

G.R. 1190/17
State
vs
Makibar Rahman

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS, NALBARI

Case No. G.R. 1190/2017 u/s 279/304(A) IPC

STATE

-Vs-

Makibar Rahman

..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr. Hem Sarmafor the State.

Mrs. Tribeni Devifor the accused.

Date of prosecution evidence – 4.1.19, 8.3.19, 6.7.19, 7.2.20

Date of argument – 27.5.20

Date of judgment – 3.6.20

Judgment

1. Md. Riyaj Ali initiated the instant case by filing written 'ejahar' before the O/C, Belsor P.S. on 1.8.17. Prosecution case in brief is that, on 22.7.17 at around 8.30 p.m. while informant's son Abdul Rejek (Ali) with his friend Pulak Nobi Choudhury was going towards Barni Chowk by bicycle, at Dewry para village road a motorcycle bearing Registration No. AS-01/AY-2474 driving in rash and negligent manner hit the bicycle from the backside, as a result of which both of them fell down on ground and were grievously injured. After the incident both

Judgment delivered on 3.6.20

of them were taken to Nalbari SMK Hospital through 108 vehicle, but doctor declared informant's son Abdul Rejek as dead and Pulak Nobi Choudhury was referred to GMCH for further treatment.

2. On receipt of the 'ejahar', police have registered Belsor P.S. case No. 146/17 u/s 279/338/304(A) IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused Makibar Rahman u/s 279/304(A) IPC.
3. During trial, accused person was allowed to go on bail. Relevant documents of the accused were furnished to him u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 279/304(A) IPC.
4. Prosecution in support of the case examined 6(six) witnesses. Defence side did not examine any witness in support of their claim. Statement of the accused person was recorded u/s 313 of Cr.P.C. defence case is of total denial. Defence declined to adduce evidence on his behalf.
5. I have heard argument of both sides.

Points For Determination

6. Upon hearing and perusal of the record, I have framed the following points for determination:
 - i. Whether the accused person on 22.7.17 at about 8.30 p.m. drove motorcycle bearing Registration No. AS-01/AY-2474 rashly and negligently knocked down informant's son and his friend while they were on their way to Barni Chowk and thereby committed an offence punishable u/s 279 IPC?
 - ii. Whether the accused person on the same date and time drove motorcycle bearing Registration No. AS-01/AY-2474 in rashly and negligently and caused death of informant's son Abdul Rejek (Ali) and thereby committed an offence punishable u/s 304(A) IPC.

Discussion, Decision and Reasons Thereof

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. Pw 1 Riyaj Ali who is the informant of this case deposed in his evidence that he has filed this case. The incident happened about two years ago at around 7.30 p.m. at Dewry para Chowk. His son Abdul Rejek went out with bicycle. He heard that his son had occurred with an accident. He further stated that he heard that bike has hit his son. He also heard that the accused, who is in the dock, drove the bike. He further stated that the accident took place due to guilt of his his. His son was taken to hospital and he died in the hospital. Ext. 1 is ejehar and Ext. 1 (1) is his signature.
9. During his cross examination he stated that his son fell down on his own. He has no knowledge for whose fault the occurrence took place.
10. Pw 2 Pulak Nobi Choudhury who is another victim of this deposed in his evidence that on that date of incident, he was going with Rejek with bicycle and he sat on the back of the bicycle. Rejek ride the bicycle. The incident took place at night. The bike hit the bicycle. Rejek died. He has not seen who drove the bike.
11. During cross examination, he stated that they fell down from the bicycle. The accident took place due to mistake of cycle-rider.
12. Pw 3 Ikramul Ali deposed in his evidence that accident took place about 1 ½ years ago at around 7.30 p.m. He was coming from Mukalmlua riding a bike. He saw gathering and one cycle was lying. He saw two injured persons on the spot. He heard that there was an accident between bicycle and motorcycle. Police seized one cycle in front of him. Ext. 2 is the seizure list and Ext. 2 (1) is his signature.
13. During his cross examination he stated that he has reached the place of occurrence after the accident took place. He also has no idea for whose fault

the occurrence took place.

14. Pw 4 Rubuluddin Ahmed deposed in his evidence that he has not seen the occurrence. Incident took place about 1 ½ years ago at Deoripara. He was coming from duty when he heard there was an accident. He has not seen anyone on the spot. Defence declined to cross examine the said witness.
15. Pw 5 Makbul Ali stated in his evidence that in 2017 he used to drive 108 vehicle. He took an injured person to hospital. Police seized one bike. Ext. 2 is the seizure list and Ext. 2 (1) is his signature. Defence declined to cross examine the said witness.
16. Pw 6 ASI Ram Charan Nath deposed in his evidence that on 1.8.17 he was as ASI in Belsor P.S. On that day an ejahar was filed by Riyaz Ali before the O/C. The O/C registered the case and entrusted him with the task of investigation. Before filling ejahar G.D. Entry no. 428 dtd. 22.7.17 was made. He has investigated the case as per the G.D. Entry. Place of occurrence is Belsor Deuripara road. He went to the place of occurrence, prepared sketch map and recorded statement of the witnesses. He has seized one motorcycle and bicycle. He has collected the medical report of the victim. He has sent the vehicle for MVI inspection. Accused person appeared on receipt of notice. He released him on bail as the offences were bailable in nature. On completion of investigation he has filed charge sheet against Makibar Rahman u/s 279/304(A) IPC. Ext. 2 is seizure list one bicycle and one motorcycle. Ext. 2(3) is his signature. Ext. 3 is seizure list one Glamour bike with relevant documents. Ext. 3 (1) is his signature. Ext. 4 is sketch map and Ext. 4(1) is his signature. Ext. 5 is charge sheet. Ext. 5 (1) is his signature.
17. During cross examination, he stated that the occurrence took place on 22.7.17. Before they went to the place of occurrence the victim was already sent to hospital. There were two traveller in the bicycle. He has taken the motorcycle and bicycle to P.S. from the place of occurrence on the date of occurrence itself. On 6.8.17 when the accused person appeared he seized the said vehicle.
18. On perusal of the entire evidence it is seen that though the witnesses have

stated the occurrence as alleged in the ejahar but none of the witnesses among the said six witnesses has deposed that they have seen the occurrence nor have they seen the accused person causing the accident by his rash driving. On perusal of the evidence of Pw 1 Rijaj Ali it transpires that he was not present in the place of occurrence at the time of occurrence. Pw 3 and PW 4 also came to the Place of occurrence after the occurrence had taken place. Pw 2 was the pillion rider in the cycle with the victim. But he also has not seen the accused person driving the vehicle. Moreover, he has stated that the accident took place due to the fault of the cycle rider. Pw 3 and Pw 5 are the seizure witnesses. They have identified their signature in the seizure list. However on perusal of the evidence of the I/o it transpires that the I/o has seized the vehicle at police station on 06.08.17 when the accused person appeared. There is no mention of place or date as to when the bike was seized in the seizure list. The occurrence took place on 22.07.17 and the bike was seized on 06.08.17 meaning thereby, the fact that accused was involved in the accident could not be established as the said vehicle was seized later and hence doubt arises with regard to the accused rashly driving the vehicle on the date of occurrence and causing the accident. Thus the entire materials placed before me suggests that none of the witnesses has seen the accused person at the time of occurrence driving his vehicle in rash manner and caused the accident.

19. Situated thus my considered opinion is that as the witnesses examined by the prosecution has not seen the accused on the date of occurrence driving his car in a rash manner, the evidence on record is not enough to prove beyond reasonable doubt that it was the accused person who was involved in the occurrence or caused the death of the victim by his rash and negligent driving.
20. Hence, prosecution has failed to prove the guilt of the accused and accordingly, accused Makibar Rahman is not found guilty of offence punishable u/s 279/304(A) IPC. Hence, he is acquitted of the said charges and set at liberty forthwith.
21. The bail bonds furnished on behalf of the accused persons shall remain in force for a further period of six months

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Given under my hand and seal of this Court on this 3rd day of June, 2020.

Rubina Yasmin
J.M.F.C. Nalbari

APPENDIX

Prosecution witness:

Pw 1 – Md. Riyaj Ali
Pw 2 – Pulak Nobi Choudhury
Pw 3 – Ikramul Ali
Pw 4 – Rubuluddin Ahmed
Pw 5 – Makbul Ali
Pw 6 – ASI Ram Charan Nath

Prosecution Exhibits:

Ex 1 – ejahar
Ex 2 &3 – Seizure list
Ex 4 – Sketch map
Ex 5 – Charge sheet

Defence witness & Exhibits:

Nil

Rubina Yasmin
J.M.F.C. Nalbari