

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
BILASIPARA.**

GR 854 OF 2014
U/S 279/338/304(A) I.P.C.

STATE OF ASSAM.....PROSECUTION SIDE.

-Versus-

ANOWAR HUSSAIN.....DEFENCE SIDE.

PRESENT: - SMTI SANGITA HALOI, AJS
Sub Divisional Judicial Magistrate (M),
Bilasipara.

COUNSELS:

FOR the Prosecution: - SRI SOHRAB ALI SHEIKH, Ld. APP.

FOR the Defence:- MOMINUR ISLAM, Ld. Counsel.

EVIDENCE recorded on: - 28.09.18 & 18.11.19.

STATEMENT DEFENCE recorded on:- 25.02.2020.

ARGUMENT heard on: – 16.06.2020.

JUDGMENT delivered on: – 05.11.2020.

J U D G M E N T

1. THE PROSECUTION STORY as unfolded by the FIR filed by Samsuddin Sk is that on 21.11.14 at about 6.30 PM while his nephew Anowar Hussain was getting down from the auto bearing No.AS-17B-5166 at Nayahat Bus Stand the driver of the auto suddenly drove the auto in negligent manner. As a result of which his nephew Anowar Hussain fell down on the road and caused greivous injury. Later the victim was taken to Bilasipara hospital, then Dhubri Civil Hospital then Lower Assam Hospital at Bongaigaon and on 22.11.14 he died under treatment at hospital. Hence, this case.

2. On receipt of the FIR, Bilasipara P.S Case No.1004/14 u/s 279/338/304(A) I.P.C. was registered and investigated into the case. Subsequently charge sheet was filed u/s 279/338/304(A) IPC against the accused person.

3. After receipt of Charge-sheet cognizance was taken against the charge sheeted accused person under above-mentioned sections and then after compliance with S.207 Cr.P.C and on appearance of the accused person and on hearing Id. Counsels for both sides, particulars of offences under section 279/338/304(A)/427 I.P.C were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Prosecution examined 4(four) witnesses in support of this case. The evidence of the prosecution side closed. Statement of the accused person u/s 313 Cr.P.C. has been recorded where defence took the plea of complete denial and denied to adduce evidence.

Points for Determination

I. Whether the accused person on 21.11.14 at about 6.30 PM drove the auto bearing No.AS-17B-5166 at Nayahat Bus Stand in rash and negligent manner and thereby committed an offence punishable u/s 279 IPC ?

II. Whether the accused person on same date, time and place did in act which resulted into grievous hurt to Anowar Hussain and thereby committed an offence punishable u/s 338 IPC ?

III. Whether the accused person on the same date, time and place caused the death of Anowar Hussain by driving his vehicle in rush and negligent manner and thereby committed an offence punishable u/s 304(A) IPC ?

4. Heard Id. Counsels for both sides. Perused evidences on record. My decisions with reasons on the above framed points are as follows:-

DISCUSSION, DECISION AND REASONS THEREON

5. **PW1 Samsuddin Sk** has deposed that he is the informant in this case. One his nephew Anowar met with an accident. After receipt of information he rushed to the spot and found that he was lying on the spot. He succumbed to injured at the hospital.

In his cross-examination he has stated that he has not seen the accident. He does not know who was riding it.

6. **PW.2 Rabiya Bibi** has deposed that she knows the informant. She does not know the accused. Her husband died out of an accident. She has not seen the accident.

In her cross-examination she has stated that she does not know who caused the accident.

7. **PW.3 Mansur Rahman** has deposed that informant is known to him. He does not know the accused. Three years ago there was an accident. The injured later died. The Tempo was coming from Bilasipara.

8. **PW.4 Nazinur Rahman** has deposed that he knows the informant. About 4 / 5 years back one day at about 7 PM when he was at Nayahat one Tempo vehicle stopped and one person got down but the Tempo suddenly started whereby that person fell down and sustained injury on his head. The victim Anowar Hussain was taken to hospital but he expired later on.

In his cross-examination he has stated that he does not remember the date of occurrence. He was about 15/20 hands away from the P.O. He does not remember the number of Tempo. He has not seen the driver of Tempo. As the Tempo started before the victim got down, accident took place. He took the victim to hospital. Victim is his maternal uncle.

APPRECIATION OF EVIDENCES

9. In this case the accused is facing trial u/s 279/338/304(A) IPC. The perusal of FIR shows that the informant/PW.1 Samsuddin Sk lodged an FIR while his nephew Anowar Hussain met with an accident on 21.11.14 at about 6.30 PM while he was getting down from the auto bearing No.AS-17B-5166 at Nayahat Bus Stand the driver of the auto suddenly drove the auto in negligent manner. As a result of which his nephew Anowar Hussain fell down on the road and caused greivous injury. Later the victim was taken to Bilasipara hospital, then Dhubri Civil Hospital then Lower Assam Hospital at Bongaigaon and on 22.11.14 he died under treatment at hospital.

10. To prove the prosecution case they have examined as many as 4(four) number of witnesses including the informant. Only the PW.4 during his testimony stated that when he was at Nayahat one Tempo vehicle stopped and one person got down but the Tempo was suddenly drove whereby that person fell down and sustained injury on his head. But in his cross-examination he stated that he was about 15/20 hands away from the P.O. As the Tempo was drove before the victim got down, accident took place. He did not remember the number of Tempo. He had not seen the driver of Tempo. On the other hand the other three witnesses i.e. PW.1, 2 & 3 had not seen the incident.

11. Stitching everything together it appears to me that none of the witnesses had seen the accused committing the offence for the negligence on his part. None of the witnesses stated regarding rash act of the accused.

12. They only stated that there was an accident. Thus, I have come to the safe conclusion that the prosecution has failed to prove the case against the accused person beyond all reasonable doubt. Hence, the accused person is acquitted of above charges and he is set at liberty forthwith.

13. Bail bond of accused person to remain in force for six months as per section 437-A Cr.P.C.

14. Given under my hand and seal of this Court on this the 5th day of November, 2020 at Bilasipara.

(Smti. Sangita Haloi)

SDJM(M), Bilasipara.

APPENDIX

Prosecution Witnesses:-

PW.1 :- Samsuddin Sk

PW.2 :- Rabiya Bibi

PW.3 :- Mansur Rahman

PW.4 :- Md Mazinur Rahman

Prosecution Exhibits:-

Nil

Defence Witnesses & Exhibits:-

Nil

Court Witnesses:-

Nil

(Smti. Sangita Haloi)

SDJM (M), Bilasipara.