

P.R.C no. 976/2019

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

P.R.C no. 976/2019

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

State of Assam

-Vs-

Md. Badrul Ali....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. Durlav Thakuria, Ld. Advocate,

Dates of evidence : 30/12/19, 20/01/20, 31/03/21,
09/12/21 & 22/12/21.

Date of argument : 30/12/2021.

Date of judgment : 04/01/2022.

J U D G M E N T

PROSECUTION CASE:

1.The prosecution case in brief as unfolded from the 'ejahar' dated 17/02/2019 filed by the informant Nur Islam Ali is that on 12/02/2019 at about 4:10 pm, his brother Munnaf Ali was returning home from Nalbari on Scooty bearing registration no. AS-01-DN-7184 and as he reached NH31 near Barkura West crossing, the offending vehicle being one Dumper bearing chassis no. MB1HTHD1JPXG0759, engine no. JXPZ151472 which was coming from the same direction and was driven by its driver/accused Badrul Ali rashly and negligently suddenly tried to overtake the Scooty of his brother from the right side without any signal and as such the body of the offending dumper vehicle hit the Scooty of his brother causing various injuries to his brother Munnaf Ali. The Scooty of his brother was also damaged in the said accident. Local public immediately sent his brother to SMK Civil hospital, Nalbari where his brother was declared dead. As he was busy in the treatment of his brother there was delay in filing the ejahar. Hence the case.

2.The said 'ejahar' was received and registered as Nalbari P.S case no. 114/19 u/s 279/304(A)/427 I.P.C. After completion of investigation charge-sheet no. 100/19 dated 31/03/19 was submitted against accused person Badrul Ali u/s 279/304(A)/427 I.P.C. Copy was furnished to the accused person. Particulars of offence and substance of accusation were read over and

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explained to the accused to which he pleaded not guilty and claimed to be tried.

3.POINTS FOR DETERMINATION:

(i) Whether on 12/02/2019 at about 4:10 pm at NH31 near Barkura West Crossing under Nalbari P.S, the accused drove a Dumper bearing chassis no. MB1HTHD1JPXG0759, engine no. JXPZ151472, in a manner so rash and negligent, endangering human life, and thereby committed an offence punishable u/s 279 of the I.P.C?

(ii) Whether on 12/02/2019 at about 4:10 pm at NH31 near Barkura West Crossing under Nalbari P.S, the accused caused the death of victim Munna Ali by driving the Dumper vehicle in a rash and negligent manner which is not amounting to culpable homicide and thereby committed an offence punishable under section 304(A) of the IPC?

(iii) Whether on 12/02/2019 at about 4:10 pm at NH31 near Barkura West Crossing under Nalbari P.S, the accused committed mischief by causing wrongful loss or damage to the property of the victim and is liable to be punished under Section 427 of 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.The accused Badrul Ali was charged for an offence under section 279, 304(A), 427 IPC for rash or negligent driving endangering human life and thereby causing death of Munnaf Ali and also for causing loss or damage by mischief. To support its case, the prosecution brought in the witness box, five (5) witnesses. PW3 is the informant of this case, PW4 is the Medical officer who conducted the post mortem of the deceased & PW5 is the investigating officer of this case.

6.Looking at the allegations and charges against the accused, the appreciation of the oral as well as documentary evidences on record can be discussed into three phases :-

- Whether the accused was driving the said dumper by which the accident took place?
- Whether in the said accident Munnaf Ali got injured and succumbed to his injuries?
- Whether the accused was driving his vehicle in rash and/or negligent manner?
- Whether the accused intentionally caused wrongful loss or damage to the vehicle of Munnaf Ali?

1.After the closing of the prosecution witness, the statement of the accused Badrul Ali was recorded under section 313 Cr.P,C. The accused Badrul Ali denied the allegation of rash and/or negligent driving.

2.PW1 Tulu Ali deposed that around 10 months ago an accident had taken place between a Scooty and one Dumper near Haripur over the divider during evening time. He came to the P.O after the incident. The scooty was lying on the ground. One Dumper was taken to police reserve. He did not see any victim at the P.O. Police had seized the scooty.

3.PW1 during cross-examination deposed that he does not remember the registration number of the scooty. He does not know if the rider of the scooty was wearing helmet or not. One helmet was lying on the ground. The scooty was damaged from the front side. Police had seized everything from the P.O. The accident took place during evening time at about 4:30 pm.

4.PW2 Mrinal Kalita deposed that the incident took place in the month of February at about 4 pm near Barkura chowk. One scooty was lying on the ground and one Dumper was present at the P.O. He was at the P.O at the time of incident. He reached the P.O with his bike and was going towards Barama when he witnessed the incident. He lifted the scooty as per direction of the police. He does not know who was the owner of the scooty.

5.PW2 during cross-examination deposed that he has

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not seen the accident by himself. He does not know the registration number of the scooty and the dumper.

6.PW3 Nur Islam Ali who is the informant deposed that the incident took place on 12/02/19 at about 4:30 pm. He was informed by police that Munnaf Ali had met with an accident and that he died on the spot. The accident took place at Barkura. His brother was hit by a dumper truck at Barkura.

7.PW3 during cross-examination deposed that he filed the ejahar after 5 days of the accident.

8.PW4 ASI Bhupen Kalita who is the I.O deposed that on 12/02/2019 Tulu Ali informed them that an accident had taken place at NH31. Thereafter it was registered as GD entry no. 310 dated 12/02/19 and he went to the spot and seized two vehicles. The injured was admitted to SMK civil hospital but was declared dead. On 17/20/19 Nur Islam Ali filed the ejahar. He then started investigation and apprehended the accused person and recorded his statement and allowed him to go on bail. After completion of investigation he submitted charge-sheet against the accused Badrul Ali u/s 279/304(A)/427 IPC.

9.PW4 during cross-examination deposed that no helmet was seized by him. No denomination of Rs. 200 was seized by him on the spot. He did not seize any D/L from the deceased person. The accident site was spotted to him by local people. He has seen no blood stains at the spot. He has not collected any blood stains

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and sent to FSL.

10.PW5 Dr. Dilip Kr. Nath (M.O) deposed that on 13/02/2019 he performed post mortem of deceased Md. Munnaf Ali and found lacerated injury of size 7cm x 6cm into brain deep over forehead, lacerated injury of size 2 cm x 1 cm into muscle deep over right side over neck, lacerated injury of size 10 cm x 6 cm into muscle deep over pubis, lacerated injury of size 4 cm x 2 cm into muscle deep over left knee. No ligature mark was detected over the neck. Opinion - death is due to coma as a result of head injury and injury to the brain. All injuries were anti-mortem and caused by blunt force impact. Time since death 12 - 24 hours (approximately). PW5 deposed that the inquest report was prepared by the I.O in his presence and he had put signature on the inquest report.

11.PW5 during cross-examination deposed that in the post mortem report he has not stated anywhere regarding any RTA injury. No one informed him that any road traffic accident was involved. The injury may be caused due to falling over hard surface.

12.Hence, from the oral evidences of PW1, PW2 and PW3, it comes forward that in the accident caused by the dumper driven by the accused, the person who was in the scooty died. PW3 brought forward that the person who died in the incident was his brother Munnaf Ali who was in his scooty. PW4, brought forward that during investigation, he found that the deceased was Munnaf

Ali whose post mortem was later conducted by PW5. The documentary evidences of Exhibit 1, Exhibit 2, Exhibit 6 and Exhibit 7 corroborates the oral evidences on record. It is to be noted that neither of these Exhibits were challenged or disputed by the defence side.

13.The fact that the deceased Munnaf Ali was riding the scooty which met the accident by the dumper of the accused in which Munnaf Ali died was not challenged or disputed by the defence side neither by cross-examining the prosecution witnesses in that point nor at the stage of argument. Hence, from the above discussions, the fact that the deceased Munnaf Ali died in the accident caused by the accused by his dumper comes forward as "proved".

14.Hence, upon appreciating the oral as well as the documentary evidences on record and the discussion made till now, it comes as proved beyond all reasonable doubt that the accused was driving dumper bearing chassis no. MB1HTHD1JPXG0759, engine no. JXPZ151472 by which the accident took place in which Munnaf Ali who was in his AS-01-DN-7184 scooty got injured and succumbed to his injuries. As the accused was charged for causing death of Munnaf Ali by his rash and/or negligent driving, hence now the only point left to be ascertained is whether the accused was driving his dumper bearing chassis no. MB1HTHD1JPXG0759, engine no. JXPZ151472 in rash and/or negligent manner

which resulted in the death of Munnaf Ali?

15. Upon scanning the entire oral evidences of the prosecution side, it appears that on the basis of the depositions of the prosecution witnesses, they can be classified into three sets:-

- Firstly, those who did not witness the incident taking place;
- Secondly, those who tried to bring forward that there was no act of rash and negligent driving by the accused;
- Thirdly, those who came forward as eye-witnesses to the incident to depose that the rash and negligent driving of the accused caused death to Munnaf Ali.

1. PW1 deposed that an accident had taken place between a Scooty and one Dumper near Haripur over the divider and that he came to the P.O after the incident. The scooty was lying on the ground. One Dumper was taken to police reserve. PW1 during cross-examination deposed that he does not remember the registration number of the scooty.

2. PW2 Mrinal Kalita deposed that one scooty was lying on the ground and one Dumper was present at the P.O. He was at the P.O at the time of incident. He reached the P.O with his bike and was going towards Barama when he witnessed the incident. PW2 during cross-

examination deposed that he has not seen the accident by himself.

3.PW3 deposed that on 12/02/19 at about 4:30 pm he was informed by police that Munnaf Ali had met with an accident and that he died on the spot. The accident took place at Barkura. His brother was hit by a dumper truck at Barkura.

4.Though the evidence of PW3 is not direct evidence in regard to the alleged act of rash and negligent driving and appears to be hearsay evidence, but the said evidence of PW3 cannot be out rightly rejected and thrown in the dustbin. The evidence of PW3 can be admissible and reliable if it forms corroboration to the other witnesses of the incident or it forms a fact forming part of same transaction as provided under Section 6 of the Indian Evidence Act. Now, the oral evidences of PW's alongwith the documentary evidences on record are to be scrutinised in furtherance to it.

5.Upon minutely scanning the evidence of PW1 and PW2, it appears that they have not deposed as to the fact as to who was driving the dumper at the time of accident, they only limited their statement to the extent that an accident had taken place between one dumper and a scooty.

6.Exhibit 4 was prepared by PW4 i.e. the IO of this case. It is pertinent to state that Exhibit 4 was not challenged or disputed by the defence. Further the identity of the accused is already ascertained given the fact that his

name features in the seizure list as the holder of Driving License and further from the statement of PW4 who stated that he apprehended the accused and he interrogated him and on finding sufficient materials, he arrested him.

7.Hence, from the oral and documentary evidences on record and on the basis of the discussions made in the foregoing paragraphs, it is concluded that the fact of driving the dumper by the accused in "very rash and negligent manner" proves that the accused was driving the dumper in rash manner. The fact that the dumper in fast speed "suddenly tried to overtake from the right side without signal and thereby hit the scooty and got over the divider" proves that the accused was driving the dumper in negligent manner. Hence, it is held that the accused Badrul Ali was driving his dumper in rash and negligent manner thereby endangering human life and by his rash and negligent driving he caused an accident resulting in death of Munnaf Ali.

8.The accused Badrul Ali along with Section 279,304(A) IPC was also alleged to commit an offence under section 427 IPC.

9.It appears that Motor vehicle inspection was conducted (though not examined and exhibited by the prosecution) and the Motor vehicle inspector had inspected the scooty bearing registration no. AS-01-DN-7184 on 02/03/2019 and found damages on it. Therefore, it is proved that damage was caused to the

scooty of the deceased.

10. From the discussion in the foregoing paragraph, it is already held that the accused was driving his dumper in rash and negligent manner. By driving his dumper in rash and negligent manner that to in an evening time busy hours (4:10 P.M), the accused was well aware and having sufficient knowledge that he is likely to cause wrongful loss or damage to the public or to any person or property. As of his act of rash and negligent driving, the accused caused destruction of the scooty of the deceased Munnaf Ali. The damages reflected in the MVI report (though not exhibited by the prosecution), in my sense of understanding clearly exceeds the value of more than Rupees fifty in value.

11. In the result, the accused Badrul Ali is convicted u/sec 279/304(A)/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 Badrul Ali had total disregard for human safety and he forgot that the lives of several people would depend on his cautious driving.

12. *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.”

13. 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.

14. Accordingly the accused Badrul Ali 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 304(A) IPC. He is also sentenced to undergo rigorous imprisonment for a period of 1 (one) month u/sec 279 IPC. The accused is also sentenced to pay a fine of Rs. 1000/- (Rupees One

Thousand) in default to undergo imprisonment for 1 (one) month u/sec 427 IPC. 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.

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

16. 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. 2,000/- (Rupees Two Thousand) under the aforementioned Penal Provisions. The fine amount if deposited be sent to Govt. Head.

17. Release the convict forthwith.

18. 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.

19. Given under my hand and seal of this court on this 4th day of January, 2022.

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Chief Judicial

Magistrate

Nalbari

APPENDIX

Prosecution witness:

PW 1- Tulu Ali,

PW 2- Mrinal Kalita,

PW 3- Nur Islam Ali (Informant),

PW 4- ASI Bhupen Kalita (I.O),

PW 5- Dr. Dilip Kr. Nath (M.O),

Prosecution Exhibits:

Exhibit 1 - Seizure list,

Exhibit 1(1) & 1(2) - Signature of seizure witness,

Exhibit 1(3) - Signature of I.O,

Exhibit 2 - Seizure list,

Exhibit 2(1) & 2(2) - Signature of seizure witness,

Exhibit 2(3) - Signature of I.O,

Exhibit 3 - Ejahar,

Exhibit 3(1) - Signature of informant,

Exhibit 4 - Sketch map,

Exhibit 4(1) - Signature of I.O,

Exhibit 5 -Final Form,

Exhibit 5(1) - Signature of I.O,

Exhibit 6 - Post mortem report,

Exhibit 6(1), (2), (3), (4) & (5) - Signatures of M.O,

Exhibit 7 - Inquest report,

Exhibit 7(1) - Signature of M.O,

Defence witnesses & Defence Exhibits :Nil

Chief Judicial

Magistrate,
Nalbari