

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

P.R.C. no. 313/2019
u/s 279/337/427 I.P.C.

State of Assam

-Vs-

Sri. Bhaben Talukdar.....Accused

PRESENT : Smti Sorbani Bhattacharjee, A.J.S,
Addl. C.J.M., Nalbari.

ADVOCATES APPEARED:

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

For the accused : Smti. Dipika Barman, Ld. Advocate,

Dates of evidence : 02/08/2019, 06/09/2019 & 06/01/2020.

Date of argument : 12/06/2020.

Date of judgment : 22/06/2020.

J U D G M E N T

PROSECUTION CASE:

1) The prosecution case in brief as unfolded from the ejahar dated 26.11.2018 filed by the informant Smti. Sabita Haloi is that on 01/11/2018 at about 5 pm, her husband Sri. Paresh Sutradhar was going to Barama on his bicycle from his home to sell milk and as he reached Rabha Hotel near Barama Pub Chowk, the rider of the offending motorcycle who was coming from the north side in a rash and negligent manner hit the bicycle of her husband resulting which her husband sustained severe injuries over different parts of his body. The bicycle of her husband also got damaged due to the incident. Local public immediately took the injured to Barama Primary Health Center and as the injury was severe in nature, the injured was referred to GMCH and later admitted in Down Town Hospital, Guwahati. As she was busy in the treatment of her husband, there was delay in filing the ejahar.

2) The said 'ejahar' was received at Nalbari P.S Traffic branch vide GDE no. 666 dated 26/11/2018 and was forwarded to the O/c Nalbari P.S for registration and was registered as Nalbari P.S case No. 847/18 u/s 279/338/427 I.P.C dated 26/11/18. After completion of investigation charge-sheet no. 485/18 dated 31.12.2018 was submitted against accused Bhaben Talukdar u/s 279/337/427 I.P.C. Copy was furnished to the accused person. Particulars of offence u/s 279/337/427 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 01/11/2018 at about 5 pm, at Barama Pub Chowk near Rabha Hotel under Nalbari P.S., the accused drove Hero Hunk motorcycle bearing registration no. AS-01-BK-9214 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 01/11/2018 at about 5 pm, at Barama Pub Chowk near Rabha Hotel under Nalbari P.S., the accused caused hurt to Paresh Sutradhar by riding Hero Hunk motorcycle bearing registration no. AS-01-BK-9214 rashly/negligently and thereby committed an offence u/s 337 I.P.C?

III. Whether on 01/11/2018 at about 5 pm, at Barama Pub Chowk near Rabha Hotel under Nalbari P.S, the accused committed mischief by riding Hero Hunk motorcycle bearing registration no. AS-01-BK-9214 rashly/negligently and caused loss / damage to the bicycle of Paresh Sutradhar to the amount of rupees fifty or upwards and thereby committed an offence punishable u/s 427 I.P.C?

4) DISCUSSION, DECISION AND REASONS THEREOF:

The prosecution 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 he denied his involvement with the alleged offence. 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) PW 1 Sabita Haloi who is the informant deposed that she does not know the accused person. The incident took place on 01/11/18 at about 5 pm. Her husband was coming in his bicycle towards Barama

chowk to sell milk. On the NH 31 in front of Rabha Hotel, one motorcycle coming from the opposite direction hit her husband. She received information over phone that her husband was taken to Barama P.H.C. She went to Barama P.H.C and found that her husband had sustained injury over his head and hands. She took her husband to GMCH and after 3 days her husband was taken to Down Town Hospital, Guwahati. She filed the ejahar after 26 days as she was busy in the treatment of her husband.

6) PW 1 during cross-examination deposed that she has not seen the incident. She does not know due to whose fault the incident took place.

7) PW 2 Paresh Sutradhar who is the victim deposed that he know the informant who is his wife. He does not know the accused person. The incident took place on 01-11-2018 in the evening time. He was going towards Barama in his bicycle to sell milk. As he reached Rabha Hotel, one bike hit him from the opposite side in front of the hotel. He fell down and became senseless. He regained his sense after 20 days. He sustained injury over his head. He was treated at SMK civil hospital and thereafter he was referred to GMCH. His wife filed the ejahar. Police recorded his statement.

8) PW 2 during cross-examination deposed that he have one son aged about 21 years and two daughters. He has filed MACT case. The P.O. is a busy road and many vehicles ply. The accident took place while he was crossing the road. He does not know how the accident took place. There was two milk gallons measuring 5 litres each attached to his bicycle. He does not remember what type of vehicle hit him. It is not a fact that his wife filed a false case.

9) PW 3 Rameswar Pathak deposed that he know the informant. He does not know the accused person. The incident took place about 1 year back at about 5.00-5.30 pm. He was in his shop near Rabha hotel. He heard that an accident took place. He came out and saw that Paresh Sutradhar was lying near the road side. The son of Paresh Sutradhar came to the P.O and he along with other people took Paresh Sutradhar to medical. Police recorded his statement.

10) PW 3 during cross-examination deposed that police recorded his statement after 10-12 days of the incident. The P.O. is about 30-40 meters from his shop. He came to the P.O hearing 'hulla' after the accident had taken place. The P.O is a busy road and many vehicles ply. He heard that one bike hit Paresh Sutradhar. He does not know the details of the bike.

11) PW 4 Trinayan Baishya deposed that he does not know the informant. He know the accused person. He does not know the date and time of incident. He heard that an accident took place near Barama road. Exhibit 2 is the seizure list and Exhibit 2(1) is his signature. Police recorded his statement.

12) PW 4 during cross-examination deposed that he does not know the contents of the Exhibit 2 seizure list. He has not seen the accident.

13) In this case the prosecution examined altogether four (4) witnesses. The evidence of the informant (PW1) reveals that she has not seen the incident. She could not identify the accused person. She also stated that she does not know due to whose fault the incident took place. The evidence of PW2 reveals that he is the victim of this case and on the day of incident one bike hit him from the opposite side in

front of Rabha Hotel. After the incident he fell down and became unconscious. In his cross-examination he stated that he does not know how the incident took place and does not remember what type of vehicle hit him. The evidence of PW3 reveals that he came to the P.O after the incident. He could not identify the accused and he has no knowledge about the details of the offending bike. The evidence of PW4 reveals that he has not seen the incident and he only heard about an accident but does not know the date and time of the incident. The prosecution failed to examine any other witnesses in this case. On careful scrutiny the evidence of PW1 to PW4 reveals that none of the witnesses have incriminated the accused of committing any offence.

14) In order to constitute an offence u/s 279 I.P.C it must be established that the accused was driving the 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.

15) 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. The prosecution also failed to establish that the accused was involved in damaging the bicycle of the victim. The prosecution has failed to establish the essential ingredients so required to constitute the charged offences U/S 279/337/427 of IPC beyond all reasonable doubt by leading clear, cogent & convincing evidence.

16) Accordingly, the accused person namely Sri Bhaben Talukdar is held not guilty u/s 279/337/427 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 be disposed of in due course as per law.

Given under my hand and seal of this court on this 22nd day of June, 2020 in virtual court.

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

APPENDIX

Prosecution witness:-

PW 1-Smti. Sabita Haloi (Informant),

PW 2-Sri Paresh Sutradhar (Victim of the case),

PW 3-Sri Rameswar Pathak,

PW 4-Sri Trinayan Baishya,

Prosecution Exhibits :-

Exhibit 1 - Ejahar,

Exhibit 1(1) - Signature of the informant,

Exhibit 2 - Seizure list,

Exhibit 2(1) - Signature of seizure witness Trinayan Baishya,

Defence witnesses :-

Nil

Defence Exhibits :-

Nil

Court Witnesses:-

NIL

Court Exhibits:-

Nil

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