

DISTRICT: GOALPARA

IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE

GOALPARA

G.R. CASE NO. 1871/2014

U/S. 279/338/427/304(A) IPC

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: SRI RATAN DAS

PRESENT: SMTI. S. CHANDA, LL.M., AJS.
ADDL. CHIEF JUDICIAL MAGISTRATE, GOALPARA.

APPEARED FOR:

THE STATE: SMTI. SHRABANI GUHA, LEARNED ADDL. PUBLIC PROSECUTOR.

SRI DIPJYOTI DAS, LEARNED ASSTT. PUBLIC PROSECUTOR.

ACCUSED: SRI DHRUBAJYOTI PATHAK, LEARNED ADVOCATE.

DATES OF:

OFFENCE EXPLANATION: 22-12-2017.

DATE OF EVIDENCE: 13-02-2018, 01-06-2018, 08-08-2018, 12-10-2018.

ARGUMENT: 06-04-2019.

JUDGMENT: 03-06-2019.

J U D G M E N T

1. Smti. Padmabati Dutta has initiated the instant case by filing a written '*ejahar*' before the O/C, Dudhnoi P.S. on 23-08-2014 which was registered as Dudhnoi P.S. FIR No. 121/2014 against driver of the vehicle bearing registration No. AS-18C-4750.
2. The prosecution case in a nutshell is that, informant's grandson Partha Pratim Baruah accompanied by one Sri Kulendra Ray Choudhury was riding a bicycle on 21-08-2014 from Dudhnoi to Damra by National Highway. At about 08-00 PM in front of Sankardev Sishu Niketan the driver of the offending vehicle hit them resulting grievous injury to them and also damaged the bicycle. Allegedly, the offending vehicle was driven rash and negligently and at a very high speed. Immediately local people shifted the victims to Dudhnoi Hospital and later they were shifted to G.M.C.H for better treatment. Hence, the case.

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3. During investigation victim Partha Pratim Baruah succumbed to his injuries and section 304(A) IPC was added to this case. On completion of investigation police filed a charge-sheet against the driver of the offending vehicle Sri Ratan Das under section 279/338/427/304(A) IPC.
4. After securing appearance of the accused he was allowed to go on Court bail. Relevant documents of the case were furnished to him. Upon perusal of materials on record and after hearing both sides, my Learned Predecessor-in-office has explained the particulars of the offence under section 279/338/427/304(A) IPC to the accused, to which he has pleaded not guilty and claimed to be tried.
5. The prosecution in support of its case examined six witnesses. The accused was examined under section 313 CrPC. The defence case was total denial. The defence side has not adduced any witness in support of their defence.
6. I have heard the argument advanced by the Learned Counsels for both sides.
7. Upon hearing and on perusal of the record I have framed the following point for determination:

(i) Whether the accused person drove the offending vehicle bearing registration No. AS-18C-4750 on National Highway 37, near Sankardev Sishu Niketan in a manner so rash and negligent as to endanger human life and thereby caused death of Partha Pratim Batuah, grievous injury to Kulendra Ray Choudhury and also damaged their bicycle?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

8. I have gone carefully through the entire evidence and the materials placed before me. The informant **Smti. Padmawati Dutta** has examined herself as **Pw-1** and stated on oath that, about 3/4 years ago her grandson Partha Pratim Baruah was riding his bicycle from Dudhnoi to Damra. Near, Sankardev Sishu Niketan, Tekachu, he met with an accident. One vehicle hit him. He was shifted to Dudhnoi Hospital, later referred to other hospitals. Six days after the incident he had succumbed to his injuries during treatment. The offending vehicle was driven by Ratan Das. She has proved the ejahar lodged by her as Ex-1 and her signature there as Ex-1(1).

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9. During cross examination Pw-1 has stated that, she has not witnessed the incident, she has not mentioned "Ratan Das" as driver of the offending vehicle before I/O and has not mentioned his name in the ejahar.
10. Alleged victim **Sri Kulendra Roy Choudhury (Pw-4)** has stated on oath that, one day during 2014 at 07-15 PM he alongwith his nephew Partha Pratim Baruah were riding a bicycle from Dhupdhara Cinema Hall to Damra. Suddenly he had heard a sound and fell down on the road. Someone shifted them to hospital and he had regained consciousness at Down Town Hospital four months later. Then he came to know that his nephew Pratha has expired.
11. During cross examination the Pw-4 has admitted that, he does not know which vehicle hit them and who drove the vehicle.
12. **Sri Rajen Rajbongshi (Pw-2)** has stated on oath that, about 4 years ago Partha Pratim Baruah and his companion met with an accident near Sankardev Sishu Niketan when they were riding a bicycle from Dudhnoi to home. The victims were shifted to hospital and Partha Pratim Baruah has expired during treatment about eight days later. He has stated that, he had heard that Ratan Das was responsible for the accident.
13. During cross examination Pw-2 has admitted that, he has not witnessed the incident and he is not sure due to whose fault the incident had happened.
14. **Sri Raju Dutta (Pw-3)** has stated on oath that, on 21-08-2014 at about 08-00 PM Partha Pratim Baruah was riding a bicycle back home when near Sankardev Sishu Niketan one Maximo Max vehicle hit him from behind and he was immediately shifted to Dudhnoi Hospital. Later, he was referred to Guwahati and during treatment he had expired on 26/08/2014. He has stated that, accused Ratan Das was driving of the offending vehicle. He has proved his signature in the seizure list of the bicycle as Ex-2(1).
15. During cross examination Pw-3 has stated that at the time of the incident he was at Damra and he came to know about the incident and went to the hospital. He has failed to recall from whom he came to know that Ratan Das was the driver of the offending vehicle.

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16. The M.O **Dr. Purna Rangshel (Pw-5)** has stated on oath that, he has examined Kulendra Ray Choudhury at Dudhnoi CHC on 21-08-2014 and proved the injury report as Ex-3. He has stated that on his opinion the head injury was grievous in nature. Later, the patient was referred to G.M.C.H. Defence side has declined to cross examine him.
17. The **I/O Biraj Karmakar (Pw-6)** has stated on oath that, on 21-07-2014 at about 08-00 PM they received information of an accident under Dudhnoi P.S and immediately went to the spot. He has stated that, he had seized one Maximo vehicle and one bicycle from the P/O, interrogated the witnesses, prepared Sketch-Map (Ex-4) and Seizure-List (Ex-5). Later, owner of the offending vehicle produced the driver to the P.S and he has interrogated and arrested the driver. He has completed the preliminary investigation and Sri Jotish Das submitted charge-sheet (Ex-6) in this case.
18. During cross examination Pw-6 has stated that, the reason for delay is not mentioned in the ejahar and though apparently there is correction in the ejahar, there was no initial signature with it.
19. Now, on going through the entire material it appears that, the prosecution side has secured to examine six listed witnesses including the informant, one alleged victim, the I/O and M/O. The informant (Pw-1) has admitted that she has not witnessed the incident. The victim (Pw-4) has failed to throw any light on the cause of the alleged incident. Other two witnesses (Pw-2 and 3) have admitted that they have not witnessed the incident and though they have stated that they have heard that accused Ratan Das was driver of the offending vehicle, their statements are not backed by any material. From the evidence of M/O (Pw-5) it appears that Sri Kulendra Ray Choudhury sustained grievous injury on his head, but there is no material indicating involvement of the accused in causing the said injury. The I/O (Pw-6) has admitted that, though he has seized the offending Maximo vehicle from the P/O the driver was produced by owner of the vehicle to the P.S. During examination of the accused U/S 313 CrPC he has denied the allegation in *toto*. In result, there is no material to prove that the accused was in fact driving the offending vehicle at the relevant time.

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20. Appreciating the entire material it clearly transpires that, the prosecution side has failed to bring any cogent material to substantiate rash and negligent driving by the accused. Hence, the accused Sri Ratan Das is held not guilty of offence punishable under section 279/338/427/304(A) IPC and he is acquitted and set at liberty forthwith.
21. Bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.
22. The seized articles be given in *zimma* as per law in due course.
23. Given under my hand and seal of this Court on this 3rd day of June, 2019.

S. CHANDA
ADDL.C.J.M. GOALPARA.

APPENDIX:

PROSECUTION EXHIBITS:

1. EZAHAR
2. SEIZURE-LIST
3. INJURY-REPORT
4. SKETCH-MAP
5. CHARGE-SHEET

DEFENCE EXHIBIT:

NONE

PROSECUTION WITNESSES:

1. SMTI. PADMAWATI DUTTA.
2. SRI RAJEN RAJBONGSHI
3. SRI RAJU DUTTA
4. SRI KULENDRA ROY CHOUDHURY
5. DR. PURNA RONGSHEL
6. SRI BIRAJ KARMAKAR

DEFENCE WITNESS:

NONE

DICTATED AND CORRECTED BY ME,

S. CHANDA, ADDL. C.J.M. GOALPARA.

TRANSCRIBED BY, SMTI . J. CHAKI (STENOGRAPHER).