

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS: NALBARI**

**P.R.C. NO. 530 OF 2019**

**U/S. 279/338 I.P.C.**

**STATE**

**Vs.**

**AMZAD ALI ..... ACCUSED**

**PRESENT**

**SMRITI REKHA BHUYAN, A.J.S.**

**JUDICIAL MAGISTRATE FIRST CLASS, NALBARI**

**ADVOCATE FOR THE STATE : HEM SARMA, LEARNED A.P.P.**

**ADVOCATE FOR THE ACCUSED : UMESH M.B. BARUAH**

**EVIDENCE RECORDED ON : 05.01.2022**

**ARGUMENTS HEARD ON : 11.01.2022**

**JUDGMENT DELIVERED ON : 11.01.2022**

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

1. The gist of the prosecution case is that, on 11/12/2018 the informant Sri Pabitra Kumar Barman lodged an ejahar at Nalbari P.S alleging inter alia that on 13/11/2018 at around 11:30 P.M., while his son Pervade Supad Barman was coming with his friend, in a Pulsur 200 NS motorcycle bearing Reg. no. As 14 TC 0027, towards his home riding by his friend from Ganesh Mandir to Barkura in a rash and negligent manner, then at Laudal Chowk, Nalbari the said motorcycle hit on the divider forcefully after losing its control and as a result informant's son fell down and got grievous

injuries on various parts of his body. After getting information, police arrived there and informant's son was taken to S.M.K.C.H., at Nalbari for treatment, from where he was referred to G.M.C.H. for better treatment. Further, informant's son was treated at Critical care hospital & Research Institute and also at Rahman Hospitals Pvt. Ltd. Hence, this case.

2. The ejahar was received and registered as Nalbari P.S Case No. 880/18 u/s 279/338 of IPC. On completion of investigation the investigating officer of the case submitted charge sheet against the accused person Amzad Ali u/s 279/338 IPC.
3. Cognizance of offence was taken accordingly u/s 279/338 IPC. On receiving summons the accused person appeared before this court and he was allowed to go on bail. Copy was furnished to the accused person under section 207 Cr.P.C. Particulars of offence under section 279/338 of IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. Prosecution has examined two witnesses and exhibited the ejahar as exhibit 1 and signature of the informant as exhibit 1(1) .The statement of accused person under section 313 was dispensed with as there was no incriminating materials against him. The defence declined to adduce any evidence.
5. Heard the arguments advanced by the Learned APP and the Learned Defence Counsel.

**POINTS FOR DETERMINATION :**

*I. Whether the accused Amzad Ali on 13/11/2018 at around 11:30 P.M., at Laudal Chowk, Nalbari under Nalbari P.S. had driven his motorcycle bearing Reg. no. As 14 TC 0027 on a public road in a manner, so rash and negligent as to endanger the life of the informant's son/others or to be likely to cause hurt or injury to the informant's son/others and thereby committed an offence punishable u/s 279 IPC as alleged?*

*II. Whether the above named accused person on the said date ,time and place had voluntarily caused grievous hurt to the informant's son by riding the said motorcycle, so rashly and negligently so as to endanger life of the informant's son/others or the personal safety of the informant's son/others and thereby committed an offence punishable under Section 338 of IPC as alleged?*

**DISCUSSION, DECISION AND REASONS THEREON:**

6. I have carefully gone through the entire evidence-on-record and materials placed before this court.
7. Both the two points for determination are decided together for the sake of convenience.
8. There are allegations of offences U/S 279/338 I.P.C. against the accused person in the instant case and this

court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.

9. Section 279 I.P.C. provides that, *"Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*
10. Section 338 I.P.C. provides that, *"Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*
11. Thus, from the aforesaid provisions, it is clear that a person in order to commit an offence punishable u/s 279/338 IPC must not only cause hurt or injury or to any person by driving a vehicle but also must have done the act with rashness or negligence.
12. Now let's have a discussion on the evidence-on-record deposed by the two prosecution witnesses and after that to reach in a conclusion whether any offence u/s 279/338 I.P.C. is made out against accused **Amzad Ali** satisfying the ingredients of the said sections.
13. P.W. 1 Pabitra Kumar Barman, the informant, deposed in his examination-in-chief that, the accident took place three years ago at about 10.30 P.M. There was an

accident took place on N.H. 31 near Barkura chowk. In the said accident, his son Pervade Supad Barman got injured, as he was coming towards his home with the accused in the same motorcycle riding by the accused. In the said accident both his son and accused got injured. However, due to misunderstanding, he lodged FIR against the accused. But, later on, he got to know that the accident had not taken place due to the fault of the accused. Hence, he did not want to proceed with this case. Exhibit 1 is the ejahar and exhibit 1(1) is his signature.

14. During cross examination, P.W.1 deposed that he has no objection if the accused is discharged from this case.
15. P.W.2 Pervade Supad Barman, the victim, deposed in his examination-in-chief that, the accident took place three years ago at about 10.30 P.M. There was an accident took place on N.H. 31 near Barkura chowk. At that time, he was coming towards home with the accused on the same motorcycle riding by the accused. However, an accident took place at Barkura Chowk and in the said accident both of them got injured. The accident had not taken place due to the fault of the accused.
16. During cross examination, P.W.2 deposed that he has no objection if the accused is discharged from this case.
17. On perusal of the entire evidence-on-record, it is seen that in the instant case, neither the informant nor the victim has stated anything about rash or negligence act

on the part of the accused **Amzad Ali**, which either endangered human life or caused the death of the victim. There is no evidence to prove that the accident was the result of rashness or negligence on the part of the accused. It is found that both the victim and informant stated that the accident did not take place due to the fault of the accused. Further, the informant did not want to proceed in the case.

18. Therefore, the only two witnesses examined by prosecution side, have not supported the prosecution case. Hence, in view of the discussions made above, it can be held that the prosecution has miserably failed in establishing the guilt of the accused under Sections 279/338 I.P.C. beyond reasonable doubt against the accused **Amzad Ali**, thereby making him not guilty under the said Sections.

### **O R D E R**

19. This court finds that the prosecution has failed to establish the guilt of the accused person **Amzad Ali** beyond reasonable doubt. Accordingly, accused **Amzad Ali** is not held guilty of the offence punishable u/s 279/338 IPC and accordingly, he is acquitted and set at liberty forthwith.

20. The bail bond furnished on behalf of the accused shall remain in force for a further period of six months.

21. The seized articles/vehicle and documents are to be handed over to the custody of the registered/actual/lawful owner as per law.
22. The judgment is pronounced in the open court.
23. Make necessary entry in the Judgment register.
24. Given under my hand and seal of this court on this 11<sup>th</sup> day of January, 2022.

SMRITI REKHA BHUYAN  
J. M. 1<sup>ST</sup> CLASS, NALBARI.

Typed & corrected by me

Smriti Rekha Bhuyan, J.M.F.C., Nalbari.

#### A P P E N D I X

##### LIST OF PROSECUTION WITNESS:

P.W.1 : Pabitra Kumar Barman

P.W.2 : Pervade Supad Barman

##### LIST OF DEFENCE WITNESS:

D.W. : NIL

##### PROSECUTION EXHIBITS:

EXHIBIT 1 : Ejahar

EXHIBIT 1(1) : Signature of P.W.1

(Smriti Rekha Bhuyan), J.M.F.C., Nalbari.