

**IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE::BAKSA
Case No. : GR-957/18
Under Section 279/338/304(A) IPC**

**Present :- Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.**

The State of Assam.....Prosecution.

-Vs-

Md. Azizul Hoque.....Accused Person.

Evidence recorded on :- 01-04-2016, 18-03-2017
03-01-2019, 20-03-2019,
13-09-2019, 27-12-2021
Argument heard on :- 11-05-2022
Judgment delivered on :- 11-05-2022

Advocate Appeared :-

Mr. Ranjit Basumatary.....APP for the State of Assam.

Mr. Musharuf Khan.....Advocate for the accused person.

J U D G M E N T

1. The gist of the case is that on 02/08/2013 at about 12.30 pm one motor cycle bearing Regn. No. AS-15B/5736 came from the opposite side and hit the informant's elder brother Pradip Ghosh

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at Ota Bajegaon who was on foot. Pradip Ghosh sustained grievous hurt and he died on 04/08/2013 at about 11.45 am at Guwahati Medical College. FIR is lodged delayed due to remaining busy in the treatment of the deceased.

2. Police registered a case against the accused person u/s 279/338/304(A) IPC and after completion of investigation submitted charge- sheet against accused person Md. Azizul Hoque u/s 279/304(A) IPC.
3. Particulars of offence u/s 279/338/304(A) IPC are read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 5 (five) Nos. of witnesses and one Court witness. The defence examined none.
5. The accused person is examined u/s 313 Cr.P.C. The accused declined to adduce evidence.
6. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

7. POINTS FOR DETERMINATION:-

1. Whether the accused person had driven motor cycle bearing Regn. No. AS-15B/5736 on the public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person?
2. Whether Pradip Ghosh sustained grievous hurt?

3. Whether the accused person had caused grievous hurt to Pradip Ghosh by doing any act so rashly or negligently as to endanger human life or personal safety of others?
4. Whether Pradip Ghosh has died?
5. Whether the accused person had caused death of Pradip Ghosh by doing any rash or negligent act not amounting to culpable homicide?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1, 2, 3 & 4:

10. PW1 Shyamal Ghosh is the informant. He got information about his brother's accident. When he reached the PO saw his brother laying in injured condition. He learnt that the accused struck his brother by motor cycle from back side. He took his brother to Barpeta Road Hospital, thereafter to Barpeta Medical and thereafter to Guwahati. On 04/08/2013 his brother died during treatment at Guwahati. He clarified in his cross that he had not seen the accident.

11. Mere striking pedestrian or anybody is not rashness or negligence. PW1 though has not seen the occurrence has not stated about any rashness or negligence on the part of the accused in causing the occurrence.

12. PW2 Kali Kumar Ghosh is another brother of the deceased has also not seen the occurrence. He was at his house at the relevant time. Hearing sound outside of the house, he went to

the spot and found his brother laying on the ground with head injury. The deceased was taken to hospital at Barpeta Road, thereafter to Barpeta and then to Guwahati for better treatment. His brother Pradip died later on. He heard that the accused caused injury to his brother by dashing. He clarified in cross that he has not seen the occurrence.

13. PW3 Amar Chand Das has said that he went to the spot and saw a man lying on the road. He said in his cross that he had not seen how the accident took place. He has not even heard who committed the accident.
14. PW4 Paresh Ch. Ghosh said that he went to the PO and found Pradip Ghosh lying on the road in injured condition. He clarified in his cross that he had not witness the accident.
15. PW5 Anjali Ghosh said that the brother of the informant died in a road accident.
16. Hence, I find that it is not proved that the accused being the husband of the informant had subjected her to cruelty. So, the accused person cannot be held guilty u/s. 279/338/304(A) IPC.
17. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt u/s 279/338/304(A) IPC. So, I acquit accused Azizul Hoque of the charge u/s 279/338/304(A) IPC and is set at liberty.
18. The custody of the seized article vide MR No.18/13 (Z/No.9/13) is made absolute.

19. Bail-bond furnished u/s 437(A) Cr.P.C. shall remain in force up to six months from today.
20. Given under my hand and seal of this Court this 11th day of May, 2022.

Typed by me—

D. Boro
CJM, Baksa

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CJM, Baksa