

The Court of JM 1st Class, Ramgarh**Present: Smriti Tripathi****Judicial Magistrate****19th December, 2022****District: Ramgarh****G.R. Case No. 981/2017****CNR No. JHRG030003562017****Gola PS Case No. 85/2017**

Informant	State (Through Teklal Mahto)
<i>Represented By</i>	<i>Smt. Manju Kachchap, Id. APP</i>
Accused	Sumit Kumar Mahto s/o Mansu Mahto, male, aged about 28 years, r/o village Hohad, PS Rajrappa, District Ramgarh [A1]
<i>Represented By</i>	<i>Sri Rajendra Kumar Mahto, Ld. Adv.</i>

Date(s) of Offence	08.09.2017
Date of FIR	09.09.2017
Date of Chargesheet	11.01.2018
Date of substance of accusation	23.02.2018
Date of Commencement of evidence	28.03.2018
Date when Judgment is reserved	16.12.2022
Date of Judgment	19.12.2022
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 s. 428, CrPC
A1	Sumit Kumar Mahto	-	03.10.2017	s. 279 and 304A of IPC	Acquitted	-	-

J U D G M E N T

- The aforementioned accused person (hereinafter referred to as "**A1**") is facing trial for charges framed u/s. 279 and 304A of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").
- The compendious **case of the prosecution** as sourced from the written report

of Teklal Mahto (hereinafter referred to as the "**informant**") is that on 08.09.2017, his elder brother Sulendra Mahto left for duty at BML factory at around 7:30 PM. After a few minutes, he received a phone call that his elder brother met with a motorcycle accident. On this information, he, alongwith other villagers went to the place of alleged incident and saw that his brother Sulendra Mahto was lying died on the road. A motorcycle bearing registration no. JH09AA-9003 was also lying on road-side in damaged condition, which was being driven by A1 with two other pillion riders, one of whom had fled away. Thereafter, the instant FIR bearing Gola P.S. Case No. 85/2017 dated 09.09.2017 was registered against motorcycle rider A1 who dashed the cycle of the deceased.

3. After investigation, the Investigating Officer submitted **charge-sheet** bearing no. 02/2018 dated 11.01.2018 against A1 for the offence u/s. 279 and 304A of IPC and subsequently, **cognizance** was also taken by the predecessor court of the offence under the same sections on 14.02.2018.
4. After police papers were supplied, on 23.02.2018, **substance of accusation** was explained to A1 u/s. 279 and 304A of IPC in simple Hindi to which he pleaded not guilty and claimed to be tried and the record was advanced for prosecution evidence.
5. After closing the **prosecution evidence** on 09.09.2022 the statement of A1 was **recorded u/s. 313 of CrPC** in which the material against him was put to him which he denied and claimed to be innocent.
6. Thereafter, the defense 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 Id. Assistant Public Prosecutor argued that a perfect case is made out against A1 indicating that it was he who committed the alleged offence and he thus deserves to be convicted.
8. The defense 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 beyond reasonable doubt, and he thus, deserves to be acquitted.
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 drove motorcycle bearing registration no. JH09AA-9003 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 brother Sulendra Mahto by driving motorcycle bearing registration no. JH09AA-9003 in a rash and negligent manner?

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/Defence Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Tapeshear Kumar	Hostile Witness
PW2	Riday Mahto	Hearsay Witness
PW3	Teklal Mahto	Interested Witness (Informant)
PW4	Yogesh Rajak	Official Witness
PW5	Ram Vinod Singh	Official Witness
PW6	Dr. Abhishek Agarwal	Expert Witness (Doctor)
PW7	Pradip Mahto	Hearsay Witness

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 PW01 on Photocopy of Inquest Report
2.	Ext.2	Written Report
3.	Ext.2/1	Case registration
4.	Ext. 3	Formal FIR
5.	Ext. 3/1	Signature on formal FIR
6.	Ext. 1/1	Inquest Report
7.	Ext. 1/2	Challan of dead body
8.	Ext. 4	Post mortem Report

B. Defence:

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

FINDINGS

Did A1 drove motorcycle bearing registration no. JH09AA-9003 on any public way in a manner so rash or negligent as to endanger human life?; Did A1 cause the death of informant's brother Sulendra Mahto by driving motorcycle bearing registration no. JH09AA-9003 in a rash and negligent manner?

11. For the sake of brevity, both these points of consideration are being dealt with together. To prove the charges under section 279 and 304A, IPC, the prosecution has produced a host of evidences, the relevant portions of which are discussed one after the other hereinafter.
- 11.1 PW1 is a Hostile Witness and did not depose anything to support the prosecution case and only deposed some minor details relating to the alleged incident which he deposed he has heard and not witnessed.
- 11.2 PW2 deposed that the alleged incident took place on 08th day of some month of 2017 when the deceased Sulendra Mahto was going on bicycle for duty at plant from his house at Badki Kpiyya and at about 7:30 PM near the plant, one motorcycle which was being driven rashly and negligently dashed Sulendra Mahto who fell down and died on the spot. He then corroborated the motorcycle number and deposed that three people were on it. Further that it belonged to A1 and he was riding it himself and there were 2 other pillion riders of whom all, one person got injured and 2 ran away, and later that the people preset at the spot told him about this. He further deposed that he learnt about the incident via a phone call and reached the alleged place of incident where he saw that the deceased was lying there who was then taken to Government hospital, Gola. Thereafter, the PS personnel came and sent to body for *post-mortem*. He then deposed that the deceased Sulendra received injuries on his head and thigh. Upon his identification, the postmortem report was marked as Ext. 1. To the court's question, he deposed that it was the informant who told him that A1 was the one who was riding the said motorcycle. In his cross-examination, he deposed that the deceased is his cousin, that he has neither witnessed the alleged accident nor has he seen A1

drive the said vehicle, and details about the surrounding of the alleged place of incident amongst other things.

11.3 PW03, who is the informant of this case, supported the prosecution case, corroborated the contents of Ext. 2, which was exhibited upon his identification, and corroborated the deposition of PW01. In addition, he deposed that his brother/deceased was a laborer and used to commute to the factory by bicycle. He also deposed that one Fulchand Mahto saw the alleged incident and informed him through a phone-call, and when he went there he saw A1 standing there. He further deposed that even if A1 is present he cannot identify him as the alleged incident also took place at night-time. In response to court's question he deposed that it was A1 who has told him that his name was Sumit Kumar. In his cross-examination, he deposed that he is not eye witness to the occurrence and that he reached the alleged place of incident with Fulchand, amongst other things.

11.4 PW4 was posted at Gola Police station as an ASI on 10.01.2018, and on instruction of Dy. SP Kishor Rajak he took charge of investigation of this case. Thereafter, he submitted charge-sheet bearing no. 02/18 dated 11.01.2018 u/s. 279 and 304A of IPC against A1. He identified the writing and signature of O/C Arjun Mishra on case registration, which was then exhibited as Ext. 2/1. Further, he identified Formal FIR filled up by O/C Arjun Mishra, which was marked as Ext. 3. In his cross-examination, he deposed that during the investigation, he neither visited at the place of occurrence nor did he record the statement of any witness.

11.5 PW5 is the Investigating Officer of this case, who was posted at Gola PS as an ASI on 09.09.2017. On the basis of written report of the informant, this case was registered bearing PS Case no. 85/2017 by O/C Arun Mishra u/s 279 and 304A of IPC. Thereafter, he was handed over the charge of investigation. He deposed that the alleged incident took place on 08.09.2017 near the house of Vijay Soni, situated at village Kamti. On 09.09.2017, death inquest report was prepared at 6:15 AM in Gola PS premises. He further deposed that he recorded the re-statement of informant and witness Riday Mahto and inspected the surroundings of the place of alleged incident. Further, that he did not obtain MVI report of the said motorcycle. Further, that he obtained *post mortem* report of the and mentioned the same in the diary. Further, that the owner-cum-driver/accused of said motorcycle was released on bail by the court on 30.10.2017. Also, that upon his transfer, he handed over the charge

of investigation to O/C of Gola P.S. on 28.12.2017. He identified the writing and initial signature of O/C Arjun Kumar Mishra on case registration, which was marked as Ext. 2/1. He identified the Formal FIR which is filled up by Sudhir Kumar, and it was marked as Ext. 3/1. Further, he identified the death inquest report which is in carbon copy and the Dead Body's Challan bearing his signature and initial signature, which were then marked as Ext. 1/1 and 1/2 respectively. Further, the *post mortem* report was marked as Ext.4. He claimed to identify A1 had he been present in the court. In his cross-examination, he deposed that he was informed about the incident after 7:30PM on 08.09.2017 and that he visited the place of alleged incident but could not recall the exact time. Further that, he has not enclosed a copy of '*Sanah*' in the case-diary but has entered it in the PS Diary and incident diary. Further that, he recorded the statement of all witnesses at their respective houses situated at village Kamti. He further deposed that he did seized the said motorcycle from the place of alleged incident but did not prepare any seizure-list and also did not inquire into the involvement of any other vehicle in the said accident as the onlookers told him the no. of the vehicle which he seized. Also, that he did not seize any article from the deceased. After 09.09.2017, he did not go to place of alleged incident again.

11.6 PW6, the Expert Witness has deposed that on 09.09.2017 he was posted as Medical Officer at Sadar Hospital, Ramgarh and on that day, he conducted *post mortem* of the deceased who was brought to hospital by Chowkidar 4/6 Murli Karmali, his two cousins, PW02 and PW07. On dissection of the body, he found that intracranial hemorrhage was present and the death was caused to serious head injury. Further that, the postmortem report was prepared by him and he identified his signature which was earlier marked as Ext.4. In his cross-examination, he deposed that before the *post-mortem* he did not see any document regarding identification of the deceased but saw the inquest report.

11.7 PW7 deposed that the alleged occurrence took place in the year 2017 and on the second day of the alleged incident, his brother Shibu Mahto informed him through mobile that Sulendra Mahto was hit by a motorcycle at village Kamta while he was riding his bicycle, and he died on the spot. Upon receiving information, when he reached Gola PS, he saw the deceased's dead body and was sent with it for *post mortem*. In his cross-examination, he deposed that on the day of the alleged incident, he was at Ranchi and he has not seen the incident in his own eyes.

- 11.8 Now, coming to documentary evidences, the prosecution has produced the *post mortem* report of the deceased which shows that he died due to head injury. Also, inquest report and challan of the dead body of deceased has been produced by the prosecution, amongst other things. These go to show that it was indeed Sulendra Mahto who died.
12. Thus, looking at the prosecution case as a whole, based on various oral and documentary evidences brought by it, the prosecution has tried to make out the case u/s. 279 and 304A, IPC. A perusal of Ext. 4 alongside deposition of PW06 amongst others raises the presumption that the informant's brother indeed died in the accident as alleged. However, whether it was A1 who was driving the motorcycle that allegedly resulted in the death of the deceased is a question that the prosecution has failed to answer. One of its witness turned hostile, and the others are hearsay witnesses or official and expert witnesses. PW03 who is the informant has deposed that he received the information of the alleged accident from one Fulchand. The prosecution has failed to examine him or any other eye witness who saw as to who was riding the motorcycle belonging to A1. Even the informant himself expressed his inability to identify A1 and depose whether it was he who was riding the said motorcycle at the time of the alleged incident. In such a situation, the prosecution has failed to raise the presumption that A1 did a negligent act that resulted in the death of the deceased and has thereby failed to shift the burden of proof. The prosecution case, overall, due to the sheer absence of even a single eye-witness is shorn of even a single piece of evidence that could prove that it was A1 due to whose negligent act of rashly driving the said motorcycle, the deceased died.
13. Thus, this court is of the considered opinion that the prosecution has failed to substantiate the charges u/s. 279 and 304A of IPC. Hence, A1, is hereby **acquitted** of all charges in this case. He as well as his bailors stand discharged from the liabilities of their respective bail bonds.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 19th December, 2022

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 19th December, 2022