

			bail				for the purpose of section 428 of IPC
A-1	Md. Moktab Ali			U/S 279//30 4(A) of IPC	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	22/11/2019
Date of FIR	10/10/2020
Date of charge-sheet	30/11/2020
Date of O.E.	28/03/2022
Date of commencement of evidence	30/07/2022
Date on which judgment is reserved	N/A
Date of judgment	28/09/2022
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, Sri Nagen Ch. Medhi, stating that on 22/11/2019 at about 2:30 P.M., when his wife Niruprabha Medhi was riding as a pillion rider in the motor cycle bearing no. AS-01-ED-4053 from Guwahati to Mukalmua, then due to the rash and negligent riding of the rider, the wife of the informant fell down while crossing the speed breaker near Ghoga PWD Road. As a result, his wife sustained injury on her head. Though the nearby people took her to GNRC Hospital, Dispur but she succumbed to her injury on 25/11/2019 at about 10:15 PM. Hence, she lodged this case.
- 2.** The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 436/2020, under section 279/304(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, Sri Nayan Jyoti Medhi under Section 279/304(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 279/304(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 five (05) 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 22/11/2019 at about 2:30 P.M., at Ghoga PWD Road, under the jurisdiction of Mukalmua P.S. rode a motor cycle bearing no. AS-01-ED-4053 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 the death of Niruprabha Medhi 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 279/304(A) of IPC.
- 9.** PW-1, Sri Prafulla Talukdar deposed that he knows the informant. He is his co-villager. The accused is the son of the informant. The incident occurred about 3 / 4 years back at about 2.00 / 3.00 PM at Ghoga Chowk on road. He was at his house situated at a distance of 5 / 6 Km from the place of occurrence. When he heard about the incident he went to the place of occurrence. He saw on the place of occurrence the dead body of the victim Smti. Prabha Medhi was lying on the road. She was taken to the medical. He had left the place of occurrence before the police arrived at the place of occurrence. Defence declined to cross-examine this witness.
- 10.** PW-2, Sri Dipu Deka is the seizure witness. Exhibit P-1/PW-2 is the seizure list and Exhibit P-1(1) is his signature. In his testimony he says that he knows the informant. The informant is presently residing at Swahid Nagar, Noonmati. His ancestral house is situated at Mukalmua. He knew the deceased victim. She was wife of the informant. The accused is the son of the informant and the deceased victim. The incident occurred on 22-11-2019 at Mukalmua. At 3.00 PM, he received the information from the accused about the incident. He was riding his Auto at that time at Guwahati. He immediately came to Mukalmua. The victim was already brought to GMCH. He has not visited the place of occurrence. About 2 3 years back, he went to Mukalmua PS along with the

informant. On that day, he put his signature on the seizure list. He put his signature as a witness. Police recorded his statement.

- 11.** PW-3, Sri Nagen Ch Medhi is the informant of this case. According to him **Exhibit P-2** is the FIR and **Exhibit P-2(1)** is his signature. The accused in the dock is his only son. His wife Niruprabha Medhi is the deceased victim. The incident occurred on 22-11-2019 at 3.00 PM at Ghoga Chowk on PWD road. He was at his house situated at Guwahati. His wife and his son was visiting his ancestral house situated at Kaldi. His son was riding his bike and his wife was coming as a pillion rider when they were coming from Guwahati. He does not know what happened. His son called him and told him over phone that his wife fell from the bike and sustained injury. He brought his wife / his mother to Guwahati for treatment. She was treated at GNRC Guwahati for 4 days. Thereafter, she succumbed to her injuries at the hospital. After few days, he lodged the FIR. Police recorded his statement. During cross-examination informant (PW-3) says that the FIR was scribe by someone else. He does not know the scribe of the FIR. He put his signature on it. He went to the police station to get a certificate for death report of his wife for insurance benefit. He is staying with his son who works in a private job. He has not seen the incident. He has no objection if the accused get acquittal in this case.

12. PW-4, Sri Samin Kalita deposed that he knows the informant. His ancestral house is situated at Kaldi. He is a resident of Kaldi. He knows his son who is the accused in this case. He knew his wife who is the deceased victim of this case. The incident occurred about 3 years back at about 2.30 PM. He was at his house. The incident occurred at Ghaga Chowk about 6 kilometer from his house. After getting telephonic information of the incident, from the accused, he went to the place of occurrence. The victim was injured. Public gathered there. They sent the victim to the medical. The accused accompanied the victim to the medical. Police recorded his statement at police station. During cross-examination PW-4 says that he has not seen the incident.

13. Thus, from the evidence of PW-1, PW-2, PW-3 and PW-4 it is seen that none have seen the alleged incident. All of them are hearsay witness.

14. Moreover, the informant (PW-3) Sri Nagen Ch Medhi has exhibited Exhibit P-2 as the FIR and Exhibit P-2(1) is his signature. Exhibit P-2 i.e., FIR reveals that date of occurrence is 22-11-2019 and the case is lodged after almost 1 year i.e., on 10-10-2020. But nowhere in the case record there is any explanation that why the case is lodged after one year of the alleged incident. Hence, this fact goes to the root of the prosecution story and shakes the credibility of the prosecution story.

- 15.** It is a settled principle that delays in lodging the FIR results in embellishment and the report gets bereft of the advantage of spontaneity. There is also danger of introduction of a coloured version exaggerated account or concocted story as a result of deliberation and consultation. Hence, the evidence of PW-3 (informant) has to be appreciated cautiously.
- 16.** PW-5 (I/O), Sri Jyotish Kalita stated regarding the investigation of the case. During cross-examination I/O says that the statements of the witnesses were recorded after one year of the incident. The alleged place of occurrence is at Ghoga. He could not find any witness in Ghoga in connection with this case.
- 17.** It is to be noted that the rash and negligent riding is the crux of the offence u/s 279/304(A) of IPC. From the evidence on record it can be seen that not a single witness have deposed incriminating against the accused saying that at the time of the incident the accused was riding the motor cycle in rash and negligent manner.
- 18.** 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 riding the vehicle in high speed and due to which the wife of the informant succumbed to death.

CONCLUSION

- 19.** The prosecution side failed to prove its case that accused person has committed an offence u/s 279/304(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 Sri Nayan Jyoti Medhi is acquitted from the offence under section 279/304(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 Cr.P.C. The seized materials to be disposed of as per law.

However, though the prosecution side failed to prove the case, but the role of the investigative officer in conducting the investigation and the FIR that sets the case in to motion itself is also not acceptable to common prudence.

Informant (PW-3) lodged the case against his son/ accused alleging in the FIR i.e Exhibit P-2 on 10-10-2020 alleging that the accused on 22-11-2019 rode the bike on high speed and negligently due to which his wife/victim fell on PWD road and sustained injury and died. On 10-10-2020, on the day of the

lodging the FIR, IO completed almost all the investigation except collecting the post mortem report. Witness Dipan Deka is resident Guwahati, neighbour of the accused and informant. He is a seizure witness of the bike. The other witnesses i.e PW-1, PW-4 are resident of Kaldi, ancestral village of the informant and the accused. Not a single witness of Ghoga i.e the place of occurrence is traced by the IO as per case diary. The IO arrested the accused and informant took bail of the accused by submitting bail bond i.e Exhibit P-4. Informant took the custody of the bike. As such, the record caused doubt that the FIR was lodged due to service of some other purpose then delivery of criminal justice. Criminal Justice Delivery mechanism is running on the resources of the state and such cases, which are lodged, as seemed from the record itself, for some other purpose then delivery of justice, is misappropriation and wastage of the resources of the state. Hence, the copy of the order and judgment to be sent to the District Magistrate, Nalbari, SP , Nalbari and DGP, Assam for their information.

Given under my hand and seal of this court on this 28th 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	Sri Prafulla Talukdar	Other witness
PW-2	Sri Dipu Deka	Other witness
PW-3	Sri Nagen Ch. Medhi	Informant
PW-4	Sri Samin Kalita	Other witness
PW-5	Sri Jyotish Kalita	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH
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		WITNESS, OTHER WITNESS)
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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 P-1/PW-2	Seizure list
2.	Exhibit P-2	FIR
3.	Exhibit P-3	Sketch map
4.	Exhibit P-4	Bail bond
5.	Exhibit P-5	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