

P.R.C no. 523/2018

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

P.R.C no. 523/2018

u/s 279/304(A)/337/427 I.P.C

State of Assam

-Vs-

Dhanjit Sarania....Accused person

PRESENT: K.C Boro, A.J.S.

ADVOCATES APPEARED:

For the state : Mr. D. Talukdar, Ld. A.P.P,

For the accused : Mr. Gautam Barman, Ld.
Advocate,

Dates of evidence : 07/02/19, 06/05/19 & 18/12/20.

Date of argument : 03/01/2022.

Date of judgment : 03/01/2022.

J U D G M E N T

PROSECUTION CASE:

1.The prosecution case in brief as unfolded from the 'ejahar' dated 08/01/2018 filed by the informant Hajara Khatun is that on 23/12/2017 at about 6:30 am, her son Rafik Sai, aged 24 years was going towards Baganpara from Dhamdhama from his rented room on his bicycle for earning his livelihood and as he reached near Dhamdhama Girls high school, the offending vehicle bearing registration no. AS-01-FC-5099 (Star Bus) coming from Baganpara towards Nalbari and which was driven by the driver rashly and negligently lost its control and knocked down her son (who was on his own side) from the front and dragged her son towards the Girls high school and the bus turned upside down. Her son sustained grievous injuries. The passengers of the said bus also sustained injuries. Local public with the help of police took her son to Dhamdhama PHC from where her son was shifted to SMK Civil hospital but her son succumbed to his injuries and was declared dead. As she was busy in the treatment of her son there was delay in filing the ejahar. Hence the case.

2.The said 'ejahar' was received vide Dhamdhama O.P GDE no. 109 dated 08/01/18 and was forwarded to O/c Ghograpar P.S which was later received and registered as Ghograpar P.S case no. 06/18 u/s 279/304(A)/338 I.P.C. After completion of investigation charge-sheet no.

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22/18 dated 28/02/18 was submitted against accused Dhanjit Sarania u/s 279/304(A)/337/427 I.P.C. Copy was furnished to the accused person. Particulars of offence and substance of accusation were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3.POINTS FOR DETERMINATION:

(I) Whether on 23/12/2017 at about 6:30 am in front of Dhamdhama Girls High school under Ghograpar P.S, the accused drove Star Bus bearing registration no. AS-01-FC-5099 in a public way in a rash/negligent manner so as to endanger human life or to be likely to cause hurt or injury to any other person(s) and thereby committed an offence u/s 279 I.P.C?

(ii) Whether on 23/12/2017 at about 6:30 am in front of Dhamdhama Girls High school under Ghograpar P.S, the accused drove Star Bus bearing registration no. AS-01-FC-5099 in a public way in a rash/negligent manner and caused death of the victim Rafik Sai by his rash and negligent driving of the vehicle at the time of occurrence and thereby committed the offence punishable u/S 304(A) IPC?

(iii) Whether on 23/12/2017 at about 6:30 am in front of Dhamdhama Girls High school under Ghograpar P.S, the accused drove Star Bus bearing registration no. AS-01-FC-5099 in a public way in a rash/negligent manner and injury was caused on the person(s) of

victim for such rash and negligent act of the accused person and thereby committed the offence punishable u/S 337 IPC?

(iv) Whether on 23/12/2017 at about 6:30 am in front of Dhamdhama Girls High school under Ghograpar P.S, the accused committed mischief by driving Star Bus bearing registration no. AS-01-FC-5099 in a public way in a rash/negligent manner and caused loss to the amount of Rupees Fifty and upwards and thereby committed the offence punishable u/S 427 IPC?

4. **DECISION AND REASONS THEREOF:**

The prosecution examined five (5) witnesses while the defence declined to adduce any evidence. The statement in defence of the accused person u/s 313 Cr.P.C was recorded wherein he denied his involvement with the alleged offences. I have heard the arguments advanced by learned counsels of both the sides and also perused the evidence available on record, my findings with reasons are as follows:

5.PW1 Ananta Mohan Das deposed that the incident took place in the year 2017 at about 6-6:30 am. One bus hit the wall of their school boundary and entered into its premise causing damage. He saw the victims at the P.O. One person sustained severe injuries and was taken to Dhamdhama medical but was declared dead. The deceased person was coming on his bicycle who did business of mattress. PW1 during cross-examination

deposed that he heard that the accident took place due to burst of the front tyre of the offending vehicle.

6.PW2 Kalpa Baishya deposed that he knows the accused person. The incident took place around 5 - 6 months ago at about 6:30 am and at that time he was coming on foot and in the meanwhile one tyre of the offending vehicle got burst and the bus hit the wall of Girls high school and caused damage. The bus caused severe injury to one bicycle rider. He saw the passengers of the bus were taken to medical.

7.PW3 Jagadish Dey deposed that the incident took place 1 ½ years ago and on that day the tyre of one bus got burst and thereafter the bus hit the wall of Girls High School causing death of one person who was a mattress seller. The passengers of the said bus were also injured. Police did not record his statement. PW3 during cross-examination deposed that he did not witness the accident.

8.PW4 Sanjib Ramchiary deposed that the incident took place around 3 years ago during morning time. He was coming to Dhamdhama on a bus and the said bus hit the wall after losing its control due to tyre burst. He sustained injury on his head. One person lost his life.

9.PW5 Keshab Ch. Kalita deposed that he knows the informant and the accused person. The incident took place in the year 2017. On receiving information he came to the P.O. His vehicle (Star Bus) met with an

accident. One person lost his life. His bus damaged one wall and he paid for the damage. His bus was seized by the police.

10.The prosecution failed to examine further witnesses in this case including the I.O and M.O.

11.The independent witnesses PW1, PW2, PW3 & PW4 supported the case of prosecution and testified that the offending bus hit the wall of Girls High School at the P.O and caused damage to the wall of the said school and due to said accident one person lost his life and the passengers of the said bus also sustained injuries and were taken to medical. They further testified that the seriously injured victim who was coming on a bicycle was taken to hospital, but the victim Rafik Sai had succumbed to his injury.

12.PW5 had testified that he had immediately arrived after the accident and he had seen the damaged vehicle (Star bus bearing registration no. AS-01-FC-5099). He had proved the seizure list and Exhibit 1 by putting his signature.

13.On the other hand learned counsel of defence submitted that none of the witnesses had seen under what circumstances the accused had hit the wall of Girls high school at the P.O causing death to the victim. Learned counsel of defence argued that the informant (who is not examined in this case) had alleged that the accused was in high speed, but the PW's could not

define the speed of the vehicle. He further submitted that it was purely an accident (due to tyre burst), because the accused had made utmost effort to avoid the accident and due to this his vehicle lost control and hit the wall and got turtled. Learned counsel had submitted that the prosecution witnesses had failed to prove the charge against the accused and hence the accused may be acquitted from the charge.

14.He further argued that the prosecution cannot derive a conclusion on presumption that the accused was negligent. He further argued that when the prosecution could not prove that the accused was negligent in his driving, he should be acquitted forthwith.

15.In view of the discussion above, before arriving to decision, I would like to put that to prove the offence under section 279 IPC the prosecution has to prove that the driver was reckless or negligence while driving. Similarly to prove the offence under section 337 IPC, the driver has to be so much rash or negligent in his driving that such act might cause endanger to public life or safety. Similarly to prove the offence under section 304(A) IPC, the act of the driver has to be so much rash and negligent in his driving that he is not bothered about the consequence of such reckless driving. The question posed, what shall be the degree of "rash or negligent" to engulf penal provision. Let me first, go through the definition of rash and negligent.

16.When a person, conscious of the fact that his action

may cause harm or damage, takes the action with utter indifference to the consequences, which may ensue from his such act, he is said to have done the act rashly. In other word, when a person, who is aware of the risk, which his action involves, does the act with utter indifference to the consequences, which his action is likely to entail, such an act is a rash act. On the other hand, when a person fails to take, while doing an act, such precaution, which a reasonable and prudent person is expected to take or ought to take, before doing the act, such doing of the act would amount to negligence.

17. Describing as to what is a rash and negligent act, ***Hon'ble Gauhati High Court, in Haider Islam Vs. State of Assam, reported in 2007 (1) GLT 428***, it was observed as under: "the criminal negligence lies in doing an act without taking such care, which a reasonable man would, ordinarily, do. In the case at hand, firstly, let us try to find out whether the accused Dhanjit Sarania was driving the ill-fated vehicle bearing registration no. AS-01-FC-5099 at Dhamdhama - Baganpara PWD road or not. However, the Indian Evidence Act, 1872 does not mandate the requirement of a large or long list of witnesses to prove a fact. What matters is the quality of the evidence tendered and not the quantity. The evidence of a single eye witness can be relied upon if his evidence is trustworthy. In the instant case there is no animosity between the

witnesses and the accused person and thus, I hold that the evidence of the PWs are trustworthy. Also upon perusal of Exhibit 1, it transpires that the driving license of the accused Dhanjit Sarania was seized by the I.O which leaves no doubt as to the identity of the driver of the Starbus bearing registration no. AS-01-FC-5099. So, the first essential ingredient of Section 279 IPC is established to the extent that the accused person drove the bus bearing registration no. AS-01-FC-5099 on the day of the occurrence.

18.Dhamdhama - Baganpara PWD road is the place of occurrence as per the ejahar and the depositions of PWs. The expression 'public way' has not been defined in the IPC but in general parlance it would mean a place or way where any member of the general public can frequent for thoroughfare. Thus, in my opinion, the P.O is undisputedly a 'public way' where members of the public have every right for thoroughfare and where the offending bus bearing registration no. AS-01-FC-5099 was being driven at the time of the collision. Resultantly, the second essential ingredient of Sec 279 IPC is established.

19.As a rule of road safety, while a person is driving a vehicle on the road, he should keep in mind the safety of the pedestrians and other persons and vehicles on the road. Accordingly, one should exercise utmost care and caution while driving a vehicle. It is a settled law that mere high speed does not necessarily mean rash

and negligent driving. The term “rash and negligent” has nowhere been defined in the IPC. Whether the driving of a vehicle is rash and negligent will depend on the facts and circumstances of the case.

20.The Apex Court in the case of ***Bhalchandra v. State of Maharashtra reported in AIR 1968 SC 1319***, held that criminal negligence is gross and culpable neglect or failure to exercise reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. A person who drives a vehicle is liable to be held responsible for the act as well as the result. There is no denial as to the death of Rafik Sai in the occurrence. During his examination u/sec 313 Cr.P.C. he simply denied the accident and stated that he did not drive the offending vehicle. Moreover, there was no attempt on the part of the accused to prevent the accident and he thus failed in exercising the duty of care cast upon him by the rule of the road. Had he exercised proper care and caution such an accident might by all means have been avoided. No evidence was adduced by the defence to establish that due to negligent driving of the Starbus or due to tyre burst, the mishap took place. There is also no evidence to show that the accident took place despite the care and caution, which the accused driver

ought to have taken. Accordingly, the third essential of offence u/sec 279 IPC is proved beyond an iota of doubt.

21. Now, as far as the offence u/sec 337 IPC is concerned, the prosecution has examined only one injured person namely PW4. The prosecution has not examined the doctor/doctors who had medically examined/treated the victims. The prosecution has also not exhibited the injury report of the persons said to have been injured in the accident. PW-1 has stated in his evidence that he saw the victims at the P.O and that one person sustained severe injuries and was taken to Dhamdhama medical but was declared dead and PW-2 had also stated that after the accident he saw the injured persons / passengers of the bus were taken to medical. But without any medical evidence as to the fact and nature of the injuries sustained by the victims of the accident, I am not inclined to hold the accused person guilty u/sec 337 IPC.

22. In the case of ***Sri Nageshwar Shri Krishna Ghobe v. State of Maharashtra reported in AIR 1973 SC 165, the Hon'ble Supreme Court of India*** observed that, "The statements of the witnesses who met with an accident while travelling in a vehicle or those of the people who were travelling in the vehicle driven nearby should be taken and understood in their correct perspective as it is not necessary that the occupants of the vehicle should be looking in the same direction.

They might have been attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. The Court has held as under:

“6. In cases of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during the few moments immediately preceding the actual accident, from which its true cause can be ascertained. When accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own preoccupations and in the normal course, their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what happened. It is seldom- and it is only a matter of coincidence- that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know something more,

then what they may happen to see there, would lead them to form some kind of opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye-witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured. In the present case, the person who died in the accident is obviously not available for giving evidence.”

23. Coming to the offence u/sec 304A IPC, the prosecution has to establish the presence of the following essential ingredients in the act of the accused person:

- i) There must be death of the person in question;
- ii) Such death must have been caused by the accused person;
- iii) That such act of the accused was rash and negligent and that it did not amount to culpable homicide.

24. The fact that Rafik Sai lost his life in the accident on

Dhamdhama - Baganpara PWD Road near Dhamdhama Girls High School is an undisputed fact. The cause of death of Rafik Sai is also established from the post-mortem report of the deceased (though not exhibited by the prosecution). According to the opinion of M.O, death was due to coma resulting from head injury. The M.O also stated that all the injuries were ante-mortem and caused by blunt force impact. The defence also failed to establish any stigma of doubt regarding contributory negligence on the part of the deceased. In view of the above, I hold that Rafik Sai died as a result of rash and negligent driving of the Starbus by the accused Dhanjit Sarania and hence, I find him guilty u/sec 304A IPC.

25. Coming to the offence u/sec 427 IPC, none of the PWs have stated about the damage caused by the vehicles involved in the accident. PW5 also stated that his bus damaged one wall and he paid for the damage. However, the prosecution in this aspect has examined the Motor Vehicle Inspector but has not exhibited any report of the Motor Vehicle Inspector. In the absence of any cogent evidence as to the actual damage caused by the vehicles involved in the accident, I am not inclined to hold the accused person guilty u/sec 427 IPC.

26. In the light of the above discussion, I am of the opinion that the prosecution has been able to establish the guilt of the accused person u/sec 279/304A IPC

beyond reasonable doubt and at the same time it failed to bring home the offences u/sec 337/427 IPC.

ORDER

27. In the result, the accused Dhanjit Sarania is convicted u/sec 279/304A IPC and acquitted from the offences u/sec 337/427 IPC. Heard the convicted accused person on the point of sentence. He prayed for mercy and leniency. In the instant case, it has been found that due to negligence on the part of the accused person, *an innocent person lost his life*. At the time when he was driving the vehicle, accused Dhanjit Sarania had total disregard for human safety and he forgot that the lives of several people would depend on his cautious driving.

28. *The Hon'ble Supreme Court of India in the case of Dalbir Singh v. State of Haryana reported in AIR 2000 SC 1677* observed as follows:

“When automobiles have become death trap, any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain deterrent element in the sentencing

sphere any latitude shown to them in that sphere would tempt to make driving frivolous and frolic.”

29. Keeping in view the above observation of the Apex Court and also upon considering the facts and circumstances of the prosecution case, I am not inclined to deal with the accused under the provisions of the Probation of Offenders Act or u/sec 360 of the Cr.P.C. The accused person deserves a moderate sentence of imprisonment and fine in order to deter like-minded offenders who do not exercise requisite care and caution while driving on the road resulting in numerous such fatal accidents everyday.

30. Accordingly the accused Sri Dhanjit Sarania is sentenced to undergo rigorous imprisonment for 1 (year) with fine of Rs. 1000/- (Rupees One Thousand) in default to undergo imprisonment for 1 (one) month u/sec 304A IPC. He is also sentenced to undergo rigorous imprisonment for a period of 1 (one) month u/sec 279 IPC. Both the substantive sentences of imprisonment are to run concurrently. The period of detention, if any, already undergone by the accused person in connection with the instant case is to be set off against the substantive sentence of imprisonment awarded to the accused person.

31. During sentence hearing, the convict has prayed before this court that, this is his first time offence. He has no criminal case lodged in any other court. He belongs to a poor family and the only bread earner. He

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has aged parents and prayed to consider his case and take a lenient view.

32.Considering above, it is found that, the convict has repented for his guilt. Therefore, his punishment is reduced and is imposed a fine of Rs. 1,000/- (Rupees One Thousand) under the aforementioned Penal Provisions. The fine amount if deposited be sent to Govt. Head.

33.Release the convict forthwith.

34.The bail bond in operation, shall remain in force for a period of six months as per provision under section 437-A(1) of Cr.P.C.

35. Given under my hand and seal of this court on this 3rd day of January, 2022.

Chief Judicial

Magistrate

Nalbari

APPENDIX

Prosecution witness:

PW 1- Ananta Mohan Das,

PW 2- Kalpa Baishya,

PW 3- Jagadish Dey,

PW 4- Sanjib Ramchiary,

PW 5- Keshab Kalita,

Prosecution Exhibits:

Exhibit 1 - Seizure list,

Exhibit 1(1) - Signature of seizure witness,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Chief Judicial

Magistrate,

Nalbari