

The Court of JM 1st Class, Ramgarh
Present: Mrs. Smriti Tripathi
Judicial Magistrate
20th December, 2022
District: Ramgarh
G.R. Case No. 1139/2016
CNR No. JHRG030000802016
(Gola PS Case No. 75/2016)

Informant	State (Through Dilip Kumar Mahto)
Represented By	<i>Smt. Manju Kachchap, Ld. A.P.P.</i>
Accused	Azad Khan s/o Basruddin Khan, male, aged about 43 years, r/o village Gurha, PS Tarhassi, District Palamu [A1]
Represented By	<i>Ankit Singh, Ld. Adv.</i>

Date(s) of Offence	07.10.2016
Date of FIR	08.10.2016
Date of Chargesheet	30.11.2016
Date of substance of accusation	11.09.2017
Date of Commencement of evidence	02.01.2018
Date when Judgment is reserved	17.12.2022
Date of Judgment	20.12.2022
Date of Sentencing Order, if any	N/A

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, CrPC.
A1	Azad Khan	None	19.10.2016	s.279, 337, 338 and 304A, IPC	Acquitted	None	N/A

J U D G M E N T

1. The afore-named accused person (hereinafter referred to as “**A1**”) is facing trial for charges framed u/s.279, 337, 338 and 304A of The Indian Penal Code, 1860 (Hereinafter referred to as the “**IPC**”).
2. The compendious case of the prosecution, founded on the written report of Dilip Kumar Mahto (hereinafter referred to as the “**informant**”) is that on 07.10.2016, at

about 6:30 PM, his mother, was going with his younger brother on a motorcycle bearing registration no. JH02Y-7011 to her daughter's house. When they reached near DVC, at about 6:45PM, a truck bearing registration no. NL01L-0342 came, being driven rashly and negligently hit the motorcycle of his brother due to which, his mother Fulo Devi died on the spot and was then taken to the hospital where doctor declared her dead, and his brother Kuldeep Mahto sustained serious injuries. Thereafter, the instant case was lodged against driver of said truck.

3. After investigation, the Investigating Officer submitted charge-sheet bearing no. 121/2016 dated 30.11.2016 against A1 for the offence u/s. 279, 337, 338 and 304A, IPC and thereafter, cognizance was taken under the same sections by the then court on 09.01.2017.

4. After supply of police papers, on 11.09.2017, substance of accusation was explained to A1 in simple Hindi u/s.279, 337, 338 and 304A, IPC to which he pleaded not guilty and claimed to be tried.

5. After closing the prosecution evidence on 27.06.2022, the statement of A1 was recorded u/s. 313 of CrPC on same day in which he denied the material available against him and claimed to be innocent.

6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the defence evidence was closed and the matter was posted for arguments.

7. The prosecution argued that the case has been supported by the witnesses beyond all reasonable doubt which warrants conviction of A1.

8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the prosecution has failed to prove the guilt of A1 above named beyond the shadow of all reasonable doubt.

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Did A1 drive vehicle bearing registration no. NL01L-0342 on any public way in a manner so rash or negligent as to endanger human life?

9.2 Did A1 cause the death of informant’s mother Fulo Devi by driving vehicle bearing registration no. NL01L-0342 in a rash and negligent manner?

9.3 Did A1 cause hurt and grievous hurt to informant’s brother Kuldeep Mahto by driving vehicle bearing registration no. NL01L-0342 rashly or negligently as to endanger human life, or the personal safety of others?

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, which are enlisted below:

List of Prosecution/Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Rajkishor Mahto	Hostile Witness
PW2	Dilip Kumar Mahto	Interested Witness [Informant]
PW3	Ganesh Mahto	Hearsay Witness
PW4	Narendra Prasad	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material Exhibits

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Ext.1	Signature of PW02 on Written report
2.	Ext. 1/1	Case Registration
3.	Ext.2	Signature of PW03 on Carbon copy of death inquest report
4.	Ext. 2/1	Death inquest report
5.	Ext. 3	Formal FIR

B. Defence:

Sr. No.	Exhibit Number	Description
--- nil ---		

C. Material Objects:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

Did A1 drive vehicle bearing registration no. NL01L-0342 on any public way in a manner so rash or negligent as to endanger human life?; Did A1 cause the death of informant's mother Fulo Devi by driving vehicle bearing registration no. NL01L-0342 in a rash and negligent manner?; Did A1 cause hurt and grievous hurt to informant's brother Kuldeep Mahto by driving vehicle bearing registration no. NL01L-0342 rashly or negligently as to endanger human life, or the personal safety of others?

11. PW1 denied knowledge about the alleged incident, and did not support the prosecution case at all and was thus, declared hostile.

12. PW2, the informant has deposed that he has lodged this case against owner of the vehicle bearing registration no. NL01L-0342. That, on 07.10.2016, when his mother Fulo Devi was returning from Chokad, then behind Gola DVC, a truck bearing registration no. NL01L-0342 which was being driven rashly hit the said motorcycle on which, his mother was sitting and which, his brother Kuldip Kumar Mahto was driving. As a result, his mother Fulo Devi died on the spot. He further deposed that he does not know the name of driver of the alleged truck but can identify him as he saw him at the Police Station on 08.10.2017, and that he reached the place of alleged incident two hours after the alleged occurrence. Further, that he has not seen the alleged incident with his own eyes but has heard about it from his brother who was riding the said motorcycle. Further that, he saw some injury on the body of his brother. Also, that the 4 years old daughter of his brother, namely Kajal also sustained some injuries, and both were treated at Gola Hospital. Further, that the *post mortem* was conducted at Hazaribagh. Thereafter, upon his identification, his written application was marked as Ext.1. He claimed to identify the driver of truck had he been present in the court. In his cross-examination, he deposed that he did not produce any document before the police relating to accident of the motorcycle and that his brother was riding the motorcycle without driving license and finally that, he is not an eye-witness to the alleged occurrence.

13. PW03 more or less corroborated PW02's deposition and deposed that on 07.10.2016 at 6:30 PM, the deceased Fulo Devi met with an accident. Upon his identification, Ext.2 was exhibited. He said that he does not know who was driving the LP truck. In his cross-examination, he deposed that he learnt about the incident via telephone call from Kuldip. Further, that he has not seen the number of alleged motorcycle and he is not an eye witness to the alleged incident.

14. PW04 deposed that on 08.10.2016, he was posted at Gola PS as an ASI. He was handed over the charge of investigation by O/C Sanjay Kumar after registering the case on the basis of written report of informant. After he took charge of the investigation, he entered the written report of informant in the case diary and recorded re-statement of the

informant who supported the case of the prosecution. Thereafter, he visited the place of alleged incident. He recorded the statements of witnesses who all supported the case. He entered the death inquest report in the case diary. Further, that he referred the matter to MVI, Hazaribag for inspection and obtained MVI report as well as death inquest report from Hazaribag. He then, submitted charge-sheet u/s. 279, 337, 338 and 304A of IPC as per directions, against A1. Upon his identification, Ext. 2/1, Ext. 1/1 and Ext. 3 were exhibited. In his cross-examination, he deposed that on 08.10.16 at 7:45 PM, he reached the place of incident saw tyre-mark of vehicle but he has not mentioned the same in the case-diary. Further, that neither did he see any damaged-vehicle-parts at the place of alleged incident, nor did he seize any broken parts of the truck from there. Also, that neither did he sent the motorcycle for investigation, nor did he mention in the case diary that he obtained the license of the rider of the said vehicle. Further, that he made the people present at the place of alleged incident the witnesses and recorded their statement at about 8:30, but neither did he make the injured Kuldip Mahto a witness of this case, and nor did he record his statement in the case-diary. Also, that he did not obtain injury report of Kuldip. Also, that he has not recorded the statement of MVI inspector nor made him witness.

15. After going through the material available on record, the court finds that prosecution has been given ample opportunities for adducing witnesses but only three witnesses have been examined of whom, PW01 has turned hostile, and PW03 is a hearsay witness. PW04, being the Investigating Officer has supported the prosecution case and deposed the details of his investigation. PW02 is the informant who is also not an eye witness. One eye-witness, who and whose daughter even allegedly sustained injuries during the alleged incident has not been produced as a witness. No other eye witness has been produced. Overall, the prosecution case is shorn of a single piece of direct evidence which can prove that A1 was driving the alleged vehicle which resulted in the death of informant's mother and injuries to his brother, in the manner he stands charged.

16. Thus, this court is of the considered opinion that the prosecution has failed to substantiate the charge u/s.279, 337, 338 and 304A, IPC. Hence, A1 is hereby acquitted in this case. A1 as well as his respective bailors stand discharged from the liabilities of their respective bail bonds.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 20th December, 2022

Sd/-

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