence punishable under section 279 IPC?
- ii. Whether the accused, on or about the same day, time and place, caused grievous hurt to Gopilal Chauhan @ Gopi Chetry by driving the CBZ motorcycle bearing registration No. AS-01U-9435 so rashly or negligently as to endanger human life or the personal safety of others and thereby committed an offence punishable under section 338 IPC?
 - iii. Whether the accused, on or about the same day, time and place, caused the death of Gopilal Chauhan @ Gopi Chetry by doing a rash or negligent act not amounting to culpable homicide and thereby committed an offence punishable under Section 304A IPC?

Discussion of evidence, decision and reasons therefor:

6. For convenience, all the three points for determination are taken up together for discussion. P.W.-1 ASI Sri Upen Ch. Bordoloi is the informant of the case, who lodged the ejahar which is exhibited as exhibit-1 and he confirmed his signature thereon as exhibit-1(1). In his deposition he stated that while he was working as assistant sub inspector of police at Jagiroad police station on 6-11-2015, at about 5.30 p.m., he was informed by the Officer-in-Charge of Jagiroad police station about a road traffic accident in front of Jagiroad Paper Mill. Immediately, thereafter, he went to the place of occurrence and found one Gopi Chetry and one Rudra Sing Pumah lying on the ground along with a motorcycle. He immediately admitted both of them in the Paper Mill Hospital as both of them sustained injuries. As Gopi Chetry sustained more injuries, therefore, he was advised to be taken to Guwahati. The said PW-1 came to know that Gopi Chetry died on 7-11-2015 at Guwahati. He further stated that as no one came forward to lodge ejahar, therefore, he lodged the same.

7. Though it appears from the evidence of PW-1 that Gopi Chetry died due to the injuries sustained by him in the occurrence, however, the said statement is contradicted by PW-5 Sri Som Bahadur Magor, who is the father-in-law of the deceased Gopi Chetry. According to PW-5, Gopilal Chetry @ Gopi Chetry was taken to his house as per advice of the doctor, wherein, after two days, he died due to

illness. Therefore, the death of Gopilal Chetry was, according to his own father-in-law, was due to illness. This revelation by PW-5, therefore, contradicts the impression given by PW-1 that Gopi Chetry died due to the injuries sustained by him in the vehicular accident. Though PW-1 stated that the accused was riding the motorcycle at high speed and negligently from Deusal side and knocked Gopi Chetry from behind while he was walking on the road; however, in cross-examination it is revealed that the said PW ASI Sri Upen Ch. Bordoloi did not see the occurrence with his own eyes. He also expressed his ignorance as to for whose fault the occurrence took place.

8. Except the accusation by PW-1 that the accused Sri Rudra Sing Pumah was driving the motorcycle at a high speed and negligently, none of the remaining five witnesses have implicated the accused of negligent or rash driving or of riding the motorcycle at a very high speed.

9. According to PW-2 Sri Kartik Bordoloi, who was present at the place of the occurrence at the time of the occurrence, he saw a man walking in an unsteady manner on the road. He was shabbily dressed at that time and was under the influence of liquor. At that time the accused was coming from Nagaon side and when he reached the place of occurrence in front of the eyes of the said PW, the unsteady walker fell on the handle of the bike which was rode by the accused. At the same time, the accused fell down on the ground. Thereafter, the accused was lifted by the walker from the ground and both of them were taken to Paper Mill Hospital by PW-2. At the hospital doctor rebuked the walker as he was under the influence of liquor at that time. According to him, the accused was riding the bike at about 20/25 k.m. per hour as he was about to cross the flyover for which he was riding the bike slowly. PW-2 further revealed in his cross-examination that it was not the accused, who knocked the injured by the bike rather it was the person, who was walking, who knocked at the bike handle of the accused. It was further stated that the accused was not at fault and the occurrence took place due to the fault of the person who was walking i.e. fault of Gopi Chetry.

10. Likewise, PW-3 also stated, while under cross-examination, that injured on his own fell down on the bike rode by the accused in an unsteady condition for which the occurrence took place. He also stated that he took the accused as well as the injured to Paper Mill Hospital, wherein the nurse and doctor rebuked the injured as he was under influence of liquor at that time.

11. PW-4 Sri Bhupen Deka also stated the same thing as his deposition also confirmed that Gopi Chetry was under the influence of liquor at the time of the occurrence. He also revealed in cross-examination that he heard that the occurrence took place due to the fault of the person, who was under the influence of liquor.

12. P.W.-5 Sri Som bahadur Mogar, who is the father-in-law of Gopilal Chetry @ Gopi Chetri @ Gopilal Chouhan, admitted, while under cross-examination, that his son-in-law Gopilal Chetry remains under influence of liquor and he heard it was Gopilal Chetry, who, on his own, fell down in front of the bike. He also revealed that Gopilal Chouhan was under influence of liquor and for which doctor advised to take him to his house. As already indicated above, Gopilal Chetry died after two days.

13. P.W.-6 Sri Gautam Chetry also revealed in his cross-examination that Gopilal Chetry remains under influence of liquor throughout the day since morning. He also heard that the occurrence took place as Gopilal Chetry was under the influence of liquor at that time.

14. It is seen that except PW-1 all the remaining five witnesses have not uttered a single word that the accused person was rash or negligent or that he was driving the vehicle at a high speed at the time of occurrence. Though the accused admitted the occurrence; however, according to him also it was the accused who, under the influence of liquor, knocked his bike while he was riding his bike slowly. This statement by the accused supports the deposition of all the PWs except PW-1. Statement of the PW-1 that the occurrence took place due to rash and negligent driving by the accused is only guess work as he did not see the same and arrived at the scene as per direction of the officer in charge of Jagiroad police station.

Therefore, there is no material to show that the occurrence took place due to rash and negligent driving of the accused.

15. In view of the depositions of the non-official witnesses, the prosecution side also did not proceed further to summon and examine the remaining official witnesses, as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so. The official witnesses cannot be expected to have any direct knowledge of the occurrence and their evidence will not improve the prosecution case.

16. For the aforesaid reasons and discussion the points for determination are answered in the negative.

17. The prosecution side failed to prove the case against the accused beyond all reasonable doubt. The accused is found not guilty and accordingly he is acquitted of the offences under sections 279/338/304A of IPC. He be set at liberty forthwith. His bail bond is extended for a period of six months from today in view of section 437A of CrPC.

18. The motorcycle bearing registration No.AS-01U-9435 and its documents, seized vide seizure list bearing MR No.348/2015 be returned to the accused, from whom the same were seized, if not already returned.

19. The judgment is pronounced in open court and given under my hand and seal on this 30th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

Ext.-1(1): Signature of PW-1 ASI Sri Upen Ch. Bordoloi

Ext.-2: Seizure list bearing MR No.348/2015

Ext.-2(1): Signature of PW-1 ASI Sri Upen Chandra Bordoloi

Ext.-2(2): Signature of PW-2 Sri Kartik Bordoloi

Ext.-2(3): Signature of PW-3 Sri Bhaskar Mohan Boruah

Ext.-2(4): Signature of PW-4 Sri Bhupen Deka

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: ASI Sri Upen Ch. Bordoloi

P.W.-2: Sri Kartik Bordoloi

P.W.-3: Sri Bhaskar Mohan Baruah

P.W.-4: Sri Bhupen Deka

P.W.-5: Sri Som bahadur Mogar

P.W.-6: Sri Gautam Chetry

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon