

PRC No.1132/2018

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

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

Ref: PRC No.1132/2018

State

-VS-

Nurul Islam

S/o- Lt. Mahammad Ali

Village- Kukarpar,

PS- Sarthebari.

Dist. Barpeta, Assam

..... Accused person.

u/s-279/337/427 I.P.C.

EVIDENCE RECORDED ON : 22.04.2019, 30.09.2019 & 24.01.2020

ARGUMENT HEARD ON : 27.02.2020.

JUDGMENT DELIVERED ON : 27.02.2020.

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 in this case was launched by lodging of an ejahar with the Officer-in-Charge of the Nalbari Police station, by the informant, Md. Asgar Ali by putting his thumb impression on

06.04.2015, alleging inter-alia that on 02.04.2015, at about 10.30 am, in the morning, he was proceeding towards Nalbari from Rangia after carrying fish bucket (*handi*) by riding his cycle and then, on his way, at village Kairara on NH 31, he was knocked by one Honda Xcent vehicle bearing Regd. No.DL 4C AJ 4293 from the backside as a result of which his sustained injuries and his bicycle also got damaged. The informant further alleged that the driver of the above mentioned vehicle was driving the vehicle rashly and negligently. Hence, the case.

2. On receiving the case, the O.C of Nalbari P.S. registered Nalbari P.S. Case No.237/2015 u/s-279/338/427 IPC and started investigation. On completion of investigation, the I.O filed charge-sheet against accused person namely Nurul Islam u/s-279/337/427 IPC vide CS No.102/2015 dated 19.04.2015.

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-279/337/427 I.P.C and the substance of accusations u/s-279/337/427 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 02.04.2015, at about 10.30 am, at Kairara, on NH 31 under Nalbari PS, in a public way, drove a Honda Xcent vehicle bearing Regd. No.DL 4C AJ 4293 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 hurt to one Md. Asgar Ali by driving a Honda Xcent vehicle bearing Regd. No.DL 4C AJ 4293 so rashly as to endanger human life and thereby committed an offence punishable u/s-337 I.P.C. ?
- Whether the accused on the above mentioned date, time and place, committed mischief causing loss or damage to the bicycle of the informant to the amount more than Rs.100/- after hitting the same by driving a Honda Xcent vehicle bearing Regd. No.DL 4C AJ 4293 and thereby committed an offence punishable u/s-427 I.P.C. ?

DECISION AND REASONS THEREOF :

6. PW.1 is informant, Asgar Ali. He deposed that about four years ago, one day, at about 11.00 am, he was proceeding towards his residence from Rangia by riding his bicycle and then, he was knocked by a car from the backside at Kairara on NH 31. Immediately, he was taken to medical. He sustained injuries on his right leg and right hand. Police recorded his statements.

7. During cross-examination, this witness deposed that the FIR has been written by police. He does not know what is written in the FIR.

8. PW.2 is Phanindra Ch. Kalita. He deposed that he does not know either of both the sides. He does not know anything about the accident. Police obtained his signature at the time of seizing a bicycle vide Ext.1.

9. Defence declined to cross-examine this witness.

10. PW.3 is Dharani Kalita. He deposed that he does not know the informant and the accused. The accident occurred about 4-5 years ago,

on NH 31. While the informant was proceeding then the accident occurred. The victim was taken to medical. Police during the course of investigation seized a bicycle vide Ext.1.

11. Defence declined to cross-examine this witness.

12. PW.4 is Merajul Haque. He deposed that he does not know the informant and the accused. He could not remember about the accident. Police obtained his signature at the time of seizing a vehicle vide Ext.2.

13. Defence declined to cross-examine this witness.

14. PW.5 is Dadhi Kalita. He deposed that he knew the informant, but does not know the accused. About three years ago, one day, near his residence, the informant was hit by a vehicle.

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-337 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.1 (informant) stated that on the day of the incident, while he was proceeding towards his residence from Rangia by riding his bicycle, then, at Kairara, he was hit by a car from the backside as a result of which, he sustained injuries and his bicycle also got damaged. The informant has failed to implicate the accused person in any way for hitting him. The next witnesses viz. PW.2, PW.3, PW.4 and PW.5 also did not state anything incriminating material against the accused person.

21. In the instant case, the prosecution has not examined the MVI, the M.O or the I.O. The prosecution has failed to bring any other witness who could support the prosecution case.

22. The prosecution case has to stand on its own legs. The prosecution side in a case of rash and negligent driving should be able to identify the driver of the vehicle which caused the accident. There should be no ambiguity in identifying the driver of the vehicle which caused the accident. In the instant case none of the witnesses deposed that accused Nurul Islam was driving the vehicle during the accident. The elements of the testimony of the witnesses is not clear and cogent whether the vehicle bearing Regd. No.DL 4C AJ 4293 was driven in rash and negligent manner by the accused as a consequences of which the accident occurred.

23. In the instant case 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.

24. 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.

25. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, the accused person namely Nurul Islam is acquitted of the offences u/s-279/337/427 I.P.C. and set at liberty forthwith.

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

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

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

Given under my hand and seal of this court on this the 27th day of February, 2020.

PRC No.1132/2018

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Dictated and corrected by me

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Jitul

APPENDIX

Witnesses for the prosecution

- PW-1 - Asgar Ali, informant.
- PW-2 - Phanindra Ch. Kalita.
- PW-3 - Dharani Kalita.
- PW-4 - Merajul Haque.
- PW-5 - Dadhi Kalita.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - Seizure list.
- Ext.2 - Seizure list.

Defence Exhibits

None.

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari