

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

**G.R. CASE NO. 555 of 2018
(PRC NO. 1174/19)**

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

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

STATE

-VS-

SRI DILIP RANJAN NATH

-----Accused.

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

For the Defence : Mr. R. Basumatary, Ld. Advocate.

Date of prosecution evidence : 05-04-2021.

Date of Argument & Judgment : 30-12-2021.

J U D G M E N T

1. The prosecution case, as unfolded in the ejahar in brief, is that on 05-06-2018 the informant Smti. Bhanumoti Sarania, W/o- Late Pulak Sarania, a resident of Niz Dala, under Kalaigaon Police Station, Udalguri lodged a written ejahar before the Officer-in-Charge, Kalaigaon Police Station stating inter-alia that on 04-04-2018 at about 9:30 AM her husband namely Pulak Sarania went to Bholabari on foot and on M.B. road near Bholabari Chowk was hit by a motorcycle bearing Registration No. AS-13/G-4941 from his backside coupled with rash and negligent driving for which her husband sustained severe injury. Local people informed them and immediately though they brought him to Kalaigaon hospital, but he was referred to Gauhati Medical College & Hospital for better treatment and he was admitted at Hayat hospital, Guwahati. However, on that day while in undergoing treatment, he succumbed to his injuries.

2. On receipt of the ejahar to the effect aforesaid, the Officer-in-Charge, Kalaigaon Police Station registered a police case vide Kalaigaon PS case no. 60/2018 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 Dilipranjan Nath 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.P.C. 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 three (3) PWs in the form of:

PW 1 Smti. Bhanumoti Sarania (Informant)

PW 2 Sri Dipankar Sarania

PW 3 Sri Mantu Sarania.

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 04-04-2018 at about 9:30 A.M. near Bholabari Chowk under Kalaigaon Police Station the accused drove his vehicle on the public road with rash and negligent manner to endanger human life of Pulak Sarania 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 rashly and negligently caused death of the victim Pulak Sarania 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 noticed before coming to the final decision. Prosecution must have to prove that the accused was either rash or negligent while driving his vehicle at that relevant point of time. In that backdrop, for sake of convenience of discussion I would like to reproduce the evidences of prosecution witnesses.
9. **PW 1 Smti. Bhanumoti Sarania**, who is the informant of this case, stated in her deposition that she does not know the accused. On 4th April, 2018 at about 11 AM while her husband was going to Bholabari by riding a bicycle, she heard that he was hit by somebody from his back. But she could not know as to who hit her husband as at the time of occurrence she was at her residence and after getting information of the accident she became senseless. Her husband died on the same day of the accident at 4 P.M. Subsequently, after two months she lodged this case since she was busy with the last rites of her deceased husband and there was delay in filing the case.
10. **PW 2 Sri Dipankar Sarania** deposed that he knows the informant but does not know the accused. Two to three years back during day time while he was going towards Kalaigaon he saw a gathering near Bholabari chowk and there he came to know that a motorcycle hit Pulak Sarania and fled from the scene.
11. **PW 3 Sri Mantu Sarania** stated in his deposition that he knows the informant but does not know the accused. Three years back he heard that his brother Pulak Sarania met with an accident at Bholabari chowk and nearby people took him to Kalaigaon hospital, then to Mangaldai and therefrom he was referred to Gauhati Medical College & Hospital. But for the better treatment they took him to Hyat hospital where he was declared dead.
12. Now from the material available in the record, it reveals that though the prosecution side examined three vital witnesses, but none of the prosecution witnesses had witnessed the incident and they are found to be hearsay witnesses only and such hearsay evidence has not got much evidentiary value in the eye of law.
13. **PW 1**, the informant has stated that on 04-04-2018 she heard that her husband was going towards Bholabari by riding a bicycle and somebody hit

him from backside. PW 1 further stated that in that accident her husband died on the same day at 4 P.M. which is not debarred by the defence. She further stated that she doesnot knowas to how the accident took place and who hit her husband from backside on the day of occurrence. After getting the sad news, she became senseless. Similarly, **PW 2 Sri Dipankar Sarania** stated that he peeped through the gathering near the Bholabari Chowk and came to know that a motorcycle fled away from the scene after hitting Pulak Sarania i.e. he came to know about the occurrence after the accident had taken place and **PW 3 Sri Mantu Sarania** also stated that he heard that there was an accident at Bholabari of his brother Pulak Sarania and at the time of occurrence he was at his residence.

14. 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 his injuries due to the injury sustained by him for the accident. But none of the independent witnesses have made fuss about the accused with the alleged accident claiming that it was none but the accused who rode the vehicle or about the accident that occurred. But the defence denied that the accused rode the offending vehicle at the relevant time of occurrence, the prosecution has failed to prove the same by adducing independent eye witnesses. 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 cross examinations of both **PW 2 & PW 3** it is amply clear that they did not witness the incident. None of them have claimed to witness the occurrence. All are found to be hearsay witnesses only.
15. For the offence of rash and negligence driving, the prosecution must prove the fact that the accused was driving/riding in hazardous and dangerous manner or is a wanton act with knowledge that it may cause injury or knowledge that such injury will probably be caused.
16. In this instant case the independent witnesses also could not ascertain whether the rider of the vehicle rode 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. 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 rode his vehicle with rash and negligent manner. Therefore, we are of the opinion that no incriminating material is found sufficiently to incriminate the accused with the alleged offences.

17. From the above discussion, I find that the prosecution has miserably 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

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

19. The seized articles, if not yet given in zimma, be given in zimma to its actual registered owner

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 30th 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 Smti. Bhanumoti Sarania (Informant)**
PW 2 Sri Dipankar Sarania
PW 3 Sri Mantu Sarania.
- B. Defence witness : Nil.
- C. Documents exhibited : Nil.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.