

DISTRICT : KOKRAJHAR

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
KOKRAJHAR**

GR Case No. 1244/2016

Under Section 279/338/304(A) of I.P.C

State of Assam

..... Complainant

–Vs–

Md. Usub Ali Paramanik

..... Accused

PRESENT : **Achyutananda Saikia, AJS**

APPEARANCE:

For the State: Sri Lakshman Barman, Ld. APP

For the Accused: Md. A.K. Miah & Md. A.G. Sk, Ld. Advocates

Date of Evidence: 28.07.17, 01.09.17, 30.11.17 and 04.01.18

Date of Argument: 24.01.18

Date of Judgment: 24.01.18

JUDGMENT

1. The prosecution case is initiated with the lodging of an FIR by one Sri Kajal Debnath before the Officer-in-Charge of Fakiragram Police Station to the effect that on 14.12.16 at about 12:30 PM his nephew Joydeb Debnath while returning home from Chithila HS School, Shakti Ashram, one Alto Car of Regd. No. AS-19-D/6497 coming in a rash and negligent manner and in high speed from Chithila Side towards Shakti Ashram hit him at Chokapara near Kali Mandir as a result of which he sustained grievous injuries and later died in hospital.

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2. Accordingly Fakiragram Police Station Case No. 83/16 was registered under Section 279/338/304(A) of IPC and after completion of investigation police submitted Charge Sheet under Section 279/338/304(A) of IPC against the accused Md. Usub Ali Paramanik.
3. After securing attendance of the accused before court copies of relevant documents submitted by the Investigating Officer under Section 173 of Cr.P.C. were furnished to him as per provision of Section 207 of Cr.P.C. Substances of accusation under Section 297/338/304(A) of IPC were stated to the accused to which he pleaded not guilty and claimed to be tried.
4. During trial prosecution examined as many as nine prosecution witnesses and defence examined none. Accused was examined under Section 313 of Cr.P.C. and defence case is of total denial.

POINTS FOR DETERMINATION

5. Whether the accused Md. Usub Ali Paramanik being driver of the Alto Car of Regd. No. AS-19-D/6497 on 14.12.16 was driving the same in high speed and in a rash and negligent manner endangering human life and at about 12:30 PM hit informant's nephew Joydeb Debnath at Chokapara near Kali Mandir causing grievous injuries to him who died later in hospital, and thereby committed offences punishable under Section 279/338/304(A) of IPC.
6. I have heard arguments of both sides and carefully examined the evidence on record.

DISCUSSION on EVIDENCE , DECISION and REASON THEREOF

7. PW 1, informant Sri Kajal Debnath has stated that on the date of occurrence in the month of November, 2016 at about 12:30 PM his nephew Joydeb Debnath was coming from his school at Shakti Ashram

towards his house by riding a bicycle after attending his examination and at Chokapara in front of Kali Mandir one Alto car hit his nephew from the front side and his family members brought him to hospital in injured condition but he succumbed to his injuries. However, PW 1 has not seen the occurrence as at the relevant time he was at Dotma bazaar and he received information from his other nephew Sujal Debnath. He lodged the FIR which prosecution marked as Ext. 1. He is also a seizure witness of the bicycle which was being ridden by the deceased at the time of occurrence. Prosecution marked the seizure list as Ext. 2.

8. PW 2 Sri Ananta Debnath has stated that on the date of occurrence he was coming by the road from bazaar and he saw a white coloured small vehicle coming in a high speed knocking down a small boy who was riding a bicycle at Chokapara. He has also stated that the small vehicle while overtaking a goods vehicle in high speed knocked down the boy. In cross examination PW 2 could not say at what exact speed the car was and he also did not see who was driving the car.
9. PW 3 Sri Amit Debnath has stated that he received information that his cousin brother met with an accident at Chokapara and he immediately came to the place of occurrence and found his cousin brother lying injured on the road and he called on 108 ambulance and his cousin brother was taken to hospital where he succumbed to his injuries and that he also came to know that when his cousin brother was going back to his house by riding a bicycle after attending his examination one Maruti vehicle hit him and ran away.
10. PW 4 Sri Bijoy Debnath has stated that on the date of occurrence he was returning from Dotma Bazaar and at about 12:20 PM he saw a gathering near Chokapara Kali Mandir and came to know that there was an accident and he saw the deceased lying on some straw senseless.
11. PW 5 Sri Surajit Debnath has stated that on the date of occurrence he was going towards Chithila and at about 12:30 PM he heard a smashing

sound towards his back and he saw from a distance one boy lying on the road and there was a small vehicle of white colour which ran away and that the small vehicle caused the accident.

12. PW 6 Sri Pronoy Kumar Debnath has stated that his mother informed him over telephone that one Alto car with broken glass was left stranded in their courtyard. He has also stated that later on police took the vehicle and he heard that there was an accident and one person was hit by a vehicle.
13. PW 7 Dr. Diganta Kr. Boro conducted post mortem of deceased Joydeb Debnath on 15.12.16 at RNB Civil Hospital, Kokrajhar and prosecution marked the post mortem report as Ext. 3. According to PW 7 deceased died due to brain injury, intra-cerebral haemorrhage caused by sudden impact with hard, blunt object with high velocity.
14. PW 8 Md. Naushad Ali Paramanik, the brother of the accused, has stated that the accused made phone call to him and told him that he was detained in Fakiragram P.S. with the Alto Car which he used to drive and that accordingly he went to the P.S. and police seized the vehicle in his presence and he took the bail of the accused and that he also came to know that there was an accident caused by the said vehicle. Prosecution marked the seizure list of the vehicle as Ext. 4. In cross examination PW 8 has state that the accused used to drive numerous vehicles and that he does not know who was driving the alto car at the time of occurrence.
15. PW 9 SI Kalindra Das is the Investigating Officer and he stated that during his visit to the place of occurrence he came to know that one Alto 800 car of Regd. No. AS-19-D/6497 hit Joydev Debnath and the driver ran away keeping the vehicle in the courtyard of one Dulu Ghosh. PW 9 seized the offending vehicle from the owner namely Habibur Rahman who appeared at the thana and he brought the accused with him who PW 9 arrested. PW 9 submitted the charge sheet which prosecution marked as Ext. 5.

16. PW 1, PW 3, PW 4 and PW 6 are not eye witnesses to the incident except they have corroborated that Joydeb Debnath died on being hit by a vehicle. PW 1, PW 3 and PW 6 have also pointed out that the offending vehicle was an Alto car. Police seized one Alto car of Regd. No. AS-19-D/6497 and as per the seizure list marked as Ext. 4 it is reflected that the vehicle was seized from the accused. As per evidence of the Investigating Officer/PW 9 the vehicle was seized from the owner Habibur Rahman, but Ext. 4 does not bear his signature though his name is shown to be the owner. Prosecution has also not brought evidence of Habibur Rahman and Dulu Ghosh where the vehicle was left stranded by the accused as alleged by the Investigating Officer in his evidence. PW 6 though stated that his mother informed him over telephone that one Alto car with broken glass was left stranded in their courtyard which was later taken by police, yet the Investigating Officer has not made it clear as to whether it was the seized vehicle in question and whether he seized the same from the residence of said Dulu Ghosh or from the possession of owner Habibur Rahman. Thus, there remains doubt that it was none other than the seized Alto Car that was involved in the incident.

17. PW 2 and PW 5 happened to be chance witnesses who were at or nearby the place of occurrence at the relevant time and they have stated that one small vehicle caused the accident. PW 2 though stated that the vehicle was in high speed but he could not say at what exact speed it was in cross examination. None of them saw the accused driving the vehicle. The brother of the accused is also examined as PW 8 according to whom the accused used to drive not only the seized Alto car but also numerous vehicles. As such, it is not established beyond reasonable doubt that the seized Alto car was involved in the incident and it was the accused who was driving the car at the relevant time when it occurred, and the benefit of doubt goes in favour of the accused.

ORDER

18. Prosecution has failed to establish the guilt of the accused Md. Usub Ali Paramanik beyond reasonable doubt by adducing sufficient evidence.
19. The accused Md. Usub Ali Paramanik is acquitted from the charges punishable under Section 279/338/304(A) of IPC and set at liberty forthwith.
20. The bail bond shall remain in force for next six months from the date of this judgment.

Given under my hand and seal of this Court on this the 24th day of January, 2018.

(Typed by me)

ACHYUTANANDA SAIKIA

Judicial Magistrate 1st Class, Kokrajhar

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Judicial Magistrate 1st Class, Kokrajhar

APPENDIX

1. Witnesses for Prosecution

P.W. 1:	Sri Kajal Debnath
P.W. 2:	Sri Ananta Debnath
P.W. 3:	Sri Amit Debnath
P.W. 4:	Sri Bijoy Debnath
P.W. 5:	Sri Surajit Debnath
P.W. 6:	Sri Pronoy Kumar Debnath
P.W. 7:	Dr. Diganta Kumar Boro
P.W. 8:	Md. NAushad Ali Paramanik
P.W. 9:	SI Kalindra Das
P.W. 10:	ASI Md. Ismail Hussain

2. Witnesses for Defence

NIL

3. Court Witnesses

NIL

4. Prosecution Exhibits

Ext. 1:	FIR
Ext. 2:	Seizure List
Ext. 3:	Post Mortem Report
Ext. 4:	Seizure List
Ext. 5:	Charge Sheet

5. Defence Exhibits

NIL

ACHYUTANANDA SAIKIA
Judicial Magistrate 1st Class, Kokrajhar