

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

G.R. Case No. 1354/2015

U/S. 279/427/304-A OF IPC

State of Assam

-Vs-

1. Sri Tapan Kr. Roy.

.....Accused.

***PRESENT: A.K. BARUAH, LL.M., AJS.
Chief Judicial Magistrate,
Kokrajhar.***

APPEARANCE:

Advocate for the Prosecution : Mr.K.C.Saha, Addl.PP.
Advocate for the Defence : Mr. Chandan Mukherjee.
Date of evidence : 29.07.2016, 03.10.2016, 20.03.2017
& 22.05.2017
Date of argument : 04.01.2018
Date of judgment : 18.01.2018

J U D G M E N T

1. The case of the prosecution in brief is that, on 22.10.2015 at about 9.30 P.M., Tapan Kr. Roy and the elder brother of the complainant namely Bimal kr. Barman were going towards Kokrajhar by a motor cycle bearing registration No. AS-16A-3556 and Tapan Kr. Roy was riding the motor cycle at a very high speed, as a result of which they met with an accident near the Magurmari Satsangha Kendra Mandir near a culvert. In

the accident, the elder brother of the complainant sustained serious injury and he died at the spot. The rider of the motor cycle namely Tapan Kr. Roy also sustained injuries and was undergoing treatment at Bongaigaon Lower Assam hospital. The motor cycle was also damaged in the accident. The complainant namely Nirmal Kr. Barman lodged one FIR at Kokrajhar police station.

2. On the basis of the FIR lodged by the complainant, a case being Kokrajhar P.S. Case No. 836/2015 u/s. 279/427/338/304(A) of IPC was registered against the accused Tapan Kr. Roy.
3. After registration of the case, police conducted investigation and submitted charge sheet against the above named accused person u/s. 279/427/304(A) of IPC.
4. The accused appeared in this case and copy was furnished to him u/s. 207 of Cr.P.C. The particulars of the offences u/s. 279/427/304(A) of IPC were explained to the accused to which he pleaded not guilty and claimed to be tried.
5. **POINTS FOR DETERMINATION:**
 - i) Whether the accused was riding the motor cycle bearing registration No. AS.16/A-3556 in a rash or negligent manner on 22.10.2015 at about 9.30 P.M. near the culvert of Magurmari Satsanga Centre Temple so as to endanger human life or to be likely to cause hurt or injury to any other person?
 - ii) Whether the accused caused mischief by damaging the above mentioned motor bike and thereby caused wrongful loss to the owner of the motor cycle while riding the same in a rash or negligent manner on above mentioned date, time & place?
 - iii) Whether the accused caused death of Bimal Kr. Roy while riding the above mentioned motor cycle in a rash or negligent manner on above mentioned date, time & place?
6. The prosecution examined as many as 6(six) witnesses in this case. The defence plea is of total denial and defence did not examine any witness. The statement of the accused was recorded u/s. 313 of Cr.P.C..

7. I have carefully perused the entire evidence on record, heard both the sides and I proceed to decide as follows:

DECISION AND REASONS FOR THE DECISION:

8. The evidence of PW.1 is that he is the informant of this case. PW.1 knows the accused. On 22.10.2015 at about 9.30 P.M., the accused who is a friend of the elder brother of PW.1 namely Bimal Kr. Barman, had gone to their house and took his elder brother in his motor cycle bearing registration No. AS-16A/3556 and rode away towards Kokrajhar. At about 10 P.M., somebody called PW.1 over phone and informed him that his elder brother had met with an accident. PW.1 immediately came to the spot of the accident and found the motor cycle. PW.1 was informed that a dead body has been carried to Kokrajhar civil hospital. PW.1 came to civil hospital and found the dead body of his elder brother in a van. The dead body was also brought to police station and thereafter postmortem was done and later on, the dead body was returned to PW.1. PW.1 did not see the accident himself, but he believed that the motor cycle must have been ridden in rash and negligent manner otherwise such an accident could not take place. The accused who was riding the bike also sustained injuries in the accident and PW.1 saw him lying injured at the civil hospital. PW.1 identified the FIR as Ext.1 and his signature as Ext.1(1).

In the cross examination, PW.1 deposed that he filed the FIR on 29.10.2015. The delay in filing the FIR was due to the fact that PW.1 was busy in the funeral ceremony of his deceased brother. However this reason has not been mentioned in the FIR.

9. The evidence of PW.2 is that he does not know the informant of this case. The alleged occurrence took place during Durga Puja last year at night. At that time, PW.2 was at Puja pandal at Magurmari. At that time, some local youths of their village had informed PW.2 that an accident had taken place at the road side near the house of Santi Toppo. PW.2 immediately rushed to the PO and found the dead body lying on the road. Beside the dead body, there was a motor cycle also lying. By the side of the motor cycle, a person was also lying injured. Immediately, the police was informed and police came and picked up the injured person and went

- away. Later on, police shifted the dead body to elsewhere. PW.2 and others indicated the location of the accident to the police. Police recorded the statement of PW.2. Police seized the motor cycle from the place of accident by a seizure list and PW.2 put his signature on the seizure list. PW.2 identified the seizure list as Ext.2 and his signature as Ext.2(1).
10. The evidence of PW.3 is that about 2(two) years before, during Durga Puja, one motor bike accident took place in front of his house. PW.3 did not see the incident.
 11. The evidence of PW.4 is that during Durga Puja, about 2(two) years before, one accident took place at Magurmari. When PW.4 rushed to the PO after knowing about the incident, he found one dead body lying on the road side. PW.4 identified the seizure list as Ext.2 and his signature as Ext.2(1). In the cross examination, PW.4 deposed that he does not know the accused. As asked by the police, PW.4 put his signature on Ext.2. PW.4 does not know the contents of the Ext.2.
 12. The evidence of PW.5 is that some villagers of his village, informed him over phone that one person died as a result of an accident at Magurmari on the day of Durga Puja about 2(two) years before.
 13. The evidence of PW.6 is that he does not know about the facts of the case.
 14. From the evidence of the complainant namely Nirmal kr. Barman, it appears that he could not see the occurrence of the incident and he only drew the conclusion that the motor cycle was ridden in a rash and negligent manner by seeing the nature of the accident. Hence, from the evidence of PW.1, it is not established beyond all reasonable doubt that the accused was riding the motor cycle in a rash and negligent manner at the time of the incident. The case of the prosecution cannot be held to be proved by the assumption, presumption or conclusion of the complainant or any witness.
 15. There is no evidence on record which suggest that the accused was riding the offending motor cycle mentioned above in a rash or negligent manner at the time of the incident. There is no material or evidence from which I can draw the conclusion that the accused was riding the offending motor cycle mentioned above in a rash or negligent manner.

16. Considering the above discussion, I am of the view that the prosecution has failed to establish that the accused was riding the offending motor cycle bearing registration No. AS.16A-3556 in rash or negligent manner and caused the death of the victim namely Bimal Kr. Barman. Hence, I have no other alternative, but to hold the points for determination in the negative.
17. 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 from 6 months from today. Considering the facts and circumstances of the case, nature of the alleged offence and as compensation can be claimed in the MAC tribunal for the accident, the case is not referred for victim compensation.

Given under my hand and seal of this court on the 18th day of January/2018.

(A.K. Baruah)
Chief Judicial Magistrate,
Kokrajhar::ASSAM

APPENDIX**Prosecution witness:**

PW-1: Sri Nirmal Kr. Barman.

PW-2: Sri Umesh Ch. Koch.

PW-3: Sri Ananda Minz.

PW-4: Sri Brinda Dhanwar.

PW-5: Sri Santi Toppo.

PW-6: Sri Prasanta Koch.

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Documents exhibited by prosecution side:

Ext.1: F.I.R.

Ext.2: Seizure list.

Defence witness:

None

(Mr. A.K.Baruah)
Chief Judicial Magistrate
Kokrajhar