

IN THE COURT OF SESSIONS JUDGE AT GOALPARA.

**Present: T.K. Bhattacharjee, A.J.S.,
Sessions Judge, Goalpara**

Criminal Appeal No. 14/17.

Rafiqul Islam Appellant-accused.

-Versus-

State of Assam Respondent.

Appearance :

Mr. P.C. Boro, Advocate For appellant-accused.

Mr. B.K. Das, Public Prosecutor For Respondent.

Date of Argument: 19-06-2019

Date of Judgment: 21-06-2019

-JUDGEMENT-

1. This appeal has been preferred against the judgment of conviction and sentence dated 22.09.2017 passed by the Ld. CJM, Goalpara in connection with G.R. Case No. 2132/11 corresponding to Dhupdhara PS Case No. 63/2011 vide which the appellant-accused was convicted u/s 279/304(A) of the IPC and sentenced to pay a fine of Rs.1,000/- only u/s 279 of the IPC in default to undergo simple imprisonment for 7 days and further, sentenced to under SI for a period of six(6) months u/s 304(A) of the IPC with direction that the period of dentition already undergone by the accused, if any shall be set off.

2. The brief facts of the prosecution case is that an ejahar was lodged by one Mr. Jakir Hussain at the Dhupdhara Police Station stating that on 24/11/2011 at about 4-45 pm at Dhanubhanga his sister was killed by a truck bearing registration

no. NL-05-D-7725 which was being driven by the driver at high speed and also negligently and hence this case was filed.

3. In view of the ejahar, that was filed, Dhupdhara PS Case No. 63/2011 was registered u/s 279/ 304(A) of the IPC and investigation was started after completion of which a charge-sheet was submitted against the appellant-accused u/s 279/ 304(A) of IPC sending him up for trial.

4. In the course of trial, the learned court below read over and explained the particulars of offences u/s 279 / 304(A) of the IPC to the appellant-accused to which he pleaded not guilty and claimed to be tried and accordingly, the trial commenced and after the trial was completed, the learned court below convicted the appellant-accused and sentenced him as mentioned above.

5. Being highly aggrieved and dissatisfied with the aforesaid judgment and order of conviction, the appellant preferred the instant appeal on the ground set forth in the memo of appeal.

6. The connected LCR was called for in this context from the learned court below and it was perused very carefully and the learned counsel for the OP i.e. the State of Assam only was heard in this context as the appellant side remained absent without any steps for 3 consecutive dates when the appeal was fixed for hearing.

7. In the course of arguments, the learned Public Prosecutor submitted that the convict was rightly convicted and he was leniently sentenced by the learned court below after elaborate discussion of the evidence on record and as such, the impugned judgment and order of conviction and sentence is not required to be interfered in any manner; rather, the appeal is required to be dismissed.

9. In view of the above, it is felt necessary to carefully scrutinize the entire materials available before me and determine the following.

POINT FOR DETERMINATION:

10. Whether the learned court below was correct in convicting the appellant-accused and sentencing him to pay a fine of Rs.1,000/- only u/s 279 of the IPC in default to undergo simple imprisonment for 7 days and further, sentencing him to under SI for a period of six(6) months u/s 304(A) of the IPC?

DISCUSSION, DICISION AND REASONS:

11. On perusal of the entire case record including the connected documents and also the judgment and order dated 22.09.2017 passed by the learned court below, it is found that the occurrence allegedly took place on 24.11.2011 at about 4:45 pm when the deceased victim was knocked down and killed by a truck allegedly driven by the accused and the testimony of the PW-1 reveals that he was an eye witness to the occurrence and he was able to identify the accused as the driver of the truck. The PW-2 also corroborated the fact that one truck driven by the accused came at high speed and hit an electric pole which fell down on the victim as a result of which she was killed. The testimony of PW-4 and the PW-5 shows that they were official witnesses being the medical officer and the IO respectively. The Ext.-3 and 4 shows that the offensive vehicle and its documents were seized including the driving license of the accused driver.

12. On a careful scrutiny of the entire evidence available before me including the connected documents and also the impugned judgment and order dated 22.09.2017, it is found that the learned court below relied on the testimony of the prosecution witnesses and the Ext-2 in coming to the conclusion and the Ld. Lower court also discussed the entire evidence that was available in the case record and considering all the facts and circumstances, I am of the opinion that though the defence side cross-examined all the prosecution witnesses but the prosecution story could not be distorted significantly so far as the role of the convicted accused/appellant was concerned in the alleged occurrence as was found by the Ld. Lower court.

It may be mentioned in this context that it is the bounden duty of the court to consider all the pros and cons in coming to a logical conclusion and a single fact cannot be a guiding factor but a striking balance must always be there and further, the law is well settled that even the testimony of a single witness is sufficient to prove a case provided the testimony of such a witness inspires the confidence of the Court and in the instant case the P.Ws could not be cross-examined effectively in order to raise any doubts with respect to the role of the appellant and as such their testimony cannot be brushed aside without any cogent reasons. Moreover, the Ld. Lower court also took up all the disputed points for determination, had made elaborate discussion on the evidence adduced by the prosecution, appreciated the evidence on record in its proper perspective and finally arrived at the decision that

the accused/appellant was guilty of the offences for which he was charged and considering the entire facts and circumstances of this case as well as the guiding principle of law that minor discrepancies should not be allowed to destroy the entire prosecution case , I am of the opinion that there is no reason to differ with the reasoning and the decision arrived at by the Ld. Lower court in convicting the accused/appellant u/s 279/304(A) of the IPC and therefore it is now necessary to scrutinize the sentence imposed upon the accused-appellant. The LCR as well as the connected documents show that the Ld. Lower court also dealt with the accused/appellant quite leniently and as such after taking into account all aspects, I am of the firm opinion that this appeal is devoid of sufficient merit.

14. In the result, the appeal is dismissed on contest but without any costs. The order of conviction and sentence of the accused/appellant u/s 279/304(A) of the IPC is hereby upheld and accordingly the accused/convict/ appellant is directed to appear before the Ld. Trial court on or before 10/07/19 to serve out the sentence and to pay the fine as directed by the Ld. Trial Court and in the event of failure of the appellant/ convict to appear before the Ld. Court below his attendance shall be procured by the Ld. Lower court and thereafter he shall be dealt with in accordance with law.

15. Send back the LCR with a copy of this judgment to the Ld. Lower court for necessary action.

Given under my hand and the seal of this court on this the 21st day of June/2019.

(T.K.Bhattacharjee)

Dictated and Corrected by me:

Sessions Judge,
Goalpara.

Sessions Judge, Goalpara