

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT : = Smti. K. R. Deka, A. J. S.

Ref: G.R. Case No.857/13.

State

-vs-

Ganesh Boro Accused person

u/s-279/304(A) I.P.C.

EVIDENCE RECORDED ON : 06.12.17 & 20.09.18.

ARGUMENTS HEARD ON : 01.12.18.

JUDGMENT DELIVERED ON : 01.12.18.

ADVOCATES APPEARED:

For the State : Mr. R. Patowary, Ld. A.P.P.

For the Accused : Smti. R. Sarma, Advocate.

J U D G M E N T

1. The prosecution case, in a nut shell, is that an F.I.R. was filed on 21.06.13 by the informant Sidam Sarkar in the Nalbari PS alleging inter-alia that on 15.06.13, his nephew Indrajit Sarkar was proceeding towards Nalbari in a public bus bearing regd. No.AS 01 EC 6667. That, at Ganesh Mandir, his nephew was asked to get down from the bus by the conductor and when he was about to get down, the driver of the bus plied the bus due to which, his nephew fell down. Immediately, he was taken to SMK Civil Hospital by the owner of the bus. As his

injuries were grievous, he was immediately referred to GMCH, later his nephew succumbed to his injuries. Hence, the case.

2. On receiving the case, Nalbari PS registered Nalbari P.S. Case No.491/13 u/s-279/304(A) IPC and started investigation. On completion of investigation the I.O filed charge-sheet against accused Ganesh Boro u/s-279/304(A) IPC.

3. In pursuance of the process issued, the accused person appeared before the court and on his appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused person. Thereupon prima facie case was found against the accused person u/s-279/304(A) IPC and the particulars of the offences u/s-279/304(A) IPC were read over and explained to the accused person and he was asked whether he will plead guilty of the offences charged or claimed to be tried. He had pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined three witnesses. The 313 Cr.P.C. statement of the accused person was of total denial. The defence side declined to adduce any evidence.

5. I have heard the arguments of both the sides.

POINTS FOR DETERMINATION

· Whether accused Ganesh Boro on 15.06.13 at Ganesh Mandir chowk, under Nalbari PS drove a bus bearing regd. No.AS 01 EC 6667 negligently as to endanger human life and thereby committed an offence punishable u/s-279 IPC ?

· Whether accused Ganesh Boro on 15.06.13 at Ganesh Mandir chowk, under Nalbari PS drove a bus bearing regd. No.AS 01 EC 6667 in rash and negligent manner and due to negligent driving of accused, informant's nephew Indrajit Sarkar had died and thereby committed an offence punishable u/s-304(A) I.P.C.?

DISCUSSION, DECISION AND REASONS :

6. PW.1 is Sidam Sarkar, informant. He deposed that he does not know the informant. The incident occurred about 3 ½ years ago. At that time, he was at his residence at Raja Garh. Then, police from Nalbari informed him that his nephew Indrajit had met with an accident. Indrajit was proceeding in bus. Then, he informed the matter to the parents of Indrajit. Police told him that Indrajit had fallen from bus, injured was taken to hospital and later, at GMCH, he expired. He filed the FIR as stated by police. Ext.1 is his FIR and Ext.1(1) is his signature.

7. In his cross-examination, he deposed that he has not seen the incident himself. He does not know from whose fault the accident occurred.

8. PW.2 is Sahjahan Ali. He deposed that he does not know the informant and the accused. On the day of the incident, while he was at Barkura, he heard that there was an accident at Ganesh Mandir and he visited the place of occurrence and saw that a bus was near the place of occurrence. He put his signature while police took away the bus. Ext.2 is the seizure list and Ext.2(1) is his signature.

9. During cross-examination, this witness deposed that he has not seen the incident himself. He does not know how the accident occurred. He does not know about the contents of Ext.2.

10. PW.3 is Abdul Malik Ahmed. He deposed that he does not know the informant and the accused. At the time of the occurrence, he was working at Nalbari Traffic Branch as constable. About five years ago, he was deployed in duty at Ganesh Mandir, NH 31. While he was discharging his duty, a bus coming from Guwahati side and when the same crossed the police point of Ganesh Mandir, a boy fell down from the bus. They took the boy to the police point and gave water in his body and informed the police station and called for 108 ambulance. Police came and seized the bus. He does not know for whose fault the boy had fallen from the bus.

11. During cross-examination, he deposed that he does not know how the boy had fallen down from the bus.

12. These are the materials on record.

13. PW.1 who is the paternal uncle of the deceased deposed that he has not seen the incident. He stated that he learnt from police personnel that deceased Indrajit had fallen down from a bus and had expired in GMCH. This witness has failed to state from whom he has received the information. Apart from this, this witness did not state anything material. PW.2 has also not seen the incident. This witness is a seizure witness and it is seen that he has put his signature in Ext.2 which is seizure list, but this witness has stated that he is unable to state the contents of the Ext.2. The I.O who has prepared the seizure list Ext.2 is not examined by the prosecution, hence, I find that Ext.2 seizure list could not be proved. PW.3 is the constable who was on duty on the fateful day in Nalbari Ganesh Mandir NH 31. He stated that on the fateful day, a bus was proceeding from Guwahati towards Ganesh Mandir police point and while the bus crossed Ganesh Mandir police point, one boy had fallen out of the bus. They picked up the boy and gave him first aid and called for an ambulance and sent him to hospital. This witness has also categorically stated that he is unable to state whether the boy had fallen down due to the fault of the bus driver. Apart from that, no other prosecution witnesses were examined in order to support the prosecution case that the accused person drove the bus rashly and negligently as the result of which the incident occurred.

14. The prosecution case has to stand on its own legs. The prosecution side in a case of rash and negligent driving should be able to find out the fault on the part of the driver of the vehicle which caused the accident. In the instant case, none of the witness deposed that accused Ganesh Boro was driving the vehicle during the accident rashly and negligently. The elements of the testimony of the witnesses is not clear and cogent whether the bus bearing registration No. AS 01 EC 6667 was driven in rash and negligent manner by the accused as a consequences of which the accident occurred.

15. In the instant case the prosecution has not been able to place before the court creditable and convincing evidence to show the involvement of the accused in the commission of the offences charged with to justify a conviction.

16. The court cannot form an opinion on mere conjectural hypothesis and fix liability on the accused without the offences being proved beyond all reasonable doubt.

17. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, the accused Ganesh Boro is acquitted of the offences u/s-279/304(A) I.P.C. and he is set at liberty forthwith.

18. Bail bonds will stand cancelled after six months.

19. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 01st day of December, 2018

(Smti. K.R. Deka)

Chief Judicial Magistrate, Nalbari.

Dictated and corrected by me

(Smti. K. R. Deka)

Chief Judicial Magistrate, Nalbari.

APPENDIX

Witnesses for the prosecution

PW-1 Sidam Sarkar, informant.
PW-2 Shahjahan Ali.
PW-3 Abdul Malik Ahmed.

Witnesses for the defence

None

Prosecution Exhibits

Ext.1	FIR.
Ext 1(1)	Signature of informant Sidam Sarkar.
Ext.2	Seizure list.
Ext 2(1)	Signature of PW Shahjahan Ali.

Defence Exhibits

None

(Smti. K.R. Deka)
Chief Judicial Magistrate, Nalbari