

THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE (SADAR)
AT NALBARI
PRC CASE NO.- 955/2018
U/S 279/338 I.P.C.

STATE

VS.

SRI DHANESWAR BARMAN
S/O SRI GOURI MAL BARMAN
R/O DHANIA GOG
P.S. NALBARI
DISTT. NALBARI

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

APPEARANCES:- SMT. MONIKA CHAKRABORTY..FOR STATE

SRI PRANJAL DAS.....FOR ACCUSED

DATE OF EVIDENCE:- 31/07/19, 29/08/19, 25/09/19,
25/11/21.

DATE OF ARGUMENT:- 31/12/2021.

DATE OF JUDGMENT:- 12/01/2022.

JUDGMENT

Accused Sri Dhaneswar Barman 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 16/05/2013 at about 09:15 AM, when victim, Dimpi Kumari, was on her way to school, viz, Sri Shankar Dev Sishu Niketan, located at Korla under Nalbari Police Station (PS for short), she was knocked down by a speeding vehicle, bearing registration number AS-01/MB-5826, in front of said school. On impact she was flung to the road and her legs were fractured. Nearby people rushed her to Nalbari Civil Hospital for treatment. From there, she was referred to the Gauhati Medical College & Hospital (the GMCH for short) for advanced treatment.

On 22/05/2013, the informant, Praneswar kumar, lodged a written FIR before the Officer in Charge of the Nalbari PS which was registered and numbered as Nalbari PS Case No.395/2013 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 six (06) witnesses who were duly cross-examined by the defence and, vide order dated- 25/11/2021, 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 16/05/2013 at about 09:15 AM in front of Sri Shankar Dev Sishu Niketan at Korla within Nalbari PS, drove his vehicle, bearing

registration number AS-01/MB-5826, 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 Dimpri Kumari by doing a rash or negligent act, that is to say, by colliding his vehicle, bearing registration number AS-01/MB-5826, with the said victim, thereby, inflicting injuries on her 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 Praneswar Kumar, Bapukon Das, Manas Medhi, Manab Talukdar, Bikash Kalita, Babul Das as PW1, PW2, PW3, PW4, PW5 and PW6 respectively and closed evidence.

PW1, Praneswar Kumar, deposed as such:-

"I am the informant of this case. I do not know the accused person standing in the dock. The occurrence took place six years ago at about 9 AM near Sankardev School in Korla. My granddaughter was going to School. Her name

is Dimpy Kumari. She was about to cross the road while an alto car collided with her and she was badly injured in both her legs. Her right leg was fractured. Later the school teacher and public took her to hospital. She was later referred to Guwahati for further treatment. She had to undergo treatment for 6 months and had to stay in hospital for 2 months. I was t Bijulighat market at the time of the occurrence. She was already taken to hospital. Ext.1 is ejahar. Ext.1(1) is my signature.

XXXX

I have not seen the occurrence. I do not know how the accident took place and what vehicle has caused the accident."

PW2, Bapukon Das, deposed as follows:-

"I do not know the informant of this case. I do not know the accused person standing in the dock. The occurrence took place 5-6 years ago. I took my children to school at Bijulighat. When I reached the PO I heard a girl met with an accident and she was already taken to hospital.

XXXX

Cross examination declined."

PW3, Manas Medhi, deposed as follows:-

"I know the informant of this case. I do not know the accused person standing in the dock. The occurrence took place 5-6 years ago. An accident took place near Sankardev School in Korla. I was not present at the time of accident. When I reached the PO I heard a girl met with an accident and she was already taken to hospital. I have seen the Alto car in the PO.

XXXX

Cross-examination declined by defence."

PW4, Manab Talukdar, stated as follows:-

"I know the informant of this case. I do not know the accused person standing in the dock. The occurrence took place in 2013. I was working in Korla Sankardev Vidyalaya. At about 9:15 AM I was inside the school. When I heard hue and cry outside the school I came out of the school immediately and saw that a student of our school was collided with a four wheeler and she was lying on the ground. We informed the police and our school teachers

took her to hospital.

XXXXX

I have not seen how the occurrence took place."

PW5, Bikash Kalita, deposed as follows:-

"I know the informant of this case. I do not know the accused person standing in the dock. The occurrence took place 5-6 years ago. At that time I was working in Korla Sankardev Vidyalaya. At about 9:15 AM I was inside the school. Then I saw a gathering outside the school. When I came out of the school immediately I saw that a four wheeler has collided with a student of our school. I saw the car. It was an alto car. Our school teachers took her to hospital. Later police came and seized the car in front of me. Ext.2 is the seizure list. Ext.2(1) is my signature.

XXXXX

I have not seen how the occurrence took place. I do not know who was at fault."

PW6, Babul Das, testified as follows:-

“I know the informant. I have not recognized the accused person standing in the dock today. I don’t remember the date and year of the offence. However, it occurred between school assembly time, that is, between 09:30 AM to 09:45 AM. At the time of the incident I was standing near the gate of my school. I saw that the victim girl got loose from her mother a tried to cross the road from left to right. As she was doing so, a car approaching from the same direction as the victim, knocked her down causing injuries on her person. I immediately took the girl in my lap and as I was about to take her to the nearest hospital for treatment an 108 ambulance reached the spot. I put the girl in the ambulance and alongwith her I went to Nalbari Civil hospital. From there the victim girl was referred to Guwahati for better treatment. I have this much to say.

XXXXX

I do not remember the identity of the driver of the offending vehicle. I do not know as to who’s fault resulted into the occurrence.”

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 Praneswar Kumar, Bapukon Das, Manas Medhi, Manab Talukdar, Bikash Kalita, Babul Das. But none of them had attributed a single overt act against the accused. Nor could they 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 Dhaneswar Barman 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 12th
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.- 955/2018
APPENDIX

A. Prosecution Exhibits:-

Ext.1:- FIR

Ext.1(1):- Signature of Praneswar Kumar

Ext.2:- Seizure list

Ext.2(1):- Signature of Bikash Kalita

B. Prosecution Witness.

PW1:- Praneswar Kumar

PW2:- Bapukon Das

PW3:- Manas Medhi

PW4:- Manab Talukdar

PW5:- Bikash Kalita

PW6:- Babul Das

C. Defence Exhibits:- NIL

D. Defence Witness:- NONE

Sub-Divisional Judicial Magistrate (Sadar)

At Nalbari.