

In the court of the Special Judicial Magistrate, Khurda

Present: Shri S.K.Padhy, LL.B.,

Special Judicial Magistrate,

Khurda.

Date of conclusion of argument; 5.9.2014

Date of Judgment : 5.9.2014

G.R Case No. 1015/09

T. R No. 46/13

State

Vs

1. Sukanata Paikray age 54 years

S/o Kapila Paikaray

of village Patanibar, P.S/Dist.Khurda

Accused .

Counsel

For the prosecution

Shri A. Khan, A.P.P., Khurda.

For the defence

Shri D.K.Das

and associates,

Advocates, Khurda.

Offence u/s 279/304(A) of the Indian Penal Code.

## J U D G M E N T

The above named accused stands prosecuted for the offence punishable u/s 279/304(A) of the Indian Penal Code

2. Prosecution case is that deceased Sarup Nayk, the son of the informant was working as labor in the tractor bearing registration no. OR-02-AR 9036 and trolley no. 9037. On 22.9.2009 at about 5 p.m while he was working in the said tractor due to negligence driving of the driver (accused) he fell down and the vehicle ran over him. He was severely injured. He was first shifted to Khurda medical and then to Capital hospital for treatment but he died on the way. Basing on the report of the informant a case was registered and after due investigation charge sheet u/s 279/304(A) of the I.P.C was submitted against the above named accused. Hence this case.

3. The accused had denied the charges made against him by taking the plea of false implication.

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Now the points for determination of this case are as follows:-

iii) Whether on the relevant date, time and place the above named accused was driving the alleged vehicle bearing registration no, OR-02-AR-9036 & 9037 (trolley) in a rash and negligent manner endangering human life.

iv) Whether on the relevant date, time and place the accused had caused the death of Surup Nayak by such act of rash and negligent driving.

4. In order to prove its case prosecution examined the informant and four nos. of independent witnesses as P.W 1 to 5 and defence examined none on its behalf. Prosecution declined the remaining witnesses since despite taking all possible steps the attendance of other witnesses could not be procured in the court. Further in view of the evidence led so far on behalf of prosecution non examination of said witnesses will not prejudice the defence. F.I.R, Signature of the informant, signature of P.W 3 and the P.M report are marked as Ext.1 to Ext. 5.

5. According to the informant, P.W 1, on the occurrence day and time while he was at his home received the news of accident of his son (deceased) from Khana Naik. He told him that one tractor ran over his son. The informant immediately came to medical and found his son was severely injured. On the advice of doctor he shifted his son to capital hospital for better treatment but during the treatment he died in the hospital. In the cross examination he admitted that he has got no direct knowledge regarding the occurrence. He proves his report Ext.1 and 1/1 is his signature. P.W 2 stated on the occurrence day and time while the deceased was going in the alleged tractor fell down and the vehicle ran over him. He was shifted to Khurda medical for treatment and then shifted to Capital hospital for better treatment but he died on the way. In the cross examination he admitted that he has not seen the occurrence but heard. He failed to say from whom he heard about the incident. P.W 3, is the seizure witness who only admitted his signature Ext. 2 in the seizure list and Ext. 3 in the zimanama but did not tell any thing about the factum of the seizure. In the cross examination he admitted that as per police instruction he put his signature in the seizure list and zimanama and cannot say its contents. P.W4, is the inquest witness who also admitted his signature Ext. 4 in the inquest report and stated as per police direction he put his signature. He failed to say the contents of the inquest report. P.W 5, denied to have any knowledge regarding the incident. As seen above none of the prosecution witnesses has stated that the present accused was driving the alleged vehicle on the relevant date, time and place in a rash and negligent manner and thereby caused the death of Surup Nayak by such act of rash and negligent driving. In order to prove the offence u/s 279/304(A) of the I.P.C there must be positive evidence on record and the prosecution should prove the same. There is no evidence on record to implicate the present accused in to the alleged offences. Though the death of Surup Nayak was proved by the prosecution vide Ext. 5, the rash and negligence act for causing such death by the present accused have not been proved. In view of the above evidence on record and discussion, I am of the opinion that prosecution has not been able to prove this case u/s 279/304(A) of the I.P.C against the present accused beyond all reasonable doubt.

6. In the result the accused is held not guilty u/s 279/304(A) of the I.P.C. He is, therefore, acquitted u/s 255(i) of the Cr. P.C. He be set at liberty forthwith and discharged from his bail bond.

7. The zimanama be canceled two months after the appeal period is over if no appeal is preferred against this judgment.

8. Enter this case as mistake of fact.

Special Judicial Magistrate, Khurda.

This judgment is typed by me and pronounced in the open court this the 5th day of September 2014.

Special Judicial Magistrate, Khurda.

List of witnesses examined for the prosecution

P.W 1. Purnachandra Naik, informant

P.W 2 Hrusikesa Naik

P.W 3 Gyandra Kumar Routray

P.W 4 Pabana Bhujbala

P.W 5 Ashok Baral

List of witnesses examined for the defence

None

List of documents admitted in evidence for the prosecution

Ext. 1 F.IR.

Ext. 1/1 Signature of P.W 1

Ext. 2 Signature of P.W 2 on the seizure list.

Ext. 3 Signature of P.W 2 in the zimanama

Ext 4 Signature of P.W 4 in the inquest report

Ext. 5 P.M report of Surup Naik

List of documents admitted for the defence for the defence.

Nil

List of M.Os admitted in evidence for the prosecution/ defence.

Nil

Special Judicial Magistrate, Khurda.