

Gr 830/15
State
Vs
Isahoque Ali

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. GR 830/2015 u/s 279/338/427 IPC

STATE

-Vs-

ISAHOQUE ALI..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakrabartyfor the State.

Mr. M. Haquefor the accused.

Date of prosecution evidence – 12.02.18, 19.04.18, 21.05.18, 18.06.18, 26.7.18, 21.8.18

Date of argument – 05.09.18

Date of judgment – 13.09.18

Judgment

1. Sri Utpal Baishya initiated the instant case by filing written 'ejahar' before the O/C, Nalbari P.S. on 08.06.15. The Prosecution case in brief is that on 08.06.15 at around 7:45 a.m. while the informant's uncle was distributing newspaper near the Morowa bazar a winger bearing registration no. AS 25 AC 5669 coming from Nalbari in a rash and negligent manner hit an auto van coming from the same direction as a result of which the auto van got hit with the cycle of the informant's uncle and caused him grievous hurt.
2. On receipt of the 'ejahar', police has registered the case as Nalbari P.S. case No. 395/15 u/s 279/338/427 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Isahoque Ali u/s

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279/338/427 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 279/338/427 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 08.06.2015 at around 7:40 a.m. near the Morowa Bazar had ridden his auto van 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 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?
 - III. Whether the accused person on the same date, time and place committed mischief causing damage to the victim to the amount of fifty or upwards and thereby committed an offence punishable under section 427 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 3 is the informant who deposed in his evidence that a tempo van was coming from Nalbari and in the

meantime a winger coming from same direction tried to overtake the tempo van and the van then tried to overtake the winger and in due course the van got hit with the cycle of the victim Mantu Baishya as a result of which the victim got hurt. But on perusal of the evidence of the Pw 11 that is the investigating officer and the ejahar it reveals that the informant that is pw 1 stated in his ejahar that it was winger which drove in a rash manner and hit the van and that the van got hit with the victim's cycle

9. Pw 2 Ramani Baishya who claims to be the eye witness to the incident also stated that the winger hit the tempo van and as a result the latter hit the victim's cycle. In his cross examination he stated that the van was running a rash manner so it could not resist itself and hit the cycle.
10. From the evidence of both the above said witnesses it is clear that it was the winger which triggered the occurrence. The evidence of Pw 2 gives a picture that even though the winger hit the van first but as the van was running in a rash manner it could not resist itself. Thus the fact that van was running in a rash manner is clear. However the said witness could not recognize the accused person who was standing in the dock. Therefore it becomes unclear if the accused person was driving the van. Now let us see as to what the seizure witnesses deposed.
11. Pw 1 Ranju Baishya Pw 2 Abani Baishya and Pw 5 Mukul Baishya are the seizure witnesses. But they have not seen the occurrence and also admitted not to have the knowledge about the contents of the seizure list. Therefore it is not clear as to whether the accused person was driving the vehicle in rash manner.
12. Pw 6 Pw 7 and Pw 8 have no knowledge about the occurrence nor have they seen the occurrence. Pw 9 Mantu Baishya is the victim himself. On perusal of his evidence it appears that winger and a van was riding in a rash manner and that the van hit him. But he stated that the person who hit him is not present in the court. However the accused person was standing in the dock on the date the victim made his deposition. He further added in cross examination that the winger drove in a rash manner and hit the van.
13. Pw 10 is the medical officer of this case. Dr. syed Sajjadul Islam deposed before the court that on examination he found swelling of left fifth finger, swelling and abrasions of lateral aspect of left leg and conservative treatment was given. On perusal of the evidence of the M/O it transpires that an accident might have occurred but the fact

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that accused person caused the accident due to his rash driving has not been established by the prosecution side beyond all reasonable doubts. Though pw 4 and pw 9 has mentioned that the van was riding in a rash manner they have failed to state as to whether the accused person of this case had drove the van at the time of occurrence. They have even failed to recognize the accused person who was standing in the dock at the time of their deposition. Moreover, Pw 9 has admitted in his cross that it was the winger which drove in a rash manner and hit the van.

14. 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 van 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.
15. 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 Isahoque Ali is held not guilty of the offence punishable u/s 279/338/427 of IPC and accordingly, he is acquitted and set at liberty forthwith.
16. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.
17. 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 13th day of September, 2018.

Rubina Yasmin
J.M.F.C. Nalbari

APPENDIX

Prosecution witness:

PW 1 – Sri Ranju Baishya

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PW 2 – Abani Baishya

PW 3 – Sarat Baishya

PW 4 – Ramani Baishya

PW 5 – Mukul Baishya

PW 6 – Kanoj Baishya

PW 7 – Kamal Deka

PW 8 – Utpal Baishya

PW 9 – Mantu Baishya

Pw 10 – Dr. Syed Sajjadul Islam

Pw 11 – Retired SI D M Deka

Defence witness:

Nil

Exhibits:

Ext. 1 & 2 – Seizure list

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

Ext. 2 – seizure list

Ext. 2(1) (2) (3) & (4) – Signature of the seizure witnesses

Ext. 3 – seizure list

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

Ext. 4 – Ejahar

Ext. 4(1) – signature of informant

Ext. 5 – injury Report

Ext. 5 (1) – signature of MO

Ext. 6 – sketch Map

Ext. 6(1) – Signature of I/O

Ext 7 – Charge sheet

Ext. 7 (1) – signature of I/O

Rubina Yasmin
J.M.F.C. Nalbari