

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 684/2011

STATE VERSUS JAMAL UDDIN

U/S 279/304(A) IPC

FOR THE PROSECUTION: MR. S.K.NATH, ASST. P.P

**FOR THE DEFENSE: MR. N.I SIDDIQUE, SMT. J. SHARMA,
ADVOCATES**

EVIDENCE RECORDED ON: 18/10/12, 12/11/12, 8/1/13, 22/1/13,

ARGUMENTS HEARD ON: 20/3/13

JUDGMENT DELIVERED ON: 4/4/13

JUDGMENT

1. Informant Sri Chipon Chandra Rai lodged a written ejahar on 17/10/2011 alleging that on 13/9/2011 while his wife Bhanumati was coming home on foot from her father's house at Garogaon at about 6.30 pm, a speeding Tata Indica coming at a high speed from Rakhaldubi towards North Salmara knocked his wife down as a result of which she sustained grievous injuries and succumbed to her injuries at about 8 pm at Lower Assam Hospital. The ejahar was received at the police station and registered as Bongaigaon P.S Case No. 498/11 under sections

279/304 A IPC. During investigation police seized the offending vehicle and arrested the driver and released him on bail. After investigation police submitted charge sheet under section 279/304 (A) IPC.

2. Cognizance was taken under section 279/304 (A) IPC against the accused person above named.
3. Upon appearance copies of the relevant documents were supplied to the accused person in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police and prima facie materials under sections 279/304 (A) IPC having been found to be well established against the accused person, my learned predecessor explained the particulars of the offences under section 279/304(A) IPC to the accused person to whom he pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of as many as seven witnesses. They are:
 - 1) PW1: Chipon Chandra Ray
 - 2) PW2: Bhupen Ray
 - 3) PW3: Jayanta Barman
 - 4) PW4: Dr. Shalini Bhasin Barua, MO
 - 5) PW5: Loknath Ray
 - 6) PW6: Jitesh Barman, I/O
 - 7) PW7: Padma Lochan Hazarika, MVI, Bongaigaon
6. Following are the lists of exhibits which were exhibited during the trial:
 - 1) Exhibit 1: the F.I.R
 - 2) Exhibit 1(1): signature of informant
 - 3) Exhibit 1(2): Signature of OC Khargeswar Rabha
 - 4) Exhibit 2: Copy of Inquest Report
 - 5) Exhibit 2 (1): signature of PW2
 - 6) Exhibit 3: Post Mortem Report
 - 7) Exhibit 3 (1) : signature of the MO
 - 8) Exhibit 4: Report of MVI
 - 9) Exhibit 4(1): signature of the MVI
 - 10) Exhibit 5: charge sheet
 - 11) Exhibit 5(1): signature of Jitesh Barman, IO

7. Accused person was examined under section 313 Cr.P.C in which he pleaded not guilty but denied to adduce any evidence.
8. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:
 - 1) Whether the accused person, on 13/9/2011 at about 6.30 pm, drove a vehicle bearing registration number AS 19 B 2637 on NH 31 in a manner so rash or negligent as to endanger human life, or to be likely to cause death or injury to any other person, and thereby committed an offence punishable U/S 279 IPC?
 - 2) Whether the accused person caused the death of Bhanumati, the wife of the informant, by doing any rash or negligent act not amounting to culpable homicide and thereby committed an offence punishable U/S 304 (A) IPC?
9. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:
10. According to PW4, the Medical examiner, the cause of death was due to intra cerebral haemorrhage following head injury due to road traffic accident which is ante mortem in nature. Padma Lochan Hazarika, the MVI did not find any mechanical defect in the vehicle on examination. The Investigating Officer stated that he came to know from the witnesses when he visited the Place of Occurrence that the registration number of the vehicle was AS 19 B 2637 and that on 19/10/11 the driver of the vehicle surrendered in the Police station along with the owner and the vehicle.
11. Let us now take into account the evidences of the independent witnesses. PW1 i.e. the informant is not an eye witness and he did not see the accused knock his wife down with a speeding vehicle. He was on his way home from work when on the way he found that his wife was being carried to the hospital in an injured state and only then he came to know that his wife was knocked down by a vehicle.
12. PW2 was inside his home when the accident took place and he came out on hearing noise and came to know that a light motor vehicle had knocked down Bhanumati, the victim.

13. PW3 also denied having seen the accident. He saw a gathering on the road when he was returning from the market and then he came to know about the accident. He stated that he came to know from eye witnesses that a light motor vehicle knocked the victim but in his cross examination he could not state from whom he heard about the description of the vehicle. PW5 also did not see the accident.
14. From the above discussion it is evident that there is not a single witness who saw the accused driving the vehicle in a rash and negligent manner. None of the witnesses could identify the accused as driver of the offending vehicle, which caused the accident. In 2011 (3) Gauhati Law Journal 146 (Anjala Deb Barma versus State of Tripura) it was held by the Hon'ble Gauhati High Court that to constitute an offence under section 279 IPC, the prosecution has to establish that accused was driving offending vehicle in rash and negligent manner at relevant time of accident and to constitute an offence under section 304 A IPC, the prosecution has to establish that act of the accused was responsible for resulting in death. In the present case there is no material to show that the accused was driving the offending vehicle at the relevant time of the accident and hence in my considered opinion the ingredients of sections 279 and 304-A IPC are not fulfilled to hold the accused liable.

Order

The accused Jamal Uddin is hereby acquitted of the offences u/s 279/304 A IPC and set at liberty. Bail Bond is extended to a period of six months. Given under the hand and seal of this court on this the 4th day of April, 2013.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

