

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM
G.R. CASE NO.2085/2014

State

Vs.

Sri Manoj Kr. Bora
Son of Sri Suren Bora
Resident of village- Amsoi
P.S.- Raha,
District- Nagaon, Assam

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

For the state: Mrs. A. Kakati, Asstt. P.P.
For the defense: Md. H. Rahman, Advocate

Offences explained: u/s 279/304A of IPC

Evidence recorded on: 28-7-2016, 2-6-2017 and 21-8-2017

Statement of defense recorded on: 23-9-2019

Argument heard on: 23-9-2019

Judgment delivered on: 1-10-2019

JUDGMENT

1. The prosecution case in brief is that one Smti. Arati Bordoloi Saikia lodged a complaint in the court of Chief Judicial Magistrate, Morigaon against the accused Sri Manoj Kr. Bora alleging therein that on 1-9-2014 at about 8.00 p.m., Bipul Saikia, who was the husband of the complainant, was pillion riding with the accused in a motorcycle (Model-Discover) bearing registration No. AS-09/B-1723 from Morigaon to Bangaldhara in connection with business purpose. However, due to high speed and negligent driving of the motorcycle by the accused, the accused lost control of the vehicle and near a pond at Narmari, knocked a tree by the side of the road. As a result of the impact, Bipul Saikia sustained severe injuries on his person. The injured was immediately taken to the Morigaon Civil Hospital; however, due to severe nature of the injuries and considering the

critical condition of the injured, he was taken to GMCH, Guwahati. However, he was declared dead at GMCH, Guwahati. His post-mortem was conducted at GMCH, Guwahati. Due to performance of last rites of the deceased, the complainant could not lodge any ejahar. When she went to the police station to lodge an ejahar, police refused to lodge the same citing delay for which she had to file complaint in court.

2. The complaint was forwarded to the Officer-in-Charge of Dharamtul police station, as per prayer of the complainant, registration of a case, for investigation and submission of report under section 173 CrPC. Accordingly, the complaint was received in the Dharamtul police station on 15-10-2014 and a Dharamtul police station case No.106/2014 under sections 279/304A IPC was registered and sub inspector of police Sri Munindra Kr. Das, who was the Officer-in-Charge of the Dharamtul police station, decided to investigate the case by himself. On completion of investigation police submitted charge sheet against the accused Sri Manoj Kr. Bora under sections 279/304A 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 279/304A 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 4 (four) witnesses namely Smti. Arati Bordoloi Saikia, Smti. Basanti Bharali, Sri Digen Bharali @ Diganta Bharali and Md. Rustam Ali, as PW-1, PW-2, PW-3 and PW-4, respectively. The ejahar is exhibited as exhibit-1 and the signatures of the informant is proved as exhibit-1(1) and exhibit-1(2). While under examination under section 313 CrPC, the accused person completely denied the allegation leveled against him. Defense side refused to adduce any evidence.

5. I have heard the arguments of Mrs. Alakananda Kakati, learned Addl. P.P. as well as Md. Hamidur Rahman, learned defence counsel. 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 1-9-2014 at about 8.00 p.m. at village Naramari under Dharamtul police station, drove a motorcycle bearing registration No. AS-09/B-1723 (Discover) 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 the death of Bipul Saikia, not amounting to culpable homicide, by doing a rash or negligent act namely by driving a motorcycle bearing registration No. AS-09/B-1723 (Discover) in a very high speed and in a manner so rash and negligent so as to endanger human life and thereby committed an offence punishable under section 304A of IPC?

Discussion of evidence, decision and reasons therefor:

6. The informant Smti. Arati Bordoloi Saikia deposed before the court as PW-1. Her ejahar is exhibited as exhibit-1 and she confirmed her signatures thereon as exhibit-1(1) and 1(2). We have already noticed the contents of the ejahar. The allegation against the accused as revealed from the ejahar is that he drove the motorcycle at high speed, negligently, lost control thereof and knocked a tree by the side of the road at Naramari. Against this statement made by the informant in her ejahar, she, as PW-1, however, stated in her deposition that when the accused and her husband were going in a motorcycle, the motorcycle met with an accident as another vehicle came from opposite side and knocked the motorcycle. Due to the accident, her husband died. While under cross-examination she admitted that she did not see the occurrence with her own eyes and therefore, cannot say which vehicle knocked down the motorcycle

7. As it is clear from her deposition that her ejahar do not indicate involvement of any other vehicle. Conversely, her deposition omits the fact that the accused by driving the motorcycle at high speed and negligently knocked down a tree by the side of the road. Needless to say that because of the fact that she did not see the occurrence with her own eyes, she also could not ascertain

later also as to how the accident took place. Whether the accused knocked a tree or it was because of involvement of another vehicle the accident took place cannot be ascertained from her deposition. Therefore, she being the informant and key witness, her deposition cannot be relied upon in order to arrive at a decision as to whether the accused was rash or negligent at the time of driving the motorcycle.

8. It may be mentioned here that the accused in his 313 CrPC statement denied the fact that he was driving the motorcycle and expressed his ignorance about the occurrence. The statement of the accused that he was not driving the vehicle is found to be false and the same is rejected in view of the fact that PW-3 Sri Diganta Bharali could identify the accused in connection with the accident. Likewise, PW-4 Md. Rustam Ali also stated that he saw two persons lying on the road due to a motorcycle accident and one of them was Bipul Saikia, who sustained severe injuries on his head. Though PW-4 did not specifically stated that he also saw the accused; however, the combined effect of the deposition of PW-1, PW-3 and PW-4 clearly goes to prove the fact that it was none other than the accused who was driving the motorcycle.

9. PW-2 Smti. Basanti Bharali only heard about the accident wherein her nephew Bipul Saikia died. She did not see the occurrence with her own eyes. There is also no mention in her evidence of any rashness, negligence or high speed driving of the motorcycle by the accused.

10. PW-3 Sri Digen Bharali @ Diganta Bharali also did not see the occurrence as he was at his house at that time. He was informed about the accident by the informant (PW-1). He came to Morigaon Civil Hospital and saw Bipul Saikia with injuries on his head and upper back. He clearly stated that he does not know how the accident took place. He came to know later that deceased was travelling with the accused. He also stated, while under cross-examination, that he did not see the occurrence with his own eyes. His deposition also does not contain any statement to the effect that the accused was driving the motorcycle at high speed, negligently or rashly.

11. PW-4 Md. Rustam Ali saw that the accident took place at Naramari in a village road at a road turning and he saw two persons lying at the place of occurrence, one of whom was Bipul Saikia, who sustained injuries on his head. He also expressed ignorance as to how the accident took place. While under cross-examination, he revealed that he did not see any other vehicle at the place of occurrence or any driver of the other vehicle. This revelation by PW-4 in his cross-examination goes against the deposition of PW-1 wherein she stated that another vehicle was involved in the occurrence.

12. None of the aforementioned four witnesses uttered a single word against the accused in their depositions to show that the accused was rash or negligent. In fact none of them had seen the occurrence with their own eyes.

13. In view of the deposition of the four PWs, the prosecution side 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.

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

15. 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 279/304A 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.

16. The motorcycle bearing registration No. AS-09/B-1723 (Discover) and the documents, seized vide seizure list bearing MR No.36/2014 be returned to the accused, from whom the same were seized, if not already returned.

17. The judgment is pronounced in open court and given under my hand and seal on this 1st day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1 : Ejahar
Ext.-1(1) & 1(2): Signature of Smti. Arati Bordoloi Saikia
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Smti. Arati Bordoloi Saikia
P.W.-2: Smti. Basanti Bharali
P.W.-3: Sri Digen Bharali @ Diganta Bharali
P.W.-4: Md. Rustam Ali
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon