

**0IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MARGHERITA,
ASSAM**

GR Case No. 305/2015 (PRC No. 309/2016)

Under Section 279/338/304 A/427 of the Indian Penal Code

Present: Sukanya Gogoi, LL.M, AJS

Judicial Magistrate First Class, Margherita

State

-versus-

Boby Ali

Advocate for Prosecution: Mr. Bappa Purkayastha

Advocate for the Accused: Sahid Iqbal Khan

Evidence recorded on: 26.4.2018, 17.11.2018, 9.1.2019, 21.1.2020

Arguments heard on: 29.6.2020

Judgment delivered on: 9.11.2020

JUDGMENT

- 1.** The instant case unfolds from an F.I.R that was lodged by one Dhruba Debnath who is the brother of the deceased, alleging that on 19.4.2015 at around 12.30 A.M, his brother travelling in a Maruti Van bearing registration no. AS-23-D-6082 with 7 others including the driver, met with an accident which caused the death of 2 passengers and injured the rest.
- 2.** On receipt of the ejahar, the police registered a case as Dibgoi P.S Case No. 109/2015 u/S 279/338/304A/427, IPC. After completion of investigation, the police submitted a charge-sheet for the offense u/S 279/338/304A/427, IPC against the accused named, Bobby Ali.
- 3.** The accused person was called upon to enter trial and upon his appearance, copies of relevant documents u/s 173 Cr.P.C were furnished to him in compliance with Section 207 Cr.P.C.
- 4.** Considering the relevant documents and hearing both parties, charges u/S 279/338/304A/427, IPC was framed against the accused, Bobby Ali and the same were read over and explained to him, to which he pleaded not guilty and claimed to be tried.
- 5.** The prosecution has examined 5 (five) witnesses and exhibited 1 (one) document.
- 6.** The accused, Bobby Ali, has been examined u/s 313 Cr.P.C. and all the incriminating materials found are put to him. Their plea is of total denial. Defence adduced no evidence.
- 7.** Point for Determination: (i) Whether the accused, Bobby Ali, on 19.4.2015 drove a Maruti Van bearing registration no. AS-23-D-6082, in a manner so rash and negligent causing hurt and injury to the 7 passengers travelling with him and thereby committed an offense u/S 279, IPC?
(ii) Whether the accused, on the same date and time, caused grievous hurt to the 7 passengers travelling with him in the Maruti Van, by driving the vehicle so rashly and negligently as to endanger their lives and personal safety and thereby committed an offense u/S 338, IPC?
(iii) Whether the accused, on the same date and time, caused the death of Abhijit Debnath and Sajal Debnath, two of the passengers travelling in the Maruti Van with him, by driving the vehicle in a rash and negligent manner and thereby committed an offense u/S 304 A, IPC?

(iv) Whether the accused, on the same date and time, committed mischief by causing wrongful loss or damage to any property and thereby committed the offense u/S 427, IPC?

EVIDENCE OF THE PROSECUTION

- 8.** The prosecution forwards, Dhruva Debnath, is their first witness who happens to be the neighbour of the accused, Bobby Ali. In his examination in chief, he recollects that on 19.4.2015, one Rabu Debnath asked the accused to drive a Maruti Van to TINSUKIA. Hajal Debnath, Hira Phukan, Riki Biswas, Abhijeet Debnath, Abul Debnath and Dipankar Debnath also travelled in the same car as passengers. He stated that at around 11:30 P.M on the same day, he received the news that the Maruti van that had left for TINSUKIA had met with an accident on their way back. Following such news, he visited the TINSUKIA civil hospital at around 5 A.M in the morning where he learned that his brothers, Abhijeet and Hajal Debnath had passed away in the accident. He confirms that Exhibit 1 is the F.I.R that he had lodged on 23.4.2015 where Exhibit 1 (1) is his signature. In his cross examination, he admitted that he had not witnessed the accident himself and therefore had no idea what had caused it.
- 9.** Hira Phukan, comes forward as the second prosecution witness and introduces himself as one of the passengers who was travelling with the accused and five others in a Maruti van on the date of the incident. He narrates that at around 11 PM, while on their way back from TINSUKIA, the accused drove their car over a mound of rocks lying in the middle of the road near the Ultapul area. The car crashed into a nearby tree and he was injured in his head, back and his hand. He also stated that he was the one who managed to inform the police who rushed to the accident site along with an ambulance. In his cross examination, he specifies that the mound of rocks were lying in the middle of the National Highway.
- 10.** The third witness, Raju Debnath @ Dipankar Debnath, knew both the informant as well as the accused. He reiterates the facts as narrated by the previous prosecution witness about the incident that had occurred sometime in the year 2015. He stated that on the date of the incident at around 11 PM at night, he was travelling back from TINSUKIA with five others in a Maruti van driven by the accused when they met with an accident. According to him, the accused drove the car over a mound of

rocks and crashed into a nearby tree and toppled over to field. He clarified that he lost consciousness immediately when the accident took place and that Hira Phukan had to carry him back from the field that they had landed in. His cross-examination was declined.

11. Bijay Deb, who steps in as the fourth witness to this case is also another neighbour of the accused. In his examination in chief, he stated that around 3-4 years ago, he had gone to TINSUKIA with Raju Debnath and six others in a Maruti van which was driven by the accused. He went on to state that on the date of the incident 10.30 P.M, they met with an accident but as he had lost consciousness, he only came to his consciousness on the next day in TINSUKIA Civil Hospital and that he was informed by the hospital staff that he had been in an accident. His cross-examination was also declined.

12. The prosecution forwards Riki Kr. Biswas is the fifth and final witness who knew both the accused as well as the informant. He stated in his examination in chief that on 19.4.2015 at around 12.30 A.M, he along with 8 other people travelling in a Maruti van which hit some large rocks lying on the road and as a result crashed into a nearby tree and landed in the nearby field. He stated that all the passengers were injured and that he had managed to call the emergency medical services. Right after the police arrived along with an ambulance and moved them to the TINSUKIA Civil Hospital for treatment. In his cross examination, he stated that their car was moving at the normal speed and that at the time of the incident there was a truck coming from the opposite side of the road and its "Dipper" lights were turned off. As a result, their driver failed to notice the boulders/rocks lying in the middle of the road and crashed into them.

JUDICIAL DETERMINATION OF THE FACTS IN ISSUE

13. Now, that we have thoroughly gone through the statements of each of the witnesses the prosecution has forwarded in their favour, we need to consider the same in the context of the offenses that has been alleged against the accused person, Bobby Ali to see whether or not the ingredients of the offenses exist in the incident that had taken place.

14. The first offense alleged against the accused is under section 279, IPC which deals with the offense of "rash driving or riding on a public

way". To prove that the accused had indeed committed the said offense, it is imperative to prove that the accused had driven a vehicle in a public way rash and negligent manner thereby endangering the lives of others with the likelihood of causing hurt or injury to them. Since the primary ingredient of the offense above relate to negligence or rashness on the part of the accused, I would like to like to consider the other related offences alleged against him that include the chief element of negligence in them in order to judge whether the accused had indeed acted rashly or negligently thereby causing the accident. Section 338, IPC reads as follows, "whoever causes grievous hurt to any person by doing any act so rashly and negligently as to endanger human life, or the personal safety of others shall be punished....." This provision penalizes rash and negligent acts of a person that causes grievous hurt to another by threatening their lives or safety. The third alleged offense i.e Section 304 A, IPC which penalizes the causing of death of a person due to a rash and negligent act done by the accused, not amounting to culpable homicide. Thus, we see that in all the three offences alleged above, there is a common element that is required to be met in order to prove the guilt of the accused, is that he acted in a rash and negligent manner, thereby causing the grievous hurt to the victims and also endangering the lives of others and causing the death of one.

15. Let us, what the prosecution witnesses have to say about the fateful day when the unfortunate accident took place. It is clear from the evidence of the witnesses that it was the accused, Bobby Ali, who had been driving a Maruti Van to Tinsukia with a few other passengers when the incident occurred. Except for PW-1, the four other witnesses were all passengers in the van and were present there at the time of incident and thus were able to give a first-hand account of the incident that had taken place. PW-1 had clearly stated in his cross-examination that he had only received the news about the accident after it had occurred and that visited his brothers at the hospital the next day where he learned the news that one of his brothers had died in an accident. He had clarified that he was not present at the scene and nor did he have any idea about what had caused it or on whom, the fault, if any, lied on.

16. PWs 2,3 and 5 who were passengers in the vehicle that was involved in the accident all stated that it was at around 10.30-11 P.M at

night when the accused had accidentally driven the car over a mound of rocks that was lying in the middle of the road and lost control of the vehicle and crashed into a nearby tree. PW-5 went on to further clarify that their vehicle was being driven at a normal speed and that the accused had failed to notice the rocks in the road as at the time of the accident, a truck coming from the opposite direction had its "Dipper" lights turned off. PW-4 could not shed much light on what had exactly occurred as he had lost consciousness as soon as they crashed.

17. If we closely analyse the evidence that was forwarded by the prosecution, we see that there is nothing in the testimonies of any of the witnesses, who were all victims of the incident except for PW-1, that points to any kind of rash or negligent behaviour on the part of the accused. Their account of the incident that had occurred is identical and thus corroborated. At this juncture, I bring the attention back to the crux of all three offences alleged against the accused wherein we see that the core ingredient that is common to all three offences and needs to be satisfied is that of a rash or negligent act on the part of the accused that causes harm or endangers the lives of others. Considering the statements of all the witnesses in their entirety, I find nothing that proves that the accused, Bobby Ali, had acted rashly or negligently while driving the vehicle full of passengers on the date of the incident thereby endangering their lives and causing the death of two of them.

18. The fourth offence alleged against the accused is u/S 427, IPC which reads as follows, "whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished..." If we go by the definition of mischief as laid down u/S 425, IPC which states that "Whoever with the intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any persons, causes the destruction of any property, or any change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief". Thus, we see that the presence of mens rea to cause wrongful loss or damage to person or property is central to the commission of an offense u/S 427, IPC. However, none of the statements of the witnesses point to such a guilty intention on the part of the accused when the accident had occurred. The prosecution also failed to bring forth any evidence that pointed towards the destruction of any

property and accordingly the testimonies of the witnesses are silent with regard to the same. The accident that had injured many and caused the death of two was an unfortunate incident that befell the passengers of the Maruti Van as well as upon the driver of the vehicle and was not caused by the malicious intent of the accused or his negligency.

DECISION

- 19.** In view of the discussions made above and the conclusions reached, this court holds that the prosecution has failed to prove the charges under sections 279/338/304 A/427, IPC against the accused, Bobby Ali.
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ORDER

- 20.** Considering the discussions made above and in light of the above decision arrived at, it is hereby held that the prosecution has failed to establish the charges under section 279/338/304 A/427, IPC against the accused, Bobby Ali beyond all reasonable doubt.
- 21.** Hence, the accused, Bobby Ali is acquitted of all charges and set at liberty forthwith.
- 22.** His bail bond is extended for a period of 6 (six) months from today as per Section 437-A, CrPC.

Pronounced in Open Court and given in my hand and under the seal of this court on this the 9th day of November, 2020.

Sukanya Gogoi,
Judicial Magistrate First Class,
Margherita

APPENDIX

PROSECUTION WITNESSES

1. Dhruva Debnath as P.W-1
2. Hira Phukan as P.W-2
3. Raju Debnath @ Dipankar Debnath as P.W-3
4. Bijay Deb as P.W-4
5. Riki Kr. Biswas as P.W-5

PROSECUTION EXHIBITS

EXT. 1 - F.I.R

DEFENCE WITNESS

None

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