

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::::: BONGAIGAON.**

**GR CASE No. 576/2009.**

**U/Ss.279/304-A IPC.**

**State of Assam**

**-Vs-**

**Jahar Ali.**

*Present: Sri A.U. Ahmed, AJS*  
*Chief Judicial Magistrate,*  
*Bongaigaon.*

**Name of the informant:**

*Md. Azimuddin,*  
*D/O Late Mohammad Ali,*  
*Vill- Dawaguri,*  
*PS- Bijni, Dist- Chirang.*

**Advocates appeared:**

For the Prosecution: *Mr. T. Bhowmick, Assistant PP.*

For the Defence: *Mr. N. I. Siddique.*

Argument heard on: ***21.06.2013.***

Date/s fixed for Judgment : ***28.06.2013, 29.06.2013.***

**J U D G M E N T**

1. The prosecution case in brief is that on 05-11-2009 at 11-30 Am while the son of the informant deceased Sayeb Ali was going on foot near Padmapur Bazaar on PWD road, one Tempo having registration No. AS-19/C-0839 driven at high speed in rash and negligent manner coming from back side knocked him down. There after immediately the deceased person was taken to Lower Assam Hospital and though he was got admitted there but the doctor

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declared that the deceased person was no more. On the same day the informant lodged a written ejahar to that effect with Dhaligaon PS. On receipt of the written ejahar, O/C Dhaligaon PS registered a criminal case vide Dhaligaon PS Case No. 110/2009 under sections 279/304-A IPC and started investigation. On completion of investigation, the charge-sheet was submitted under sections 279/304-A IPC against the accused person. Hence the prosecution case has come up.

2. On completion of appearance of the accused person, copy was supplied to him. The particulars of the offence U/ss. 279/304-A IPC is duly explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. During the trial prosecution has examined as many as 8 (eight) prosecution witnesses. The accused person has been examined under section 313 CrPC. The defence has examined none. The plea of defence is of total denial.

4. **:POINT FOR DETERMINATION:**  
***(a) Whether accused person committed the offence U/Ss.279/304-A IPC ?***

5. **:DECISION AND REASONS THEREOF:**

I have very carefully gone the arguments duly advanced by the Ld. Lawyers of both sides as well as evidence on record. Now, let me discuss the evidence on record.

6. PW1 is Ajimuddin who has stated in his testimony that about 1 ½ years back while his deceased son was going towards

Padmapur on foot, one Auto-rickshaw knocked him down as a result

he sustained injury. While the deceased person was taken to hospital, he was declared to have died. There after his deceased son was taken to Dhaligaon PS. On information he came to Dhaligaon PS and found dead body of his son. On the same day he lodged the written ejahar.

7. PW2 is Md. Safar Uddin Mia who has stated in his testimony that the occurrence took place about 1½ years back. On the day of occurrence at 10-30 while he along with his wife Manowara was sitting in his house, one person from Bodo community informed that one person was fallen from Auto-Rickshaw. There after they went there running and found one person lying on PWD road. There after the injured person was taken to Lower Assam Hospital where he was declared to be dead. In the meantime he informed Dhaligaon PS and the father of the deceased about the occurrence.
8. PW3 is Musstt. Manowara Bibi who has stated in his testimony that the occurrence took place about 2(two) years back at 10-30 Am while she was in her house. Hearing shouting she came to the PO and saw one auto-rickshaw standing and near the same one boy lying in injured condition. There after she along with others took the injured boy to hospital where he was declared to be dead.
9. PW4 is Md. Hanif Ali who has stated in his testimony that the occurrence took place about one year back. He heard that one auto-rickshaw knocked a boy down as a result he sustained injury. There after the injured boy was taken to hospital. Coming to

the hospital on the following day morning he came to know that the boy breathed last.

10. PW5 is Md. Iman Ali Ahmed who has stated in his

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testimony that the occurrence took place in the year 2009 at 10-30 Am while he was working in his shop. At that time he heard shouting from the road which is standing in front of his shop. Then coming out from the shop he saw one Tempo standing and boy lying on the road in injured condition. Coming near the injured boy he found him unconscious. He heard from the people that the boy was fallen from that Tempo. The boy was sent to Lower Assam Hospital in that Tempo. Later on he came to know that the said boy had died before he reached the hospital.

11. PW6 is Sri Joy Singh Rangphar who examined the offending vehicle. He has stated in his testimony that on 07-01-2009 he examined one auto-rickshaw bearing registration No. AS-19/C-0839 on police requisition and found the same mechanically road worthy condition. Ext1 is the mechanical report and Ext1(1) is his signature.

12. PW7 is Dr. Phaltanga Kungur Brahma who has stated in his testimony that Ext2 is the Post-mortem Report and Ext2(1) is the signature of Dr. Aboni Kumar Kalita who was his colleague. On 16.11.2009 Dr. Abani Kr. Kalita on police requisition in connection with Dhaligaon PS Case No.110/09 U/S.279/304-A IPC conducted post-mortem of the deceased Sayeb Ali and found the following findings :

Dead body of a young male of approx.18 years, stout health of average built in early state of decomposition,

- 3cm,  
up
- a) **There is lacerated cut injury of approx 5cm X bone deep on occipital region.**
  - b) **Blood clots are seen in left ear.**
  - c) **Blood clots are seen in both the nostrils.**
  - d) **There is linear fracture occipital bone extending to Lt. Temporal bone.**
  - e) **There are multiple intra-cerebral haemorrhage on occipital Lt. Temporal region of brain.**

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In his opinion, the cause of death due to shock & haemorrhage caused by head injury (brain injury) following blunt impact and is ante-mortem in nature.

13. PW8 is Sri Hare Krishna Deka who is the Investigating Officer of this case. He has stated in his testimony that on 05-11-2009 at 5 PM on receipt of a written ejahar, O/C registered a criminal case and asked him to investigate the case. Finding the informant in police station he recorded his statement. There after he rushed to Lower Assam Hospital. As it became late night, he could not start the work of inquest of the deceased. On the following day he made inquest of the deceased. Ext3 is the inquest. Thereafter he sent the dead body of the deceased for postmortem to RNB Hospital, Kokrajhar. He drew sketch map of the PO and recorded statement of rest witnesses. The Accused person surrendered before him coming to the police station with the offending auto-rickshaw having registration No. AS-19/C-0839. There after he seized the aforesaid vehicle along with its relevant documents from the accused person Ext4 is the said seizure list and Ext4(1) is the signature of the accused person and Ext4(2) is his signature. The accused was apprehended and released on bail. The seized vehicle was given on zimma. On completion of investigation the charge sheet was submitted under sections 279/304-A IPC against the accused person. Ext5 is the charge-sheet and Ext5(1) is his signature.

14. The entire prosecution case rest upon evidence of PW8 as evidence of PW1 to PW5 is totally silent as to which motor vehicle knocked down the deceased and as to who drove the offending vehicle. Ext 4 shows that on the day of occurrence the accused person surrendered before the investigating officer with the offending vehicle. It is found that according to someone, the

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6.

deceased person was fallen from one motor vehicle and on contrary, according to some the deceased person was knocked down by a motor vehicle. From the evidence of PW6 it appears that the seized vehicle at the time examination, the seized vehicle was found mechanically road-worthy. From the evidence of PW8 it can be remotely presumed that the offending vehicle was driven by the accused person. There is no iota of evidence that at the time of the occurrence, the offending vehicle was driven in rush and negligent manner. It is very much necessary for the prosecution to establish first its case under section 279 IPC.

15. ***In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubts. Hence, on benefit of doubt the accused person is hereby acquitted from the charges brought against him and let him be set at liberty forthwith. His bail bond stands cancelled. Let the seized articles be returned to the registered owner in due course of law. Accordingly, this case is disposed of on contest.***

16. The Judgment is pronounced and delivered in the open Court on this **29<sup>th</sup> June, 2013** under my hand and seal of this Court.

***(Sri A. U. Ahmed)***  
**Chief Judicial Magistrate**  
**BONGAIGAON.**

*Dictated and corrected by me.....*

***(Sri A. U. Ahmed)***  
**Chief Judicial Magistrate,**  
**BONGAIGAON.**

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