

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
UDALGURI:: ASSAM**

**G.R. CASE NO. 1024 of 2019
(PRC NO. 132/20)**

U/S 279/304(A) I.P.C.

**Present: Smti. Ranjita Agarwalla
Chief Judicial Magistrate
Udalguri, Assam.**

STATE

-VS-

SRI KHAGEN DEKA

-----Accused.

For the Prosecution : Mr. M. Khakhlary, Ld. Additional P.P.

For the Defence : Mr. Dwijen Kumar Boro, Ld. Advocate.

**Date of prosecution evidence : 26-03-21, 19-04-21, 07-10-21 and
26-11-2021.**

Date of Argument & Judgment : 04-12-2021.

J U D G M E N T

1. The gist of the prosecution case, in brief, is that on 03-10-2019 informant Sri Ashok Kaya lodged a written ejahar at Panery Police Station stating inter-alia that on 02-10-2019 his mother namely Arti Kaya, aged about 41 years old while coming from Kachubil chowk towards their residence by riding a bicycle in front of tea garden factory of Panery one ALTO 800 vehicle bearing registration no. AS 27A-7278 came rashly and negligently and hit his mother from backside. Immediately though his mother was send to Panery hospital for primary treatment, but she was referred to Tezpur hospital and then again she was referred to Gauhati Medical College & Hospital Guwahati for better treatment and his mother was declared death at Gauhati Medical College & Hospital, Guwahati. On the day of lodging the ejahar the post

mortem of the deceased was conducted at Gauhati Medical College & Hospital, Guwahati. As such, he prayed to take action against the driver of the offending vehicle.

2. On receipt of the ejahar to the effect aforesaid, the Officer-in-Charge, Panery Police Station registered a police case vide Panery PS case no. 97/2019 U/S 279/304(A) I.P.C. and on completion of the investigation the Investigating Officer submitted the charge sheet against the accused Sri Khagen Deka alleging commission of the offences U/S 279/304(A) I.P.C.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused before the court. Accordingly, the accused appeared before the Court and on his appearance copies of all relevant papers and documents were furnished to the accused. Finding a prima-facie case for commission of offences U/S 279/304(A) I.P.C., the particulars of offences U/S 279/304(A) I.P.C. were stated and explained to the accused to which the accused pleaded not guilty and claimed to stand trial.
4. In order to bring home the case, the prosecution examined as many as six (6) PWs in the form of:

PW 1 Sri Ashok Kaya (Informant)

PW 2 Sri Barun Nag

PW 3 Sri Dipen Purty

PW 4 Sri Jems Digal

PW 5 Sri Binoy Kaya and

PW 6 Sri Nipen Deka.

The prosecution has exhibited the following documents in the form of:

Ext. 1 Ejahar.

Ext. 2 & 3 Seizure list.

5. After recording the prosecution witnesses the accused is examined U/S 313 Cr.P.C. The accused denied all the circumstances and pleaded his innocence. Further, the accused declined to adduce any evidence in defence.
6. I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused. I have also carefully gone through the entire evidence available with the case record.

7. **POINTS FOR DETERMINATION :**

- (i) Whether on 02-10-2019 at about 3:45 P.M. in front of the factory of Panery tea garden under Panery Police Station the accused drove his vehicle on the public road with rash and negligent manner to endanger human life of Arati Kaya and thereby committed the offence punishable U/S 279 of I.P.C?
- (ii) Whether on the same day at same time and same place the accused by driving his vehicle negligently caused death of the victim Arati Kaya and thereby committed the offence punishable U/S 304(A) of I.P.C.?

DISCUSSION, DECISION AND REASONS FOR DECISION:

- 8. The circumstances under which the accident occurred or for whose fault the same was caused is the crucial point to be determined before coming to the final decision. Prosecution must have to proof that the accused was either rash or negligent while driving his vehicle at that relevant point of time. In that backdrop, let us scrutinize the evidence of prosecution. **PW 1 Sri Ashok Kaya**, who is the informant of this case, stated in his deposition that he does not know the accused. Two years back while he was working a tea garden he was informed that his mother met with an accident while she was going towards market that a four wheeler vehicle hit her from back side near the vicinity of Shiv temple. He after getting the information rushed to the spot and found that his mother had already died. Then he brought the dead body of his mother to Tangla Civil Hospital as per direction of police whereby she was referred to Gauhati Medical College & Hospital, Guwahati for post mortem and subsequently, he lodged the ejahar Ext.1.
- 9. **PW 2 Sri Burun Nag** deposed that he knows the informant but does not know the accused. About one year back he heard near the road of the garden factory an accident took place and victim Arati Kaya died in that accident. But he does not know how the accident took place.
- 10. **PW 3 Sri Dipen Purty** stated in his deposition that he knows the informant but does not know the accused. While he was working in the tea garden he came to know that an accident took place on the road to Panery tea garden and when he came to the spot, he found out the dead body of Arati Kaya. Later on he accompanied the son of the victim to Tangla Civil Hospital. He heard from the gathering that a four wheeler vehicle hit the victim.

11. **PW 4 Sri Jems Digal** stated that that he knows the informant but does not know the accused. Two years back he heard that informant's mother met with an accident as such he went to Panery tea estate hospital to visit the patient whereby the patient was referred to GMCH, Guwahati. He also heard that on the next day the patient succumbed to her injuries.
12. **PW 5 Sri Binoy Kaya** stated that that he knows the informant but does not know the accused. Three years while he was working in the tea garden factory, somebody informed that an accident took place nearby for which he also rushed to the spot and found the offending vehicle fled away from the scene and the victim Arti Kaya, his aunt, was brought to hospital and on the same day the victim died.
13. **PW 6 Sri Nipen Deka** stated that that he knows the informant as well as the accused. On 02-10-2019 as police seized the vehicle of the accused person, he went to the police station along with the accused and thereby police obtained his signature as asked for. Ext. 2 & 3 are the seizure list and Ext. 2(1) & 3(1) are his signatures.
14. Now from the material available in the record, it reveals that the prosecution side has examined all the witnesses except the official witnesses. But none of the prosecution witnesses have witnessed as to how the incident took place. Thus, there is no any eye witness in this case where PW 1 in his testimony stated that while his mother was going towards market she was hit from behind by a small four wheeler vehicle in the vicinity of Shiv temple. At that time she was working in the tea garden. On hearing information about the accident he immediately came to the spot and found his mother there. But the said witness is silent about the offending vehicle in his deposition. Although PW 1 stated that his mother was hit from behind but PW 2 **PW 2 Sri Barun Nag, PW 3 Sri Dipen Purty, PW 4 Sri Jems Digal** and **PW 5 Sri Binoy Kaya** are totally silent about how the accident took place or for whose fault the said accident occurred. PW 2 only heard that a road accident occurred near the tea garden factory, but he too does not know as to how the accident occurred. PW 3 came to the spot when he heard that an accident had taken place and he accompanied the informant to the Tangla Civil Hospital and he heard that a four wheeler vehicle had hit the victim. In cross-examination he admitted that as he was not available at the spot he could not say exactly which vehicle and by whom the accident was caused. **PW 4 Sri Jems Digal** stated that he heard that informant's mother met with an accident, but in cross-examination he also admitted that he did not know as to how the accident

took place. **PW 5 Sri Binoy Kaya** in this testimony stated that three years back while he was working in the tea garden factory, somebody informed him about the incident and accordingly he rushed to the spot but found the offending vehicle fled away from the scene. His aunt had met with the accident. Although she was brought to hospital, but died. In cross-examination he asserted that he had no knowledge as to for whose fault the accident took place and who drove the offending vehicle at that point of time. **PW 6 Sri Nipen Deka** stated that he along with the accused went to the police station as police seized the vehicle of the accused person in connection with this case. Police obtained his signature in the seizure lists prepared by them whereby the vehicle of the accused and the documents of the vehicle were seized. In cross examination he admitted that he had no knowledge about the accident.

15. No doubt, there was an accident that took place on the day of occurrence which the defence has not disputed and that the deceased succumbed to injuries due to the injury sustained by her for the accident. But the prosecution has failed to prove the same by adducing independent eye witness. From the versions of the independent witnesses, it is clear that all of them are silent about how the accident occurred as they did not see the accident. From the version of PW 1 it is amply clear that he too was ignorant about the occurrence. None of them have claimed to witness the occurrence nor seen the vehicle on the spot. All are found to be hearsay witnesses.
16. To prove an offence of rash and negligence driving, the prosecution must prove the fact that the accused was driving in hazardous and dangerous manner or is a wanton act with knowledge that it is so and that it may cause injury or knowledge that such injury will probably be caused. Similarly, criminal negligence is acting without consciousness that illegal mischievous effect will follow and the actor did not act exercising due caution incumbent upon him.
17. In this instant case the independent witnesses also could not ascertain whether the driver of the vehicle drove the vehicle rashly or negligently at the time of occurrence. Therefore, from the evidences of the prosecution witnesses we are not able to ascertain as to how the accident occurred and/or for whose fault the accident took place. None of them is an eye witness of the occurrence which is very much essential to prove the negligent act of the accused. All are found to be the hearsay witnesses. None of the PWs have whispered that the due to the fault of the accused, the accident occurred or at the time of occurrence the accused

drove his vehicle with rash and negligent manner. Therefore, in my considered view no incriminating material is found sufficiently to incriminate the accused with the alleged offences.

18. From the above discussion, I find that the prosecution has failed to establish the offences U/S 279/304(A) I.P.C. against the accused beyond reasonable doubt. Hence, the accused is found not guilty U/S 279/304(A) I.P.C.

O R D E R

19. In the result, accused Sri Khagen Deka is acquitted from the offences U/S 279/304(A) I.P.C. and he is set at liberty forthwith.

The bail bond shall remain in force for next six(6) months as per provisions of Section 437(A)Cr.P.C.

Given under the hand and seal of this Court on this 4th day of December, 2021 at Udalguri, Assam.

Dictated and corrected by me:

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

APPENDIX

- A. Prosecution witnesses : **PW 1 Sri Ashok Kaya (Informant)**
PW 2 Sri Barun Nag
PW 3 Sri Dipen Purty
PW 4 Sri Jems Digal
PW 5 Sri Binoy Kaya and
PW 6 Sri Nipen Deka.
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 Ejahar.
Ext. 2 & 3 Seizure lists.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.