

			bail				for the purpose of section 428 of IPC
A-1	Md. Moktab Ali			U/S 279/337 /304(A) of IPC	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	18/02/2017
Date of FIR	20/02/2017
Date of charge-sheet	31/03/2017
Date of O.E.	17/12/2018
Date of commencement of evidence	05/04/2019
Date on which judgment is reserved	14/09/2022
Date of judgment	14/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case sets into motion by filing a FIR by the informant, Smti Dipti Kalita on 20/02/2017, stating that on 18/02/2017 at about 4:00 P.M., when her husband Sunanda Kalita was going as pillion rider with Sri Kushal Thakuria to Kamarkuchi from Nalbari through Digheli-Balilesa road in motor cycle bearing registration no. AS-01BU-7373. The rider Sri Kushal Thakuria was riding the motor cycle carefully. At Block Chariali of Digholi village a mini truck bearing registration no. AS-09C-2283 coming in rash and negligence manner hit their bike from backside. As a result her husband fell on the road and expired on spot. The rider of the motor cycle Sri Kushal Thakuria also sustained injury. The driver of the mini truck fled away from the place of occurrence. Hence, she lodged this case.
- 2.** The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 126/17, under section 279/338/304(A) of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused person, Md. Maktab Ali under Section 279/337/304(A) of IPC.
- 3.** In due course, the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Particulars of offence u/s

279/337/304(A) of IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. The prosecution side examined eleven (11) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed.
5. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Ld. Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused person, on 18/02/2017 at about 4:00 P.M., at Block Chariali of Digholi village, under the jurisdiction of Nalbari P.S. drove a mini truck bearing registration no. AS-09C-2283 in a public way in rash/negligent manner so as to endanger human life or to be likely to cause hurt or injury to any other person and thereby committed an offence u/s 279 I.P.C ?*
- (ii) *Whether on the same day, time and place, the accused caused hurt to Late Sunanda Kalita and Sri Kushal Talukdar by driving a mini truck bearing registration no. AS-09C-2283 rashly/negligently and thereby committed an offence u/s 337 I.P.C?*

(iii) *Whether on the same day, time and place, the accused caused the death of Sunanda Kalita by doing a rash and negligent act not amounting to culpable homicide, to wit and thereby committed an offence u/s 304(A) I.P.C?*

DISCUSSION, DECISION AND REASONS THEREOF:

8. In the instant case the accused is facing trial u/s 279/337/304(A) of IPC.
9. PW-1 (informant), Smti Dipti Kalita deposed that she knows the informant. She does not know the accused person. Her husband Sunanda Kalita used to work at Forest Department, Nalbari. On 18.02.17, her husband along with colleague Kushal Thakuria were going towards Kamarkuchi on a motorcycle. Near Digheli, Pub-Nalbari Development Block chowk, one mini truck hit the motorcycle from behind. Kushal Thakuria was riding the bike and her husband was the pillion rider. Her husband died on the spot. She received information from police about the incident. Later she filed the ejahar. Ext 1 is the ejahar and Ext 1(1) is her signature. Police recorded her statement. During cross-examination she says that at the time of incident, she was in her house. She has not seen the accident. What she deposed in court is on the basis of what she had heard from police. Thus, from the evidence of PW-1 (informant) it is seen that she is just a hearsay witness and being a hearsay witness her evidence could not be relied upon.

- 10.** PW-5, Sri Pradip Kr. Barman stated that Md. Ashraf Ali called him over phone and informed him that the victim has expired in an accident in which a vehicle hit him. He has not seen the incident. He was not present at the time of alleged incident. PW-8, Sri Prabhat Sarma another hearsay witness. He stated that hearing hue and cry he came out and saw a huge gathering and also saw one person was lying on the road on his face. He heard that it was a case of road traffic accident and the victim has already expired.
- 11.** PW-6, Md. Rafique Ali and PW-7, Sri Phanin Barman are the seizure witnesses. They both deposed that they put their signature on a blank paper. They have no knowledge that who caused the accident. They only heard about the incident.
- 12.** PW-9, Sri Mintu Kalita another seizure witness deposed that he reached at the place of occurrence after the incident. One dead body was lying on the road and one truck was standing at a distance of 50 meter from the dead body. The police came to the place of occurrence and sent the dead body for postmortem. The truck was loaded with sand and iron rod. Police seized the vehicle. Police took his signature on the seizure list. Police recorded his statement. Exhibit P-7 is the seizure list and Exhibit P-7(1) is his signature.
- 13.** PW-10 Sri Kushal Thakuria stated that he knows the informant. Her husband, Late Sunanda Kalita, who is the deceased victim of this case was his colleague in Forest

Department. He does not know the accused of this case. The incident occurred about 4 / 5 years back at about 3.30 PM. He was riding their office motorcycle from their office situated at Bidyapur, Nalbari to Mukalmua Police Station by Nalbari-Balilecha road. Late Sunanda Kalita was going as a pillion rider of his bike. When they reached near Balilecha Pub-Nalbari block, a mini truck hit his bike from back side. The victim Sunanda Kalita fell of the road. He also fell on the road. The victim expired on spot due to the injuries, he sustained on his head. The truck ran away after hitting. He sustained injury on his head, on his back and on his leg. Their office staff, Tankeswar Barman, Dwipen Deka etc were also following them by three numbers of bikes. They stopped at the place of occurrence. The other staff waited there and he was brought to Nalbari Forest office and thereafter to SMK Civil Hospital. Police recorded his statement when wife of the victim lodged this case.

14. PW-11 (IO), Inspector Dipak Bargayari stated regarding the investigation of the case.

15. PW-2 (MO), Dr. Dipul Das deposed that on 18-02-2017 he was on duty at SMK Civil hospital as Sr M&HO. He submitted the post mortem report of Late Sunanda Kalita who was brought to Mourge House SMK Civil Hospital by 476 Mukul Barman of Nalbari Traffic Branch and accompanied by relative Pradeep Kr Barman and Mukut Choudhury at 6.00 PM on 18-2-2017. They have also identified before him.

Examination was conducted on 18-2-2017 at 8.00 PM as per inquest report. On examination he found: Crush head injury, brain matter outside, blood clot was out with water, ante-mortem in nature. Death was due to head injury. **Exhibit P-2/PW-2** is the post mortem report no. 21/2017 dated 18-2-2017, which he submitted in connection with Nalbari PS traffic branch GD Entry no. 464 dated 18-2-2017. **Exhibit P-2(1)** is his seal and signature. It was counter signed by the then Joint Director, Health Service, Nalbari. **Exhibit P-3** is the inquest report forwarded by the then Traffic In-Charge, Nalbari PS Sri Dipak Bargayary and **Exhibit P-3(1)** is his seal and signature.

- 16.** PW-3 (MO), Dr. Birendra Nath Medhi deposed that on 18-02-2017, he was on duty as Sr. M. & H. O. at SMK Civil Hospital, Nalbari. On that day at 6.22 PM, he examined injured person Mr. Kushal Thakuria, age- 48 years, S/o- Sri Manoranjan Thakuria, R/o- Kaithalkuchi, escorted by ASI Lutfur Rahman and accompanied by Md. Nizamuddin Ahmed, in connection with Nalbari PS Traffic Branch GDE No. 464 dated 18-2-2017, in Emergency Registration No. 3159. On examination he found: i) Pain and swelling left elbow joint, ii) abrasions left knee anteriorly. Investigation & treatment modules: i) X-Ray left elbow (normal study). Nature of Injuries: Simple Injury. Age of Injuries: Fresh. Injuries caused by: Blunt object. Opinion: Simple injury caused by blunt

object. **Exhibit P-4/PW-3** is the injury report prepared by him and **Exhibit P-4(1)** is his seal and signature.

- 17.** Now coming to the evidence of PW-4, Sri Homeswar Barman it is found that he does not know the informant. He does not know the victim. He knows the accused. He was his driver. He had one 407 mini truck. He does not remember the registration number. The accused was the driver of his 407 mini truck. **Exhibit P-5/PW-4** is the seizure list and **Exhibit P-5(1)** is his signature. He put the signature at the Nalbari Police Station. The incident occurred in the year 2017. The accused was driving the mini truck. He was transporting articles from his brother's shop situated at Balilecha Road, Nalbari to Barbhag by the truck. An accident took place. Public informed him. After 2 / 3 days, he went to Nalbari Police Station with the documents of the vehicle. He submitted the documents to the police. Police took his signature on the seizure list. Later on, he took custody of the seized truck at the police station. The driver was absconding for 2 / 3 days. After 3 / 4 days, he produced the accused driver in the dock at the police station. He took bail of the said accused driver present in the dock. **Exhibit P-6/PW-4** is the bail bond and **Exhibit P-6(1)** is his signature as a bailor. He heard that one person died under the wheels of his vehicle which was seized. At that time, accused driver was driving the vehicle. Police recorded his statement.

- 18.** Though from the evidence of PW-4 it is clear that the accused was driving the alleged vehicle, but, from his cross-examination it can be seen that he was not present at the time of alleged occurrence at the alleged place of occurrence and he has not seen the alleged occurrence. Moreover, from the entire evidence on record it can be seen that not a single person has seen that the offence was committed by the accused person due to his rash and negligence driving.
- 19.** Also, the cross-examination of I/O (PW-11) shows that Sri Hemanta Rajbongshi and Sri Narayan Kalita are not made witnesses in this case. Their shop houses are situated near the place of occurrence as per the sketch map.
- 20.** The rash and negligent driving is the crux of the offence u/s 279/337/304(A) of IPC. From the evidence of the owner of the vehicle i.e., PW-4 it is clear that the accused was the driver of the offending vehicle at the time of the incident. However, PW-1, PW-5, PW-6, PW-7, PW-8 and PW-9 have not seen the incident. So, not a single witness has deposed incriminating against the accused saying that at the time of the incident the accused was driving in rash and negligent manner.
- 21.** Hence, from the aforesaid discussions and decisions, it is clear that prosecution side failed to adduce credible evidence to prove that on the day of the incident it is

the accused who was driving the vehicle in high speed and hit the deceased victim.

CONCLUSION

22. The prosecution side failed to prove its case that accused person has committed an offence u/s 279/337/304(A) of IPC.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused person beyond reasonable doubt.

Accordingly, the accused Md. Moktab Ali is acquitted from the offence under section 279/337/304(A) of IPC and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC. The seized materials to be disposed of as per law.

Given under my hand and seal of this court on this 14th day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Smti Dipti Kalita	Informant
PW-2	Dr. Dipul Das	Medical witness
PW-3	Dr. Birendra Nath Medhi	Medical witness
PW-4	Sri Homeswar Barman	Other witness
PW-5	Sri Pradip Kr. Barman	Other witness
PW-6	Md. Rafique Ali	Other witness
PW-7	Sri Phanin Barman	Other witness
PW-8	Sri Prabhat Sarma	Other witness
PW-9	Sri Mintu Kalita	Other witness
PW-10	Sri Kushal Thakuria	Other witness
PW-11	Inspector Dipak Bargayari	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	Ejahaar
2.	Exhibit P-2/PW-2	Post mortem report
3.	Exhibit P-3	Inquest report
4.	Exhibit P-4/PW-3	Injury report
5.	Exhibit P-5/PW-4	Seizure list
6.	Exhibit P-6/PW-4	Bail bond
4	Exhibit P-7	Seizure list

5.	Exhibit P-8	Sketch map
6.	Exhibit P-9/PW-11	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari