

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
DIBRUGARH :: ASSAM.**

G.R. Case No. 1492/2016

U/S 279/304(A) OF IPC

**State of Assam**

**-Vs-**

**Shri Labit Sonowal..... Accused**

***PRESENT :A.K. BARUAH, LL.M. AJS.***

***Chief Judicial Magistrate,***

***Dibrugarh.***

**APPEARANCE :**

Advocate for the Prosecution	:	Miss D. Gogoi, Asst. P.P.
Advocate for the Defence	:	T. Bhowmick, Advocate.
Date of evidence	:	25.06.2019, 19.08.2019, 22.10.2019, 21.01.2020, 24.02.2020, 24.02.2021.
Date of argument	:	29.04.2021
Date of judgement	:	13.05.2021

**J U D G M E N T**

1. The case of the prosecution in brief, is that on 19.05.2016, at about 9.20 PM, a Maruti Van Bearing Registration No.

AS-23-L-4630 which was coming from Amolapatty Chariali side towards Dibrugarh University in high speed and in a rash and negligent manner hit the scooter of the younger brother of the complainant namely Sahid Ahmed bearing Regd. No. AS-06-Q-4368 on the national highway, near Rose Goli as a result of which his younger brother Sri Sahid Ahmed and his father Kamaruddin Ahmed (Pillion rider) were grievously injured. His father was first taken to Assam Medical College and Hospital and then later on shifted to Brahmaputra Diagnostics and Hospital where he succumbed to his injuries on his next day. The informant lodged one FIR before the Dibrugarh Police station regarding the incident.

- 2.** On the basis of the FIR lodged by the complainant, a case, being Dibrugarh P.S Case No. 425 of 2016, was registered under Section 279/304(A) IPC. Police conducted investigation into the case and filed charge sheet against the accused person namely Shri Labit Sonowal under section 279/304(A) IPC.
- 3.** The accused appeared in this case. Copies were furnished to him under section 207 Cr PC. Particulars of offences under section 279/304(A) IPC were explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4. During the trial of the case, the prosecution side examined 8 (eight) P.W.s in this case. The defence plea is of total denial. The defence did not adduce any evidence. The statement of the accused was recorded U/s 313 Cr. PC.
5. I have heard the learned counsel for the accused and learned Asst. P.P for the State. Having heard both sides and after perusing the materials on record, the following points for determination are framed by this court for the just decision of the case :-

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 19.05.2016, at about 9.20 PM, the accused person drove the offending vehicle (Maruti Van) bearing Regd. No. AS-23-L-4630, in a manner so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person on the public road?
- ii. Whether on the same date, time and place, the accused person caused death to the victim namely Kamaruddin Ahmed, by hitting him by the above mentioned vehicle while driving the same in a rash or negligent manner which did not amount to culpable homicide?

**DECISION AND REASONS FOR THE DECISION :-**

7. P.W. 1 (**Wazid Ahmed**) has deposed in his

evidence that he is the complainant of this case. He does not know the accused person. On 19.05.2016, his father and brother namely Lt. Kamaruddin Ahmed and Sahid Ahmed were coming from Amolapatty to Rosegolli by scooter, then one maruti van hit them from the back side near Rosegolli. Then he lodged one FIR in the police station. PW 1 has identified the FIR as Ext1 and Ext.1(1) as his signature.

In his cross-examination, PW 1 has deposed that he was at his shop at the time of incident at Panchali. The distance between Panchali and Rosegolli is about 1(one) KM. He did not see the occurrence personally.

- 8.** P.W. 2 (**Jamal Ali**) has deposed in his evidence that he does not know the complainant. He does not know the accused person. About 4 years before, during night hour at 9/9.30 PM, while he was closing his shop he saw that one car hit one scooter from the back side in which two persons were coming. The incident took place at Rosegolli at Amolapatty.

In his cross examination, PW 2 has denied the suggestion that he did not state before police that while he was closing his shop he saw that one car hit one scooter from the back side in which two persons were coming.

- 9.** P.W. 3 (**Meraj Shah Nawaz**) has deposed in his evidence that he knows the complainant. He knows the accused person. On 19.05.2017, when he was sitting at his shop, he heard one sound outside his shop and when he came out from his shop, he saw that two persons were lying on the ground after one accident. Then police took his signature on a paper. PW3 has identified the seizure list as Ext.2 and his signature as Ext.2(1) and he identified another seizure list as Ext.3 and Ext.3(1) as his signature.

In his cross-examination, PW 3 has denied the suggestion that he did not state before police that when he was sitting at his shop, he heard one sound outside his shop and when he came out from his shop, he saw that two persons were lying on the ground after one accident. He did not see the articles seized by police in the court on the day of his evidence.

- 10.** P.W. 4 (**Nilab Das**) has deposed in his evidence that he knows the complainant. He does not know the accused person. On 19.05.2016, during night hour at 9/9.30 PM, while he was standing near his shop, he saw that one car hit one scooter from the back side in which two persons were coming. The incident took place at Rosegolli at Amolapatty. PW 4 has identified the seizure list as Ext.3 and

Ext.3(2) as his signature.

In his cross-examination, PW 4 has deposed in his evidence that he has not seen the seized articles by police in the court. PW 4 has denied the suggestion that he did not state before police that on 19.05.2016, during night hour at 9/9.30 PM, while he was standing near his shop, he saw that one car hit one scooter from the back side in which two persons were coming. PW 4 has denied the suggestion that he did not see the occurrence personally. Police took his signature on a blank paper.

- 11.** P.W. 5 (**Nagen Sonowal**) has deposed in his evidence that he does not know the complainant. The accused person is his younger brother. About 3 years before, on the day of the incident, he was informed by police that his accused brother met with an accident. When he reached the police station, police asked him to put his signature on a paper. PW 5 has identified the seizure list as Ext.4 and Ext.4(1) as his signature.

In his cross-examination, PW 5 has deposed in his evidence that he does not know about the contents of Ext.4. He does not have any personal knowledge about the incident. When he put his signature on Ext.4, it was blank.

- 12.** P.W. 6 (**Wazid Rahman @ Wazid Rahman Hazarika**) has deposed in his evidence that he knows the complainant but he does not know the accused person. He does not know about the facts of this case.
- 13.** P.W. 7 (**Sahid Ahmed**) has deposed in his evidence that he knows the complainant. He knows the accused person after the incident. In the year 2016, on the day of the incident, at about 9.20 PM, while he along with Kamaluddin Ahmed who is his father were going from Mirzabagh to Amolapatty by his scooty bearing Registration No. AS 06Q 4368, one van which was coming in the same direction hit their scooty from the back side. Thereafter, his father fell down on the road side and he fell down on his left side on sand. As a result of such an accident, his father sustained injury on his head and blood was oozing out from his head. Thereafter, nearby people gathered at the P.O. and the nearby people apprehended the van. He immediately took his injured father to AMCH, Dibrugarh with the help of local people. Later on, his father was shifted to Brahmaputra Hospital for better treatment. On the next day, his father succumbed to his injury. The owner of the offending vehicle i.e. the accused came to

Brahmaputra Hospital to meet them and then he saw him in the hospital for the first time. The registration no of the offending vehicle is AS 23 L 4630. Police recorded his statement. Police seized the documents pertaining to his scooty in connection with this case and he put his signature on the seizure list. PW 7 identified the seizure list as Ext.2 and Ext.2(2) as his signature. Later on, he took zimma of the seized documents. As per PW7, the accident took place due to the fault of rash and negligent driving by the driver of the offending vehicle.

In his cross-examination, PW 7 has deposed that he has been riding scooter from the last ten years. He knows that the Pillion rider is required to wear a helmet. On the day of the incident, his father was not wearing helmet. It was his duty to insist his father to wear a helmet. PW 7 has denied the suggestion that he did not state before police that his father fell down on the road side and he fell down on his left side on sand. PW 7 has denied the suggestion that he did not state before police, that in result of such an accident, his father sustained injury on his head and blood was oozing out from his head. The backside of the scooter was not broken. PW 7 has denied the suggestion that he did not state before police that the owner of the

offending vehicle i.e. the accused came to Brahmaputra Hospital to meet them and then he saw him in the hospital for the first time. PW 7 has denied the suggestion that he did not state before the police that the registration no of the offending vehicle is AS 23 L 4630. When he put his signature on the seizure list, it was blank. He did not produce any seized document before this Court of which he had taken zimma. He did not state before police that he sustained injury in the accident. PW 7 has denied the suggestion that since he did not sustain any injury, hence, he did not state before police about any injury and police did not send him for medical examination. PW 7 has denied the suggestion that in the place of occurrence there was rush of vehicles. PW 7 has denied the suggestion that due to his own rash and negligently driving ,the accident occurred. PW 7 has denied the suggestion that the accused did not drive the offending vehicle in a rash and negligent manner.

- 14.** PW 8 (**Kartick Choudhury**) has deposed in his evidence that he does not know the complainant. He knows the accused person. He does not know about the facts of this case. PW 8 has identified the seizure list as Ext.4 and Ext.4(2) as his

signature. He does not know why he put his signature on Ext.4.

- 15.** From the above discussion, I have found that as per the evidence of PW1, PW2, PW4 and PW7, on the day of the incident, one car/van hit the scooter from the back side and in that scooter, PW7 and the victim Kamaluddin Ahmed were coming. As per PW7, the accident took place due to the fault of rash and negligent driving by the driver of the offending vehicle. But neither from the evidence of PW7 nor from the evidence of any other witness, it is proved beyond all reasonable doubt that the accused was the person who hit the scooter by which PW7 and his victim father were coming. Hence, from the evidence on record, the identity of the person who was driving the offending van/car at the time of occurrence is not proved beyond all reasonable doubt.

In the case of **State Vs. Mohd. Furqan, 2018, the hon'ble Delhi High Court** held that the complainant did not depose as to which of the respondents was driving the bike in a rash and negligent manner. Thus, he failed to identify the accused who committed the offence. The hon'ble high court thus dismissed the Criminal Leave Petition filed against the judgement of the Id. Magistrate whereby the respondents were

acquitted of the offences u/s279/338 of IPC.

In this instant case also the witnesses failed to identify the accused to be the driver of the offending car at the time of occurrence. In other words, it is not proved beyond all reasonable doubt that the accused was driving the offending car in a rash and negligent manner at the time of occurrence and thereby caused death of the victim by hitting the scooter by which he was coming.

Therefore, the case of the prosecution is not proved beyond all reasonable doubt. Hence, I hold that the points for determination are not established against the accused.

- 16.** In the result, I have not found the accused guilty in this case. Hence, I acquit him from the charges of the case and set him at liberty forthwith.

The bail bond will be in force for 6 (six) months from today.

Considering the nature of the offence and as compensation can be claimed in MAC case for the victim of the accident, hence the case is not referred to victim compensation.

- 17.** The bail bond will be in force for 6 (six) months from today.

Given under my hand and seal of this court on this 13<sup>th</sup> day  
of May, 2021.

(A K Baruah)  
Chief Judicial Magistrate,  
Dibrugarh.

## **Appendix**

### Prosecution Witness :-

PW1 :- Wazid Ahmed

PW2 :- Jamal Ali

PW3:- Meraj Shah Nawaz

PW4:- Nilab Das

PW5:- Nagen Sonowal

PW6:- Wazid Rahman @ Wazid Rahman Hazarika

PW7:- Sahid Ahmed

PW8:- Kartick Choudhury

### Defence witness :-

None

### Exhibits :-

#### Prosecution exhibits :-

Exhibit 1:- FIR.

Exhibit 2:- Seizure list.

Exhibit 3:- Seizure List.

Exhibit 4:- Seizure List.

#### Defence exhibits : -

None

Court witness :- None.

Court exhibits :- None.

**CJM, Dibrugarh**