

**THE COURT OF SUB-DIVISIONAL JUDICIAL**  
**MAGISTRATE (SADAR)**  
**AT NALBARI**  
**PRC CASE NO.- 626/2019**  
**U/S 279/338 I.P.C.**

STATE

VS.

SRI TIKEN DUTTA  
S/O LATE RANIDHAV DUTTA  
R/O BALIKURIA  
R/O NALBARI  
P.S. NALBARI  
DISTT. NALBARI

PRESENT:- KAUSHIK KAMAL BARUAH  
SUB-DIVISIONAL JUDICIAL MAGISTRATE  
(SADAR), AT NALBARI.

APPEARANCES:- SMT. MONIKA CHAKRABORTY..FOR STATE

MD. AZGAR ALI

**AND**

SMT. JONALI DAS.....FOR ACCUSED

DATE OF EVIDENCE:- 24/10/2019, 30/12/2019.

DATE OF ARGUMENT:- 03/01/2022.

DATE OF JUDGMENT:- 03/01/2022.

## **JUDGMENT**

Accused Sri Tiken Dutta stood trial for offences punishable under sections 279/338 of the Indian Penal Code, 1860 (the IPC for short.).

Material facts of the case of the prosecution as appears from the contents of the First Information Report (hereinafter the FIR for short) are as follows:- that, on 26/11/2018 at about 11:30 AM, victim, Sri Kanak Chandra Rajbongshi, was on his way towards Nalbari travelling in a passenger bus bearing registration number AS-14/C-6911. Said bus stopped near Nalbari Ganesh Mandir Chowk and above named victim alighted from it. But, just as he was stepping out of it, the driver of the bus suddenly and without warning accelerated and as a result, above named victim fell on the road sustaining injuries on his legs.

On 25/12/2018, the informant, Sri Sanjay Rajbongshi, lodged a written FIR before the Officer in Charge of the Nalbari PS which was registered and numbered as Nalbari PS Case No.915/2018 u/s 279/338 of the I.P.C. During the course of investigation the investigating officer (I/O for short) visited the place of occurrence, recorded statements of witnesses u/s 161 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for short), seized the offending vehicle, collected report from the concerned Motor Vehicle Inspector (MVI for short) and

injury report of the victim, arrested the accused person and released him on bail.

After completion of the investigation into the alleged occurrence, the I/O returned the case in Final Form for prosecution of the accused person u/s 279/338 of the I.P.C.

Court processes were issued and upon his appearance Learned predecessor allowed the accused to go on bail. Copy of relevant documents were furnished to the accused. Substance of the accusation u/s 279/338 of the I.P.C. was explained to the accused person to which he pleaded not guilty and claimed to be tried.

Prosecution examined three (03) witnesses who were duly cross-examined by the defence and, vide order dated- 20/12/2021, evidence stood closed. Examination of the accused u/s 313 of the Cr.P.C. was dispensed with as nothing was deposed against him.

Heard arguments advanced by learned Assistant Public Prosecutor and learned defence counsel.

### **POINTS FOR DETERMINATION**

- (i) Whether the accused, on 26/11/2018 at about 11:30 AM near Ganesh Mandir Chowk within Nalbari PS, drove his vehicle, bearing registration number AS-

14/C-6911, in rash and negligent manner as to endanger human life?

- (ii) Whether the accused, on the same day, time and place caused grievous hurt to Sri Kanak Chandra Rajbongshi by doing a rash or negligent act, that is to say, by colliding his vehicle, bearing registration number AS-14/C-6911, with the said victim, thereby, inflicting injuries on his person?

And, thereby, the accused is liable to be punished u/s 279/338 of the IPC.

### **DISCUSSION, DECISION AND REASONS THEREON**

In order to establish the alleged offences against the accused person the prosecution examined Rajib Ali, Sanjay Rajbongshi, Kanak Chandra Rajbongshi as PW1, PW2, PW3, respectively and closed evidence.

PW1, Rajib Ali, deposed as such:-

**"I do not know the informant and the accused person. I know nothing about the occurrence.**

**XXXX**

**Cross-examination declined by defence."**

PW2, Sanjay Rajbongshi, was the informant. He deposed as follows:-

**"I am the informant. I do not know the accused person and I have not recognized him. About a year ago, while my father was on his way towards Nalbari SBI branch, he fell down from the moving passenger bus in which he was travelling. As a result, my father sustained severe injuries on his body and nearby people rushed him to hospital for treatment. Later on, I lodged the case. Ext 1 is the FIR and Ext-1(1) is my signature thereon.**

**XXXX**

**Cross examination declined."**

PW3, Kanak Chandra Rajbongshi, was the victim. He deposed as follows:-

**"Informant is my son. I have not recognized the accused person. On 26/11/2018 I was on my way towards Nalbari SBI branch in a passenger bus. On reaching Nalbari Ganesh Mandir Chowk, the bus I was travelling in stopped and as I was disembarking the driver of the bus suddenly accelerated. As a result, I fell down and sustained injuries on my legs. I had not seen who drove the bus. Later on, my son filed a written FIR complaining about the**

**occurrence.**

**XXXX**

**Cross-examination declined by defence."**

Now, in order to bring home the offence under section 279 of the I.P.C. the prosecution has to prove the following:-

- (i) Driving of a vehicle on a public way;*
- (ii) Such driving must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person.*

Apart from the ingredients mentioned above, to bring home the offence under section 279 of the I.P.C., first of all the identity of the author of the rash and negligent driving must be fixed by proper, cogent and unimpeachable evidence.

Prosecution has asserted that the accused was rash in his driving and is, thus, guilty of criminal rashness and negligence. In order to prove that the accused was the author of the alleged criminal rashness, prosecution examined Rajib Ali, Sanjay Rajbongshi, Kanak Chandra Rajbongshi. But none of them had attributed a single overt act against the accused. In fact, Kanak Chandra Rajbongshi was the victim but he himself could not identify

the accused as the one who drove the offending vehicle at the time of the collision.

As such, it occurs to me that the identity of the driver of the offending vehicle could not be ascertained by the prosecution beyond doubt. In addition to section 279 of the IPC, the accused named above also stood trial for offence u/s 338 of the IPC. But, as the author of the rash and negligent act could not be ascertained, doubt remains to cloud the version put forwarded by the prosecution.

To cut a long story short, prosecution has failed to establish the allegations levelled against the accused for offences u/s 279/338 of the IPC beyond all reasonable doubt.

The points for determination are, therefore, decided in the negative.

### **ORDER**

Therefore, from the observation and discussion made hereinbefore, I arrive at the safe conclusion that the prosecution had failed to establish the offences u/s 279/338 of the I.P.C. against the accused person beyond all shadow of doubt. As such, accused Tiken Dutta is, hereby, acquitted of the offences under the sections of law as indicated above.

Bail bonds of the accused person shall remain in force for the next six months from today. The accused

person may obtain copy of the judgment but not without payment. Seized articles, if any, be disposed of in due course.

The case is disposed of on contest.

Given under my hand and Seal of the Court this 3<sup>rd</sup> day of January, 2022.

Typed and corrected by me.

(Kaushik Kamal Baruah)

Sub-Divisional Judicial Magistrate (Sadar)  
At Nalbari.

**THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS**  
**AT NALBARI**  
**PRC CASE NO.- 626/2019**  
**APPENDIX**

A. Prosecution Exhibits:-

Ext.1:- FIR

Ext.1(1):- Signature of Sanjay Rajbongshi

B. Prosecution Witness.

PW1:- Rajib Ali

PW2:- Sanjay Rajbongshi

PW3:- Kanak Chnadra Rajbongshi

C. Defence Exhibits:- NIL

D. Defence Witness:- NONE

Sub-Divisional Judicial Magistrate (Sadar)

At Nalbari.