

Gr 316/17  
State  
Vs  
Gunajit Talukdar

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS, NALBARI**

**Case No. GR 316/2017 u/s 279/337/338 IPC**

**STATE**

**-Vs-**

**GUNAJIT TALUKDAR..... Accused**

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakrabarty .....for the State.

Mr. Raju Choudhury.....for the accused.

Date of prosecution evidence – 23.05.18, 20.06.18, 9.07.18, 30.07.18, 27.08.18

Date of argument – 06.09.18

Date of judgment – 18.09.18

**Judgment**

1. Smti Barnali Barman initiated the instant case by filing written 'ejahar' before the O/C, Nalbari P.S. on 02.03.17. The Prosecution case in brief is that on 25.02.17 at around 4:30 p.m. while the informant and his husband and son uncle were going towards their home from Ghograpar in their splendour bike the accused person coming from the same direction in his car bearing registration no. AS 15 G 4391 in a rash and negligent manner hit their splendour bike as a result of which they fell down and caused them grievous hurt.
2. On receipt of the 'ejahar', police has registered the case as Nalbari P.S. case No. 152/17 u/s 279/337/338 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Gunajit Talukdar

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u/s 279/337/338 IPC.

3. During trial, the accused person was allowed to go on court bail. Relevant copies of the documents were furnished to him u/s 207 CrPC. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 279/337/338 IPC. The particulars of the offences were explained to the accused to which he pleaded not guilty and claimed to be tried.
4. Prosecution in support of the case examined as many as 11 (eleven) witnesses. Defence side did not examine any witness in support of their defence. The examination of the accused person was dispensed with as no incriminating materials were found against the accused.
5. I have heard argument of both sides.

#### **Points For Determination**

6. Upon hearing and perusal of the record, I have framed the following points for determination:
  - I. Whether the accused on 25.02.2017 at around 4:30 p.m. near the Sonabati chowk had ridden his car bearing registration no. AS 15 G 4391 so rashly and negligently that it was likely to cause hurt to anyone and thereby committed an offence punishable under section 279 IPC?
  - II. Whether the accused person on the same date, time and place caused hurt to the victim driving the vehicle in rash and negligent manner and thereby committed an offence punishable under section 337 of the IPC?
  - III. Whether the accused person on the same date, time and place caused grievous hurt to the victim driving the vehicle in rash and negligent manner and thereby committed an offence punishable under section 338 of the IPC?

#### **Decisions Discussions and Reasons thereof**

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. On perusal of the entire evidence on record it appears that Pw 1 Barnali Barman is the informant who deposed in her evidence that a four wheeler was coming from the same direction and hit them from back and hence she could not see the person who was driving the car. However in her cross examination she stated that she would recognize the person if she sees him. But on perusal of the evidence it is seen that she has failed to recognize the accused person who was standing in the dock.
9. Pw 3, Pw 4, Pw 5 and Pw 6 are the seizure witnesses. None of them have witnessed the occurrence nor have they any knowledge as to which vehicle has caused the accident. Moreover, they have admitted not to have any knowledge about the contents of the seizure list.
10. Pw 2 Dhruba Jyoti Rajbonshi who claims himself to be the eye witness of the incident however stated something adverse to the prosecution case. He deposed in his evidence that he has seen himself the incident and that due to the fault of the bike the accident occurred. On perusal of the evidence of Pw 8 it is seen that this witness has also deposed that it was due to the fault of the bike the accident occurred. He has heard of it and has not seen the occurrence. It is pertinent here to mention that it was the victim who was driving in bike.
11. The investigating officer has not mentioned anything material rather than the usual procedure of investigation. Further on perusal of the evidence of Pw 11 that is the MVI it is seen that both the vehicles that were seized were found with damages. Pw 7 who is the medical officer also found injury upon victim Baikuntha Barman. He found swelling of right leg size 3x5 cm, clinically fracture of right leg present. However, he did not find any injury upon alleged victim Barnali Barman. Nor the child specialist Imran Hussain deposed as Pw 9 has found any injury upon the alleged victim Debasish Barman. Though the medical officer has found injury upon Baikuntha Barman it is just a mere opinion. An expert opinion is not a conclusive evidence in absence of any substantive evidence which could back the prosecution case. On perusal of the evidence of the M/O it transpires that an accident might have occurred but the fact that accused person caused the accident due to his rash driving has not been established by the prosecution side beyond all reasonable doubts. Only Pw 1 who is the informant as well the alleged victim has seen the occurrence. But she too

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failed to recognise the accused who was standing on the dock at the time of her deposition. Therefore that it becomes unclear that the accused was involved with the accident.

12. Thus my considered opinion is that the evidence on record is not enough to prove beyond reasonable doubt that it was the accused person who was riding his vehicle in a rash and negligent manner. And since the prosecution has been unable to prove that, the accused cannot be held liable for causing grievous hurt to the victim through his rash and negligent driving.
13. I, therefore, find that the prosecution has failed to bring home the guilt of the accused person beyond all reasonable doubt under the said charges. As such, accused person Gunajit Talukdar is held not guilty of the offence punishable u/s 279/337/338 of IPC and accordingly, he is acquitted and set at liberty forthwith.
14. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.
15. The seized article, if any, be returned to the original owner as per law in due course.

Given under my hand and seal of this court on this 18<sup>th</sup> day of September, 2018.

Rubina Yasmin  
J.M.F.C. Nalbari

#### **APPENDIX**

#### **Prosecution witness:**

*PW 1 – Sri Barnali Barman*

*PW 2 – Dhruva Jyoti Rajbongshi*

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*PW 3 – Purabi Barman*

*PW 4 – Chandan Das*

*PW 5 – Pallab Talukdar*

*PW 6 – Dipankar Das*

*PW 7 – Dr. Ayub Ali*

*PW 8 – Arif Ahmed*

*PW 9 – Dr. Imran Hussain*

*Pw 10 – ASI Lutfur Rahman*

*Pw 11 – M.K. Das*

**Defence witness:**

*Nil*

**Exhibits:**

*Ext. 1 – ejahar*

*Ext. 1 (1) – signature of the informant*

*Ext. 2 & 3 – seizure list*

*Ext. 2(1) (2) & 3 (1) (2) – Signature of the witnesses*

*Ext. 3 – seizure list*

*Ext. 3(1) (2) & (3) – Signature of the seizure witnesses*

*Ext. 4 & 5 – injury report*

*Ext. 4(1) & 5 (1) – signature of M/O*

*Ext. 6 – charge sheet*

*Ext. 6 (1) – signature of I/O*

*Ext. 7 & 8 – MVI report*

*Ext. 7(1) & 8 (1) – Signature of MVI*

Rubina Yasmin

J.M.F.C. Nalbari