

IN THE COURT OF SUB- DIVISIONAL JUDICIAL MAGISTRATE (M)**NORTH SHALMARA, ABHAYAPURI**

G.R. No. 01 of 2015 U/S 279/338/304-A/427 of IPC

State

-Vs-

Dilwar Hussain

S/O- Md. Abdul Hoque

T/A-

C/O- Indrajit Singha, Dokmoka, Howraghat

District- Karbi Anglong

P/A-

R/O- Modartoli, Mikirgaon

P.S.- Doboka, District- Nagaon

..... Accused



Present: Shri Nayanjyoti Choudhury, A.J.S.

For the State: Mrs. S. BarmanLearned APP

For accused: Mr. H. Ali..Learned advocate

Date of Evidence: 28-09-16, 17-02-17, 29-01-18, 06-06-18

Date of argument: 26-03-19

Date of judgment: 09-04-19

J U D G M E N T1. Brief fact of the case:-

2. The prosecution case in brief is that the informant Niranjan Ray on 01-01-15 lodged the FIR before I/C, North Salmara OP which was forwarded to O/C, Abhayapuri P.S. alleging that on 29-12-14 at 7:10 pm when his son Sunil Ray was riding with bike no. AS 19 D 0090 along with Rajib Medhi towards his residence from Tulungia one Inova vehicle No. AS 01 AZ 3444 coming from opposite direction in rash and negligent manner and in excessive speed hit the motor cycle from front causing serious injuries to the riders and hence the

5/4
09/04/19
S. D. J. M. (M)
North Shalmara, Abhayapuri

case. The FIR was registered as Abhayapuri P.S. case No. 01/2015 u/s 279/338/427 of IPC. During investigation Sunil Ray succumbed to his injuries on 02-01-15. After investigation police submitted the charge sheet u/s 279/338/304-A/427 of IPC against the accused person named above. The accused person named above made his appearance and copies of the relevant documents were furnished to the accused person. The particulars of offences u/s 279/338/304-A/427 of IPC were explained to the accused to which he pleaded not guilty and claimed to be tried. Prosecution examined six witnesses and exhibited some documents. The statement of the accused person was recorded U/S 313 of Cr.P.C. wherein he denied the prosecution case. The accused have not adduced any defense witness.



3. Points for determination:

(a) Whether the accused person on 29-12-14 at around 7:10 pm was driving a Inova vehicle no. AS 01 AZ 0444 at Tulungia in a rash and negligent manner endangering human life and properties?

(b) Whether the accused on the same date, place and time voluntarily caused grievous hurt to Rajib Medhi by hitting him with the aforesaid vehicle?

(c) Whether the accused caused death of Sunil Ray by hitting him by the aforesaid vehicle by his rash and negligent driving?

(c) Whether the accused on the same date, place and time committed mischief of Yamaha Bike no. AS 19 D 0090?

4. I have carefully gone through the case record and perused the entire evidence on record both oral and documentary. I have heard the arguments and the submissions made by the learned advocates.

5. Discussion of evidence, decisions and reasons thereof:

6. The learned A.P.P. appearing for the state has fairly submitted that there are sufficient evidence in support of the prosecution case. On the other hand the learned advocate for the accused persons has submitted and argued that the prosecution witness has not supported the prosecution case and there is no evidence to show that the accused person is involved with the alleged offence. The learned advocate for the accused person has further submitted that the prosecution has miserably failed to prove the case against the accused person as alleged beyond all reasonable doubt and the accused person is entitled to get acquitted from the charges levelled against him.

7. Now let us see how far the prosecution has been able to discharge its burden to prove the offence leveled against the accused. PW 2 Niranjan Ray who was the informant in his evidence deposed that he was the informant but he did not know the accused. But the owner of the vehicle with which the accident took place namely Rajib was known to him. On 29-12-14 at 7:00 pm the PW 1 was in his residence and at that time one person informed him that his son Sunil Kumar Ray met with an accident near Hari Mandir, Salmara and as his wife and daughter in law got information that the injured was taken to hospital they left for hospital and PW 2 stayed at their residence as he got ill

09.04.19
S. D. J. M. (M)
Salmara, Abhayapuri

after receiving the information. PW 2 got information that his son was riding a motor cycle and was hit by a vehicle. His son was at first treated in Bongaigaon Hospital and then he was referred to Guwahati but he succumbed to his injuries during treatment. Later on PW 2 lodged one FIR before police. Ext. 1 was FIR and Ext. 1(1) was the signature of PW 2. In his cross examination the PW 2 admitted that he had not heard by whose negligence the accident took place.

8. PW 1 Biplab Kumar Phukan deposed that the informant was his uncle but he did not know the accused person. In the year 2014 in the month of December one day at 7 pm when he was returning from Salmara saw crowd in front of Hari Mandir. PW 1 approached and saw Sunil Ray lying on the road along with Rajib Medhi in injured condition. Later on PW 1 came to know that when they were coming from Tulungia towards their residence one white colour Inova vehicle coming from Salmara bearing number AS 01 AZ 0888 hit their bike causing the accident. Later on 108 ambulance was called and the injured were admitted in Lower Assam Hospital. As the conditions of the injured were critical they were referred to GNRC, Guwahati. After two days Sunil Ray succumbed to his injuries. Police recorded the statement of PW 1. Police seized the vehicles from the place of occurrence and PW 1 signed on seizure list. Ext. 1 was seizure list, Ext. 1(1) was the signature of PW 1. PW 1 in his cross examination admitted that he did not see the accident.

9. PW 3 Rajib Medhi in his evidence deposed that he knew the informant but did not know the accused. The incident took place in 2015 at 7/7:30 pm. The PW 3 and Sunil Ray were going to Bakhulagaon on a bike. On the way near Chilarai school at Salmara an inova coming from Dhubri hit them from front near Hari Mandir. PW 3 got senseless and regained his senses at Lower Assam Hospital. Sunil Ray was in a serious condition in the same hospital and as such he was taken to Guwahati wherein he expired. The Innova was in full speed. The registration no. of the Innova was AS 01 AZ 0888. PW 3 admitted that he did not know who was driving the Innova. Then Sunil's father lodged the case.

10. PW 4 Dhiraj Rai deposed that he knew the informant but did not know the accused person. On 29-01-15 when his brother in law Sunil Ray was going towards Bakhulagaon from Deohati near Salmara Hari Mandir he was hit from front. His brother in law was on a motor cycle. The number of the Innova was AS 01 AZ 0888. His brother in law was taken to hospital and after keeping him for two days in Lower Assam Hospital he was referred to GNRC wherein he expired on 02-02-15. Later on the father of the deceased lodged the FIR. PW 4 admitted that he did not know by whose negligence the accident took place. Police took the signature of PW 4 at the time of seizing the vehicles. Ext. 1 was seizure list and Ext. 1(2) was the signature of PW 4. .

11. Now from the evidence of the witnesses it is seen that none of the witnesses except PW 3 had been physically present at the time of the accident. Now the PW 3 deposed that the accident took place due to the excessive speed of the vehicle of the accused. But mere excessive speed does not amount to rash and negligent driving. The essential ingredients to constitute an offence punishable under Section 279 Indian Penal Code are that there must be rash and negligent driving or riding on a public way and the act



A.
09.04.19
A. D. J. M. (M)
Abhayans

must be so as to endanger human life or be likely to cause hurt or injury to any person. It is a settled law that it is incumbent upon prosecution to establish categorically the rash and negligent driving of the accused beyond any shadow of doubt, however, keeping in view the aforesaid discussion, about the inconsistencies and gaping loop holes in the deposition of the eyewitnesses examined, the rash or negligent aspect in driving of the accused remained unproved as merely coming to a conclusion that a vehicle was being driven at a high speed does not in itself mean the accused was driving a vehicle rashly or negligently. In a criminal trial, burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. Though an innocent person died in that accident but in the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". Therefore, after scanning the entire record and keeping in view the above discussion, in the absence of compelling and persuasive testimony of the eye witnesses on record, in my considered opinion, the prosecution has miserably failed to prove the case beyond all reasonable doubt to make me believe that the accused person was involved to the charges leveled against him. Hence in my considered view I hold the opinion that the accused person is not guilty u/s 279/338/304-A/427 of IPC

12. Considering the nature of the offence and other attending facts and circumstances of this case the accused Dilowar Hussain is acquitted.

13. The bail bonds for Dilowar Hussain shall be in force for six months.

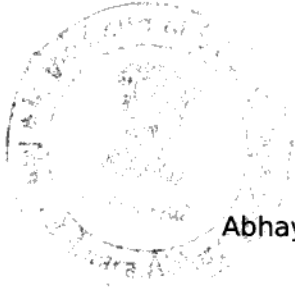
14. Accordingly the case is disposed of on contest under the following order,

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09.04.19
B. D. J. E. (M)
Magistrate, Abhaynagar

ORDER

In view of the evidence of the witness, the material available with the case record and the argument put forwarded by the Learned A.P.P. and the learned counsel for the accused person I am of the opinion that the prosecution has failed to establish the case against the accused Dilowar Hussain. Hence the accused Dilowar Hussain is acquitted. The bail bonds for Dilowar Hussain shall be in force for six months. The case is disposed of on contest accordingly.

Given under my hand and seal on this 9th day of April 2019 at Abhayapuri.



Dictated and corrected by me,

Nayanjyoti Choudhury

Sub- Divisional Judicial Magistrate (M)

Abhayapuri

B. D. J. M. (M)
Salma, Abhayapuri

Nayanjyoti Choudhury

Sub- Divisional Judicial Magistrate (M)

Abhayapuri

B. D. J. M. (M)
Salma, Abhayapuri

APPENDIX(A) Prosecution Exhibits:

Ext. 1- FIR, Seizure list

(B) Defense Exhibits:

Nil

(C) Witnesses Exhibits:

Nil

(D) Prosecution Witness:

PW 1- Biplab Kumar Phukan

PW 2- Niranjan ray

PW 3- Rajib Medhi

PW 4- Dhiraj Ray

(E) Defense Witness:

Nil

(F) Court Witness:

Nil



(Signature)
09.04.19
B. D. J. H. (M)
Balmara, Abhayapur