

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

**PRESENT: SYEDA FARIDA AFZAL ZINNAT**

**G.R CASE NO: 836/2010**

**STATE VERSUS AMIR HUSSAIN**

***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: 27/7/12, 12/9/12, 24/9/12, 16/10/12,  
20/11/12**

**ARGUMENTS HEARD ON: 10/4/12**

**JUDGMENT DELIVERED ON: 10/4/13**

## JUDGMENT

1. Informant Sri Mahendra Rabha lodged a written ejahar on 8/12/2010 alleging that on 3/12/2010 at about 6 pm while his brother was standing near the gate of the office of FCI, Bongaigaon, the driver of the truck bearing registration number AS-G-1817 driving the vehicle in a rash and negligent manner knocked him down from behind as a result of which he received injuries and was immediately taken to Lower Assam Hospital where he succumbed to his injury at about 9 pm on the same day. The ejahar was received at the police station and registered as Bongaigaon P.S Case No. 600/10 under sections 279/304-A IPC. 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 six witnesses. The accused was examined u/s 313 Cr.P.C in which he denied all the allegations levelled against him but declined to adduce any evidence.

6. 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 3/12/2010 at about 6 pm, drove a vehicle bearing registration number AS-G-1817 on the public road in front of FCI, Bongaigaon 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 Shatrughana Rabha, the brother 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?

7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

8. PW1 is only the informant and he is not a eye witness. PW2 and PW3 stated to have heard about an accident that took place near FCI godown but according to these two PWs they have not seen how the accident occurred.

PW4 was declared hostile by the prosecution and was cross examined by learned counsel appearing on behalf of the Prosecution. But prosecution could not impeach the credibility of the witness.

9. As a legal proposition, it is now settled by the decisions of the Supreme Court, that the evidence of a prosecution witness cannot be rejected wholesale, merely on the ground that the prosecution had clubbed him 'hostile' and had cross-examined him. In *Sat Paul v. Delhi Administration* (1976 CriLJ295) it was observed by the Hon'ble Supreme Court that "Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter

of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto”.

10. The instant case is not one where the whole of the testimony of the witness was impugned in cross-examination by the prosecution. The Investigating Officer was not examined by the prosecution which is essential to shake the credibility of hostile witnesses. Hence I find no reason to discard the testimony of the witness declared hostile by the prosecution.
11. PW5 (M.V.I) gave a routine report stating that the vehicle was in road worthy condition and there was no damage in the vehicle. No inference whatsoever can be made regarding the accident from this report.
12. According to PW6, the Medical examiner, the cause of death is shock and haemorrhage following multiple injuries which is ante mortem in nature. Defence did not counter the findings of the medical expert and there remains no doubt that the victim died due to the accident but prosecution could not give a clear picture as to how the accused was responsible for rash and negligent driving. Learned counsel appearing on behalf of the prosecution argued that the fact of the death of the victim speaks for itself and the principle of *res ipsa loquitur* is applicable to the facts and circumstances of the case. In AIR 1979 SC 1848 Syad Akbar vs

State of Karnataka it was observed by Hon'ble Supreme Court as below: "In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts even in the first instance, the burden on the defendant who in order to exculpate himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of *res ipsa loquitur* to criminal trials are : Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be- innocent. Until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident "tells its own story" "of negligence on somebody. Secondly; there is a marked difference as to the effect of evidence, viz. the proof in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt but in criminal proceeding the presumption of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment."

13. Needless to point out, prosecution could not discharge its burden by adducing just and cogent evidence which would point out towards the guilt of the accused and only the guilt of the accused.

14. The decision that follows from the discussions made above is that prosecution failed to establish the guilt of the accused person beyond all reasonable doubt.

### **Order**

The accused Amir Hussain 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 10th day of April, 2013.

Syeda Farida Afzal Zinnat, AJS

J.M (1<sup>st</sup> CLASS) BONGAIGAON

#### APPENDIX:

1. PW1: Mahendra Rabha
- 1) PW2: Sahidul Rahman
- 2) PW3: Dhir Jyoti Das
- 3) PW4: Md. Aher Ali
- 4) PW5: Diganta Deka
- 5) PW6: Dr. Jahidur Rahman

#### LIST OF EXHIBITS:

1. Exhibit 1: ejahar
2. Exhibit(1): signature of PW1
3. Exhibit 2: Report of M.V.I
4. Exhibit 2(1): Signature of M.V.I
5. Exhibit 3: Post Mortem Report
6. Exhibit 3(1): Signature of Medical Examiner

