

*THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
UDALGURI, ASSAM.*

**G.R. CASE NO. 606 of 2016**  
(U/S- 279/304(A) **IPC**)

*STATE*

*-VS-*

*SRI ANJAN SARMAH*

*Resident of*

*Village-*

*PS-*

*Dist. Udalguri, Assam.*

*-----Accused person.*

*Present: Shri Gitali Rabha, A. J. S.*

*Advocate for the Prosecution : Mr. A. Basumatary*

*Advocate for the Defence : Mr. Jaharuddin Ahmed.*

**Evidence recorded on : 16-09-17, 08-12-17 and 19-01-2018.**

**Argument heard on : 07-02-2018.**

**Judgment delivered on : 07-02-2018.**

### **J U D G M E N T**

1. Briefly the prosecution case is that informant Smt. Ramela Basumatary lodged the written ejahar on 01-06-2016 stating that on 27-02-2016 at about 6-30 P.M. in the evening when her husband Suresh Basumatary was coming on his bicycle

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from Swapangaon daily market to his house at Bandarguri, on his way the offending vehicle(Pulser bike) bearing registration no. AS-01/BR-2722, ridden by the accused in rush and negligent manner, hit against her husband, due to which her husband sustained severe injury on his head. Though he was immediately taken to Udalguri Civil Hospital by 108 vehicle, but the doctor declared him dead. Hence this prosecution case.

2. After receiving the aforesaid ejahar, the I/C Bhairabkunda outpost made Bhairabkunda outpost GD Entry No. 8 dated 01-06-2016 and forwarded the ejahar to Udalguri police station for registering a police case under proper Section of law and investigate the matter. Accordingly Udalguri PS case no. 135 of 2016 was registered u/S 279/304(A) I.P.C. The police investigated the case, seized the ill fated vehicle and connected documents, recorded the statement of the witnesses and prepared the seizure list. The vehicle was examined by MVI. The Investigating Officer collected the Post Mortem Report and after completing the investigation he submitted the charge sheet against the accused u/S 279/304(A) I.P.C.
3. Necessary processes were issued for causing appearance of the accused person before the court. The accused appeared. Copies of relevant documents were furnished to the accused. Then the particulars of offence u/S 279/304(A) I.P.C. was read over and explained to the accused to which the accused pleaded not guilty and claims to the tried.
4. During the trial the prosecution has examined as many as five(5) PWs including I/O and DTO. Statement of defence had been recorded u/S 313 Cr.P.C. The defence case is of total denial. No witness has been examined by the defence. Argument had been heard from both sides.
5. I have considered the evidence on record, the statement recorded u/S 313 Cr.P.C. and the arguments advanced. For the purpose of clarity, the following points for determination is hereby framed:

6. **POINTS FOR DETERMINATION OF THE CASE : (I)** Whether the accused had driven his offending vehicle(pulser bike) bearing registration no. AS-01/BR-2722 rashly and negligently as to endanger the human life on the public road and thus committed the offence punishable u/S 279 IPC? **(II)** Whether the accused caused death of the victim Suresh Basumatary 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?
7. **DISCUSSION, DECISION AND REASONS FOR DECISION.** Prosecution has examined as many as five (5) witnesses to bring home the case. They are:
- PW 1 Smt. Ramela Basumatary(informant)  
PW 2 Sri Ranjit Narzary  
PW 3 Sri Bihuram Basumatary  
PW 4 Sri Ganesh Sonowal (DTO) and  
PW 5 SI Dimpal Gayari.
8. I have gone through the prosecution case. The most vital witness PW 1 Smt. Ramela Basumatary, the informant of this case, had stated in her deposition that on the day of occurrence, while her husband, was returning home, he was hit by a bike and due to the accident he had sustained injury. She testified that when she got the information about the accident, she rushed to the place of occurrence, but her husband had already been shifted to Udalguri Civil Hospital and in the hospital, her husband succumbed to his injuries. She further stated that she had filed the FIR after a delay of four(4) months. PW 1 had exhibited the FIR as Ext. 1 and Ext. 1(1) as her signature.
9. During cross-examination PW 1 had stated that she had not seen the accident. She had filed the case on the basis of the information given by the people.
10. PW-2 Ranjit Narzary had stated that on the day of occurrence he had traveled through the place of occurrence and saw the victim was lying on the road. He testified that when he saw the victim he immediately informed the I/C, Bhairabkunda outpost about the matter. PW 2 further stated that at that time the

bike rider was not present.

11. During cross-examination PW 2 had stated that the incident took place before his arrival.
12. PW 3 did not supported the prosecution case and stated that he does not know anything about the incident.
13. PW 4 DTO Ganesh Sonowal had stated that he had examined the offending bike at police station and found right side rear view mirror damaged and fuel tank partially tented.
14. PW 5 SI Dimpal Gayari had stated that on the day of occurrence he was informed by local people about regarding the accident. So he entered a GD Entry bearing no. 391 dated 27-02-2016. Thereafter, he had visited the place of occurrence, found the victim lying in injured condition on the roadside and so he had called 108 ambulance and sent the victim to Udalguri Civil Hospital. The ill fated vehicle was seized. Later on, he heard about the death of the injured at hospital. After four(4) months of the accident, the informant had filed the written FIR and then he had forwarded the FIR to the OC, Udalguri PS and he was endorsed for investigation. Then he recorded the statement of witnesses, drew the sketch map, collected the post mortem report of the deceased and after completion of investigation he had submitted the charge-sheet u/S 279/304(A) IPC. He had exhibited the charge-sheet as Ext. 3, sketch map as Ext. 4 and seizure list as Ext. 5.
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 304A IPC, the driver has to be so much negligent in his driving that he is not bothered about the consequence of such reckless driving.

16. I have considered the evidence at length and I found that none of the prosecution witnesses had seen the incident. All the prosecution witnesses PW 1, PW 2 and PW 3 had stated that they had arrived at the spot after the incident. In such circumstances where there no direct evidence regarding the reckless driving or negligence of the accused, the Court can not convict a person merely on assumption and surmises. In that background, I deem it fit to acquit the accused from the charges.

**O R D E R**

As the prosecution has failed to prove the case against the accused, so the accused Anjan Sarma stands acquitted on benefit of doubt and set at liberty forthwith. The bail bond stands remain in force for next six months u/S 437 (A) CrPC.

The zimma order of the seized articles is made absolute.

The judgment is given under the hand and seal of this court on this the 7<sup>th</sup> day of February, 2018.

**Dictated and corrected by me:**

Chief Judicial Magistrate  
Udalguri, Assam.

Chief Judicial Magistrate  
Udalguri, Assam.

**APPENDIX**

- A. Prosecution witnesses : PW 1 Smt. Ramela Basumatary(informant)  
PW 2 Sri Ranjit Narzary  
PW 3 Sri Bihuram Basumatary  
PW 4 Sri Ganesh Sonowal (DTO) and  
PW 5 SI Dimpal Gayari.
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 – FIR.  
Ext. 2 – MVI report  
Ext. 3 – Seizure list  
Ext. 4 – Sketch map.  
Ext. 5 – Charge-sheet.

Chief Judicial Magistrate  
Udalguri, Assam.

Typed and transcribed by me:

Tulashi Dev Sarma/Steno.