

GR. Case No. 1901/2016

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, NALBARI

GR. CASE NO.1901/16

u/s 279/338/427 I.P.C.

State of Assam

-Vs-

Md. Samej Ali.....Accused

PRESENT: Smti Sorbani Bhattacharjee, AJS

Additional C.J.M., Nalbari.

ADVOCATES APPEARED:

For the state : Mr. A. Barman, Ld. A.P.P,

For the accused : Mr. K. Ali, Ld. Advocate,

Evidence recorded on : 29.11.17, 29.01.18,
27.09.18, 31.10.18,
19.01.19 & 25.10.19.

Date of argument : 04.02.2020.

Date of judgment : 14.02.2020.

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the ejahar dated 11.12.16 filed by the informant Sri Ramen Baishya alleging that on 08.12.16 at about 11:30 p.m., at night while he was returning home

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from Nalbari and when he reached at Saniroad Chowk, at that moment, a truck bearing registration No.AS-01/AA-8441 coming from Naddin side hit his motor cycle bearing registration No.AS-01/BX-6769. As a result of which he sustained grievous injuries on his person and his both legs got fractured and he had stitches on his face. The VDP party of Saniroad Chowk brought him to Nursing Home for treatment. Hence, the case.

2. On receipt of the said 'ejahar' it was registered by O/C Belsor P.S. as Belsor P.S case No.252/16 u/s 279/338/427 of I.P.C dated 11.12.16. After completion of investigation charge-sheet no.174 dated 30.12.16 was submitted by the I.O. against accused Samej Ali u/s 279/338/427 of I.P.C. In due course he appeared before this Court after receiving summons and copy was furnished to the accused person. Having found a prima facie case against the accused U/S 279/338/427 of IPC, the particulars of offences u/s 279/338/427 of I.P.C was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION:

(i) Whether on 08.12.16 at about 11:30 pm, at Saniroad Chowk the accused drove a truck bearing No.AS-01/AA-8441 in a public way in a rash/negligent manner so as to endanger human life or to be likely to cause hurt or injury to any other person and thereby committed an offence u/s 279 I.P.C?

(ii) Whether on 08.12.16 at about 11:30 pm, the accused caused grievous hurt to Ramen Baishya by driving a truck bearing No.AS-01/AA-8441 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

(iii) Whether the accused person namely Md. Samej Ali on 08.12.16 at about 11:30 p.m., in the night, at Soniroad Chowk under Belsor P.S., committed mischief by causing damage of the "bike" of the victim Sri

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Ramen Baihsya amounting to more than Rs.50/- and thereby committed an offence punishable u/s-427 I.P.C. ?

DISCUSSION, DECISION AND REASONS THEREOF:

4. The prosecution examined seven (7) witnesses while the defence declined to adduce any evidence. The statement in defence of the accused person u/s 313 Cr.P.C was recorded wherein he denied his involvement with the alleged offence. I have heard the arguments advanced by learned counsels of both the sides and also perused the evidence available on record, my findings with reasons are as follows.

5. PW-1 Sri Ramen Baishya is the informant-cum victim of the case. The evidence of PW1 reveals that he is the informant of this case and he does not know the accused. On 08.12.16 at about 11:30 p.m., he was on his way to Panigaon in his Super Splendar bike bearing registration No.AS-01/BX-6769 and while he reached Soniroad Chowk then a truck bearing registration No.AS-01/8884 hit his bike from front side. He fell down from the bike and became senseless. A VDP personnel informed his family members and his family members took him to Baruah Nursing Home. His both hands got fractured in the incident. He exhibited FIR as Exhibit-1 and his signature therein as Exhibit-1(1). He further stated that the incident took place due to the fault of the truck driver as while the truck came to the main road then the truck driver would have looked at the other vehicles on the road.

His cross-examination reveals that at the time of incident there was heavy fog. The condition of the road from Soniroad to Naddi is very bad. At the time of incident there was no other people at the place of occurrence and the VDP party was far away from the place of occurrence. He denied the suggestion put forwarded by the Ld. Counsel for the defence side.

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6. The evidence of PW2 Sri Pradip Barman reveals that he also could not identified the accused. On the day of incident, he was on petrol duty for VDP party at Soniroad Chowk. He heard some sound and reached to the place of occurrence. There was a bike rider lying on the road and his bike was also lying nearby. A truck was parked nearby but the driver was not there. He called 108 ambulance and police personnel of Belsor P.S. The family members of the victim took him to Hospital. In his cross-examination the PW 2 has stated that he has not seen the alleged incident.

7. The evidence of PW-3 Sri Amardeep Barman reveals that he could not identified the accused. On the day of incident he heard some sounds at Soniroad main Chowk when he was in petrol duty for VDP party. There was a bike rider lying on the road who was Ramen Baishya. Ramen Baishya was not in a condition to talk. A truck was parked nearby and the truck driver fled away from there. He informed the family members of the informant as well as police. The family members of victim took him to Hospital. PW-3 in his cross-examination stated that he has not seen the alleged incident.

8. The evidence of PW4 Sri Jitu Barman reveals that he does not know the accused and he has not seen the incident.

9. The evidence of PW5 Dr. Kameswar Lahkar (M.O.) reveals that on 09.12.16 at about 7:30 a.m., he examined Ramen Baishya (PW1) and found injury of left upper eye lid with epistraxis, multiple injuries of both radius and ulna. The injury was fresh, grievous in nature and caused by blunt object. He exhibited the injury report as exhibit-2 and Exhibit-2 and 2(1) is his signature. In his cross-examination he stated that the injury can be sustained by fall.

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10. The evidence of PW6 Sri Ram Charan Kalita reveals that on 24.12.16 he inspected one Motor Cycle bearing Registration No.AS-01/BX-6769. The owner of the motor cycle was Sri Ramen Baisya. During inspection, he found front light assembly completely damaged. He exhibited the inspection report as Exhibit-3 and his signature therein as Exhibit-3(1). During cross-examination he stated that he did not found damage on other side of the motor cycle except the front light assembly.

11. The evidence of PW-7 Ibrahim Ali Ahmed reveals that he has investigated the instant case and filed charge sheet against accused Samej Ali after completion of investigation u/s 279/338/427 of IPC. He exhibited sketch map as Exhibit-4 and his signature there in as Exhibit-4(1). He also exhibited the charge sheet as Exhibit-5 and his signature there in as Exhibit-5(1).

12. In this case prosecution examined altogether seven (7) witnesses including the informant-cum-victim. The evidence of informant (PW1) reveals that on the day of incident i.e., on 08.12.2016 at about 11:30 p.m., while he was driving his Super Splendor bike bearing registration No.AS-01/BX-6769 from Nalbari towards Panigaon via Palla Sarthebari road and when he reached at Soniroad then a truck coming from Naddi side bearing registration No.AS-01/8884 hit his bike front the front side. He became senseless. His both hands got fractured in the incident. The informant could not identify the accused in the dock. In his cross-examination he had admitted that at the time of incident there was heavy fog and the road condition from Naddi to Soniroad was bad.

13. If we gone through the FIR (ejahar) lodged by the informant, it is reveals that the truck which hit his bike had the registration number as

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AS-01/AA-8441 but the registration number which the informant stated in his evidence is AS-01/8884. It is apparent that there is contradiction in the evidence of the informant with his Ejahar on material points. He stated two different numbers in his ejahar and in his evidence which create doubt over the truthfulness of the evidence of the informant. In such situation we have to cautiously deal with his evidence.

14. Furthermore, in his examination- in-chief PW-1 stated that the offending vehicle hit his bike from the front side but in his cross-examination he stated that the truck hit him on the left side of his bike. If we gone through Exhibit-3 which is accident report of informant's bike given by For-man ASTC, Nalbari then it is seen that the front light assembly of the bike completely damaged. It also creates doubt over the evidence of PW1 who in one place stated that the bike was hit from front side and in another place stated that it hit was in the left side.

15. There is no eye witness of the alleged incident except the informant. The evidence of PW2, PW3, PW4, PW5 and PW6 reveals that they does not know the accused and have not seen the alleged incident.

16. On appreciation of the testimonies of witnesses and the materials available on record, I find that there is no evidence to show that the accused was driving the offending vehicle in a rash and negligent manner, thereby causing injury/hurt to the victim and damaging his bike. The prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable all doubt by leading clear, cogent & convincing evidence.

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ORDER

17. Accordingly the accused person namely Md. Samej Ali is found not guilty u/s 279/338 I.P.C and hence, he is acquitted of the alleged offences and set at liberty forthwith. Bail bond of the accused and his surety shall remain in force for a further period of six months as per amended CrPC. The seized articles (if any) is to be disposed of in due course as per law.

Given under my hand and seal of this court on this 14th day of February, 2020 at Nalbari.

**SMTI SORBANI BHATTACAHARJEE, AJS
ADDITIONAL CHIEF JUDICIAL MAGISTRATE
NALBARI**

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APPENDIX

Prosecution witness:

PW 1- Sri Ramen Baishya (Informant-cum- victim),

PW 2- Sri Pradip Barman,

PW 3- Sri Amardeep Barman,

PW 4- Sri Jitu Barman,

PW 5- Dr. Kameswar Lahkar (M.O),

PW 6- Sri Ram Charan Kalita,

PW7- Md. Ibrahim Ali Ahmed (I.O.),

Prosecution Exhibits:

Exhibit 1 - Ejahar,

Exhibit 1(1) - Signature of informant,

Exhibit 2 - Injury report.

Exhibit 2(1) - Signature of M.O., at injury report.

Exhibit 3- Accident report.

Exhibit 3(1)- Signature of Sri Ram Charan Kalita, For-Man ASTC,Nalbari.

Exhibit 4- Sketch map.

Exhibit 4(1)- Signature of I.O., in sketch map.

Exhibit 5- Charge sheet.

Exhibit 5 (2) - Signature of I.O., in charge sheet.

Defence witnesses :

Nil

Defence Exhibits :

Nil

SMTI SORBANI BHATTACAHARJEE, AJS
ADDITIONAL CHIEF JUDICIAL MAGISTRATE
NALBARI