

**IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI**

**P.R.C.No.627/2018**

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

State of Assam

-Vs-

Kalpana Das Kalita .....Accused

**PRESENT:** Mrs. S. Bhattacharjee, AJS

Addl. C.J.M., Nalbari.

**ADVOCATES APPEARED:**

For the state : Mr. Sonabar Ali, Ld. A.P.P,

For the accused : Mrs. Anju Rani Das, Ld. Advocate,

Dates of evidence : 01.07.19, 14.08.19 & 31.12.19.

Date of argument : 10.02.2020.

Date of judgment :10.02.2020.

**J U D G M E N T**

**PROSECUTION CASE:**

- 1) The prosecution case in brief as unfolded from the ejahar dated 21.08.2017 filed by the informant Smti. Archana Das is that on 12.04.2017 at about 6:15 p.m., in the evening when the husband of the informant Anil Das tried to cross the NH-31 at

Paikarkuchi Chowk from Western side to Southern side, at that moment, a Scooty bearing Registration No.AS-01/BD-8842 coming from Nalbari in wrong side, hit Anil Das by driving the scooty in a rash and negligent manner. As a result of which he sustained injuries on his person. Immediately, the local people brought him to S.M.K., Civil Hospital, Nalbari for treatment but the SMK Civil Hospital referred him to G.M.C.H., for better treatment, considering the seriousness of injuries sustained by him. Hence, the case.

- 2) On receipt of the said 'ejahar' it was registered as Nalbari P.S case No.262/17 u/s 279/338 I.P.C. After completion of investigation charge-sheet No.117/17 dated 27.04.2017 was submitted by the I.O. against accused Smti Kalpana Das Kalita u/s 279/338 I.P.C.
- 3) In due Course accused appeared before Court on receiving summons and relevant copy was furnished to the accused person as per section 207 of CrPC. Particulars of offence u/s 279/338 I.P.C was read over and explained to the accused person to which she pleaded not guilty and claimed to be tried.
- 4) The prosecution side examined four (4) 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 she denied her involvement in the alleged offence. I have heard the arguments advanced by learned counsels of both the sides

**5) POINTS FOR DETERMINATION:**

- (i) Whether on 12.04.17 at about 6:15 pm, at NH-31, Paikarkuchi, the accused drove a Scooty bearing registration No.AS-01/BD-8842 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 the same day, time and place, the accused caused grievous hurt to Anil Das by riding a Scooty bearing registration No.AS-01/BD-8842 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

**6) DISCUSSION, DECISION AND REASONS THEREOF:**

PW 1 Smti. Archana Das, in her evidence has stated that she does not know the accused person. The incident took place on 12.04.2017 at about 6:30 p.m. Her husband Anil Das was standing near Paikarkuchi chowk. One scooty coming from Nalbari side hit her husband from behind and her husband fell down on the ground. Local public sent her husband to SMK Civil Hospital, Nalbari. She was informed about the incident over phone and thereafter she came to SMK Civil Hospital and found that her husband sustained fracture on his left leg. Later her husband was referred to GMCH where he was admitted for twelve days. Metal plate is still fixed on the left leg of her husband. Police recorded her statement. Exhibit-1 is the ejahar and exhibit-1(1) is her signature. Defence declined to Cross-examine her.

- 7) PW 2 Sri Anil Das, who is the victim of the case has stated that he know the informant, who is his wife. He does not know the accused person. The incident took place in the year 2017 at about 6:15 p.m., at Paikarkuchi Chowk, at that time he was waiting over the divider over the NH-31 at Paikarkuchi Chowk for crossing the road from northern side to southern side. At that time one Scooty coming from Nalbari on the wrong side hit him and his left leg got fractured. Local people took him to SMK Civil Hospital from there he was referred to GMCH. Metal plate was inserted to fix his leg. His wife filed the ejahar. Police recorded his statement.
- 8) PW 2 in his cross-examination deposed that the incident took place in the evening time. He further deposed that the Pronita Restaurant is about  $\frac{1}{2}$  k.m., from the place of occurrence. The crossing was in front of the Pronita Restaurant which was far away from the place of occurrence. There was no crossing at the place of occurrence. He does not know who was the driver of the scooty and he also does

not know the registration number of the scooty. He denied the suggestion that the accident took place due to his fault.

- 9) PW 3 Sri Dharani Dhar Das @ Dharani Das has stated that he does not know the informant of the case Smti. Archana Das and he also does not know the accused person. The incident took place about two and half years ago at about 5:30 p.m., near Paikarkuchi Chowk. Anil Das was crossing the road from the northern to the southern side of the NH-31 on foot. At that time he was coming to his house and he saw Anil Das was lying on the road near the divider and his left leg was fractured and he called one Tempo and sent Anil Das to SMK civil hospital, Nalbari.
- 10) PW 3 in his cross-examination deposed that the Pronita Restaurant is about ½ k.m., from the place of occurrence. There was no zebra-crossing at the place of occurrence and he had not seen the incident.
- 11) PW 4 Sri Hari Baishya has stated that he does not know the informant of the case Smti. Archana Das nor the accused person. The incident took place about one and half years ago at about 5 p.m., near Paikarkuchi Chowk. At that time he was at his house. On hearing halla, he came out to the place of occurrence. He heard that one Scooty came from the wrong side and hit Anil Das. He saw Anil Das laying on the road in injured condition. He also saw the Scooty rider at the place of occurrence. Anil Das sustained fractured on his leg. The injured was sent to medical. Police seized the scooty. Police took his signature in the seizure list. Exhibit-2 is the seizure list and exhibit-2(1) is his signature.
- 12) PW 4 in his cross-examination deposed that he reached the place of occurrence after the incident. He had not seen the incident. There was no zebra crossing at the place of occurrence. He does not remember the colour and the registration number of the offending vehicle. He had not seen the Scooty rider.
- 13) In this case prosecution examined altogether 4 (four) witnesses including the informant and the victim of this case. The evidence of informant reveals that she has not seen the alleged incident and she came to know about the incident after receiving information about it over phone. The evidence of PW2 who

is the victim of this case reveals that he could not identify the accused. His evidence reveals that on the day of incident one Scooty hit him and his leg got fractured in the incident. He could not say the registration number and model of the offending vehicle. In his cross-examination he admitted that he does not know who was driving the Scooty. The evidence of PW3 and PW4 reveals that they have not seen the alleged incident. They also could not identify the accused. PW3 found the victim Anil Das lying on the road near the divider and he took the victim to the hospital. PW4 only heard that one Scooty hit Anil Das but he could not say the colour and registration number of the offending Scooty.

- 14) From the evidence of all PW's it is apparent that none of them have incriminated the accused of committing any offence. None of them could identify the accused or say the registration number of the offending vehicle. Prosecution failed to examine any other witnesses to prove its case. There is no iota of evidence against accused Smti. Kalpana Das Kalita and in such circumstances the accused is entitled to get acquitted. The prosecution has failed to prove the offence u/s 279/338 of IPC against the accused beyond all reasonable doubt.

### **ORDER**

- 15) The accused person namely Smti. Kalpana Das Kalita is found not guilty u/s 279/338 I.P.C and hence, she is acquitted of the offence U/S 279/338 of IPC and set at liberty forthwith. Bail bond of the accused shall remain in force for a further period of six months as per amended CrPC. The articles seized (if any) shall be disposed of in due course as per law.

Given under my hand and seal of this court on this 10<sup>th</sup> day of February, 2020.

**Addl. Chief Judicial Magistrate  
Nalbari**

**APPENDIX**

**Prosecution witness:**

PW 1-Smti. Archana Das (Informant),  
PW 2- Sri Anil Das, victim of the case.  
PW 3- Dharani Dhar Das @ Dharani Das.  
PW 4- Sri Hari Baishya.

**Prosecution Exhibits:**

Exhibit 1 - Ejahar,  
Exhibit 1(1) - Signature of informant,

**Defence witnesses :**

Nil

**Defence Exhibits :**

Nil

**Court Witness:-**

NIL

**Addl. Chief Judicial Magistrate,  
Nalbari.**