

PRC No.24/2019

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT : = Sri K.C. Boro, A.J.S.

Ref: PRC No.24/2019

State

-VS-

Bikram Rabha

S/o- Lt. Prafulla Rabha

Village- Bherakhat,

PS- Tamulpur.

Dist. Baksa, BTAD, Assam

..... Accused person.

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

EVIDENCE RECORDED ON : 27.03.2019, 13.05.2019, 21.06.2019,
03.08.2019 & 17.01.2020.

ARGUMENT HEARD ON : 24.01.2020.

JUDGMENT DELIVERED ON : 03.02.2020.

ADVOCATES APPEARED:

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Mr. R. Patgiri, Ld. Advocate.

J U D G M E N T

1. The prosecution case, in a nutshell, is that an F.I.R. was filed on

03.12.2017, before the In-Charge of Kamarkuchi OP, by informant Karen Rabha against accused Bikram Rabha, alleging inter alia that on 15.10.2017, at about 10.30 pm, at night, his nephew Jyotikan Rabha was proceeding as the pillion rider of the scooty bearing Eng. No.JF33ABHGH04500 and Chassis No.MBLJFW013-HGH05539 towards Hajo side from Nalbari. The informant alleged that the rider i.e. accused rode the vehicle rashly and negligently and on the way, near the bridge of Betkata, the rider of the vehicle applied its brake suddenly, as a result of which, his nephew Jyotikan Rabha was thrown and he sustained injuries on his head and other parts of his person. Immediately, the injured was brought to SMK Civil Hospital, Nalbari and from there, he was referred to GMCH. Hence, the case.

2. On receiving the case, the I.C of Kamarkuchi OP entered the information in the General Diary vide Kamarkuchi OP GDE No.45 dated 03.12.2017 and forwarded the FIR to Nalbari PS. On receipt of the same, Nalbari P.S. registered Nalbari P.S. Case No.926/2017 u/s-279/338 IPC and started investigation. On completion of investigation, the I.O filed charge-sheet against accused person namely Bikram Rabha u/s-279/338 IPC vide CS No.494/2017 dated 31.12.2017.

3. In pursuance of the process issued, the accused person appeared before the court and on his appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused person. Thereupon prima facie case was found against the accused person u/s-279/338 I.P.C and the substance of accusation u/s-279/338 I.P.C was explained to the accused person and he was asked whether he would plead guilty of the offences charged or claimed to be tried. He had pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined five (5) witnesses. The 313 CrPC statement of the accused person was dispensed with. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides.

POINTS FOR DETERMINATION

- Whether the accused person, on 15.10.2017 at about 10.30 pm, at Betkata under Nalbari PS, in a public way, drove a scooty vehicle (without number plate) bearing Eng. No.JF33ABHGH04500 and Chassis No.MBLJFW013 - HGH05539, in a manner so rash as to endanger human life and thereby committed an offence punishable u/s-279 I.P.C. ?
- Whether the accused on the above mentioned date, time and place caused grievous hurt to one Jyotikan Rabha by driving a scooty vehicle (without number plate) bearing Eng. No.JF33ABHGH04500 and Chassis No.MBLJFW013 - HGH05539 so rashly as to endanger human life and thereby committed an offence punishable u/s-338 I.P.C. ?

DECISION AND REASONS THEREOF :

6. PW.1 is informant, Karen Rabha. He deposed that the incident occurred about a year ago. His nephew was proceeding as the pillion rider in the scooty of the accused and he fell down and sustained injuries. Now the matter has been compromised. Ext.1 is the FIR and Ext.1(1) is his signature. Ext.2 is the seizure list and Ext.2(1) is his signature.
7. Defence declined to cross-examine this witness.
8. PW.2 is Saifuddin Ahmed. He deposed that he does not know the informant and the accused. There was a major accident with a scooty about two years ago. Two persons sustained injury in the said accident.
9. Defence declined to cross-examine this witness.
10. PW.3 is Intaz Ali. He deposed that he knew the accused, but did not know the informant. The accident occurred in the year 2017, one night, at about 10.30 pm. At that time, he was talking in the residence of Saifuddin. The accident occurred while the injured was proceeding in

a scooty vehicle. Police seized the scooty vide Ext.3, seizure list. Police recorded his statements.

11. During cross-examination, this witness deposed that he does not know who was on fault for the accident.

12. PW.4 is Latifur Rahman. He deposed that he does not know the informant and the accused. There was a bike accident at the edge of the bridge about 2-3 years ago, one night, at about 2.00 am. The public gave the injured first aid.

13. Defence declined to cross-examine this witness.

14. PW.5 is Jyotikan Rabha. He deposed that informant is his uncle. Accused is his friend. The accident occurred about two years ago. He went for roaming. While he was proceeding with the accused, suddenly a dog crossed the road as a result of which the accident occurred. The matter has been compromised. He has no objection if the accused is acquitted.

15. Defence declined to cross-examine this witness.

16. These are the materials on record.

17. In view of the discussion above, before arriving to decision, I would like to put that to prove the offence u/s-279 IPC, the prosecution has to prove that the driver was reckless or negligence while driving. Similarly to prove the offence u/s-338 IPC, the driver has to be so much rash or negligent in his driving that such act might cause endanger to public life or safety. The question posed, what shall be the degree of "rash or negligent" to engulf penal provision. Let me first, go through the definition of rash and negligent.

18. When a person, conscious of the fact that his action may cause harm or damage takes the action with utter indifference to the consequence, which may ensue from his such act, he is said to have done the act rashly. In other word, when a person who is aware of the risk, which his action involves, does that act with utter indifference to

the consequence, which is action is likely to entail, such an act is a rash act. On the other hand, when a person fails to take while doing an act, such precaution, which a reasonable and prudent person is expected to take or ought to take, before doing the act, such doing of the act would amount to negligence.

19. Describing as to what is a rash and negligent act, **Hon'ble Gauhati High Court in Haider Islam vs State of Assam, reported in 2007 (1) GLT 428**, it observes as under -

“The criminal negligence lies in doing an act without taking such care, which a reasonable man would, ordinarily, do.”

In State of Himachal Pradesh vs Mohinder Singh, 1982(2), Crimes 159 a Single Judge of the Himachal Pradesh High Court noted that *“ criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause an injury but without intention, to cause injury or knowledge that it will probably be caused. The criminality lies in taking the risk of doing such an act with recklessness or being indifferent as to the consequence. Reckless driving or driving in a manner dangerous to public is rashness. In order to see whether it is so the condition of the road, the amount of traffic at that time and number of persons frequently moving about on the road or expected to be road, are some of the factors to be taken to consideration in assessing the rashness or negligence of the driver. It is duty of every man who drives a vehicle on the public road, to drive it with such a care and caution as to prevent, as far as possible, any injury to anyone.”*

20. Now, let us see whether the prosecution has been able to bring home the guilt of the accused person beyond all reasonable doubt. From the materials on record, it is found that PW.5 i.e. victim deposed that on the day of the incident, at the relevant time, he along with accused were proceeding in a scooty and then, one dog suddenly crossed the road as a result of which the accident occurred. It appears that the victim and the other prosecution witnesses have not

implicated the accused person of commission of offence u/s-279/338 IPC. The prosecution witnesses have not stated anything incriminating material regarding the incident against the accused person.

21. In the instant case, the prosecution has not examined the MVI, the MO or the I.O. The prosecution has failed to bring any other witness who could support the prosecution case. Furthermore, the prosecution has not been able to place before the court creditable and convincing evidence to show the involvement of the accused in the commission of the offences charged with to justify a conviction.

22. The court cannot form an opinion on mere conjectural hypothesis and fix liability on the accused without the offences being proved beyond all reasonable doubt.

23. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, the accused person namely Bikram Rabha is acquitted of the offences u/s-279/338 I.P.C. and set at liberty forthwith.

24. Seized articles to be disposed of as per law.

25. Bail bond would be cancelled after expiry of the appellate period.

26. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 03rd day of February, 2020.

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Dictated and corrected by me

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

APPENDIX

Witnesses for the prosecution

- PW-1 - Karen Rabha, informant.
PW-2 - Saifuddin Ahmed.
PW-3 - Intaz Ali.
PW-4 - Latifur Rahman.
PW-5 - Jyotikan Rabha.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR.
Ext.2 - Seizure list.
Ext.3 - Seizure list.

Defence Exhibits

None.

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Jitul