

PRC No.1620/2019

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

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

Ref: PRC No.1620/2019

State

-VS-

Pradip Choudhury

S/o- Lt. Bindu Nath Choudhury

Village- Elengidol,

PS- Nalbari.

Dist. Nalbari, Assam

..... Accused person.

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

EVIDENCE RECORDED ON : 24.02.2020.

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. P. Sarma, 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, Anima Devi on 02.07.2019, alleging inter-alia that on

20.06.2019, at about 9.00 am, her husband Sri Kamal Choudhury along with his elder brother were proceeding in a scooty vehicle bearing registration No. AS-01-DP/1862 from Nalbari town towards his house through Hajo-Nalbari Road. The informant further stated that her husband was a pillion rider of the scooty and on their way, in front of Bharat Gas Agency, Majdia, the rider of the scooty tried to overtake a truck and due to rash and negligent riding of the rider the scooty, the vehicle met with an accident and the husband of the informant fell down on the pucca road from the back seat and serious injuries on his left leg. Immediately he was taken to SMK Civil Hospital, Nalbari for treatment and from there, he was referred to G.M.C.H., for better treatment. The injured was later on admitted at Sanjeevani Hospital at Guwahati. Hence, the case.

2. On receiving the case, the O.C of Nalbari P.S. registered Nalbari P.S. Case No.432/2019 u/s-279/338 IPC and started investigation. On completion of investigation, the I.O filed charge-sheet against accused person namely Pradip Choudhury u/s-279/338 IPC vide CS No.260/2019 dated 25.07.2019.

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 two (2) 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 20.06.2019 at about 9.00 am, at Hajo-Nalbari road, in front of Majdia Bharat Gas Agency under Nalbari PS, in a public way, drove a scooty vehicle bearing Regd. No.AS 01 DP 1862 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 Kamal Choudhury by driving a scooty vehicle bearing Regd. No.AS 01 DP 1862 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, Anima Choudhury, informant. She deposed that she knew the accused. Accused is the elder brother of her husband. The accident occurred on 20.06.2019 at about 9.00 am. Her husband was proceeding towards Nalbari and then, on his way, at Majdia, one truck vehicle crossed them and then, they fell down and sustained injuries. The victim was immediately taken to SMK Civil Hospital, Nalbari and later on, to GMCH. She has no objection against the accused. Ext.1 is the FIR and Ext.1(1) is her signature.

7. Defence declined to cross-examine this witness.

8. PW.2 is Kamal Choudhury. He deposed that informant is his wife. Accused is his elder brother. On 20.06.2019, while he was proceeding towards Nalbari, then, on his way, he met with an accident. Both of them had fallen at the road as a result of which, his leg got fractured. There is no fault on the part of the accused. The accident occurred as one truck had crossed them.

9. Defence declined to cross-examine this witness.

10. These are the materials on record.

11. 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.

12. 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.

13. 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 hazing 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 or 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."

14. 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) and PW.2 (victim) deposed that on the day of the incident, at the relevant time, victim was proceeding along with accused in a scooty vehicle and on their way, at Majdia, one truck had crossed the scooty and therefore, they had fallen down at the road and then, the victim sustained injury. It appears that the victim and the informant 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.

15. 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. 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.

16. 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.

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

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

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19. Bail bond would be cancelled after expiry of the appellate period.
20. 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.

(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 - Anima Choudhury, informant.
PW-2 - Kamal Choudhury.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR.

Defence Exhibits

None.

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari