

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

P.R.C. No.200/2019

u/s 279/338 I.P.C

State of Assam

-Vs-

Md. Nur Hussain Ali.....Accused person

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. Bareque Ali , Ld. Defence Advocate,

Dates of evidence : 29.03.2019, 03.09.2019, 30.10.2019 &
26.12.2019.

Date of argument : 20.10.2020

Date of judgment : 28.10.2020

J U D G M E N T

PROSECUTION CASE:

1) The prosecution case in brief as unfolded from the 'ejahar' dated 20.02.2018 filed by the informant Md. Younus Ali is that on 08.02.2018 at about

8:30 a.m., in the morning his son Jiaur Rahman @ Jiarul Rahman sitting in the bus bearing registration No.AS-01/HC-4043 in order to go to Hailakandi for religious purpose and after the bus went a little distance, in front of the house of Md. Ramij Ali, his son tried to get down from the bus but suddenly, the driver started the bus as a result of which his son skidded of the bus and got fracture injury on his left leg. Immediately, he admitted the injured at SMK Civil Hospital. As he was busy in the treatment of his son, there was delay in filing the ejahar.

2) The said 'ejahar' was received and registered as Nalbari P.S case No. 102 u/s 279/338 I.P.C dated 20.02.2018. After completion of investigation charge-sheet No.81/18 dated 28/03/18 was submitted against accused Md. Nur Hussain Ali u/s 279/338 I.P.C. Copy was furnished to the accused person and particulars of offences u/s 279/338 I.P.C were 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 08.02.2018 at about 8:30 am, the accused drove Ultra bus bearing registration no.AS-01/HC-4043 in a public way in 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 08.02.2018 at about 8:30 am, the accused caused grievous hurt to Jiaur Rahman @ Jiarul Rahman by driving Ultra bus bearing registration no AS-01/HC-4043 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

4) DISCUSSION, DECISION AND REASONS THEREOF:

For the sake of convenience all the points are taken up together for discussion. The prosecution side examined six (6) 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. 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) From the evidence of PW-1 Yonus Ali who is the informant of this case it is revealed that he did not witness/see the incident and has no knowledge for whose fault the incident took place. The evidence of PW-2 Md. Jiaur Rahman who is the victim of this case reveals that on the day of incident he was going to Hailakandi in a ultra bus (offending vehicle). After the bus went a little ahead he and some other passengers of his group forgot something in the mosque. So they asked the bus to stop. Two passengers got down and he was about to get down when the accused suddenly started the bus and took the turning he fell down from the bus and sustained grievous injuries in his left leg. He became unconscious and also sustained injury over his chest, head, hand and other parts of the body. In his evidence he alleged that the incident took place due to fault of accused as he suddenly started the bus after stopping it and while they were getting down from the bus. In his cross-examination PW2 admitted that before the incident he had never met the accused and after the accident also he did not meet him. He does not know the name of the accused and the name of the owner of the offending vehicle. He also stated that he does not know the name of the bus and do not even know that the ultra bus has a name or not. In his cross-examination he admitted that he did not ask to stop the bus. From the evidence of the victim it is evident that he did not ask the bus driver to stop the bus. The statement of the victim is contradictory in this regard. In his

examination-in-chief he stated that they asked to stop the bus and alleged that while he was about to get down from the bus suddenly accused started the bus. But in his cross-examination he had admitted that he did not asked to stop the bus which means the accused was not aware that PW2 will get down from the bus when he started the bus. As the accused was not informed by PW2 prior to his attempt to get down from the bus in such circumstances, the accused cannot be held responsible for the negligence in his duty. If we go through the evidence of PW-3 Md. Rubul Ali who is an independent witness of this case it is seen that he saw the incident but he had no knowledge as to due to whose fault the accident took place. The evidence of PW-4 Dr. Khanindra Mohan Saud (M.O.) reveals that he deposed regarding injuries sustained by the victim and the treatment provided by him. The evidence of PW-5 Md. Sayef Ali reveals that he does not know how the victim fell down from the bus. The evidence of PW-6 Sri Bhabesh Kalita reveals that he is the investigating officer of this case and deposed regarding the investigation done by him in this case.

6. In this case prosecution failed to examine any of the passengers of the offending vehicle although there were fifty passengers in the offending vehicle while the incident took place as revealed from the evidence of PW2. Except PW2 none of the witnesses had the knowledge as to what happened in the offending vehicle when the incident took place. The evidence of PW2 is not sufficient in this case to come to the conclusion that it was in fact the negligence on the part of the accused due to which the accident took place and victim sustained injuries. The other witnesses who were examined by the prosecution could not know what had happened inside the offending vehicle when the accident took place. Prosecution failed to examine two vital witnesses in this case who got down from the bus before the accident took place. Although in his examination-in-chief PW2 alleged that accused started the bus after stopping it while they were getting down from the bus which resulted into the accident but it is not plausible because if the accused would have started the bus suddenly after stopping it while they were getting down from the bus then all three of them would have fell

down from the bus and would have sustained injury but in this case the other two passengers did not meet with any accident and it creates doubt towards the version of PW2. There is every possibility that after two passengers got down from the bus, PW2 also suddenly tried to get down from the bus without informing the accused (bus driver) which resulted into the accident. There is no clear evidence on record that the accused was negligent in his act and there was any kind of rashness of his part which resulted into the accident.

7) 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.

8. Accordingly, the accused person namely Md. Nur Hussai Ali 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 28th day of October, 2020
in physical Court.

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

APPENDIX

Prosecution witness:

PW 1- Md. Younus Ali (Informant),

PW 2- Md. Jiaur Rahma (victim),

PW 3- Md. Rubul Ali.

PW 4- Dr. Khanindra Mohan Saud (M.O., of this case)

PW 5- Md. Sayef Ali.

PW6- Sri Bhabesh Kalita (I.O., of this case)

Prosecution Exhibits:

Ext 1 – Ejahar,

Ext 1(1) – Signature of the informant Md. Younus Ali,

Ext.2- Injury report.

Ext.2(1)- Signature of M.O., Dr. Khanindra Mohan Saud.

Ext.3- Sketch map.

Ext.3(1) Signature of I.O., Bhabesh Kalita.

Ext.4- Seizure Memo.

Ext.4(1) Signature of Bhabesh Kalita.

Ext.5- Charge sheet.

Ext.5(1) Signature of I.O., Bhabesh Kalita.

Defence witnesses :

Nil

Defence Exhibits :

Nil

Court Witness:

Nil

Court Exhibits :

Nil

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