

IN THE COURT OF THE SESSIONS JUDGE:::.....:BONGAIGAON

Criminal Appeal No. 19(2)/2014.

Samar Sutradhar Appellant.
Vs.
State of Assam Respondent.

***PRESENT : Smt. M. Nandi,
Sessions Judge,
Bongaigaon.***

*ADVOCATES APPEARED : Sri H. Das, Advocate
for the appellant.*

*Sri A.K. Nath, Public Prosecutor
for the State.*

Date of Argument : 12.11.2014.

Date of Judgment : 25.11.2014.

JUDGEMENT AND ORDER

1. This appeal is directed against the order and judgment passed by learned Additional Chief Judicial Magistrate, Bongaigaon on 25.03.2014 in G.R. Case No. 754/10 convicting and sentencing the accused to R.I. for one year and to pay a fine of Rs. 1000/- i/d, S.I. for three months for the offence U/S 279 IPC and R.I. for one year and also to pay a fine of Rs. 500/- i/d, S.I. for six months for the offence U/S 304(A) IPC.

2. The brief facts of the case is that the complainant Sri Shambharam Kakati lodged an ejarah on 30.10.2010 stating inter alia that on 16.10.2010 at about 6.10 PM in the evening, while the complainant's wife Kusum Kakoti was travelling from Dhaligaon towards Bongaigaon in a Tempo bearing No. AS-26-0479, the driver of the said vehicle was driving the same in a rash and negligent manner and dashed against a divider that was located in the Chapaguri Road. As a result of which the vehicle turned turtle and the

Contd.....P/2

passengers in the vehicle i.e. the complainant's wife, one Anima Baruah and her husband Promod Kr. Baruah sustained grievous injuries on their person. The wife of the informant i.e. Kusum Kakoti was taken to Lower Assam Hospital, Bongaigaon for her treatment. After that she was shifted to GNRC, Guwahati where she succumbed to her injuries on 26.10.2010.

3. On receipt of the ejahar, a case was registered and after completion of investigation charge sheet was submitted against the accused Samar Sutradhar. Accused put his appearance before the trial court and during trial, learned Magistrate examined as many as eight witnesses and after hearing both sides, learned trial Court delivered the judgment and order as aforesaid.

4. Being highly aggrieved and dissatisfied with the judgment and order passed by the learned Trial Court, the accused/appellant has preferred this appeal on the following grounds:-

1. for that the learned Trial Court has erred in law as well as in facts of the case.
2. for that the learned Magistrate wrongly arrived into the conclusion upon conjectures and surmises and conviction of the appellant held without appreciating the evidence brought into the record and as such, liable to be set aside.
3. for that the learned Trial Court has miserably failed to appreciate the evidence of PW 2, 3 and 4 in regard to driving the vehicle in a rash and negligent manner which is an offence U/S 279/304(A) IPC.
4. for that the learned Trial Court has miserably failed to consider the discrepancy and contradiction of the evidence of the witnesses who were also travelling in the offending vehicle at the time of the accident.
5. for that the learned Trial Court wrongly interpreted the prosecution story and the independent witnesses apparently arrived into an improper decision which is liable to be set aside.

5. I have heard the argument advanced by the learned counsel of both the sides. I have perused the evidence of the witnesses recorded by the learned Trial Court. I have also perused the judgment passed by the learned Magistrate.

6. It appears from the evidence on record that PW 2, PW 3 and PW 4 were travelling in the offending vehicle at the relevant time. Due to the alleged accident they also received injuries on their person and the passengers i.e. wife of the informant Kusum Kakoti, who was also travelling in the offending vehicle also sustained injuries and after that he died in GNRC, Guwahati.

7. It is seen from the record that the learned Magistrate convicted the accused U/S 279 & 304(A) IPC. Section 279 IPC is the offence relating to rash and negligent driving or riding on a public road which reads as follows: -

“Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

8. On a bare look at the provision, it is seen that the maximum punishment for the offence U/S 279 IPC is six months, but learned Magistrate convicted the accused and sentenced him to R.I. for one year which is not as per provision of law. I do not go into the merit of the case at this stage. The case is remanded back to the learned Trial Court with a direction for fresh hearing/argument and after that pass judgment as per provision of law.

O R D E R

9. In the result, the appeal is partly allowed. The order dated 25.03.2014 passed by learned Additional Chief Judicial Magistrate, Bongaigaon

....4....

in G.R. 754/10 is set aside. The case is remanded back to the Court of learned Additional Chief Judicial Magistrate, Bongaigaon with the direction aforesaid.

10. Send back the case record with a copy of this judgment and order to the learned trial court.

Given under hand and the seal of the court on this 25th day of ***November, 2014.***

(M. Nandi)
Sessions Judge,
Bongaigaon.

Dictated and corrected by me,

(M. Nandi)
Sessions Judge,
Bongaigaon.

Criminal Appeal 19(2)/2014

25.11.2014

Judgment is delivered.

In the result, the appeal is partly allowed. The order dated 25.03.2014 passed by learned Additional Chief Judicial Magistrate, Bongaigaon in G.R. 754/10 is set aside. The case is remanded back to the Court of learned Additional Chief Judicial Magistrate, Bongaigaon with the direction aforesaid.

Send back the case record with a copy of this judgment and order to the learned trial court.

Judgment is prepared in separate sheets and the same is kept with the case record.

As dictated,