

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- **Criminal Appeal No. 19/2011.**

Sri Ujjal Baruah. Appellant.

-Vs-

The State of Assam. Respondent.

Date of final hearing 15.11.2013.

Date of judgment & Order 21.11.2013.

APEARANCES :

For the appellant Mr. S. Hiloidhari,
Advocate, Golaghat.

AND

For the respondent/State
of Assam. Mr. N.P. Acharjee,
Public Prosecutor, Golaghat.

PRESENT :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT & ORDER :

1. This Criminal Appeal u/s 374(3)(a) of the Code of Criminal Procedure, 1973 submitted by the appellant Sri Ujjal Baruah against the judgment and order dated 6.6.2011 passed by the learned Sub-Divisional Judicial Magistrate (S), Golaghat in G.R. Case No.

284/2010 convicting him u/s 279 of IPC and sentencing him to undergo simple imprisonment for 6 months and to pay a fine of Rs.1,000/- and in default of payment of fine, he shall undergo with simple imprisonment of one month ; further the appellant was convicted u/s 304(A) of IPC and sentenced him to undergo simple imprisonment of 6 months and to pay a fine of Rs.1,000/-, and in default of payment of fine, he shall undergo with simple imprisonment of one month.

2. A written ejahar was lodged by the complainant Sri Pioli Das with the O/C of Bokakhat police station on 9.3.2010 alleging that on 3.3.2010, while his son Utpal Das was playing in the court-yard, one 207 vehicle, in course of moving backward, crushed said Utpal Das and thereafter, the injured was taken to Bokakhat civil hospital and from there, to Guwahati Medical College & Hospital and at the night, the injured succumbed to the injury. Accordingly, the O/C of Bokakhat police station registered the case vide Bokakhat P.S. Case No. 47/2010 u/s 279/304(A) of IPC and investigated into the case. During investigation, the offending vehicle along with its Registration Certificate Book, Permit and Insurance policy had been seized. The vehicle was got examined by the Motor Vehicle Inspector. After completion of investigation, the police submitted the charge sheet u/s 279/304(A) of IPC against the accused person.

3. Trial began before the Court of learned Sub-Divisional Judicial Magistrate (S), Golaghat. The prosecution examined as many as 7 witnesses to prove the case, whereas, the accused person adduced none in his defence. The accused person has been examined u/s 313 of Cr.P.C. The plea of the accused is one of total denial. After hearing from both the sides and on appreciating the evidence on record, the learned trial Court was satisfied to hold that the prosecution was able to prove the case u/s 279/304(A) of IPC and accordingly, convicted the appellant and sentenced him as stated above.

4. Being highly aggrieved by and dissatisfied with the aforesaid impugned judgment and order of the learned trial Court, the

accused/appellant has preferred this appeal on the following amongst other grounds :-

That the learned trial Court has erred in law while convicting the accused/appellant on the basis of the evidence available on record which do not warrant conviction of the appellant ; that in absence of the evidence to constitute the ingredients of Section 279 and 304(A) of IPC, the learned trial Court should not have convicted the appellant. That the non-examination of the material witnesses is fatal to the prosecution case.

5. Called for case record of G.R. Case No.284/201 is received from the learned trial Court. I have perused the same.

6. Heard learned counsels of both the sides.

7. For the purpose of deciding the appeal, let me discuss the evidence on record.

8. The learned counsel on behalf of the appellant has initiated the argument by stating that Bokakhat police station had prepared the GDE No. 94, dated 5.3.2010 in connection with the occurrence. The said GDE has been exhibited as Ext-4 by the prosecution. On perusal of Ext-4, it is found that the vehicle No. AS-03-AC/0180 (Mohendra Pick-up Van) while coming to the court-yard belonging to Sri Pyoli Das laden with livestock, one 7/8 months baby belonging to said Pyoli Das creeping under the back side wheel of the said vehicle and as a result, he sustained injury. Thereafter, the said baby was taken to Bokakhat civil hospital by the said vehicle. Traffic A.S.I. Md. A. Zalil was deputed to investigate into the case. In the said General Diary Entry, the name of the driver of the said vehicle has not been mentioned. The ejahar was lodged on 9.3.2010. In the ejahar also, the name of the driver of the said vehicle has not been mentioned.

9. P.W.1 Sri Pyoli Das, who is the informant in this case has stated that at the time of occurrence, at around 11 A.M., while his baby Utpal Das was playing in the court-yard, the accused/appellant drove the Pick-up Van towards back and dashed against his said baby causing injury to him. His said baby succumbed to the injury at night on the way

when he was taken to Guwahati Medical College & Hospital. He lodged the ejahar on 9.3.2010 after 6 days of the occurrence. But he did not mention the name of the accused person who drove the offending vehicle at the time of occurrence.

10. P.W.2 Sri Durlav Das has deposed in evidence that at the time of occurrence, he was on the road. When he returned home, he saw while the accused driving the 207 vehicle towards back side and the son of the informant was crushed by the said vehicle.

11. P.W.3 Sri Mintu Hazarika has deposed in evidence that at the time of occurrence, while he was escorting his son to the school, he was informed over telephone by his brother Ranjit Hazarika that the Broiler carriage vehicle, driven by the accused, dashed against a boy. He (P.W.3) did not see the incident. But said Ranjit Hazarika has not been examined by the prosecution.

12. P.W.4 Deben Das has deposed in evidence that he did not see the incident. At the time of occurrence, he was in his house. He having heard the incident, rushed to the place of incident and found that the injured had already been taken to the hospital. He heard that one Pick-up van while drove towards backside by the accused, dashed against the said baby of the informant.

13. P.W.5 Anil Hazarika has deposed in evidence that at the time of occurrence, he along with Durlav Das (P.W.2) was on the road. One Broiler carriage vehicle was halted in front of the house of the informant. The son of the informant was crushed by the rear wheel of the said vehicle. The said vehicle was driven by Utpal Das.

In cross examination, P.W.5 has stated that the vehicle was driven by Utpal Das and later on, he has stated that Utpal Baruah has driven the said vehicle. He did not state the name of the accused/ appellants, who has driven the said vehicle at the time of occurrence.

14. According to the evidence of P.W.6 Smti. Rupali Das, who is the mother of the deceased, at the time of occurrence, she was inside the house and her deceased son was playing in the court-yard. At that time, the age of her deceased son was one year. At the time of

occurrence, Durlav Das raised hue and cry and then he came out of the house and saw her son in the lap of P.W.2 Durlav Das. She came to know from him that accused while driving the vehicle, dashed against her son.

15. P.W.7 A.S.I. of police Md. Abdul Zalil has deposed in evidence that on 5.3.2010, while he was working as A.S.I. of police at Bokakhat police station, on that day, one person from Kuruabahi informed him that one vehicle bearing registration No. AS-03-AC/0180 (Mohendra Pick-Up Van) while moving backward in the court-yard of the informant, dashed a 7/8 months baby of the informant. Then he prepared the GDE No 94, dated 5.3.2010 and rushed to the place of incident. Ext-4 is the said GDE , dated 5.3.2010. In the mean time, the injured/baby was taken to Bokakhat Civil hospital by the said offending vehicle. Then he (P.W.7) went to the said civil hospital and gave requisition for medical treatment and also seized the said vehicle. Ext-2 is the seizure list, upon which Ext-2(3) is his signature. During investigation, he prepared the sketch map of the place of occurrence. On the next day, i.e. on 6.3.2010, the said injured-baby was taken to Guwahati. On the way to Guwahati, the said baby succumbed to the injury and returned to the police station. Thereafter, he prepared the inquest report over the dead body of the deceased. Ext-3 is the said inquest report. After completion of investigation, he submitted the charge sheet against the accused person.

16. What we have found from the aforesaid discussions is that the baby belonged to the informant was succumbed to the injury in the result of the accident caused by the offending vehicle in the instant case. The police prepared the GDE on the same day of the incident and thereafter, he received the written ejahar after three days of the occurrence. In both of those documents, the name of the accused/appellant has not been cited as driver of the said offending vehicle who drove the said vehicle at the time of occurrence. The witnesses as examined by the prosecution, rushed to the place of incident after the occurrence. They are not the eye witnesses to the occurrence. They have stated that the appellant has driven the said vehicle at the time of

occurrence. If the appellant has actually driven the said vehicle, then why his name has been concealed in the GDE and in the ejahar. There is no evidence that how the deceased/baby came under the rear wheel of the offending vehicle.

17. Considering the aforesaid circumstances, I came to the conclusion that the prosecution has unable to prove the case against the accused/appellant Ujjal Baruah beyond all reasonable doubt , and in the result, I find and hold that the appeal has merit, and accordingly, the appeal is allowed on contest. The impugned judgment and order of the learned trial Court dated 6.6.2011 passed in G.R. Case No. 284/2010 is, hereby, set aside. The accused/appellant is set at liberty forthwith.

18. His ail bond stands discharged.

19. Send back the case record of G.R. Case No. 284/2010 to the learned trial Court along with a copy of the judgment and order passed by this Court.

Given under my hand and seal of the court on this the 21st day of November, 2013.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictated & corrected
by me.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me :- S. Borpatra, Steno.