

**IN THE COURT OF THE ADDL.CHIEF JUDICIAL
MAGISTRATE, GOLAGHAT.**

GR CASE No.377/11

State

-vs-

1) Laban Das
U/s 279/304(A) IPC

Present : **Mrs.M.Dutta,**
Addl.Chief Judicial Magistrate,
Golaghat.

COUNSELS APPEARED :

For the prosecution : Mr.N.Hazarikia, Addl.PP, Golaghat.

For the defence : Mr.R.Gogoi, Advocate, Golaghat.

Evidence recorded on : 18.08.12,04.03.13,01.06.13,02.07.13,
05.08.13,17.08.13,29.10.13

Argument heard on : 16.11.13

Judgment delivered on : 25.11.13

J U D G M E N T

1. The prosecution case in brief is that on 02.04.11 one Smti.Suchitra Bora,filed an FIR before the Officer-in-Charge of Kamargaon PS against the present accused person stating inter-alia that on 01.04.11 at about 7 pm while her husband Chandra Bora was going for marketing on the NH 37 at Kamargaon Tiniali, the vehicle bearing No.AS01/BC-1166(Winger) of cream colour coming from Jorhat towards Guwahati in high speed hit her husband causing grievous injury. Then her husband was treated at NRL Hospital and as there was no improvement of his health, he was referred to Jorhat Civil Hospital where he died. Hence this case stands for trial.

2. Receiving the FIR, police registered a case vide Kamargaon PS C/No 22/11 u/s 279/304(A) IPC and started investigation. After completion of the investigation the police accordingly submitted chargesheet against the accused u/s 279/304(A) IPC.
3. In response to the process issued from the court, the accused person appeared before the court to stand trial. Necessary copies were furnished to him by my learned predecessor and when the particular of accusation u/s 279/304(A) IPC was explained to him, he pleaded not guilty and claimed to be tried.
4. The prosecution side to establish its case examined all total 9 (nine) witnesses. The accused was examined u/s 313 Cr.PC. He denied all the allegations brought against him by the prosecution side. He denied to adduce evidence in his defence. I have heard the arguments put forwarded by the learned counsels of both sides.

5. **POINT FOR DETERMINATION :**

- (i) Whether the accused person on 01.4.11 at about 7 pm on the way NH 37 at Kamargaon Tiniali from Jorhat to Guwahati drove the vehicle No.AS01 /BC-1166(winger) in so rash and negligent manner as to endanger human life as alleged and thus committed an offence u/s 279 IPC,as alleged ?
- (ii) Whether the accused person on the same day, time and place caused death of Chandra Bora by driving the vehicle which was rash not amounting to culpable homicide, as alleged and thus committed an offence punishable u/s 304(A) IPC,as alleged ?

DECISION & REASONS THEREOF:

6. To decide the points stated above, I have carefully gone through the evidence on record. As I have stated earlier the prosecution has

examined 9 witnesses to prove its case.

7. PW-1 Dinai Saikia has deposed that about one month back, he was in his shop and hearing halla he went to the place of occurrence and found one man lying there in unconscious condition. He heard that the man was hit by a winger while the man was going to market. The man was taken for treatment but he had died on the way to Jorhat.
8. PW-2 Ratul Saikia in his evidence has stated that on the day of the occurrence i.e at about 6-10 pm he was in his house and when he was coming to his house after closing shop, one winger in high speed hit Chanadra Bora and he had died on that night itself. The winger was stopped. The injured at first was taken to NRL Hospital and later to Jorhat. The driver of the vehicle was caught by the public and after that he does not know.
9. PW-3 Suchitra Bora who is the informant in this case has deposed that at time of occurrence she was present at Kamargaon Tiniali. Hearing halla she went to the place of occurrence and heard that Chandra Bora was involved in an accident. 108 emergency was called where Chandra Bora was taken for treatment and she was not taken with him. At about 10 pm the injured died on that day itself. She has stated that Chandra Bora was going to market and she heard that when he was waiting for crossing, then the vehicle dashed him. Ext.1 is the ejahar and Ext.1(1) is his signature.
10. In his cross-examination she has stated that she has filed MACT case for causing death of her husband.
11. PW-4 Narayan Charingia in his evidence stated that he does not know the informant and know the accused as driver. He stated that on 01.04.11 at about 7/7-30 pm he along with his staff went from Majuli towards Guwahati. One winger vehicle bearing No.AS01-BC1166 had been driven by the accused. When their

vehicle reached at Kamargaon an old man tried to cross the road, then their vehicle which was 30/ 40 kmph in speed tried to stop, the vehicle touched the old man and the old man fell down. They took the man in the winger, but at that moment one 108 ambulance came and it carried the injured to NRL Hospital. Thereafter he was taken to Jorhat. They informed the matter at Kamargaon PS and previous day came to know the man died.

12. In his cross-examination he has stated that their vehicle was originally coming from Bokajan, Tinsukia, Majuli, Nagaon and during the whole period the driver had plied the vehicle normally.
13. PW-5 Bikash Bora has deposed that the occurrence took place before two year when her father went to pharmacy from his shop. She saw one man was hit by a winger coming from Jorhat towards Guwahati when he was trying to cross the road. Later on came to know that man was her father who was alive and died at Jorhat Medical Medical College. The winger was running in high speed and due to break failure the occurrence took place. at first her father was taken to NRL Vivekanandra Hospital, thereafter he was referred to Jorhat Medical where he died. The winger was driven by Laban Das. Ext.2 is the seizurelist and Ext.2(1) is his signature.
14. In his cross-examination he has stated that the vehicles in evening time runs in high speed.
15. PW-6 Kan Saikia has deposed that the occurrence took place on 01.04.11 at about 6 pm on 37 NH at Kamargaon Tiniali one sumo driver hit late Chandra Bora when he was at his shop. He went to the place of occurrence and saw the man. They took the injured to NRL Hospital, therefter he was taken to Jorhat Medical College Hospital. The injured died on that day. The dead body was taken to hospital for post mortem and after that the same was returned to house.

16. PW-7 Dul Saikia in his evidence stated that on the day of the occurrence when he was present at Kamargaon Tiniali, Chandra Bora was walking towards Kamargaon Tiniali, then from same direction one winger hit him coming in high speed. The injured was unconscious and he was taken to Numaligarh hospital and thereafter he was referred to Jorhat Civil Hospital and on that night itself the injured died.

17. In his cross-examination he has stated that Kamargaon Tiniali is a busy place and the vehicles ply in that area in low speed but the winger was plying in high speed.

18. PW-8 Porag Saikia MVI in his evidence stated that on 02.04.11 he was working as MVI at Golaghat and on that day he examined the vehicle No.AS01 BC 1166 Tata Winger on getting requisition from O/c Kamargaon PS and following damages are found :

(i) front wind shield glass

(ii) bonnet left side partially,

Remarks : At that time the vehicle was found unfit to ply on the road.

Ext.3 is the MVI report and Ext.3(1) is his signature.

19. PW-9 Nur Mohamad (IO) in his evidence stated that on 01.04.11 he was working as ASI at Kamargaon PS. On that day at about 7-30 pm, the O/c Kamargaon PS received information that Chandra Bora was hit by one winger. Having received the information he did GDE No.13 dtd. 01.04.11 he went to the place of occurrence, recorded the statements of the witnesses, drew the sketch map of the place of occurrence. Ext.4 is the sketch map and Ext.4(1) is his signature. He seized the vehicle via Ext.2 and Ext.2(1) is his signature. On enquiry came to know that the injured was taken for medical examination. On the next day informant

Suchitra Bora filed an FIR stating that the vehicle bearing No.AS01 BC 1166 hit her husband and on that day her husband died at Golaghat Civil Hospital. The O/c having registered the case entrusted him to investigate the matter. He arrested the accused and allowed him to go on bail as the offences were bailable. The concerned vehicle was examined by MVI. The late Chnadra Bora was referred to Johart Medical Hospital by I/c of Golaghat Civil Hospital. Inquest was done on the dead body, collected inquest report, collected MVI report, post mortem was done at Jorhat Civil Hospital. On completion of the investigation he submitted chargesheet against the accused u/s 279/304(A) IPC. Ext.5 is the chargesheet and Ext.5(1) is his signature.

20. In his cross-examination he has stated that he came to the place of occurrence at 4-40 pm after 10 minutes having got the information. He stated that PW2 and PW- 5 have stated to him that the vehicle was coming in slow speed.
21. On perusal of the aforesaid evidence of the witnesses, it is seen that PW-4 and PW-7 have stated in their evidence that it was the accused who was present today before the court was the driver of the ill fated winger bearing which had hit the deceased Chandra Bora who died on the spot. PW-4 also has stated that he was a passenger in the winger and had seen that the winger had hit the deceased while he was trying to cross the road. They they identified the winger driver who had driven the offending vehicle at the time of accident. PW-3 in her evidence has stated that she came to know that it was the winger who had hit the deceased while trying to cross the road. PW-1 in his evidence has stated that on the day of the occurrence at about 6-30 pm the accident occurred at Kamargaon Tiniali. At that time he was in his shop when after closer of his shop he saw the winger which was coming

from Jorhat side in a high speed had hit Chandra Bora while he was trying to cross the road and that night the victim succumbed to his injury. After hitting the deceased the winger which was coming in high speed left towards the side of the road. The victim was taken to NRL Hospital and later on to Jorhat. But he died at that night. The driver of the winger was caught by the public after the accident. PW-5 in his evidence has stated that he came to know that the victim who was hit by the winger while the victim was trying to cross the road and that Chandara Bora was his father who died later on at Jorhat Medical Hospital. He further stated that since the winger came in high speed he could not stop the vehicle and thus hit the victim. PW-6 in his evidence has stated that at about 6-30 pm on 01,.04,11 the accident occurred at 37 NH near Kamargaon Tiniali and the vehicle had hit the deceased Chandra Bora and he came to the place of occurrence after the occurrence had taken place. From the evidence of the prosecution witnesses it is seen that the accused Laban Das was driving the winger in high speed when the road condition was clear, the accused should have cautioned the consequences of such recklessness of the vehicle.

22. “Relationship between recklessness speed and rashness or negligence depends upon the place, time, condition of the road, nature of the traffic and such other like circumstances. A motor vehicle is meant to be driven in speed. It is not always that one who drives his vehicle at a slow speed is a safety driver. So, the speed with which a vehcile is driven is not always the deciding factor for coming to a finding whether he has rashly or negligently. The speed is not alone criteria for deciding rash or negligence on the part of the driver. The motor vehicle is intended to be driven in speed. The relationship between speed, rashness or

negligence depends upon the place and time”.

23. “No rider or driver can tell when pedestrian may happen to arrive on a road. Consequently he cannot ride rashly or negligently even at a time when the road happens to be temporarily unoccupied by any pedestrian or by any vehicle and this is so, not only because any person or any vehicle may happen to arrive on the road at any time but also because the driver or rider is to look to his own safety as well and cannot at all indulge in a riding or driving which may endanger his own life. The mere fact that a public road happens at the moment to be empty is not per-se a ground for acquitting a [person of the offence under this section for his rash driving or riding in such public road is likely to cause injury to human life, even though in point of fact he had by the intervention of providence, not endangered the safety of any person”.

24. In the case in hand, from the evidence of the prosecution witnesses which shows that there is negligence on the part of the accused for failure to take precaution which was a reasonable and prudent person is expected to take care while driving the vehicle in public road. From the evidence of the PW-2 it is also seen that the accident occurred though there was no hindrance from the public nor was there any failure on any part of the winger, still that driver of the winger had hit the deceased Chandra Bora who was trying to cross the road and it also appears from the evidence of Pws that there was no blowing of horn by the winger before the accident occurred. Since the driver of the winger had hit the deceased without blowing the horn which was a mandatory provision under traffic rules. Therefore, it is only circumstantial evidence which is very important to come to a conclusion as to how the accident took place and whether there was any rash or negligence driving on the part of the driver of the vehicle. In an

accident case, it is too much to expect oral evidence to prove the rash and negligence driving. As accident took place within fraction of a second and it may not be possible for any witness to speak about the exact manner in which the accident took place. There is no dispute that the deceased received injuries and it was only the winger which had hit the deceased. As there is no evidence to show that other than the winger there was no any other vehicle that had hit the deceased. Even when the statement of the accused was recorded u/s 313 Cr.PC, he has stated that he was driving the winger which had caused the deceased Chandra Bora on the fateful day and he had hit the deceased where deceased died after the accident.

25. Considering all aspects, I came to to the conclusion of the case that due to rash and negligence driving of the accused, the accident occurred resulting in death of Chandra Bora. After going through the evidence on record, and other materials before me , I am of the view that the prosecution has considerably been able to prove its case against the accused beyond all reasonable doubt. Accordingly he is convicted u/s 279/304(A) IPC. It is seen that the accused had driven the vehicle in rash manner without blowing horn at the time of driving the vehicle and the minimum precaution that should have been taken place by the accused was not taken by him when the accident occurred, which has caused death of deceased Chandra Bora. Therefore, the accused is not entitled to get the benefit under the provision of Offenders Act.

26. The accused is heard on the point of sentence to be awarded. The accused has submitted that he is an young man, he has to look after his family and he is employee of state government.

27. Thus, considering the above facts and circumstances of the case, I am of the view that justice will be meted out if the accused

is sentenced to pay a fine of Rs.5000/-, i/d of payment of fine one month SI u/s 279 IPC and also to pay a fine of Rs.8000/- and i/d of payment of fine two months SI u/s 304(A) IPC.

28. ORDER

On conviction u/s 279/304(A) IPC, the accused is sentenced to pay a fine of Rs.5000/-, i/d of payment of fine one month SI u/s 279 IPC and also to pay a fine of Rs.8000/- and i/d of payment of fine two months SI u/s 304(A) IPC.

29. If the fine realized, be paid to the wife of the deceased.

30. Furnish a free copy of the judgment to the convict/ accused free of costs immediately.

31. Given under my and and seal of this court on this 25^h day of November,2013.

Dictated & corrected

by me.

Addl.Chief Judicial Magistrate, Addl.Chief Judicial Magistrate,

Golaghat.

Golaghat.

25.11.13

Accused Laban Das is present. Today was fixed for delivering judgment.

The judgment is pronounced in the open court and delivered in the open court.

The accused is found guilty u/s 279/304(A) IPC and accordingly the accused is sentenced to pay a fine of Rs.5000/-, i/d of payment of fine one month SI u/s 279 IPC and also to pay a fine of Rs.8000/- and i/d of payment of fine two months SI u/s 304(A) IPC.

Supply a free copy of the judgment to the accused.