

P.R.C. Case no. 1080/2018

Page 1 of 7

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
NALBARI**

P.R.C. Case no. 1080/2018

u/s 279/338 I.P.C

State of Assam

-Vs-

Sri. Haren Das.....Accused

PRESENT : Smti Sorbani Bhattacharjee, A.J.S,
Additional Chief Judicial Magistrate, Nalbari.

ADVOCATES APPEARED:

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

For the accused : Mr. Jahuruddin Ahmed, Ld. Defence Advocate,

Dates of evidence : 18-06-2019, 29-07-2019 & 18-11-2019.

Date of argument : 08-06-2020.

Date of judgment : 17-06-2020.

J U D G M E N T

PROSECUTION CASE:

1) The prosecution case in brief as unfolded from the 'ejahar' dated 02-12-2014 filed by the informant Sri. Devajit Sarma is that on 01/11/2014 at about 7:40 pm, he along with his wife and children were returning home on foot after watching Jagadhatri Puja at Moura and were walking through the left side of the road and at that time the rider of the offending motorcycle bearing registration no. AS-01-AU-0394 was coming in a high speed from Moura towards Kalag and as they reached in front of the house of Kishor (rickshaw puller), the offending motorcycle knocked down his son Jenin Jon Bharadwaj from behind causing serious injury to his right leg. His son also sustained injury over his face. As he was busy in the treatment of his son, there was delay in filing the ejahar.

2) The aforesaid 'ejahar' was received at Kamarkuchi outpost vide GDE no. 28 dated 02/12/2014 and the same was forwarded to Nalbari P.S for registration which was later received and registered as Nalbari P.S case no. 792/14 u/s 279/338 I.P.C dated 03/12/14. After completion of investigation charge-sheet no. 55/15 dated 28/02/15 was submitted against accused Haren Das u/s 279/338 I.P.C. Copy was furnished to the accused person and particulars of offence u/s 279/338 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 01/11/2014 at about 7:40 pm, the accused drove motorcycle bearing registration no. AS-01-AU-0394 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 01/11/2014 at about 7:40 pm, the accused caused grievous hurt to Jenin Jon Bharadwaj by driving motorcycle bearing registration no AS-01-AU-0394 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

4) DISCUSSION, DECISION AND REASONS THEREOF:

The prosecution side examined five (5) witnesses. 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 took the plea of innocence and false implication. 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) The evidence of PW 1 Devajit Sarma who is the informant reveals that the incident took place on 01/11/14 at about 7:40 pm at village Maura near a Kali Mandir. He along with his wife Nipa Sarma and his son Jenin Jun Bharadwaj were returning home from Maura on foot. One bike coming from behind hit his child who was aged about 6 years at that time. PW-1 could not reveal in his evidence as to who was driving the offending vehicle. In his cross examination reveals that as the incident took place during evening time, so he could not able to

see the accused. He also stated that the bike was coming from behind and he has not seen the registration number of the bike. Thus, from the evidence of the informant who is also an eye witness of the incident it is crystal clear that neither he saw the accused riding the offending vehicle nor he saw the registration number of the vehicle. Pw-1 failed to disclose in his evidence as to the manner how the accident took place. Merely saying that some bike hit the victim is not enough to hold the accused guilty when rashness and negligence on the part of the accused cannot be proved by the prosecution. If we go through the evidence of the other two eye witnesses then it becomes quite clear that they could not reveal anything incriminating the accused in this case. The evidence of PW-2 Smti Nipa Sarma reveal that on the day of incident while she along with her son and husband were returning home after watching Jagadhatri puja on foot one bike coming from behind hit her son. In her cross examination she inter alia stated that many people were coming on the road after watching 'puja' and she does not know who was riding the bike and she also does not know the description of the bike. She also stated that she does not know whether the accused person is involved with the incident. The evidence of the victim i.e., PW-3 Sri Jenin Jon Bharadwaj reveals that he does not remember the incident. He said nothing regarding the incident. PW-2 and 3 could not identify the accused in this case.

6) The evidence of PW-4 Sri Tutul Talukdar reveals he also does not know the registration number and model of the offending motorcycle. He does not know who hit the victim. In his evidence he only revealed that one motorcycle hit PW-3 from backside but he could not reveal as to how the incident took place or how the accused was involved in the accident. The evidence of PW 5 Sri Bhabesh Sarma reveals that the

incident occurred on 01-11-2014 at about 7.45 pm at Barkulhati. He along with his wife and daughter were coming from Moura after watching Jagadhatri Puja towards his residence situated at Barkulhati. One bike bearing registration number AS-01-AU-0394 hit Zenin Jon Bharadwaj Sarma from back side. PW 5 during cross-examination deposed that many people were present in between him and the victim at the time of incident. He does not know who was driving the bike bearing registration number AS-01-AU-0394. It was dark at the time of the incident. Although PW-5 stated the registration number of the offending vehicle in his evidence but he failed to say as to who was riding the said bike. He could not identify the accused.

7) In order to constitute an offence u/s 279 of I.P.C it must be established that the accused was driving the offending vehicle in a rash & negligent manner so as to endanger human life or likely to cause hurt or injury to other persons. Negligence connotes want of proper care and caution while rashness conveys idea of reckless doing of an act without consideration of any consequences. Rashness or negligence to be established must be more than mere error of judgment. In this case prosecution has failed to prove any rashness or negligence on the part of the accused.

8) Regarding the offence U/S 338 of IPC prosecution has also failed to prove that it was in fact the accused who caused grievous hurt to PW-3 (victim). As already discussed in the foregoing discussions it is clear that none of the witnesses have incriminated the accused of causing grievous hurt to the victim as they have not seen the accused causing the accident.

9) On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond all reasonable doubt by leading clear, cogent & convincing evidence. 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 grievous injury/hurt to the victim.

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

Given under my hand and seal of this court on this 17th day of June, 2020 in virtual court no.5.

Smti Sorbani Bhattacharjee, A.J.S,
Additional Chief Judicial Magistrate,
Nalbari, Assam

APPENDIX

Prosecution witness:

PW 1- Sri Devajit Sarma (Informant),

PW 2- Smti Nipa Sarma,

PW 3- Sri Jenin Jon Bharadwaj Sarma (victim),

PW 4- Sri Tutul Talukdar,

PW 5- Sri Bhabesh Sarma,

Prosecution Exhibits:

Ext 1 - Ejahar,

Ext 1(1) - Signature of the informant Devajit Sarma,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Court Witness:

Nil

Court Exhibits :

Nil

Smti Sorbani Bhattacharjee, A.J.S,
Additional Chief Judicial Magistrate,
Nalbari, Assam