

IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, UDALGURI.

Present: Smti. Taslima Firdosa, A.J.S.

G.R.NO.996/18 (PRC 312/19)

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

STATE OF ASSAM

Vs

1. Sri Pranjal Deka.

.....Accused Person.

Advocate Appeared:-

For Prosecution: Smti. Dipali Deka, Learned A.P.P.

For Defence: Mr. D. K. Boro.

Offence explained on: 07.06.2019.

Evidence recorded on: 03.02.2020, 03.02.2021,
26.02.2021, 22.03.2021, 13.09.2021,
25.10.2021.

Arguments heard on: 15/12/2021.

Judgment delivered on: 27/12/2021.

J U D G M E N T

1. Prosecution story in brief is that on 1/10/18, Sri Babulal Kurmi lodged an F.I.R. before the Panery police station alleging inter alia that on 18-09-2018 at 8.20 A.M at Anadhowapara, P.S.- Paneri, Dist-Udalguri, B.T.A.D., Assam while the mother of the

informant Late Atowari Kurmi, age 65 years went to a nearby shop near their house, suddenly a winger bearing Registration No. AS-27C-1628 approached from Tangla towards Panery drove at full speed by the driver hit the mother of the informant near the road and injured her grievously and threw her on the ground and the winger itself met with the accident. After that as condition of the mother of was crucial the informant informed the police. Even though his mother was admitted at Panery Health Centre for treatment, but considering the serious condition of his mother the victim was referred by the doctor to Mangaldoi Hospital. After taking the victim to Mangaldoi Hospital unfortunately on the same day she died at Mangaldoi Hospital itself. As the informant was busy in performing the last rites of his deceased mother there was a delay in lodging the FIR.

2. On receipt of the F.I.R., Panery P.S. Case No.82/2018 was registered and investigated into. Seizures of (i) One no. veh. AS-27-C-1628, owner-Pratul Hazarika, S/o- Lt. Tarini Hazarika, P.S.-Paneri, Dist- Udalguri B.T.A.D., Assam, Chasis No.-MAT460010CUG04730, E/No.-843DL56GXY709130, LMV TATA Winger, All Assam Tourist Taxi, Tax up to 31-12-2018. (ii) One Insurance copy-200803/31/16/630001327, policy –

prev. policy No.-20080331156300009892 valid up to 20/02/2019, (iii) One pollution under control certificate valid up to 21/08/2017, dtd.- issue 22/02/17, (iv) One DL No.-WT/DTO/19/09/2026, name of driver- Pranjal Deka, S/o- Sri Sadhram Deka of Sonapani, P.S.- Paneri, Dist-Udalguri, B.T.A.D., Assam were seized during the investigation, (v) One RC Veh. No. AS 27-C -1268 of owner Sri Pratul Hazarika C/No. NAT460010CUGO4730, E/No.- 843DL56GXY709130 were made vide M.R. No. 28/2018 (Zimma No.28/2018). On completion of the investigation the Investigating Officer (I.O.) had submitted the Charge sheet under section (U/S)- 279/304 (A) of Indian Penal Code (I.P.C.) against the accused person Sri Pranjal Deka.

3. On the appearance of the accused person before this Court copies of relevant documents were furnished to him as per sec 207 Cr.P.C. The particulars of the offence U/S 279/304 (A) of I.P.C. were read over and explained to the accused person Sri Pranjal Deka to which he pleaded not guilty and claimed to be tried. The defence Story is of total denial.
4. During trial prosecution side examined 10 P.W.s and exhibited 7 exhibits.

5. P.W.1, Sri Babulal Kurmi, the informant deposed that he knows the accused person. Last year on 2nd of "Aghun" month in the afternoon while he was working at the paddy field he saw gathering of people on the Tangla-Panery road and when he went to enquire about the gathering he came to know that his mother was hit by a Winger by which she got injured. But immediately police arrived and took his mother to Panery hospital for treatment. That when he came to know about it he went to the hospital and saw his mother in injured condition. Although his mother was taken to Mangaldai Civil Hospital for better treatment but she died there at around 3.00 P.M. That as he was busy in performing the last rites of his deceased mother so he lodged the F.I.R. only after a few days from the occurrence. The FIR was exhibited as Ext. 1 wherein exhibit 1(1) was exhibited as his signature.

In his cross-examination he stated that he has not seen the occurrence with his own eyes and he does not know who was the driver of that vehicle.

6. P.W.2, Sri Padum Rabha deposed that he knows the informant. He does not know the accused person. That a few days ago while he was in office he came to know that a person died by in an accident.

In his cross-examination he stated that he had no knowledge regarding the occurrence.

7. P.W.3, Sri Harita Nath deposed that he does not know the informant and the accused person. P.W.-3 heard that an accident took place near his house and when he went to the place of occurrence then police wrote P.W.3's name as witness. That the occurrence took place during the morning hours. P.W.-3 heard that a Winger vehicle hit an old lady and he had not witnessed the accident.

In his cross-examination stated that he does not know who was driving the vehicle.

8. P.W.4, Nilu Sarkar @Tara Sarkar deposed that he knows the informant but he does not know the accused person. P.W.-4 heard from his wife that an accident took place near his house. P.W.-4 heard that a Winger vehicle hit the mother of Babulal Kurmi, the informant. That he had not witnessed the accident.

In his cross-examination stated that he does not know who was driving the vehicle.

9. P.W.5, Sri Jagannath Kurmi, deposed that he knows the informant, the informant is P.W.-5's uncle but he does not know the accused person. That a Winger vehicle hit P.W.-5's grandmother. P.W.-5 had not witnessed the accident and that he went to the place of occurrence after the occurrence took place. P.W.-5

did not see the driver of the alleged vehicle. That they took the victim to the hospital where she died.

In his cross-examination he stated that he was at home when the accident took place and he does not know due to whose fault the accident took place and who was driving the vehicle.

10. P.W.6, Sri Maheswar Kurmi, deposed that the informant of this case is his father and he knows the accused person. That around 3 years back at around 11 A.M. there was an accident. That on the day of occurrence his grandmother was approaching to the main road and he was standing 12 feet away from her. That he saw a Winger (green and yellow colour) was approaching in an untidy and rashly manner at a speed of 60 k.m.p.h without any passenger from Tangla towards Panery. That the vehicle hit P.W.-6's grandmother and threw her away and fell inside a pit. That he saw the driver of the vehicle and he has identified that it is the same accused person that was standing that day in the dock. That they then took their grandmother in a private car to the Panery hospital from there they were referred to Mangaldai Civil Hospital. That P.W.-6's grandmother died on the same day when they were taking her to Guwahati from Mangaldai. That P.W.-6's father then lodged the FIR after one week of the incident.

In his cross-examination he stated that he stays in a separate house from his grandmother's house and the main road is 400/500 metre away from his grandmother's house. That on the day of the occurrence P.W.-6's grandmother was going to the shop to buy betel-nuts. The shop is towards the West and the road is towards North South. That when his grandmother was approaching to the main road from their village road the accident took place. He denied the fact that the police recorded his statement U/S-161 Cr.P.C. on the day of the occurrence. He denied the fact that the statements that he had deposed here that day, he had stated before the police. He denied the fact that he was not present at the place of the occurrence on that day. He denied the fact that his grandmother was standing on the main road at the time of the incident. He denied the fact that the incident did not took place due to the fault of the accused person but due to the fault of his grandmother.

11. P.W.7, Dr. Anil Sarma deposed that on 18.09.2018, he did the post-mortem of Atuwari Kurmi, age 65 yrs. On examination he found 1. Injury on left part of frontal bone and that there were two stitched on the injury; 2. Fracture found of the left maxillary bone; 3. Nasal bleeding in both the nostrils; 4. Rigor mortis present in all four limbs. That in his opinion: the

cause of the death was coma as a result of head injury. The post mortem report was exhibited as Ext.2 and Ext.2(1) as his signature.

The examination of P.W.-7 is cross declined.

12. P.W.8, Inspector (UB) Mantu Talukdar deposed that he has submitted the charge-sheet in this case. That on 22/10/18 he was given the charge of this case. That already the preliminary investigation like seizure of articles, recording of statements U/S-161 Cr.P.C., arrest of the accused person and releasing him on bail, sending the victim to the hospital, collecting post mortem report, collecting MVI report and preparing the sketch map after visiting the place of occurrence were completed by ASI Ibrahim Khalilullah of Panery Police station. That he submitted charge sheet against accused Pranjali Deka U/S- 279/304 (A) of I.P.C. vide charge-sheet no.-40/18 dated 29/12/2018. The charge-sheet was exhibited as Exbt-3 wherein Ext. 3(1) was his signature.

The cross examination of P.W.-8 was declined.

13. P.W.9, ASI, Ibrahim Khalil Ullah deposed that a phone call was received on 18/09/2018 from 9365734293 that AS-27-C-1628 Winger vehicle hit a person at Anadhuapara and caused fatal injuries to that person. That accordingly the O.C. Panery P.S. registered a G.D. entry vide no. 401 dated 18/09/2018 and he was directed by the O.C., Panery

P.S. to visit the place of occurrence. That accordingly, he went to the place of occurrence and found that a woman was approaching from Anadhuapara when the vehicle hit her and caused fatal injuries to her. That the driver fled away leaving the vehicle at the place of occurrence. That immediately took the victim and admitted her in the Panery S.H.C. The name of the victim was Atowary Kurmi, aged 65 years, W/O- Late Bhim Kurmi of Anadhuapara, P.S.- Panery, Dist.- Udalguri. That as he was informed by the doctor that the victim is to be given proper treatment she has to be referred to the Mangaldai Civil Hospital and so he informed her family members and handed her over to them. That after admitting her in the hospital he again visited the P.O. That he prepared the sketch map, recorded the statement of the witnesses U/S- 161 Cr.P.C., seized the vehicle from the P.O. and brought the seized vehicle to the police station to collect the MVI report. That he searched the driver of the alleged vehicle and on the next day 19/09/2018 he found the driver of the vehicle and the driver appeared in the P.S. That the name of the driver was Pranjal Deka, S/O- Sadhiram Deka, of vill- Sonapani, P.S.- Panery. That he arrested the accused person, referred the accused person for medical and recorded statement U/S- 161 Cr.P.C. Then he released the accused

person on bail after submission of proper bail bond. That on that day itself (19/09/2018) he received information from the Mangaldai Civil Hospital that the victim had passed away. That Amala Kanta Sarmah, Executive Magistrate, Mangaldai Revenue Circle prepared the inquest report of the victim at Mangaldai itself. That accordingly he collected the post mortem report. That the vehicle was sent to the MVI and accordingly he collected the MVI report. That after collection of the report the vehicle was given on zimma to the registered owner of the vehicle. That on 01/10/2018 the complainant Babu Lal Kurmi, S/O- Late Bhim Kurmi, of vill- Anadhuapara, P.S.- Panery lodged an FIR on this incident and the O.C. Panery P.S. endorsed him as the I.O. of this case. That again he investigated this case. That he recorded statement of the informant U/S- 161 Cr.P.C. That all the preliminary investigations were already done by P.W.9, the only work that was to be done after the receiving of F.I.R. was to record the statement of the informant. That accordingly after completion of all the investigation he handed over the case diary to the O.C. with a prayer to submit the charge sheet of this case U/S- 279/304 (A) I.P.C. against the accused person. The seizure list, sketch map and the extract copy of the G.D. entry were exhibited as Exbt-4, 5 and 6

respectively wherein Ext. 4(1), 5(1) and 6(1) were his signatures.

In his cross-examination he stated that he could not find the person who gave the information regarding the alleged incident. That all the investigation like recording statement U/S- 161 Cr.P.C., seizure of the vehicle, preparation of sketch map etc. were done under the G.D. Entry. That he did not prepare the sketch map after registering the G.D. entry. That he recorded statements U/S- 161 Cr.P.C. of Jagannath Kurmi, Maheswar Kurmi, Padum Rabha, Haritra Nath, Nilu Sarkar @Tara Sarkar. That he did all the preliminary investigation under the Mufassal Case Diary (M.C.D.) except recording the statement of the complainant. That the house of the victim/deceased is around 150 meters towards the east of the main road/P.O. That he do not know whether there was a shop towards the west of the main road. That Maheswar Kurmi did not state before him that he was standing 12 feet away from the victim and he saw a Winger approaching in a untidy and rashly manner at a speed of 60 km/hr. That Exbt. 6 was the extract copy of the G.D.E. which was certified to be true copy of the original G.D.E. That he had no knowledge whether the alleged incident occurred due the fault of the victim/deceased or not.

14. P.W.10, Sri Ganesh Sonowal deposed that he was the M.V.I. in this case. That on 18/09/2018 he received the vehicle bearing registration No.AS- 27-C-1628 Winger vehicle from Paneri PS for its inspection as per GD Entry No.401. That on 20/09/2018 he had examined the vehicle and recorded the damages as nil. The M.V.I. report was exhibited as Ext.4 wherein Ext.4(1) was his signature.

The cross examination of P.W.-10 was declined.

15. The examination of the accused person U/S 313 Cr.P.C. was recorded wherein he has stated that on the day of occurrence at around 9.00 A.M. he was coming from Tangla towards Panery and he was driving his Winger vehicle at 30-40 Kmph. speed. On the way he noticed 1 cow towards the left side of the road so he moved his vehicle swiftly besides the cow, suddenly an old woman appeared on the road from the right side of the jungle beside the road and she hit his vehicle and fell down on the road. Immediately he halts his vehicle and called the ambulance. A gathering took place at the place of occurrence and took the old woman to the Panery hospital. He immediately went to the Panery police station and informed about the incident. He has further stated that he has no fault in this entire incident and he has prayed that he should be acquitted from this case. However the accused

person denied adducing any defence witness (D.W.) in order to prove all his claims.

16. I have heard arguments from both the sides and also perused the case record. The learned A.P.P. has stated that the prosecution has been successful to produce cogent evidence to prove its case. PW6 being the direct evidence in this case has repeatedly stated before the court that he has identified the accused person as the driver of the alleged winger. He has also stated that he is the eye witness in this case who has deposed before this trial Court that he has witnessed that the accused person had drove the winger rashly and negligently on the day of occurrence and thus had hit the old lady Atowari Kurmi and unfortunately she lost her life in that accident. Thus this is a fit case of conviction as all the ingredients of Section 279 and 304 A have been satisfied in this case.

On the other hand the learned defence counsel has stated that one witness (PW6) has stated the accused person committed the offence. The learned defense counsel had further stated that there were contradictions between the evidences deposed by PW6 and PW9 the I.O. He has further submitted that the accident happened suddenly on the appearance of the deceased victim in front of the

winger. He has submitted that PW6 has omitted to state before the I.O PW9 that at the time of occurrence PW6 was standing at a distance of 12 feet from the deceased victim and that the colour of the winger was green and yellow and that winger was approaching at a speed of 60 K.m.p.h. He has submitted that the accident did not occur due to the fault of the accused person. He had also referred to a case law decided by the *Hon'ble Supreme Court of India viz- Basappa V. State of Karnataka (2014)5 Supreme Court Cases 154 where the Hon'ble Supreme Court of India restored the acquittal passed by the trial Court.*

Thus I have appreciated all the evidence, facts and materials on record in order to decide the following mentioned points for determination.

17. **POINTS FOR DETERMINATION:-**

- I. Whether the accused person namely Sri Pranjali Deka on 18/09/18 at 8.20 A.M. Anadhowapara, P.S.-Panery drove the alleged vehicle "Winger" in a manner so rash and/or negligently as to endanger human life or to be likely to cause hurt or injury to any other person and that thereby committed an offence punishable

U/S- the offence punishable U/S 279 of IPC?

- II. Whether the accused person namely Sri Pranjali Deka on 18/09/18 at 8.20 A.M. Anadhowapara, P.S.-Panery caused the death of Atowari Kurmi by driving the vehicle rashly or negligently not amounting to culpable homicide and thus hit her with the Winger and thereby committed the offence punishable U/S 304 (A) of IPC?

DISCUSSION, DECISION AND REASONS
THEREOF:-

18. Before appreciating the evidence of this case I would like to reflect on the point that P.W.1 to P.W.5 were not present at the place of occurrence of occurrence during the relevant time hence their evidence against the accused person is discarded on the doctrine of hearsay evidence under Sec 60 of the Indian Evidence Act, 1872.
19. Now I would like to begin the appreciation of the evidences by discussing the points highlighted by the learned defense counsel in his argument. The Learned Defense Counsel has referred to the case law of *Bassappa V. State of Karnataka (2014) 5 Supreme Court Cases 154* where the Hon'ble

Supreme Court of India restored the acquittal judgment of the learned trial court in a case of negligent driving under Section 279 and 304 A of I.P.C.

20. Though both the cases are registered under the same sections but the facts and materials of both the cases are different. In the above mentioned case there was no direct evidence to hold that the accused person was the driver of the tractor at the relevant time as there was no cogent, impeachable and clinching evidence with respect to the ingredients of the alleged offences. Therefore in view of so many discrepancies in the version deposed before the Court and one given before the police , it created a doubt whether the accused was involved in the commission of offences or not.

On the other hand in this instant case the facts and materials are quite different from the former. In this case PW6 is the eye witness of the accident who has identified the accused person as the driver of the winger at the relevant time who had committed the accident.

21. The Learned Defense Counsel also endeavoured to shake the credit of the P.W.6 on the point that the sole witness PW6 has omitted to state before the police that on the day of occurrence he was standing

12 feet away from the deceased Atowari Kurmi and that the colour of the winger was green and yellow colour and that it was at a speed of 60 k.m.p.h. Moreover the witness PW6 himself as well as the investigating officer/PW9 had also admitted that PW6 did not state before the police the same.

However I do not find this omission significant and relevant enough as PW6 has vehemently stick to his version that at the time of occurrence the accused person was driving the winger at a full speed in an irresponsible, untidy and rash manner and thus hit the deceased Atowari Kurmi who was his grandmother. Though his statement U/S 161 Cr.P.C is missing the colour, the speed of the winger or at what distance he was standing from the deceased however his statement could not be shaken by the defense counsel on the point of his witnessing the accident that happened for the rash or negligent driving of the accused person.

22. In the famous case of *Kuriya vs State of Rajasthan, 2013 (1) SCC (Cri) 202* the Hon'ble Supreme Court of India has held that *when testimony of a single eye witness as to incident or cogent and wholly reliable, Court can and may act on the same and base a conviction thereon.*

Further the Hon'ble Supreme Court of India held that in the same judgement that every improvement or variation in statements of witnesses before court in comparison with their statements recorded under section 161 of the Code by I/O cannot be treated as an attempt to falsely implicate the accused.

In another judgement State of Rajasthan Vs Mahabir AIR 1998 SC 3041: 1998(5) JT 274 the Hon'ble Supreme Court of India has pronounced that where the witness, whose statement was recorded during investigation, failed to state that the accused was present in the city on the date of incident even then it is not fatal to the prosecution case.

Further in another judgement of S Kaur Vs Baldev Singh, 1997 (11) SCC 292 the Hon'ble Supreme Court of India had decided that where the statement recorded under section 161, Cr.P.C related only to the incident of actual attack and not mention as to who where the persons who witnessed the incident apart from him, then such a commission cannot be imputed to contradiction.

23. Thus in this case too I find no reason to doubt the veracity of the witness PW6. According to my observations the omissions point out by the learned

Defense Counsel are minor contradictions and not material discrepancies.

24. Though the witness PW6 denied to the suggestion put by the defense counsel and stated that the police did not recorded his statement on the day of occurrence. But he did not state that the police did not record his statement. He also denied to the suggestion that his grandmother was standing in the middle of the road. Now if for a second it is presumed that the deceased was standing in the middle of the road then it should have been much easier for the accused to see the old lady standing in the middle of road. Because Ext.5/Sketch Map and the evidence of PW6 and PW9 clearly states that the road where the accident took place was a straight road without any turning and the incident took place in the bright day light in the morning hours while the accused was moving in that straight road from south to north direction.

25. Further PW-9 did the preliminary investigation of this case. No doubt he had started the investigation on the basis of the Ext 6/ the G.D entry however he was directed by the officer-in-charge of the Panery Police Station to start the investigation of the case. This is a case where the precious life of a human

being was lost and so need of immediate investigation was justified in my opinion.

26. The learned defense counsel had also submitted in his argument that the accident occurred on the sudden appearance of the deceased victim. However he did not put any suggestion as to how possibly the deceased victim could have appeared near the vehicle and suddenly hit the vehicle.

27. In order to know the ingredients of the registered sections of this case I have discussed the definitions of rash and negligent as mentioned in Section 279 and Section 304 A of I.P.C.

The main principles incorporated in Section 279 of IPC are-

- i) driving a vehicle or riding on a public way;
- ii) in a manner so rash or negligent so as to;
- iii) endanger human life;
- iv) or to be likely to cause hurt or injury to any other person

According to *Cambridge Advanced Learner's Dictionary, 3rd Edition*, the word rash when used as an adjective means *careless or otherwise, without thought for what might happen or result, meaning thereby that while doing something, the person did not think about the costs involved.*

As far Sec 304 A of I.P.C, this section is attracted if death of any person occurs by doing any such rash or negligence act not amounting to culpable homicide.

In Sushil Ansal Vs- State through CBI, (2014) 6 SCC 173:2014 (2) Supreme 134:2014 (3) Scale 174:2014 (4) JT (SC) 1:2014 (6) SCJ 418 the Hon'ble Supreme Court of India has defined the meaning of negligence as an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do.

28. I have also appreciated all the exhibits one by one. Ext. 1 the FIR, Ext. 3 the Charge-sheet, Ext. 5 the Sketch Map, Ext. 6 The General Diary Entry and the depositions of all the witnesses states that the accident occurred at Anadhua Para at the Tangla to Panery road which is a public way. Also Ext. 1 the FIR and Exbt 6 the general diary entry specifically mentions the registered number of the vehicle viz- AS -27C-1628.

29. Now in this case P.W.-6 the sole eye witness has deposed that the winger was approaching from Tangla to Panery(south-north) at full speed and met

with an accident by hitting the deceased near the road causing her grievous injury and threw her on the road. Further Ext.5/the sketch map too reveals that the accident took place at a straight road and that there were houses of people and temples near the place of occurrence. On the east there is a village road and a temple at of the place of occurrence, on the west there is a tea garden and a temple, towards the south goes the road to Tangla and towards the north goes the road to Panery. According to the Ext5/ the sketch map the occurrence had taken place on the right side of the Tangla to Panery road near the Anadhua Para village road. The road where the accident took place was not a highway and as the location is comprised of temples, houses and a village it is expected that the vehicles passing by that road has to maintain a lesser/low speed. In this case the winger was moving from Tangla to Panery and if we presume that the vehicle was obeying the rules of the road it was moving on the left side of the road. On the other hand the evidence of the eyewitness PW6 specifically states that the deceased was approaching to the main road from the Anadhuapara village road that means she was on the right side of the main road. The deposition of PW6, Ext1/FIR and Ext.5/ the Sketch Map also pinpoints on the fact that

the accident happened on the right side of the road where after hitting the deceased victim the winger fell on the right side of the road. P.W.9 has also stated in his statement that he had seized the vehicle from the place of occurrence.

30. Thus on applying the reasoning of a prudent person I find that without the negligence or rashness of the driver, a vehicle cannot move from its track on the left side towards the right side of the road and hit another person. In this case the driver had to drive the vehicle either rashly or negligently that all of sudden it moved from the left side to the right side and hit the deceased victim who was standing at the right side near the road. Had the accused person taken the due care needed during his driving and had he drove the vehicle cautiously without being reckless these unfortunate incident would not have happened. It has to be taken into account that the accused was a professional driver as he was driving someone else's winger which carries passengers, he should have been more vigilant while driving a vehicle like winger in such a location.

31. Further the evidence of the M.O /PW 7 states that the deceased was brought to the hospital on the day of accident itself that is on 18-8-2019. Exhibit 2 the post mortem report reveals that the deceased victim

was escorted by U.B.C Sanjay Kr. Gogoi along with PW5 Jagannath Kurmi and PW6 Maheswar Kurmi to Mangaldoi Civil Hospital. The deposition of PW 7 and Exhibit 2 states that the deceased victim was bleeding from both her nostrils and her left maxillary and frontal bone were injured and fractured and all her four limbs were present of rigor mortis. Exhibit 2 also contains the opinion of the M.O Dr Anil Sarma that the cause of death of the deceased victim of this case was coma due to head injury sustained as describe. Thus it is proved that the death of the victim was due to a tremendous hit on her body by the winger which occurred due to the negligent or rash driving of the accused person and due to which unfortunately the deceased victim succumbed to injury.

32. Thus all the ingredients of Sec 279 IPC and Sec 304 A IPC are fulfilled and the prosecution in this case has been successful to inspire the confidence beyond reasonable doubt that the accused person Sri Pranjal Deka was driving his vehicle rashly or negligently and met with an accident by hitting the deceased victim Atowari Kurmi (age 65, Female) and unfortunately she succumbed to injury in that accident.

Thus point No.I and II are decided in affirmative.

33. Now this Court has to consider whether the benefit of the Probation and Offenders Act can be extended to the accused persons or not. In this case it is seen that there is nothing in the record to indicate that the accused person is convicted earlier for any offence. The conduct of the accused person reveals that he has cooperated with the investigation fully fledged as he appeared in the police station on the next day itself i.e on 19-09-2018 along with the registered owner of the vehicle as soon as the I.O had searched for him. Further the accused person in his 313 statement has admitted that his vehicle had suddenly hit the old lady as he saw a cow on the left side of the road. I have taken note of the fact that the accused has shown repentance and remorse for the unfortunate act. Hence in my considered view that accused person is entitled to get the benefit of probation of offenders act in order to give him a chance for reformation and repentance. Thus having regard to the circumstances of the case including the nature of the offence and the character of the offender I find it expedient to extend the benefit of Probation under section 4 of Probation of Offenders Act, 1958 instead of sentencing him at once to any punishment.
34. Accordingly the benefit of Sec.4 is extended to the accused Sri Pranjal Deka and he shall be released

under section 4 of Probation of Offenders Act, 1958 on furnishing a bond of Rs10,000/- (Rupees Ten Thousand Only) without sureties with condition that during a period of 1 year he shall keep the peace and shall be of good behaviour and if he fails to observe the above mentioned conditions of the bond then he shall appear/be produced before this court to suffer the sentence in this case. The bond shall be in force for a period of one year from the date of furnishing the bond.

35. Further on perusal of the case record it appears that the zimma of the seized articles have been given in the zimma vide zimma No.28/2018 to the registered owner Sri Pratul Hazarika. As no other claimant has arisen during this trial this Court finds it fit to hold that the zimma of the seized articles shall be absolute in due course of time as per law.

Order

36. **Accused Sri Pranjal Deka is convicted for the offence U/S 279/304A of I.P.C.**
37. The benefit of Sec.4 is extended to the accused Sri Pranjal Deka and he shall be released under section 4 of Probation of Offenders Act, 1958 on furnishing a bond of Rs10,000/- (Rupees Ten Thousand Only) without sureties with condition that during a period of 1 year he shall keep the peace and shall be of

good behaviour and if he fails to observe the above mentioned conditions of the bond then he shall appear/be produced before this court to suffer the sentence in this case. The bond shall be in force for a period of one year from the date of furnishing the bond.

38. The bail bonds for each of the accused person namely Sri Pranjal Deka shall be in force for the next six (6) months.
39. The zimma of the seized articles shall be absolute in due course of time as per law.
40. Furnish a free copy of the judgment U/S 363 Cr.PC to the convicted accused persons immediately.
41. Judgment is pronounced in open court. Case is disposed of on contest.

Given under my hand and seal of this Court on this the 27th day of December, 2021 at Udalguri.

Judicial Magistrate First Class,
Udalguri.

APPENDIX.

1. Prosecution Witnesses:-

P.W.1: Sri Babulal Kurmi.

P.W.2: Sri Padum Rabha.

P.W.3: Sri Harita Nath.

P.W.4: Sri Nilu Sarkar @ Tara Sarkar.

P.W.5: Sri Jagannath Kurmi

P.W.6: Sri Maheswar Kurmi.

P.W.7: Dr. Anil Sarma.

P.W.8: Inspector (UB) Mantu Talukdar.

P.W.9: ASI Ibrahim Khalil Ullah.

P.W.10: Sri Ganesh Sonowal.

2. PROSECUTION EXHIBITS:-

Exbt-1: F.I.R.

Exbt-2: Post mortem report.

Exbt-3: Charge sheet.

Exbt-4: Seizure list.

Exbt-5: Sketch map.

Exbt-6: Extract copy of the G.D. entry.

Exbt.-7: M.V.I. Report.

3. DEFENCE WITNESSES:-

None.

4. DEFENCE EXHIBITS:-

None.

Judicial Magistrate First Class,

Udalguri.