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ক্রমিক নং	তারিখ	নোট ও আদেশ
		<p>বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ (ফৌজদারী আপীল অধিক্ষেত্র)</p> <p><u>উপস্থিতঃ</u> বিচারপতি জনাব মোঃ আশরাফুল কামাল</p> <p><u>ফৌজদারী আপীল নং ১৩১৭/১৯৯০</u> জাকির হোসেন</p> <p>-----সাজাপ্রাপ্ত-আপীলকারী।</p> <p>-বনাম-</p> <p>রাষ্ট্র ও অন্য</p> <p>-----প্রতিপক্ষদ্বয়।</p> <p>এ্যাডভোকেট উপস্থিত নাই</p> <p>-----সাজাপ্রাপ্ত-আপীলকারী পক্ষে।</p> <p>এ্যাডভোকেট মোঃ আশেক মোমিন, ডেপুটি এ্যাটর্নী জেনারেল সংগে এ্যাডভোকেট লাকী বেগম, সহকার এ্যাটর্নী জেনারেল এ্যাডভোকেট ফেরদৌসী আক্তার, সহকারী এ্যাটর্নী জেনারেল</p> <p>-----রাষ্ট্র-প্রতিপক্ষ পক্ষে।</p> <p><u>শুনানী এবং রায় প্রদানের তারিখঃ ১৯.০১.২০২৩।</u></p> <p><u>বিচারপতি জনাব মোঃ আশরাফুল কামালঃ</u></p> <p>বিজ্ঞ অতিরিক্ত দায়রা জজ, ১ম আদালত (ভারপ্রাপ্ত), বগুড়া কর্তৃক দায়রা মামলা নং ১১৮/৮৩-এ প্রদত্ত বিগত ইংরেজী ০৬.০৬.১৯৮৪ তারিখের রায় ও দন্ডাদেশের বিরুদ্ধে অত্র ফৌজদারী আপীল।</p> <p>আপীলকারী পক্ষে বিজ্ঞ এ্যাডভোকেট অনুপস্থিত। অপরদিকে রাষ্ট্রপক্ষে বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এ্যাডভোকেট মোঃ আশেক মোমিন বিস্তারিতভাবে যুক্তিতর্ক উপস্থাপন করেন।</p> <p>অত্র আপীল মেমো এবং নথি পর্যালোচনা করা হল। রাষ্ট্রপক্ষের বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এ্যাডভোকেট মোঃ আশেক মোমিন এর বিস্তারিত যুক্তিতর্ক শ্রবণ করা হল।</p> <p>গুরুত্বপূর্ণ বিধায় বিজ্ঞ দায়রা ও বিশেষ ট্রাইব্যুনাল, বগুড়া কর্তৃক বিশেষ ট্রাইব্যুনাল মোকদ্দমা নং ১১৮/১৯৮৩-এ প্রদত্ত বিগত ইংরেজী ০৬.০৬.১৯৮৪ তারিখের রায় নিম্নে অবিকল অনুলিখন হলঃ-</p> <p>“Prosecution case: The case was initiated on the basis of written ejahar lodged by the complainant P.W.1. In brief the case of the prosecution is that Khoibar Ali the the Father of the informant was returning home from santaher bazaar at about 4 P.M. On 21.01.83 A.D. on a eyele and while he</p>

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		<p><i>resched to the west of the Rly. Gate No.3 of Bogra Santahar High way near to the caustion post. A Mina Bus bearing No. Bogra BA-4061 of Yunus Paribahan caused serious injury to the said Khoibar Ali by dashing from him from behind and his cycle was damaged. The said Mini Bus left the P.O. after causing the aforesaid accident. The persons present had seen the occurrence and Reazuddin Sarder the 'checha' of said Khoibar Ali and Alim master got his (Khoibar) admitted into Santahar Rly. Hospital. The victim was thereafter removed to Rajshahi Medical College Hospital for better treatment on the following day. Accordingly the ejahar was lodged for taking legal action on 25.01.83 A.D. and the informant alleged to the effect thereto that he could not lodged ejahar earlier as he was busy with the treatment of his father. The S.I. of police Girindra Nath Das filled up the formal for of FIR and handed over the case record to S.I. Abu Sayeed P.W.8 after starting the case. The victim thereafter died on 29.1.83 A.D. at Rajshahi Medical College Hospital and as such the I.O. (P.W.8) submitted charge sheet against the accused u/s 379/338-B/304B of the Penal Code after investigation since prima facie case was made out against him. Hence the accused is facing trial before this court.</i></p> <p><i>The defence case as could be gathered from the trend of cross examination is total denial and interalia case is that the accused did not dash the victim through the Mini Bus in question as alleged but he (deceased) sustained hurt de to falling on the read while he was giving side to the Mini Bus but the complaininant lodged the ejeahar on false allegation in order to extract money.</i></p> <p><i>Accusations are prepared, readover the explained in Bangali to the accused by the ld. Asstt. Sessions Judge, Bogra while the case was in his file to which he (accused) pleaded not guilty and demanded trial. The accused has been charges as above.</i></p> <p><i>After close of the prosecution witnesses the accused is examined u/s 342 Cr.P.C. to which he repeated his innocence. The prosecution examined 8 P.Ws. and brought the P.M. report of the decided on record u/s 509-A Cr.P.C. in absence of the doctor who held post mortem examination. The defence did not examine any D.W.</i></p>

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		<p><u>Points:</u></p> <p>1. Whether any occurrence took place on the date, time, place and in the manner as alleged?</p> <p>2. Whether the accused was driving the Minia Bus bearing No. Bogra BA-4061 on the date and dashed Khoibar Ali in the manner as alleged?</p> <p>3. Whether the prosecution has been able to prove the charge brought against the accused and he (accused) is liable to be .</p> <p><u>DECISION</u></p> <p>Points Nos. 1-3:All these 3 points are taken up together for sake of convenience as they are interlinked. The burden of proving all the essential ingradients of the offence charged lientirely on the prosecutions. Under section 3 of the Evidence Act afact is said to be proved when the court is consideration of all matters placed before it, either believes it is exist on considers its existences so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exist. With this back drop last us examine the evidence on rercord.</p> <p>P.W.1 Abu Bakkar Siddique-the son of the deceased said that his father was returning home from Santaher Bazar 4 P.M. on 21.01.83 A.D. through a cycle by C & B read from Santaher Bazar at 4 P.M. on 21.01.83 A.D. through a eyele by C& B read from Santaher and when he reached of gate No.3 where there is a caution plat a Mini Bus bearing No. Bogra BA-4061 of Yunus Faribahan dashed him (His father) from behind and as such the deceased fell down on the road and sustained injury and that the cycle was damaged. He also said that the said driver changed his direction and went towards Santahar after turning the same. He further said that P.W.s Reaz, Bazlu and along with Alim and others took his father on a rickshaw to Santaher Rlly. Hospital. He further said that the Hospital authority released his father since his condition was serious and they accordingly removed him to Rajshahi Medical College Hospital and got him (decesased) admitted there and thereafter lodged the ejaher. He also said that he could not lodged written ejeaher Ext.1 earlier since he was busy far the treatment of his father. He further said that his father died on 29.1.83 A.D. at Rajshahi Medical College Hospital due to the said injury.</p>

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		<p><i>In cross he said that the occurrence took place on Santahar, Bogra road near “Ghumti-ghar” where there was a speed breaker on the road. He thereafter said that his father was a Rly. Employee. He further said that the deceased has a bag with bazaar articles in the said cycle. He of course admitted that he did not see the occurrence himself but P.W. Nazrul Islam reported him the same. He said that the Hospital authority released his father on the following day when the deceased was removed to Rajshahi Medical college Hospital. He denied the defence suggestion that he fell down on the road when he was giving side to the Mini Bus due to illness and the said Mini Bus did not dash him as alleged. He further denied that the P.W. Nazrul gave him false information about the occurrence. P.W.2 Nazrul Islam corroborated the occurrence on the date, time, place in the manner as alleged by the prosecution. He said that he was knocked down on 7th Magh, 1389 near gate No.3 at Bogra-Santahar road. He said that he was coming from a well (Indara) with water at the time of occurrence through the said road when the killer Mini Bus bearing No. Bogra BA-4061 dashed Khoibar Ali from behind and as such he (deceased) fell down thereto and sustained injuries. He also said that the said Mini Bus changed its direction when the persons present raised hue and cry and went towards Santahar. He further said that he P.W.s Reaz Alim master sent Khoibar ali to Santahar Rly. Hospital with the rickshaw of Sharif and claimed that he reported the occurrence to the complainant. In cross he said that he deals with Pan-biri and stationary in his said shop and claimed that he found the occurrence at a distance of 10/12 cubits off from the P.O. He further said that Alim master identified the Mini Bus in question and also read its number. He further said that the said Alim Master reported that the said Mini Bus was of Yunus Paribahan. He admitted that he is illiterate and claimed that Alim master was near to the P.O. at the time of occurrence. He admitted that he did not state in his statement u/s 161 Cr.P.C. that he went to bring water at the time of occurrence but denied the defence suggestion that he did not go to bring water as alleged nor that Bogra BA-4061 mini Bus did not dash the deceased from behind, He further denied the defence suggestion that the father of the complainant died due</i></p>

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		<p>to illness by failing from cycle. He claimed that he reported the occurrence to the complainant in the evening of the day of occurrence, He further denied that the minis Bus in question did not dash the deceased on the date as alleged and that he deposed falsely, P.W3 Reaz Uddin said that on 7th Magh, 1389 BS at 4 P.M. he was standing near the gate No.3 by the side of the shop of Nazrul Islam in order to go to Santahar and found Khoibar ali to come on a cycle from Santahar and just after that a mini Bus dashed him from behind and as a result the deceased fell down on the road, He further said that the said Bus returned returned back towards Santahar speedily when the persons present raised alarm. He further said that the number of the said mini Bus was Bogra BA-4061. He claim that he Nazrul and others sent the deceased to Santahar Rly. Hospital through a rickshow of one Sharif and got his admitted there. In cross he said that Khoibar ali and he himself are residents of same village. He admitted that there were many persons near the said shop of Nazrul at the time of occurrence. He further said that khoibar alia was proceeding towards east and he was standing on the road at a distance of 15/20 cubits off from the shop of Nazrul Islam. He claimed that he, Nazrul and others had been the occurrence. He said that he identified the mini Bus in question at the place of occurrence. He denied the defence suggestion that the mini Bus in question did not dash khoibor ali from behind as alleged and that khoibar ali fell down from the cycle due to illness but impleaded the concerned mini Bus falsely in order to extract money from its owner. P.W.4 was tendered by the prosecution and the defence did not cross examine his. P.W.5 the owner of the mini Bus bearing No. Bogra BA-4061 claimed that the said mini Bus is of Yeasin Paribahan and admitted that the said mini Bus used to ply on Bogra Santahar road in the year 1983 and the accused was driver of the said mini Bus at that time. He admitted that the I.O. seized rout permit, blue book. Token of the said mini Bus article Ext.1series alongwith the mini Bus in question and thereafter handed over to him on proper Zimmanama Ext.2. He further said that he thereafter surrencdered the Bogra-Santahar rout permit of the said mini Bus in the latter part of 1983and the same is now plying on Bogra-Mongalbari road via Shibganj-Joypurhat-Khotial. In</p>

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		<p>cross he admitted that he has got 2 Paribahans namely Yunus Paribahan and Yeasin Paribahan. He of course failed to state the date of appointment of Zakir Hossain (accused) driver under him. He admitted that the mini Bus in question was seized at Bogra mini Bus stand and that the rout permit of the said mini Bus was for Bogra-Santahar at the time of occurrence. He of course failed to state the name of the helper of the said mini Bus at the time of occurrence. He of course failed to state the name of the helper of the said mini Bus at the time of occurrence. He said that he took Zimma of article Exts.1 and 2 series after 8 or 10 days of the occurrence. He denied the defence suggestion that the mini Bus Art. Ext.II is not the same mini Bus which the I.O. seized earlier. P.W.6 S.I. of police said that he prepared inquest report of the deed body of the deceased Khoibor Ali at Rajshahi Medical College Hospital in connection with Paba P.S. U.D. case No.1 dated 29.1.83 in presence of witnesses and sent the same through constable 2513 to the morgue for holding P.M. examination. In cross he said that P.W. Nazrul islam of Paikpara and Jamadar Michel identified the said dead body and they signed their named on the inquest report as witnesses. P.W.7 Nazrul Islam was tendered by the prosecution. In cross he said that father of the deceased was his 'jathato' brother and that his (deceased) house is contiguous to him. He further admitted that he does not know anything about the accident. P.W. 8 S.I. of police said about the investigation of this case. He said that S.I. Girindra Chandra Das filled up the FIR form Ext.1(a) as receipt of the written ejahar from the complainant. He said that he visited the P.O. prepared skatch-map with separate Index with his signature Ext.2 and 3 series respectively and seized alamats in presence of the witnesses vide seizurelists Ext.4 and 4(a). He proved the cycle Art. Ext. III and claimed that the deceased was going with the said cycle before the accident. He further said that he recorded the statement of the P.Ws u/s 161 of the Cr. P.C. He said that the deceased was first admitted at Santahar Rly. Hospital and thereafter transferred to Rajshahi Medical College Hospital but he died there. He claimed that a S.I. of police of Paba P.S. prepared inquest report of the dead body of the deceased in presence of the witnesses and claimed that he received the P.M. report</p>

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		<p>during investigation. He further said that the complainant also supplied him the death certificate of the deceased during investigation. He thereafter said that he submitted charge sheet against the accused u/s 338-B/379/304(B) of the Penal Code on 28.02.83 A.D. since prima facie case was made out against the accused, He said that he seized the concerned mini Bus along with other connected papers and handed over the same to the owner of the said mini Bus on at 11:20on 25.1.83 A.D.and the date of occurrence was 21.1.83 A.D. He thereafter said that the P.O. is 4 miles off from the Thana towards west and the same is connected with pucca road. He said that the Pan-shop of Nazrul Islam is about 50 yards off from the P.O. He said that he seized the cycle Art. Ext. III from the house of the complainant. He of course denied the defence suggestion that the article Ext. III is not the same which he seized carlier. He admitted that there is no mention in the FIR that the cycle was damaged due to dash with the Bus during occurrence and the driver returned towards Santahar after occurrence and that there was a bag with bazaar article with the deceased at the time of occurrence.He admitted that he did not see any bag with bazaar articles. He admitted that he did not examine the FIR named witnesses Sharifuddin and alim master. He also admitted that P.W. Nazrul Islam did not state in his statement recorded u/s 161 Cr.P.C. that he was taking water from Indara at the time of accident to his house through cycle and said Khoibar Ali was when khoibar ali was going from the P.O. to Santahar through rickshaw of Sharif and Alim master was near the P.O. and he reported the occurrence to the complainanat on the evening of the date of occurrence. He said that he seized the mini Bus Art. Ext.II on 21.1.83 A.D. at 13:50 hours and claimed that the owner of the said mini Bus reported him in writing that accused Zakir Hossain was driver of the said Bus on 21.1.83 A.D. He denied the defence suggestion that he obtained the writings from the owner by force. He admitted that the owner of this mini Bus has got two paribahans namely-Yunus and Yessin paribahan. He said that he seized the article Ext.1 from driver Deraj Mondal. He admitted that he did not see the driver and khoibar Ali and denied the defence suggestion.</p> <p>It appears that the prosecution has failed to examine</p>

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		<p><i>the doctor who held post mortem examination on the dead body of the accused khoibar ali. However his post mortem report has been brought on record u/s 509-A of the Cr.P.C. on the prayer of the prosecution. The P.M. report goes to show that the deceased Khoibar ali died an unnatural death due to different injuries sustained by him during the occurrence which are ante mortem and homicidal in nature. The doctor has further opined that the said injuries are accidental in nature. It further appears that the defence does not challenge the death of the deceased and the place where he fell down from the cycle on the date. All these facts and circumstances led me to hold that the death of the deceased and the place of occurrence as well as manner of the occurrence have been well proved.</i></p> <p><i>The critical analysis of the evidence on record goes to show that the prosecution has been able to prove the case by good and satisfactory evidence. The P.Ws. 1-3 have said about the occurrence as well as death of the deceased satisfactory. Out of them the Pws 2-3 are direct eye witnesses of this case who have in a voice said about the occurrence vividly. They have stated the each and every facts leading to the accident in question as well as death of the deceased ceranelogically. Both of them have said that the number of the killer mini Bus was Bogra Ba-4061. Both of them of course said that the said mini Bus Art. Ext.II was of Yunus Paribahan but in fact the same belong to Yeasin Paribahan. Be the case as it may both the P.W.5 owner of the minis Bus in question and the I.O. of this case P.W.8 said that the aforesaid paribahan being to the same owner i.e. P.W.5 The P.W.5 has categorically said that the said mini Bus had Bogra Santahar rout permit at he relevant time (now it has (-----)) and further stated that the accused was driver of the said mini Bus on the date. The defence cross examined him at length on different points but failed to challenge that the accused was not driving the said mini Bus on the date. Further the treat of cross examination revealed that the defence does not challenge the occurrence and even the process of the concerned mini Bus on the date at the P.O. But their case is that the deceased fell down from his cycle due to illness when he was giving side to the illfated mini Bus. The P.W.s. 2-3 have also categorically said about dashing of the</i></p>

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		<p>deceased on the date of the P.O. by the illfated mini Bus as alleged and there is nothing on record to disbelieve them. The defence is completely silent about their (P.Ws.2-3) interest with the deceased or enmity with the accused. Their evidence on the point of occurrence are found most satisfactory and natural and no prudent man can disbelieve them. Further the evidence of the P.W.5 the owner of the illfated mini Bus has further comented the prosecution case and proved beyond reasonable doubt that the accused was driving the said mini Bus on the date. There is nothing on record to show that this P.W.5 deposed falsely against the accused or has got any reason to do so. The more wrongness of the name of the Paribahan of the killer mini Bus may not make the prosecution case unworthy to believe when there is clear admission from the side of the defence that the deceased fell down from his cycle due to illness on the date at the P.O. while he was giving side to the said mini Bus. Coupled with this the evidence of the P.W.5 the owner of the mini Bus in question proved that the accused was the driver of the same at the relevant time. However there is no iota of evidence about rash driving but fact remains that the deceased Khoibar all died an un-natural mini Bus which is the result of careless driving and there is nothing to show that the deceased was on wrong side. Added with this the sketch-map Ext.2 and the Index Ext.3 proved that the deceased was in right side but the mini Bus in question dashed him from wrong side. All these facts and circumstances led me to hold that the deceased khoibar ali died due to knocking down by the mini Bus in question as alleged. Admittedly the P.W.1 did not see the occurrence himself but the occurrence was allegedly reported by the P.W.2 which has been duly corroborated by the latter (P.W.2). It is true that the FIR has been lodged nearby after 98 hours from the time of occurrence but the P.W.1 complainant said that he lodged the FIR after making arrangement of treatment of his father. There is nothing on record that complainant had any other adult member of his family to lock after his father. This fact also finds place in the FIR and the defence did not challenge the same during cross. Further there is nothing in his evidence or in the FIR to suspect that he fabricated the (unread) FIR story for ulterior motive after lapse of time.The time (illigible) for</p>

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		<p>taking his father to Rajshahi medical College Hospital justify the lodging of (illigible) after 98 hours. All these facts and circumstances led me to hold that the prosecution has been able to prove the case beyond all reasonable doubt. However I find no hasitation to admit that there are some minor defects in the investigation of this case but its facts and circumstance led me to hold that the same are not very important nor has prejudiced the accused in any way. In the result prosecution must succeeded. It is, therefore.</p> <p>Order</p> <p>That the accused Zakir Hossain be and is found guilty for the defence charged u/s 304(B) of the Penal Code and I convict him thereunder and sentenced to suffer R.I. for 5(five) years.</p> <p>The accused Zakir Hossain is also found guilty for the offence charged u/s 279 of the Penal Code and convict him thereunder but no seperates sentence is passed.</p> <p>Dictated and corrected by me.</p> <p>(Hassan Ameen) Addl. Sessions Judge, Court No. II In-charge of Addl, Sessions Judge 1st court Bogra.</p> <p>প্রসিকিউশন পক্ষের সকল স্বাক্ষীগণের সাক্ষ্য সবিস্তারে পর্যালোচনায় প্রতীয়মান যে, সকল সাক্ষ্যগন পরস্পর পরস্পরকে সমর্থন করে বক্তব্য প্রদান করে প্রসিকিউশন পক্ষের অভিযোগ সন্দেহাতীতভাবে প্রমাণ করতে সক্ষম হয়েছেন। বিচারিক আদালতের রায় পর্যালোচনায় কোন প্রকার ত্রুটি বিচ্যুতি পরিলক্ষিত হয় না। বিজ্ঞ বিচারিক আদালতের রায় ও দন্ডাদেশ সঠিক এবং ন্যায্যানুগ হয়েছে। অত্র আপীলটি না-মঞ্জুর যোগ্য।</p> <p>অতএব, আদেশ হয় যে, অত্র আপীলটি না-মঞ্জুর করা হল।</p> <p>বিজ্ঞ অতিরিক্ত দায়রা জজ, ১ম আদালত (ভারপ্রাপ্ত), বগুড়া কর্তৃক দায়রা মামলা নং- ১১৮/১৯৮৩-এ প্রদত্ত বিগত ইংরেজী ০৬.০৬.১৯৮৪ তারিখে তারিখের প্রদত্ত রায় ও দন্ডাদেশ এতদ্বারা বহাল রাখা হল ।</p> <p>অত্র রায় ও আদেশের অনুলিপি প্রাপ্তির ৩০(ত্রিশ) দিনের মধ্যে আসামী-আপীলকারীকে বিজ্ঞ বিচারিক আদালতে আত্মসমর্পনের নির্দেশ প্রদান করা হল। ব্যর্থতায় বিজ্ঞ আদালত আপীলকারীকে গ্রেফতারের প্রয়োজনীয় পদক্ষেপ গ্রহন করবেন।</p> <p>অত্র রায় ও আদেশের অনুলিপিসহ অধস্তন আদালতর নথি সংশ্লিষ্ট আদালত দ্রুত প্রেরন করা হউক।</p> <p>(বিচারপতি মোঃ আশরাফুল কামাল)</p>

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