

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, UDALGURI

G.R. CASE NO. 1252/2017
U/S-279/338/304(A) IPC

State

Vs.

Md. Basiruddin

Present before : **Kumari Arti, AJS**
For Prosecution : Sri. A. Paurel.
For Defence : Sri D. K. Boro
Date of Evidence : 06.06.18, 29.06.18, 27.09.18,
20.12.18, 05.04.19, 19.06.19,
Date of argument : 23.07.2019
Date of Judgment : 06.08.2019

JUDGMENT

1. Prosecution case in brief is that informant's nephew Sri Mohan Newar at the relevant time he was going Orang Chariali to his house on his bicycle and he was hit by one motorcycle which was going in the same direction and caused grievous hurt on the head of the nephew of informant. He was taken to the hospital for treatment at Tezpur Medical College and from there he was referred to GMCH where he was succumbed to his injury on 07.11.17 at 8.30 pm. Hence this case.

Compliance of Sec- 207 Cr.P.C.

2. Copies of relevant documents were furnished to the accused person in accordance with Sec-207 Cr.P.C.

Offence explanation

3. During trial particulars of offence u/s-279/338/304(A) Indian Penal Code read over and explained to the accused person to which he pleaded not guilty and claimed to face trial.

Evidence Adduced

4. Prosecution has examined nine witnesses. Examination u/s-313 Criminal Procedure Code of accused person is dispensed with as found not necessary.

Points for determination

5. (i) Whether the accused person could be hold accountable for the offences levelled against him?
(ii) Whether the prosecution established its case beyond all reasonable doubt?

Discussion, Decision and Reasons thereof

6. **PW1** namely, Sri Bhim Bahadur Newar deposed that he is the informant and he cannot recognize the accused. The occurrence took place five months ago. At the time of occurrence he was in Guwahati and he was informed that his nephew namely Mohan Newar met with an accident and as a result after two days he died in the hospital. He heard that deceased went to the shop of his cycle and he was hit by a motorcycle and sustained grievous injury and died in the hospital. Cycle was seized by the police and given to him for zimma. Ext-1 is the FIR and Ext-1(1) is his signature. Ext-2 is the seizure list and Ext-2(1) is his signature.

In the cross examination he stated that he did not see the accident as he was in Guwahati.

7. **PW2** namely, Sri Badal Magar deposed that he can recognize the informant but he cannot recognize the accused. The occurrence took place 5/6 months ago at 8 PM. He was informed about the accident and they were rushed to the hospital and saw the injured lying on the ground thereafter and they took him to the hospital where he died after two days of the accident.

Cross examination of PW-2 is declined.

8. **PW3** namely, Sri Ravi Newar deposed that he can recognize the informant but cannot recognize the accused. He does not remember the date of occurrence. On the relevant day he reached the accident spot after the accident had already taken place, on reaching there he could not see the dead body on the accident spot and heard that some bike had caused the accident.

Cross examination of PW-3 is declined.

9. **PW4** namely, Sri Shyam Newar deposed that he can recognize the informant but cannot recognize the accused. He has heard that on the relevant day one accident was occurred with the bike.

Cross examination of PW-4 is declined.

10. **PW5** namely, Smti. Lalita Biswakarma deposed that she can recognize the informant but cannot recognize the accused. She reached the place of occurrence after the accident had occurred and she did not see how the accident took place.

Cross examination of PW-5 is declined.

11. **PW6** namely, Smti. Bharati Newar deposed that informant is her relative and she cannot recognize the accused. The occurrence took place 10 months ago in the evening time. On the relevant time she heard some noise of the accident and came out of her house and saw someone lying on the road in injured condition.

Cross examination of PW-6 is declined.

12. **PW7** namely, Sri Bhola Newar deposed that he can recognize the informant but cannot recognize the accused. He does not know anything about the accident.

Cross examination of PW-7 is declined.

13. **PW8** namely, Dr. Chandan Kr. Saha deposed that on 09.11.17 he was posted at Udalguri Civil Hospital and conducted post-mortem of deceased namely, Mohan Newar male and found following injuries:-lacerated wounds in the parietal bones bilaterally. Partly black eye left. One wound on the left eye which was stitched. Flays cathered C2 and fracture survival C3, C4. One intuminus seen in the mouth. In his opinion the death caused due to head injury and spinal injury. Ext-3 is medical report. Ext-3(1) is his signature.

Cross examination of PW-8 is declined.

14. **PW9** namely, SI Gagan Ch. Deka deposed that he received information on 05.11.17 about the accident and GD entry no. 90 was made on the same day. After GD entry he proceeded to the place of occurrence and forwarded the injured to the medical. He recorded the statement of witnesses at the place of occurrence and he prepared sketch map of the place of occurrence. Thereafter, FIR was registered and he investigated the case his self. He seized the vehicle along with relevant documents and one cycle.

MVI examined the vehicle and he collected the MVI report as well as post-mortem report as injured was died later on. The driver was arrested and released him on bail. After completion of investigation he submitted charge sheet against accused Md. Basiruddin under section 279/304(A)/427 IPC. Ext-2 is seizure list. Ext-2(2) is his signature. Ext-3 is another seizure list. Ext-3(1) is his signature. Ext-5 is sketch map. Ext-5(1) is his signature. Ext-6 is charge sheet. Ext-6(1) is his signature.

In the cross examination he stated that extract copy of GD entry was not enclosed with case record but it was enclosed with CD. FIR was received on 08.11.17. He did not seize any vehicle on the day of accident and he did not find the accused at the place of occurrence. It is not a fact that accused was driving the vehicle on the relevant day which caused the accident.

15. On discussion of nine witnesses examined by the prosecution it becomes clear that accused could not be held guilty for the commission of offence as evidence on record was found to be insufficient. Therefore prosecution failed to establish its case beyond reasonable doubt.
16. My discussion above propels me to decide both the points for determination in negative. Accordingly the accused person held not guilty for commission of the offences punishable u/s-279/338/304(A) Indian Penal Code.

ORDER

17. Accused **Md. Basiruddin is** acquitted of the offence punishable **u/s-279/338/304(A)** Indian Penal Code and he is set at liberty. Seizure if any be disposed of in accordance with law.
18. His bail bond shall be in force for six months from the date of judgment delivered.
19. Given under my hand and seal of this court on **06th** day of **August, 2019.**

KUMARI ARTI
JMFC, Udalguri BTAD, Assa

APPENDIX

PROSECUTION EXHIBITS:

Ext-1 is FIR. Ext-1(1) is signature of PW-1.

Ext-2 is seizure list. Ext-2(1) is signature of PW-1.

Ext-2(2) is signature of PW-9.

Ext-3 medical report. Ext-3(1) is signature of PW-8.

Ext-4 another seizure list. Ext-3(1) is signature of PW-9.

Ext-5 is sketch map. Ext-5(1) is signature of PW-9.

Ext-6 is charge sheet. Ext-6(1) is signature of PW-9.

DEFENCE EXHIBITS:

NIL

WITNESSES FOR THE PROSECUTION:

P.W.1Sri Bhim Bahadur Newar

P.W.2.....Sri Badal Magar

P.W.3.....Sri Ravi Newar

P.W.4.....Sri Shyam Newar

P.W.5.....Smti. Lalita Biswakarma

P.W.6.....Smti. Bharati Bewar

P.W.7.....Sri Bholu Newar

P.W.8.....Dr. Chandan Kr. Saha

P.W.9.....SI Gagan Ch. Deka

WITNESSES FOR THE DEFENCE:

NIL

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