

APPENDIX**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
BAKSA, MUSHALPUR**

Present : Smti. Dimple Boro, CJM.

Date of Judgment: 17-11-2022

Case No. : PRC-689/19

Barbari PS Case No. : 83/18

U/s : 279/304(A) IPC

Complainant	State of Assam
Represented by	Mr. Ranjit Basumatary , APP.
Accused	1. Dwithun Boro, S/o: Namal Boro, Vill: Panbari, PS: Barbari, Dist.: Baksa. (A-1)
Represented by	Adv. Romaiti Goyary
Date of Offence	08-11-2018
Date of FIR	09-11-2018
Date of Charge Sheet	31-01-2019
Date of Framing of Charge	03-01-2022
Date of commencement of evidence	21-02-2022
Date on which judgment is reserved	NA
Date of Judgment	17-11-2022
Date of the Sentencing Order, if any	NA

Accused Details:

Rank of the Accused	Name of 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 Sec. 428 Cr.PC.
A-1	Dwithun Boro	NA	04-12-2021	279/304(A) IPC	Acquitted	NA	NA

APPENDIX**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)
PW1	Anowar Hussain	Informant
PW2	Udhab Kalita	Police witness
PW3	Najum Ali	Police witness

B. Defence Witnesses, if any : NIL

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court Witnesses, if any : NIL

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext.P- 1/PW1	FIR

B. Defence: NIL

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NIL

Sr. No.	Exhibit Number	Description
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D. Material Objects: NIL

Sr. No.	Exhibit Number	Description
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J U D G M E N T

1. The prosecution story in brief is that on 08-11-2018 at about 8.30 AM Makib Ali, age 60 years who was father-in-law of informant Anowar Hussain went to tether cow to the nearest reserve. One bike bearing No. AS14H-9941, Pulsar 220 came at high speed from Barbari towards Barama and hit Makib Ali in front of the reserve on Barama-Nikashi National Highway. As a result, Makib Ali instantly died.
2. The police registered a case against the accused person u/s 279/304(A) IPC and after completion of investigation submitted charge-sheet against accused Dwithun Boro u/s 279/304(A) IPC.
3. Substances of accusation u/s 279/304(A) was 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 3 (three) nos. of witnesses and 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 bike bearing No. AS14H-9941, Pulsar 220 on the public way so rashly or negligently likely to cause hurt or injury to any other person?

2. Whether Makib Ali has died?

3. Whether the accused person had caused death of Makib Ali by doing any rash or negligent act not amounting to culpable homicide?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1, 2 and 3:

10. PW1 Anowar Hussain is the informant. He said that the incident took place on the concrete road little ahead of Barbari Police Reserve. According to PW1, he was going to Guwahati on that day by a small vehicle. One Pulsar bike crossed his vehicle and dashed his father-in-law Makib from back side. He has seen the incident. There was a pillion rider on the bike. Both boys fell from the bike and there was pool of blood and people were difficult to be identified. His father-in-law was at last stage at that time. Police was informed. Police came and brought his father-in-law immediately to medical where he was declared dead. One of the two boys sustained much injury. They thought one to be dead. The other boy sustained simple injury. He lodged FIR on next day. He does not know who drove the bike. Ext. P-1/PW1 is FIR.

11. PW2 Udhab Kalita and Najum Ali had also said about death of Makib Ali in vehicular accident on the road. PW2 described as to how the incident took place. Both PW2 and 3 have seen Makib Ali in injured condition, bike after the accident.

12. None of the PWs have said as to who drove the offending bike or whether there was any negligence on the part of the driver in causing the incident.

13. I find that prosecution has failed to establish the fact that the accused drove the offending bike at the time of the alleged incident. The prosecution has also failed to prove any rash or negligence on the part of the accused.
14. Under such circumstance, I find that it is proved that Makib Ali has died. But it is not proved that the accused person had driven bike bearing No. AS14H-9941, Pulsar 220 on the public way so rashly or negligently likely to cause hurt or injury to any other person **AND** the accused person had caused death of Makib Ali by doing any rash or negligent act not amounting to culpable homicide. So, the accused person cannot be held guilty u/s. 279/304(A) IPC.
15. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt u/s 279/304(A) IPC. So, I acquit accused Dwithun Boro of the charge u/s 279/304(A) IPC and is set at liberty.
16. The custody of the seized material vide MR No. 28/18, zimma No. 17/18, MR No. 29/18, zimma No. 17/18 is made absolute.
17. Given under my hand and seal of this Court this 17th day of November, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa