

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

**G.R. Case No.141/2016**

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

State of Assam

-Vs-

Md. Abdul Faruk .....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. Phanidhar Deka.

Ld. Defence Advocate.

Dates of evidence : 29.03.18, 29.07.19 &  
20.04.2021.

Date of argument : 20.04.2021

Date fixed for judgment:-23.04.2021 (accused  
remained absent without step on that day)

Date of judgment : 05.05.2021

**( J U D G M E N T )**

- 1)** The prosecution case in brief as unfolded from the 'ejahar' dated 25.01.2016 filed by the informant Md. Fulchand Ali is that on 29.09.2015, Tuesday at about 4 p.m. in the evening while the son of the informant namely Rasidul Islam (aged about nine years) along with him was going from Damdama towards Rampur Chowk, at that moment, a Traveler bearing registration No.AS-25/AC-4449, coming from Guwahati side to Barpeta, which was driven by it's driver in a rash and negligent manner hit Md. Rasidul Islam from his back side. Immediately the nearby people brought him to Mukalmua Hospital for his treatment but as Rasidul sustained grievous injury so he was referred to GMCH for his treatment. As the informant was busy with the treatment of his son hence, he filed the case lately.
- 2)** The said 'ejahar' was received and registered as Mukalmua P.S case No.27/2016 u/s 279/338 of I.P.C dated 26.01.2016. After completion of investigation concerned I.O. filed charge-sheet against accused Md. Abdul Faruk u/s 279/338 of I.P.C.
- 3)** In due course accused appeared before the Court complying with the summons issued by the Court and the relevant copy was furnished to the accused person u/s 207 of CrPC 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.

**4)**The prosecution side examined two (2) witnesses including the informant. The victim Rasidul Islam was examined as CW-1 in this case by the Court. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. As there is no incriminating material against the accused hence recording of his statement u/s 313 of Crpc is dispensed with. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. counsels for both sides.

**5) POINTS FOR DETERMINATION:**

- I. Whether on 29.09.2015 at about 4 p.m., in the evening at Damdama pathar under Mukalmua P.S., the accused drive a Traveler bearing registration No.AS-25/AC-4449 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 of I.P.C ?
- II. Whether on the same day, time and place, the accused caused grievous hurt to son of the informant namely Rasidul Islam by driving a Traveler bearing registration No.AS-25/AC-

4449 rashly/negligently and thereby committed an offence u/s 338 of I.P.C ?

**DISCUSSION, DECISION AND REASONS**  
**THERE OF:**

**6)** For the sake of convenience both the points are taken up together for discussion. The evidence of PW1 Md. Abdul Latif reveals that one day in the year 2015 at about 4 p.m. one boy was hit by a traveller while he was crossing the road. He saw people assembled at the P.O. He also found the injured but did not ask him anything. He further revealed that he does not know the speed of the offending vehicle and as to who was driving the same and he had not seen the incident.

**7)** The evidence of PW-2 Md. Fulchan Ali reveals that he is the informant of this case and he does not know the accused. At the time of the incident he along with his son Rasidul were coming on foot towards Rampur from Dhamdhama via Guwahati- Barpeta Road and his son Rasidul was hit by a traveller from behind as a result of which his son had fracture on his head and injury over various parts of the body. Nearby people took his son

to Mukalmua hospital. In his cross examination he admitted that the ejahar was filed after 3 months of the incident and he was at a distance of about 5 feet from Rasidul at the time of incident.

- 8)** The evidence of CW-1 Rasidul Islam reveals that he does not know the accused and he does not remember anything about the incident.
- 9)** On scrutiny of entire evidence on record it is seen that PW2 and CW-1 who are the eye witnesses of this case could not identify the accused in the Court. None of the PW's and CW nowhere alleged the accused of causing the incident. They have not incriminated the accused of committing the incident of causing grievous hurt to CW-1. Prosecution has miserably failed to prove rashness or negligence on the part of the accused by adducing cogent and reliable evidence to hold him guilty in this case and there is no iota of evidence against the accused.
- 10)** In view of the discussion made above, accused person namely Md. Abdul Faruk is hold 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 seized articles (if any) be disposed of in due course as per law.

**Given under my hand and seal of this court on this 05<sup>th</sup> day of May, 2021 at Nalbari in Virtual Court.**

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

**APPENDIX**

**Prosecution witness:**

PW 1- Md. Abdul Latif

PW 2- Md. Fulchan Ali (Informant of this case),

**Prosecution Exhibits:**

Ext 1 - Ejahar,

**Defence witnesses :**

Nil

**Defence Exhibits :**

Nil

**Court Witness:**

CW 1- Md. Rasidul Islam (victim of this case)

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