

TRUT090010052022



**IN THE COURT OF  
SUB-DIVISIONAL JUDICIAL MAGISTRATE,  
LONGTHARAI VALLEY, DHALAI, TRIPURA.**

**Present: - Mr. Avinash Jamatia**

**Date of Judgment: - 10.10.2023.**

**Case Number: PRC (SP) - 32 of 2022**

**Details of FIR**

1. District- Dhalai      P.S- Manu.                      Year- 2022  
FIR No. 2022/MNU/0017, Date and Time of FIR: 30.05.2022; 17:53 hours.
2. Section: 279/338/304A/427 of the Indian Penal Code, u/s 184 of MV Act.
3. (a) Occurrence of offence: Day- Saturday, Date – 28.05.2022, 16:30 hrs.  
(b) Information received at P.S: Date – 30.05.2022; 17:53 hours.  
(c) G.D Reference: Entry No. 25, Date & Time: 30.05.2022; 17:53 hours.
4. Type of information: Written.
5. Place of Occurrence:
  1. (a) Direction and distance from P.S: North East; 5 km.  
(b) Address: at Masli on NH-8 road, P.S- Manu, Dhalai, Tripura.

|                |                                          |
|----------------|------------------------------------------|
| Complainant    | Sri Anjan Deb Roy.                       |
| Represented by | Mr. Rabindra Sinha, Ld. APP.             |
| Accused        | Sri Aranya Kumar Jamatia.                |
| Represented by | Mr. Uttam Kr. Chakraborty, Ld. Advocate. |

|                                    |            |
|------------------------------------|------------|
| Date of offence                    | 28.05.2022 |
| Date of FIR                        | 30.05.2022 |
| Date of Charge sheet               | 31.08.2022 |
| Date of framing of charges         | 18.04.2023 |
| Date of commencement of evidence   | 07.06.2023 |
| Date on which judgment is reserved | 10.10.2023 |
| Date of judgment                   | 10.10.2023 |

### Accused details

| Rank of the Accused | Name of the Accused      | Date of Arrest | Date of release on Bail | Offences charged with                                                  | Whether acquitted or convicted | Sentence imposed | Period of detention undergone during trial for purpose of section 428 CrP.C |
|---------------------|--------------------------|----------------|-------------------------|------------------------------------------------------------------------|--------------------------------|------------------|-----------------------------------------------------------------------------|
| 1.                  | Sri Aranya Kuma Jamatia. | 31.05.2022.    | 31.05.2022.             | <b>u/s 279/337/304A/427 of IPC, u/s 184/187 of Motor Vehicles Act.</b> | Acquitted                      | N/A              | N/A                                                                         |

## J U D G M E N T

1. Succinctly stated facts of the prosecution case are that on 28.05.2022 at about 15:00 hours the younger brother of the complainant namely Biswajit Datta Chowdhury with his driver namely Sanjit Mahishya Das left the house in his personal vehicle bearing registration no. TR-02-E-0681 (Maruti Alto K10) for Kulai and on their way, at about 16:30 hours, when they reached near Masli on NH-8 road, at that time, one truck bearing registration no. AS-25-ER-2451, coming from opposite direction at a very high speed, dashed the Maruti Alto vehicle. Consequently, Biswajit Datta Chowdhury and his driver Sanjit Mahishya Das received grievous bleeding injury on their person. Thereafter, both were shifted to Manughat CHC by the help of Fire Service staff and from there both were referred to Kulai District Hospital for better treatment. Thereafter, the victims were further referred to GBP Hospital, Agartala for better treatment. However, on 28.05.2022 at about 22:45 hours, the Medical Officer of GBP Hospital declared the victim Biswajit Datta Chowdhury to be dead who had succumbed to his injury. It has been alleged that the driver of the offending vehicle bearing registration no. AS-25-EC-2451 (truck) was driving in a rash and negligent manner which had caused the said accident.
2. In this case the O/C, Manu P.S registered the case as Manu PS case No. 2022/MNU/017, u/s 279/338/304A/427 of the Indian Penal Code and u/s 184 of Motor Vehicles Act, and the case was entrusted to SI Nidhiram Reang for investigation. After completion of investigation the charge-sheet was submitted **under section 279/337/304A/427 of the Indian Penal Code and u/s 184/187 of Motor Vehicles Act** against the accused person namely Aranya Kumar Jamatia.

3. Copy was furnished to the accused person in compliance of section 207 Cr.P.C. Substance of accusation u/s 251 of Cr.P.C was prepared and read over and explained to the accused person in Bengali, to which he pleaded not guilty and claimed to be tried. Hence, this trial.
4. On perusal of the case record it is seen that there are no incriminating circumstances from the evidence of the prosecution witnesses against the aforesaid accused. Therefore, examination of the accused person under Section 313(1)(b) of Cr.P.C. was dispensed with. Thereafter, accused person was called upon to enter into defence by adducing any evidence on his behalf, to which, he declined to do so.
5. I have heard the submissions proffered by the learned APP appearing for State and the learned defence counsel for the accused person and have also perused the record meticulously.
6. The points for determination in this case is:
  - ***Whether on the alleged date, time and place, the accused person Aranya Kumar Jamatia was driving his vehicle bearing registration no.AS-25-EC-2451 (Truck) in a rash and negligent manner so as to endanger human life and personal safety and dashed against the vehicle Br. Reg. No. TR-02-E-0681 (Maruti Alto K10) which was coming from opposite direction near Masli at NH-8 road high way by doing such rash and negligent act he had caused the death of victim namely Biswajit Datta Chowdhury?***

- ***Whether on the alleged date, time and place, the accused person dashed the vehicle of the deceased and caused damage to the vehicle of the victim to an amount of Rs. 50 (fifty)?***
- ***Whether on the alleged date, time and place the accused person had driven his vehicle in a rash and negligent manner, in a dangerous manner disregarding the traffic situation of the place at that point of time and thereby failed to comply the provisions of Motor Vehicles Act?***

### **DISCUSSION, DECISION AND REASONS THEREOF**

**7.** Now let us discuss the issues and the evidence on record.

#### **POINTS NO. I & II:-**

**8.** To bring home an offence **u/s 279 of IPC** we must look at the underlying ingredients for the said sections. The primary ingredients under sections 279 of IPC are as follows: -

- i) an accused must drive a vehicle,
- ii) on a public way,
- iii) in a manner so rash or negligent,
- iv) as to endanger human life, or to be likely to cause hurt or injury to another person.

Likewise, to bring home an offence **u/s 304A of IPC** we must look at the underlying ingredients for the said sections. The primary ingredients under sections 304A of IPC is that *the death of any person must have been caused by the accused doing any rash or negligent act*. In other words, *there must be a proof that the rash or negligent act of accused was the proximate cause of the death*. As such, it needs to be proved that there must be a direct nexus between the death of a person and the rash or negligent act of the accused.

**PW 4** Sri Anjan Debroy, complainant of this case deposed before the Court that on 24.05.2022 at around 03:30 pm, about 150 metres before Masli bazar, his brother Biswajit Datta Choudhury had met with an accident when he was travelling to Kulai in his Alto vehicle and a truck had come and dashed his vehicle. He also stated that he had heard from the local public that the said accident had occurred due to the rash and negligent driving of the truck which was being driven at a very high speed on a curvy road.

**PW 1** Sri Ranjan Deb, **PW 8** Smt. Rimpi De (Datta Choudhury), **PW9** Sri Dulal Roy, **PW 10** Sri Sanjit Mahisyadas, **PW 11** Sri Dhirendra Nama and **PW 12** Sri Tutan Sarkar have all deposed that the deceased Biswajit Datta Choudhury had met with an accident on the alleged date of incident when a truck came and dashed the victim's vehicle. However, none of the prosecution witnesses have uttered anything about the driver of the offending vehicle. None of the prosecution witnesses has seen and identified the driver of the offending vehicle.

**9.** The only eye witness in this case is PW 10 who is also a victim in this case as he was the driver of the Alto vehicle which had met with an accident. However, right before the accident had occurred, he was taking rest as he was tired and the deceased had continued driving. When they reached Betcherra, PW 10 fell asleep. Thereafter, when he woke up he found himself in his house with a realization of head injury.

At the stage of argument Learned APP, appearing for the State, in his submission, had drawn the attention of the Court to the depositions of all the witnesses examined. There is only one eye witness to the alleged accident in this case and on the basis of circumstantial evidence also, the charges against the said accused person has been established. As such, the said accused person may be convicted as per law.

Ld. Defence counsel Mr. Uttam Kumar Choudhury, in his submissions, proffered that neither the eye witness nor other prosecution witnesses had seen the driver of the offending vehicle on the date of alleged accident. The alleged accident might have actually taken place but no prosecution witnesses saw the accident and none of the prosecution witness could identify the accused driver. For the sake of argument even if it is admitted by the defense that there was an accident but unless the accused person is identified by witnesses of being the driver of the offending vehicle, prosecution case shall fail. There is no evidence against the said accused person that he was the driver of the offending vehicle, let alone driving the offending vehicle in a rash or negligent manner. As such, the prosecution has miserably failed to prove the offence against the aforesaid accused person and hence, the accused shall be acquitted.

**10.** From the available evidence discussed above, it can be undoubtedly concluded that there was, indeed, an accident that took place on 28.05.2022 where unfortunately the deceased Biswajit Datta Choudhury had succumbed to his injuries. The cause of the death of the deceased has also been revealed from the deposition of the available witnesses. However, the cause of accident is alleged to be the rash or negligent driving by the driver of the offending vehicle.

The term “**negligence**” has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.

Rash or negligent act referred to in section 304-A of IPC means an act which is the immediate cause of death and not an act or omission which at best be said to be a remote cause of death. Section 304-A of IPC is correlative with sections. 279 and 338 of IPC.

A finding of rash and negligent driving is essentially of facts. In the case of ***Shakila Khader vs. Nausher Gama, AIR 1975 SC 1324***, the Hon’ble Supreme Court had observed that, “*the main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic and the attempt to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident.*”



Reckless driving or driving in a manner dangerous to public life, is rashness. The condition of the road and the amount of traffic at the time, or which might reasonably be expected to be on the road, are factors to be taken into consideration in assessing the rashness or negligence of the driver. **(State of Karnataka vs. Mohd. Ismail, 1989 Cr. LJ, 235).**

**11.** In cases of motor vehicle accidents, it is to be kept in mind that the offending vehicle was being driven in a rash and negligent manner. From the evidence of prosecution witnesses it is revealed that the offending vehicle was at a high speed. However, mere driving the car at a high speed does not amount to rash or negligent driving. At this juncture, reliance is to be placed on the case of **State of Karnataka v. Satish**, reported in **(1998) 8 SCC 493**, whereby the Hon'ble the Apex Court held that –

*“4. Merely because the truck was being driven at a “high speed” does not bespeak of either “negligence” or “rashness” by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by “high speed”. “High speed” is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by “high speed” in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no*

*presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”. There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the un-even road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.”*

From the evidence of prosecution witnesses of this case it reveals out that the occurrence of accident on the alleged date of incident was caused due to high speed of the offending vehicle on a curvy road which does amount to rashness or negligent driving of the accused driver. At this juncture this court would like to rely on another decision of the Hon’ble Supreme Court reported in **(2009) 7 SCC 353 (Braham Das Vs. State of Himachal Pradesh)** where the Hon’ble Supreme Court had observed as follows: -

*“8. Section 279 deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under Section 279 IPC is not negligence. Similarly, in Section 304-A, the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Section 279 or 304-A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved.”*

**12.** However, a vital aspect of this case is the identification of the accused driver. None of the prosecution witnesses have stated the name of the accused driver. Rather, the prosecution witnesses admitted that they did not see the driver of the offending vehicle on the date of alleged accident. No witness has stated that accused Aranya Kumar Jamatia was the driver of the offending vehicle on the date of alleged accident.

In such a scenario, there exists a cloud of ambiguity and suspicion. The Hon'ble Supreme Court of India in the case of ***Sujit Biswas vs. State of Assam decided on 28th May, 2013*** held as under: -

*“Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must*

*ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."*

**13.** All the available evidence in connection with this case reveals that deceased Biswajit Dattaa Choudhury had succumbed to his injuries sustained during the accident that occurred on 28.05.2022. It has also been established by the prosecution evidence that there was, indeed, an accident that occurred on the date of alleged incident and that the car bearing registration number **TR-02-E-0681 (Maruti Alto K10)** was also badly damaged. However, none of the witnesses could prove the identification of the present accused person. Furthermore, there is no evidence establishing that accused Aranya Kumar Jamatia was the driver of the offending vehicle on 28.05.2022 as per the provisions under section 279/337/338/304-A of IPC. As such, there is no iota of evidence against the accused Aranya Kumar Jamatia in connection with this case. In the light of the above discussions, on scrutiny of the materials and evidence on record and from the prosecution witnesses, the rash or negligence of the offending vehicle has been established but the prosecution has failed to establish that the accused Imraan Hossain was driving the offending vehicle on the fateful day. **As such, for the sake of brevity and convenience, both the points no. I and II for determination are hereby taken up together and decided in the negative.**

**POINT NO. III:-**

**14. Whether on the alleged date, time and place the accused person had driven his vehicle in a rash and negligent manner, in a dangerous manner disregarding the traffic situation of the place at that point of time and thereby failed to comply the provisions of Motor Vehicles Act.**

Referring to the discussions held in the aforesaid paragraphs, it is seen that the rash and negligent driving of the offending vehicle has been established. However, the allegations against the present accused person could not be established by the prosecution. Hence, offence under section 184/187 of the Motor Vehicles Act, 1988 are also not established against the present accused person. As such, point no. III for determination is also decided in the negative.

Thus, looking at the factual matrix of the instant case and in view of the above discussion and the above referred judgments, it can be safely held the prosecution has miserably failed to prove the case against the aforesaid accused beyond reasonable doubt.

**ORDER**

**15.** In the result, the accused person namely **Aranya Kumar Jamatia** is acquitted of the charges alleged **under section u/s 279/337/304-A/427 of IPC, u/s 184/187 of Motor Vehicles Act** and he is set at liberty forthwith.

**16.** His surety(s), if any, stands discharged from the liability of bail bond after the expiry of 6 (six) months period which was executed to ensure the attendance of the accused person before the Ld. Appellate Court from the date of pronouncing this judgment as a mandate under section 437 A of Cr.P.C.

- 17.** The seized articles, if any, shall be disposed of as per law. Inform the Court Sub-Inspector, Longtharai Valley Police Court for compliance.
- 18.** The case is, thus, disposed of on contest.
- 19.** Make necessary entry in the relevant Trial Register and CIS.
- 20.** The Judgment is given under my hand and seal of this Court on this **10<sup>th</sup> day of October, 2023.**

**P R O N O U N C E D**

Typed and corrected by me

(AVINASH JAMATIA)  
Sub-Divisional Judicial Magistrate  
-cum-  
Civil Judge (Jr. Div), Longtharai  
Valley, Dhalai District.

(AVINASH JAMATIA)  
Sub-Divisional Judicial Magistrate  
-cum-  
Civil Judge (Jr. Div), Longtharai Valley,  
Dhalai District.

## **A P P E N D I X**

### **List of Prosecution/Defence/Court witnesses**

#### **A. Prosecution.**

| Rank | Name                             | Nature of Evidence (eye-witness, police witness, expert witness, medical witness, panch witness, other witness) |
|------|----------------------------------|-----------------------------------------------------------------------------------------------------------------|
| PW 1 | Sri Ranjan Deb                   | Witness.                                                                                                        |
| PW 2 | Sri Ashinta Kr. Tripura          | Witness.                                                                                                        |
| PW3  | Sri Amit Suklabaidya             | Seizure witness.                                                                                                |
| PW4  | Sri Anjan Debroy                 | Commplainanat.                                                                                                  |
| PW5  | Sri Jyotish Paul                 | Witness.                                                                                                        |
| PW 6 | Sri Sankar Halam                 | Seizure witness.                                                                                                |
| PW 7 | Sri Pranoy Kumar Sinha           | Seizure witness.                                                                                                |
| PW 8 | Smt. Rimpi Deb (Datta Chowdhury) | Witness.                                                                                                        |
| PW9  | Sri Dulal Roy                    | Witness.                                                                                                        |
| PW10 | Sri Sanjit Mahisyadas            | Witness.                                                                                                        |
| PW11 | Sri Dharendra Nama               | Witness.                                                                                                        |
| PW12 | Sri Tutan Sarkar                 | Witness.                                                                                                        |

#### **B. Defence Witness, if any.**

| Rank | Name | Nature of Evidence |
|------|------|--------------------|
| Nil  | Nil  | Nil                |

#### **C. Court witness.**

| Rank | Name | Nature of Evidence |
|------|------|--------------------|
| Nil  | Nil  | Nil                |

**List of Prosecution/Defence/Court Exhibits**

**A. Prosecution Exhibits: -**

| Sl. No. | Exhibit Number | Description                                                                             |
|---------|----------------|-----------------------------------------------------------------------------------------|
| 1.      | Exhibit P1/1   | Signature of PW2 on the seizure list.                                                   |
| 2.      | Exhibit 2/1    | Signature of PW3 on the seizure list in relation to seized alo car.                     |
| 3.      | Exhibit P3/1   | Signature of PW3 on the seizure list in relation to documents.                          |
| 4.      | Exhibit P4/1   | Signature of PW6 on the seizure list in relation to seized truck Br. No. AS-25-EC-2451. |
| 5.      | Exhibit P4/1   | Signature of PW7 on the seizure list in relation to seized truck Br. No. AS-25-EC-2451. |
| 6.      | Exhibit P4/2   | Signature of PW7 on the post mortem report.                                             |

**B. Defence Exhibits: -**

| Sl. No. | Exhibit Number | Description |
|---------|----------------|-------------|
|         | Nil            | Nil         |

**C. Court Exhibits: -**

| Sl. No. | Exhibit Number | Description |
|---------|----------------|-------------|
|         | Nil            | Nil.        |

**D. Material objects: -**

| Sl. No. | Material object number | Description |
|---------|------------------------|-------------|
|         | Nil.                   | Nil.        |

Typed and corrected by me

(AVINASH JAMATIA)  
Sub-Divisional Judicial Magistrate  
-cum-  
Civil Judge (Jr. Div), Longtharai  
Valley, Dhalai District.

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