

The Court of JM 1st Class, Ramgarh
Present: Smriti Tripathi
Judicial Magistrate
25th May, 2023
District: Ramgarh
G.R. Case No. 147/2018
CNR No. JHRG030015072018
Gola PS Case No. 17/2018

Informant	State (through Rishi Kapoor Mandal)
Represented By	<i>Smt. Manju Kachchap, Id. APP</i>
Accused	Vivek Kumar Mandal s/o Panchanan Mandal, male, aged about 36 years, r/o Chalkari, PS Petarwar, District Bokaro [A1]
Represented By	<i>Sri Bahadur Mahto, Ld. Advocate</i>

Date(s) of Offence	11.02.2018
Date of FIR	11.02.2018
Date of Chargesheet	26.05.2018
Date of substance of accusation	23.08.2018
Date of Commencement of evidence	01.10.2018
Date when Judgment is reserved	25.05.2023
Date of Judgment	25.05.2023
Date of Sentencing Order, if any	N/A

Rank of the Accused	Name of the Accused	Date of Arrest/Surrender	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	Vivek Kumar Mandal	12.02.2018	12.02.2018	s. 279 & 304A, IPC	Acquitted	None	N/A

J U D G M E N T

- The afore-named accused person (Hereinafter referred to as "A1") is facing trial for charge u/s. 279 and 304A of The Indian Penal Code, 1860 (Hereinafter referred to as the "IPC").

PROSECUTION CASE

- The compendious case of the prosecution, as sourced from the written application of Rishi Kapoor Mandal (hereinafter referred to as the "informant") is that on 10.02.2018 at around 2:00 AM, he received information from Kiran Mandal that his younger brother Rajiv Mandal

(hereinafter referred to as the “deceased”) has met with an accident at Sikidiri road near Koila Talab. Then, he went to the spot at about 5:30 AM and saw that his brother was lying dead and thereafter, he reported the matter to the police station and after conducting *post mortem* of the dead body at Sadar Hospital, Ramgarh he again went to Gola PS where he learnt that his brother was driving the alleged vehicle (Ford Figo) bearing registration no. JH01CM-4980 which was strange as the deceased doesn’t know how to drive. He narrated the said incident to O/C Arjun Kumar Mishra who called the concerned three persons and enquired from them about the alleged incident. After a lot of interrogation, they changed their original statement and stated that at the time of the alleged incident, the said vehicle was being driven by A1. He also states that seeing the condition of the vehicle blood stains and the torn back-side of PW01’s shirt indicates towards something more and none of the three have sustained any injury. He further states that it thus, seems that the deceased, A1 and other two persons indulged in some sort of fight after which, the vehicle was made to suffer an accident intentionally. Hence, this case.

FROM INVESTIGATION TILL TRIAL

3. After Investigation, the Investigating Officer submitted **charge-sheet** bearing no. 51/2018 dated 26.05.2018 against A1 for the offence u/s. 279 and 304A of IPC and thereafter, **cognizance** was taken under the same sections by the then court on 04.06.2018.
4. After supplying police papers to A1, on 23.08.2018 **Substance of Accusation was explained** for the offence u/s. 279 and 304A of IPC to him in simple Hindi to which he pleaded not guilty and claimed to be tried. Thereafter, the case was fixed for evidence and appearance of the accused person.
5. After closing the prosecution evidence on 25.04.2023, the material against A1 was put to him and his **statement** 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.

ARGUMENTS ADVANCES

7. The prosecution argued that the case has been supported by the witness beyond reasonable doubt which warrants conviction of A1. It was further submitted that it has been proved beyond doubt that it was A1 who was driving the car bearing registration no. JH01CM-49801 at the time of the alleged accident. It was further urged that the MVI Report

doesn't suggest any technical fault in the vehicle which implies that A1 was driving carelessly. It has further been argued that the story that they were trying to save the vehicle from a vehicle trying to overtake them is a fabricated one and the truth is that A1 was driving in high speed and negligently. Further submitting that the prosecution has been able to prove this presumption, prayer was made to convict A1.

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 submitted that the prosecution has failed to prove the guilt of A1 beyond reasonable doubt. It was especially urged that none of the eye-witnesses have deposed of any fault at the hands of A1 and nothing indicating his fault has also come up during investigation. The alleged accident was on account of the bad lighting, the other vehicle, and the pit on road and not due to A1.

POINTS FOR CONSIDERATION

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charge u/s. 279 and 304A of IPC levelled against A1 beyond reasonable doubt or not.

9.1 Did A1 drive vehicle bearing registration no. JH01CM-4980 on a 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 by driving vehicle bearing registration no. JH01CM-4980 in a rash and negligent manner?

EVIDENCES

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, reference to only the relevant portions of which is made at relevant parts of this judgment, although they have all been perused by this court in detail. They are:

List of Prosecution/Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW01	Rajesh Kumar	Eye Witness
PW02	Om Prakash Sharma	Eye Witness
PW03	Rishi Kapoor Mandal	Interested Witness [Informant]
PW04	Virendra Prajapati	Chance Witness
PW05	Dr. Brajnandan Kumar	Expert Witness [Doctor]
PW06	Santosh Kumar Singh	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	Written report
2.	Ext.2	<i>Post mortem</i> Report
3.	P1/1/PW06	Endorsement of Registration of the Case
4.	P3/PW06	Formal FIR
5.	P4/PW06	Motor Vehicle Inspection Report

B. Defence:

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

C. Material Objects:

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

FINDINGS

11. Did A1 drive vehicle bearing registration no. JH01CM-4980 on a public way in a manner so rash or negligent as to endanger human life?; Did A1 cause the death of informant's brother by driving vehicle bearing registration no. JH01CM-4980 in a rash and negligent manner?

11.1 For proper adjudication, both these points are being taken up together, as the answer to one depends on the answer to the other. To establish its case, the prosecution has produced the following evidence, the relevant portion of which is being reproduced herein below.

11.2 PW01 deposed that the alleged incident took place on 10th February, 2018. At that time, he, the deceased, PW02 and A1 were going to the deceased's uncle's house at Bokaro by vehicle bearing registration no. JH01CM-4980 and on reaching Koiyan village, there was a sharp turn, where they turned their car and saw that a large vehicle was coming towards them without signaling by dipper. To save themselves from crashing into the said vehicle, they turned their vehicle left and due to a pit on the road, the vehicle toppled. After regaining consciousness after 2-3 minutes, he saw that PW02 and A1 have already exited from the car and they pulled him out. All three of them then pulled out the deceased and saw that he had serious injury on his head. Then, A1 dialed emergency no. 108. After an hour, the ambulance arrived and the deceased was taken to Gola Hospital where he was declared dead. He then deposed that A1 was driving the said vehicle and he was sitting next to him on the left side, the deceased was sitting behind A1 and PW02

was sitting behind PW01 on the left side. He then claimed to identify A1. In his cross-examination, he deposed that at the time of the alleged incident, large vehicles were continuously coming from the opposite direction and were trying to overtake other vehicles from the right side which is a spiral road. He deposed that where A1 tried to save them from approaching vehicle trying to overtake and turned left which resulted into the vehicle falling in a pit and toppling is a turning. Also, that the car was in normal speed due as it was night-time.

11.3 PW02 deposed that the alleged incident took place on 10.02.2018 at around 12:30am in the night when he, alongwith three friends PW01, A1 and the deceased left from Ranchi for Chalkari on a four-wheeler bearing registration no. JH01CM-4980. Further, he corroborated the statement of PW01 and he also claimed to identify A1. In his cross-examination, he deposed that the place of incident is sharp turning and admitted the fact that at the time of accident there were 3-4 trucks crossing/coming and accused driver tried to overtake his car caused to said incident. Accused is his friend so he knows very well. He has corroborated the sequence and details of the alleged incident, as deposed by PW01. In his cross-examination, he deposed that the place where the alleged accident took place is a sharp turn. Also, the as trucks were trying to overtake each other, and one of them came in the right direction and to save themselves from collision with it, A1 turned the vehicle left as a result of which, it fell in a pit and toppled. Finally, that he did not feel that A1 was driving the vehicle at high speed.

11.4 PW03, the informant deposed that he lodged the instant case against A1 regarding the occurrence which allegedly took place on 11.02.2018. At that time, he was informed on his mobile by Kiran Mandal that his brother, Rajiv Mandal met with an accident near Bada Koyan at Sikidiri Road. At around 5:30, they reached at Gola PS and saw the dead body of the deceased. When he asked about the alleged incident, deceased's friends A1, PW01 and PW02 told him that they were going on a four-wheeler bearing registration no. JHOICM-4980, when the alleged accident took place on the road. They further told him that the deceased was driving the vehicle which got out of control and the vehicle flipped. When he said that his brother did not know how to drive, and told the same to the OC of the PS, he enquired from A1, PW01 and PW02 again to which, they told him that A1 was driving the vehicle. He then deposed that he saw the said vehicle, whose front passenger's window glass was broken on the left side, back glass was shattered completely, right side's back passenger's window glass was completely broken and the right side's front passenger's window glass was bent. He deposed that he himself saw that the friends of his deceased brother had no injury whereas, when

he saw the dead body of his brother on funeral, he saw that his forehead was injured. When he touched his forehead, he saw that top and left portion of his forehead had injuries. He identified Ext. 1 and claimed to identify A1 if he was present in the court. In his cross-examination, he deposed that he's not an eye witness to the accident and learnt about it at the Police Station. Further, that he does not know who, the alleged vehicle belonged to as friends of his brother told him that it was borrowed from another friend.

11.5 PW04 deposed that the alleged accident took place on 10.02.2018 between 1-2am near village *Barki Koyian* and at a distance of about 10-15 km from his house. As he heard a noise and reached the place of the alleged incident, he and others saw that a car had flipped near a pit and four persons were stuck inside. One person had died on the spot and the others were badly injured. The injured took each other out of the vehicle and were then taken to hospital by Ambulance upon arrival of the Police. He then deposed that the deceased was seated in the back-seat on the right and the glass of vehicle was broken. He did not claim to identify any of the three injured persons. In his cross-examination, he deposed that on the day of the alleged incident, he had slept in his house at around 8-9 PM and reached the spot after about 10 minutes of the alleged accident and therefore cannot say who all were seated where and who was driving the vehicle. Finally, that the place of the alleged incident is a busy place and accident prone.

11.6 PW05, deposed that he conducted the *post mortem* of the deceased on 11.02.2018 at about 10:35am after his identification by Chowkidar, and found: (i) Identification mark: black mole over left side of neck, complexion was fair, hair was black, eyes closed. (ii) stains were found over the lower part of back. (iii) *Rigor mortis* was present alongwith bleeding from nostrils and ears. *Anti-mortem* findings were fracture of frontal, parietal, left and temporal left bones of the skull. (iv) Brain tissue was found to be protruded through wound over forehead 2 inches x 1 inch bone deep.

Findings were: (a) Head: skull bones were left side of skull fractured and crushed into many pieces, brain tissue was crushed, disoriented and extruded of out of skull bones, (b) Chest: heart found to be intact with pericardium. (c) lungs were pale and intact. (d) Abdomen: containing liquid digested food materials. (e) Liver: spleen and kidney were pale and intact. Death was due to head injury in road traffic accident and consequent comma and death. Death was within 8 hours. This *postmortem* report, prepared by him, was exhibited as Ext.2.

In his cross-examination, he deposed that he joined Sadar Hospital, Ramgarh in

July, 2015 and that he has not disclosed the name of the assistants who accompanied him. finally, that it is not true to say that he has not adopted the proper procedure of *postmortem*.

11.7 PW06, the Investigating Officer deposed that on the basis of written application of informant, the instant case was lodged and he was given charge of investigation by O/C Arjun Kumar Mishra. After taking charge of the investigation, he entered the written application and death inquest report in the case diary and then, he recorded the restatement of the informant and other witnesses. All of them supported the case of the prosecution. He arrested driver of the vehicle bearing registration no. JH01CM-4980, A1 and took his statement at *Hazat* where he confessed his guilt to the said offence and further disclosed that he was driving the vehicle in drunken state due to which the alleged accident took place in village Koyan Talab caused due to sharp turning of the road and the car toppled on the road as a result of which, his friend Rajiv Mandal sustained head injuries and was taken to hospital with the help of police personnel where the injured was declared dead. In para 2, he deposed that he inspected the place of the alleged incident which distance is about 4 km away from Gola PS and noted down the boundaries of the place of the alleged incident and at the place of the alleged incident he recorded the statement of independent witnesses Bijendra Prajapati and Sikandar Mahto. Further, he verified the documents of ownership of the said vehicle and its Motor Vehicle Inspection was conducted later on and it was entered into the case diary. In para 4, he deposed that he obtained CDR of Vivek Kumar Mandal, Rajesh Kuma and Omprakash Sharma from cyber cell of SP Office and found that there was no call communication made between them. Later, as per the order of the court, the alleged vehicle was released. On 26.05.2018, as per the instructions of SP office, he submitted charge-sheet bearing no. 51/18 dated 26.05.18 u/s. 279 and 304A of IPC against A1. Upon his identification, written report as well as Formal FIR, MVI Report were exhibited as Ext. P1/1/PW6, P3/PW06 and P4/PW06 respectively. He identified A1 present in the court. In his cross-examination, he deposed that he is not an eye-witness to the alleged occurrence and on 11.02.18 at about 8:25 AM, he reached the place of the alleged incident. In para 12, he deposed that he did not enquire A1 about drinking liquor or sent him for his medical test regarding the same. Also, that it is true that the place of the accident is dangerous and an accident-prone zone and as per instructions of the senior official, he submitted charge-sheet.

11.8 Apart from the depositions and documents referred to above, no other form of evidence has been produced before the court. The crux of the allegations levelled

by the prosecution are that A1 was driving in a rash and negligent manner which resulted in the demise of the deceased. The defense on the other hand is not contesting the fact that A1 was driving the alleged vehicle but is stating that the accident did not occur due to rash or negligent driving. Rather, it occurred due to events beyond the control of A1 and actions done in good faith.

11.9 Needless to say, the burden is upon the prosecution to prove, beyond reasonable doubt that A1 was driving rashly and negligently and due to the same A1 dies. To prove this, PW06 has stated that A1 confessed that he was driving in a drunken state. If that is the case, then as per the prosecution's case itself, no medical examination of A1 was conducted to prove this fact. None of the two other eye witnesses, who were the co-passengers also deposed this fact. Thus, this prosecution theory is unproved.

11.10 The next stance taken by the prosecution is of rash and negligent driving. On this, the eye witnesses have deposed that it was to save them from a collision with the other vehicle which could happen due to the incoming vehicle in their lane, in the wrong direction, that A1 turned the vehicle on the left side, not knowing that there was a pit there due to which, the vehicle toppled and the deceased sustained such injuries which resulted in his death.

11.11 On this, the Id. Assistant Public Prosecutor argued that had A1 driven the vehicle in a normal speed, the accident could have been averted. However, no report has been submitted to show the speed of the vehicle at the time of the accident. As all the eye witnesses and chance witness have deposed that the turning was a sharp turning and there was a pit, and it was night time, the factum of the accident cannot give rise to the presumption of negligent driving. The eye witnesses have also deposed that it was another vehicle, which, in a jiffy to overtake another vehicle, was approaching the vehicle A1 was driving from the wrong direction and then resulted in the said accident. In such a case, there is no evidence on record to show that A1 was driving rashly and negligently.

11.12 The MVI also shows damage to the vehicle but the cause of that damage has not been attributed to speedy/rash driving. The *post mortem* report of the deceased shows that he died due to a road traffic accident, which has neither been disputed by any of the prosecution witnesses nor by A1 himself during his statement recorded u/s. 313, CrPC. but, the genesis of this road traffic accident being the rash and negligent driving of A1 is something which could not be proved.

11.13 Therefore. Regard being had to the discussion made above and the evidence on record, this court is of the considered opinion that the prosecution has failed to

prove the charges under both the sections beyond reasonable doubt and thus, it could not shift the burden of proof upon A1.

11.14 Accordingly, A1 is hereby acquitted under sections 279 and 304A, IPC.

12. Thus, regard had to the materials placed before this court and the discussion made above, this court is of the considered opinion that the prosecution has failed to establish that A1 committed the alleged offence and has thereby failed to substantiate the charges u/s. 279 n 304A of 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.

(Dictated and corrected)

Pronounced by me in open court

Sd/-

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 25th May, 2023

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 25th May, 2023