

G.R. CASE NO: 905 of 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SHRI DHARANI DHAR KALITA

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DISTRICT: NALBARI
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE::::::NALBARI

G.R. CASE NO:905/16
U/S 279/337 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI DHARANI DHAR KALITA

**PRESENT : SHALMA AZAZ,
S.D.J.M., (S) NALBARI.**

ADVOCATE FOR THE PROSECUTION: SMTI M.CHAKROVERTY.

ADVOCATE FOR THE ACCUSED: SMTI J.DAS.

OFFENCE EXPLAINED ON: 22.05.17.

EVIDENCE RECORDED ON: 26.07.17, 20.04.18, 16.07.18, 12.12.18 and
24.01.19.

ARGUMENT HEARD ON: 01.02.19

JUDGMENT DELIVERED ON: 08.02.19

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of the Ghograpar Police station, by the informant/victim, Sri Babul Boro on 21.06.16, against the accused person, Sri Dharani Dhar Kalita, to the effect that, on 12.06.16 at 9:30 a.m, while the informant was riding his bicycle and going towards Khatikuchi gaon, and when he reached in the middle of Khagorkusi village, at that moment all of a sudden the accused person hit him from back side by riding a scooty bearing registration No.AS-14/E-4558 in rash and negligent manner. As a result of which he fell down on the ground. He availed medical treatment at Nalbari Civil Hospital. As he was busy with his treatment there was delay in lodging the FIR.
2. The police upon receipt of the ejahar registered it as Ghograpar Police Station case no.116/16 under sections 279/337 IPC and started investigation in the case. After completion of the investigation the police submitted charge sheet against the accused person Sri Dharani Dhar Kalita under section 279/337 IPC.
3. The accused person was called upon to enter trial and after causing his appearance the copies of the relevant documents were furnished to the accused. On perusal of record the particulars of offence under section 279/337 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined six witnesses including the informant/victim, M.O., Dr. Selim Sultan and I.O., ASI Sumeswar Rabha, whereas the defence denied to adduce evidence in support of its case.
5. The statement of the accused person under section 313 of CrPC, is recorded, and the accused person denied of committing the alleged offences, and stated that on the day of incident he was coming in his scooty, and he was behind the informant/victim, and the informant was sitting in the carrier of a bicycle, and the road was full of potholes, and the cycle rider lost his balance and fell down , and he out of humanity went to pick up the informant, but the informant was drunk , and he accused him of committing the accident , and in this regard they had an altercation , and

after few days the informant came to his house , and demanded money , but his brother refused to pay the money , so the informant lodged this false case against him, after few days of the incident .

6. I have heard both the parties. I have heard the learned counsel for the accused who submitted that there is no material against the accused person; as such the accused person need to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following points for determination-

POINTS FOR DETERMINATION

- (i) Whether the accused person namely Sri Dharani Dhar Kalita on 12.06.16, at about 9:30 am, in the morning, at a place near Khagorkuchi under Ghograpar PS, in a public way, drove his Scooty bearing Regd. No. AS-14/E-4558 in such a rash and negligent manner, so as to endanger human life and thereby committed an offence punishable u/s-279 I.P.C. ?
 - (ii) Whether the accused person namely Sri Dharani Dhar Kalita on 12.06.16, at about 9:30 am, in the morning, at a place near Khagorkuchi under Ghograpar PS, drove his Scooty bearing Regd. No. AS-14/E-4558 in a rash and negligent manner, and caused hurt to informant Sri Babul Boro, and thereby committed an offence punishable u/s-337 I.P.C. ?
8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

POINT FOR DETERMINATION NOS.1, &2:

9. Both the points for determination are taken together for discussion as they are intricately connected to each other.

10. The prosecution has examined as many as six witnesses in support of its case.
11. The witness, Shri Babul Boro (PW1) , who is the informant/victim of this case, is the only eyewitness to the alleged occurrence, and other than him none of the witnesses saw the alleged accident.
12. The PW1, Shri Babul Boro, has deposed that on 12.06.16 in the morning at 9 a.m., he was going to Khatikuchi and in the middle of Sagarkuchi village the accused from behind hit him with the offending vehicle (scooty), and he fell down from his bicycle, and sustained injury in his right hand and right leg, and at the time of accident, he was sitting behind, in the carrier of the bicycle being ridden by one Joon Kalita.

The PW1 was cross examined and he admitted that the road was damaged in few places.
13. The PW2, Shri Shishuram Kalita, has stated that he did not see the incident, but the informant came to his pharmacy for primary treatment as the informant sustained lacerated injury in his leg.
14. The PW3, Shri Dharmeswar Kalita, has stated that he did not see the incident, but he saw the informant was having an altercation with someone, and he told the accused to take the victim for medical treatment , as the victim sustained lacerated injury in his hand. The PW3, further stated that he did not see the accident, and he is a witness of the seizure.
15. The PW4, Sri Hareish Kalita, stated that he did not see the incident.
16. The PW5 Dr. Selim Sultana and the PW6 Sri Sumeswar Rabha , are the official witnesses and their evidence is formal in nature, and they are not the eyewitnesses of the alleged incident.
17. Thus , from the above , it is seen that , the informant/victim is the only person , who has knowledge about the alleged accident, and if I, minutely evaluate his evidence , then it is seen that the victim did not state the manner in which the accused rode the offending vehicle. The victim did not mention whether the offending vehicle was rode in a rash or negligent manner by the accused. The victim simply stated that the accused came

from behind and hit him. Further, the victim stated that he was sitting behind in the carrier of the bicycle being ridden by one Joon Kalita, and the road near the place of occurrence was damaged. The defence alleged that the rider hit a pothole in the road, and they themselves fell down by losing balance. The contention of the accused is not all that baseless, as because, it is well known that the carrier of a bicycle is to carry light goods or any article and not for carrying persons, and a person may lose balance, by carrying another person in the carrier and hitting a pothole, the informant himself admitted the road was damaged, moreover, the prosecution failed to examine the Joon Kalita, who was riding the bicycle and was the material witness for the prosecution. From the above scenario, it is hard to decipher, as to the accident occurred due to the fault of the accused or the bicycle rider, because the informant by sitting in the carrier of a bicycle, had not followed the basic norms of riding a cycle, and there is no evidence that the cycle rider was riding the cycle properly, and that the accused rode his offending vehicle rashly.

18. Further, on perusal of the case record it is seen that the incident occurred on 12/6/16, but the ejahar was lodged on 21/6/16, and the informant explained that as he was undergoing treatment, he got delayed in lodging the ejahar, but the perusal of the medical report (Exhibit 3), and the evidence of the PW5, it is seen that the informant sustained no external injury, only a mild soft tissue swelling in right knee joint was seen. Further, the prosecution failed to submit any medical document which could show that the informant was undergoing prolonged treatment and could not lodge the ejahar in due time. The reason for delay in lodging the ejahar does not corroborate with the documentary evidence on record, and therefore, it creates suspicion in the intention, by which the ejahar was lodged.
19. Now let me discuss the other materials on record and try to find out whether there is any circumstantial or other indirect evidence on record which would establish that the accused was driving the offending vehicle at the relevant time in a rash and negligent manner.
20. The PW6, Shri Sumeswar Rabha, is the investigating officer in this case and he has stated that he seized the offending vehicle, and sent it for motor

vehicle Inspection, and also collected the MVI report , and the same is marked as Exhibit 7. On perusal of Exhibit 7, it is seen that there is no damages to the offending vehicle. Hence , it is seen that the if the offending vehicle would have hit the bicycle , then there would have been some scratch or damage to the offending vehicle, but the report reveals no such fact.

21. The prosecution has failed to examine a single independent witness to the alleged occurrence , who saw the accused riding the offending vehicle in a rash and negligent manner.
22. In view of the discussions made above it is seen that there is no cogent evidence on record which would link the accused with the commission of the alleged offence. The prosecution has failed to establish by direct or circumstantial evidence that the accused herein was driving the offending vehicle at the relevant time in a rash and negligent manner; hence it is held that the prosecution has failed to prove that the accused has committed the alleged offence.
23. In view of the discussions made above it is held that the prosecution has failed to prove that the accused drove the offending vehicle at the relevant time in a rash and negligent manner.
24. DECISION: The prosecution has failed to prove that the accused drove the vehicle at the relevant time in a rash and negligent manner; as such both the points for determination are answered in the negative, in favour of the accused.

ORDER

25. In view of the discussions made above and the decision reached in the foregoing issues it is held that the prosecution has failed to prove the charge against the accused; as such the accused Sri Dharanidhar Kalita, is acquitted of the charge under sections 279/337 IPC and he is set at liberty.
26. The bail bond of the accused shall remain in force for six months from today in view of section 447A CrPC.
27. The seized articles are already given on zimma.

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28. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 08th day of February,
2019 at Nalbari.

Shalma Azaz,
S.D.J.M., (S),
Nalbari.

APPENDIX

PROSECUTION EXHIBITS:

- 1) EXHIBIT 1 – EJA HAR
- 2) EXHIBIT 2 – SEIZURE LIST
- 3) EXHIBIT 3 – MEDICAL REPORT
- 4) EXHIBIT 4- SKETCH MAP
- 5) EXHIBIT 5 – ZIMMABOND
- 6) EXHIBIT 6 – CHARGESHEET
- 7) EXHIBIT 7 – MVI REPORT

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SRI BUBUL BORO
- 2) SRI SHISURAM KALITA
- 3) SRI DHARMESWAR KALITA
- 4) SRI HARISH KALITA
- 5) DR SELIM SULTAN
- 6) SRI SUMESWA RABHA

DEFENCE WITNESSES

NONE

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Shalma Azaz,
S.D.J.M., (S),
Nalbari.

Q No.1: It has been alleged by the prosecution that you on 12.06.16 at 9:30 a.m., drove your scooty bearing registration No.AS-14/E-4558 in a rash and negligent manner and near Sagarkuchi village hit Sri Babul Boro on his bicycle from behind and injured him . What do you have to say about this?

Ans :

Q No.2: The P.W.1 Sri Babul Boro who is the informant and victim of this case has stated that on 12.06.16 in the morning at 9 a.m., he was going to Khatikuchi and in the middle of Sagarkuchi village you from behind hit him with your scooty and he fell down from his bicycle. What do you have to say about this?

Ans :

Q No.3: The P.W.1 Babul Boro stated that he was sitting in the carrier of the bicycle and Joon Kalita was riding the bicycle. What do you have to say about this?

Ans :

Q No.4: The P.W.1 Babul Boro has stated that he was sustained injuries in his right hand and right leg. What do you have to say about this?

Ans :

Q No.5: The P.W. 1 stated that he was going towards the Northern side and he was towards the west side of the road. What do you have to say about this?

Ans :

Q No.6: The PW 1 stated that he first went to Nilpur P.H.C., for treatment but he did not get well, so thereafter he went to Nalbari civil hospital for better treatment. What do you have to say about this?

Ans :

Q No.7: The PW1 lodged an ejahar against you and the same is marked as Ext.1. Do you have to say anything in regard to Ext.1 ?

Ans :

Q No.8: The PW2 Sri Sishuram Kalita has stated that the informant came to his pharmacy for primary treatment as his skin in his leg was lacerated? What do you have to say about this?

Ans :

Q No.9: The PW3 Dharmeswar Kalita has stated that on the day of incident at around 11 to 11:30 a.m., he was going to market and he saw that you were altercating with someone and he told you to take the victim to the hospital as the victim sustained lacerated injury in his hand. What do you have to say about this ?

Ans:

Q No.10: The PW3 Dharmeswar Kalita has stated that he put his signature in the seizure list which is marked as Ext.2. Do you have to say anything in regard to Ext.2 ?

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Ans:

Q No.11: The PW5 Dr. Selim Sultan, who is the medical officer has stated that on 14.06.16 at 10:20 a.m., he examined Sri Babul Boro and found that there was no external injury seen but on investigation of X-ray of right knee joint he found mild soft tissue swelling in right knee joint and in his opinion the injury was simple and fresh. His medical report is marked as Exhibit.3. Do you have to say anything in regard to Exhibit.3 ?

Ans :

Q No.12: The PW6 Sri Sumeswar Rabha who is the investigating officer of this case has stated that you appeared in the police station and submitted the documents of the vehicle bearing registration No.AS-14/E-4558 and he seized the documents and the offending vehicle vide Exhibit.2. Do you have to say anything in regard to Exhibit.2 ?

Ans:

Q No.13: The PW6 Sri Sumeswar Rabha has stated that he handed over the zimma of the offending vehicle having registration No.AS-14/E-4558 to you vide Exhibit.5. Do you have to say anything in regard to Ext.5 ?

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Ans:

Q No.14: The PW6 Sri Sumeswar Rabha is the I.O., of this case after completion of investigation he found incriminating materials against you and he has submitted charge sheet Ext.6 u/s 279/337 against you, and the same is marked as Exhibit 6. What do you have to say about this?

Ans :

Q No.15: Do you have to say anything about the incident?

Ans :

Q No.16: Do you want to adduce defence evidence?

Ans :

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