

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

**GR Case No.938/2014**

U/S 279/338/427 of I.P.C

State of Assam

-Vs-

Md Sabqul Ali .....Accused

**PRESENT** : Sri Jayanta Kumar Saikia, A.J.S,

Additional Chief Judicial Magistrate, Nalbari.

**ADVOCATES APPEARED:**

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

For the accused : Mr. Paban Das.

Dates of evidence : 30.03.2020 & 22.10.2021.

Date of argument : 25.10.2021

Date of judgment : 25.10.2021

## **JUDGMENT**

- 1)** The prosecution case in brief as unfolded from the 'ejahar' filed by the informant Miss Eliza Bibi is that on 17.06.2014 at about 4:00 p.m., while her son Md. Raijuddin Ali was going from his house riding bicycle, a Maruti car bearing registration No.AS-01AJ-7063 coming from Barpeta side, which was driven by its driver in rash and negligent manner hit the son of the informant in P.W.D. road of Loharkatha chowk. As a result of which her son sustained grievous injuries in head and hand. Immediately he was brought to Mukalmua PHC for treatment, but for better treatment, doctor referred him to GMCH. As the informant was busy with the treatment of her son hence, she filed the case lately. Hence, the case.
- 2)** The said 'ejahar' was received and registered as Mukalmua P.S case No.231/2014 u/s 279/338 I.P.C dated 20.06.14. After completion of investigation charge-sheet was submitted against accused Md. Sabqul Ali u/s 279/338/427 I.P.C.
- 3)** In due course accused appeared before this Court complying with the summon issued by this Court and the relevant copy was furnished to the accused person u/s 207 of CrPC and particulars of offences u/s 279/338/427 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 three (3) witnesses i.e., the informant, victim and M.O. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. 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 17.06.2014 at about 4:00 p.m., in P.W.D. road of Loharkatha chowk under Mukalmua P.S. the accused drove a Maruti car bearing registration No. AS-01AJ-7063 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 the same day, time and place, the accused caused grievous hurt to the son of the informant by driving a Maruti car bearing registration No. AS-01AJ-7063 rashly/negligently and thereby committed an offence u/s 338 I.P.C ?
- III. Whether on the same day, time and place, the accused committed mischief by hitting the son of the informant causing loss or damage to the son of the

informant and thereby committed an offence u/s 427 I.P.C ?

**Evidences of PWs:**

6) PW1, Musstt. Elija Bibi deposed that she is the informant of this case and victim is her son. She does not know the accused. The incident took place about six years back at about 6 p.m. At that time her son Rajiuddin Ali was on his way to Loharkatha in a bicycle and at Loharkatha Chowk one Maruti Car hit him from back side. As a result of which he sustained injury over his head. He was taken to Mukalmua PHC. Thereafter he was referred to GMCH Guwahati. He was at ICU of GMCH for about thirteen days. He partially lost his memory and now he sometimes has pain over his head. Ext.1 is the ejahar. She lodged the ejahar after three days of the incident. She gave her thumb impression in the ejahar. During cross-examination this witness deposed that the distance between her house and the P.O., is about 200 meter. She has seen the incident as she was with her son at that time. She agreed to defence suggestion that she did not state in her ejahar and before I.O., that at the time of the incident she was with her son and that she saw the incident. She denied defence suggestion that she has deposed falsely.

7) PW2, Md. Raijuddin deposed that he is the victim of this

case. He knows the accused. The incident took place about six years back at about 4 p.m., at Loharkatha Chowk. At that time he was on the way to Loharkatha Chowk in a bicycle and then a Maruti Car coming from Barpeta side hit him from back side. As a result of which he became unconscious. At the time of incident his mother was along with him. He was taken to Mukalmua PHC by his parents and from there he was referred to GMCH. He does not know the registration number of the Maruti Car. He was admitted at GMCH and treated there for about one month. He sustained injury over his head. He has not recovered yet. Police recorded his statement. During cross-examination this witness deposed that the Mukalmua-Adabari road is at East-Western side and his house is situated at the Southern side of that road. His house is situated at about ½ k.m., North from main road. His place of vegetable business is situated in the opposite side of the P.O. The alleged incident took place when he was crossing the road and it was four way (sari chowk). He had two vegetable bags in the front side of his cycle and also bags in the back side of his bicycle and he was coming to the place of his business without stopping anywhere in his bicycle. The incident took place in the middle of the main road. The main road is a busy road and also remains crowded with vehicles all the time. He

used to bring all the vegetables and articles relating to his business in his single bicycle. He agreed to defence suggestion that he did not stated before police that his mother was with him at the time of incident. He denied defence suggestion that the incident took place due to his fault and negligence. He denied defence suggestion that as the incident took place due to his fault hence, he and his mother have deposed falsely that his mother was present at the P.O., at the time of incident as none else will support their case. He denied defence suggestion that he did not stated before police that the offending vehicle was coming in high speed. He does not know the accused person present in the dock.

**8)** PW3, Dr. Rup Kanta Barman deposed that on 17/6/2014 at 4.45 PM, he was on duty as SMO & HO at Mukalmua PHC. On that day he examined Md. Raizuddin Ali, 12 years, escorted 108 ambulance service, reg. no. 1348 in connection with Mukalmua PS Case No. 231/2014 u/s 279/338 IPC. On examination, he found that nature of injury is that History of vomiting, LOC (+), O/E LOC (+), abrasion right side of chest, abrasion of right side of left foot and head injury. He was advised CT scan. The age of injury is 1 hour. On his opinion there is Head injury and patient referred to GMCH, so, report to be collected from GMCH. The medical examination report was issued on

27/6/2014 by him. Exhibit 2 is the medical report and Exhibit 2(1) is his seal and signature. During cross-examination this witness deposed that no mention of history of injury in Exhibit 2. No where, it is mentioned in Exhibit 2 that this was a case of road traffic accident. No details address of the patient was mentioned in Exhibit 2. He has not provided him any treatment and directly referred him to GMCH. Though he mentioned in Exhibit 2 that there was head injury but he has not witnessed any head injury from outside. He has not mentioned any nature of injury and nature of weapon in his report.

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

- 9)** The evidence of PW1 informant clearly shows that she admitted in her cross-examination that she did not state in her ejahar and before I.O. that she saw the incident. However, she says that she does not know the accused. The victim (PW2) also says that he does not know the accused person. From their evidences, it is found that they did not linked the accused with the alleged crime.
- 10)** From the entire evidence on record it can be seen that there is no eye-witness of the case. From the

evidence of prosecution side it is found that none has stated specifically regarding the incident that the accused person has committed the offence.

- 11)** The prosecution must prove its case beyond reasonable doubt. But, in this case the prosecution has miserably failed to prove its case that the accused person has committed offence u/s 279/338/427 of IPC.

### **ORDER**

In the light of discussions and reasons, it is seen that the prosecution side has failed to prove the guilt of the accused person.

Accordingly, the accused person, Md. Sabqul Ali is acquitted of the offence under Section 279/338/427 of IPC and he is set at liberty forthwith.

The bail bond and surety of the accused person shall remain in force for a period of 6 months from today as per amended CrPC.

The seized property to be disposed of as per law.

**Given under my hand and seal of this court on  
this 25<sup>th</sup> day of October, 2021.**

**Sri Jayanta Kumar Saikia, A.J.S,  
Additional Chief Judicial Magistrate,  
Nalbari, Assam.**

**APPENDIX**

**Prosecution witness:**

PW 1- Musstt. Elija Bibi (Informant of this case),

PW 2- Md. Rajjuddin (Victim of this case)

PW 3- Dr. Rup Kanta Barman

**Prosecution Exhibits:**

Exhibit 1 - Ejahar

Exhibit 2 – Medical Report

**Defence witnesses :**

Nil

**Defence Exhibits :**

Nil

**Court Witness:**

Nil

**Sri Jayanta Kumar Saikia, A.J.S,  
Additional Chief Judicial Magistrate, Nalbari**