

			bail		d		for the purpose of section 428 of IPC
A-1	Sri Pranab Ray Medhi			U/S 279/337/ 338/427 of IPC	Acquitte d	N/A	N/A

APPENDIX-13

Date of offence	16/12/2011
Date of FIR	17/12/2011
Date of charge-sheet	28/06/2012
Date of O.E.	15/12/2018
Date of commencement of evidence	10/05/2019
Date on which judgment is reserved	N/A
Date of judgment	28/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case sets into motion by filing a FIR by the informant, Sri Bhupen Kalita on 17/12/2011, stating that on 16/12/2011 at about 7:20 P.M., when his elder brother Pankaj Kalita was coming home from the side of Arikuchi by his bicycle, at the Hajo-Nalbari road near Jagannath temple a Winger bearing registration no. AS-28-C/0434 coming from the side of Guwahati, in rash and negligence manner, at first hit two persons who were going riding by bike and fell them on the road. Thereafter, the winger hit his elder brother Pankaj Kalita and fell down on the road, due to which his elder brother sustained serious injury. And also the bike and bicycle was damaged. Thereafter, all the three injured persons were taken to the Nalbari Civil Hospital for treatment. Hence, the informant lodged this case.
- 2.** The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 745/2011, under section 279/337/338/427 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused person, Sri Pranab Ray Medhi under Section 279/337/338/427 of IPC.

3. In due course, the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Particulars of offence u/s 279/337/338/427 of IPC 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 nine (9) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed.
5. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Ld. Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused person, on 16/12/2011 at about 7:20 P.M., at Hajo-Nalbari road near Jagannath temple under the jurisdiction of Nalbari P.S. a Winger bearing registration no. AS-28-C/0434 drove 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 hurt to elder brother Pankaj Kalita by driving a Winger bearing registration no.*

AS-28-C/0434 rashly/negligently and thereby committed an offence u/s 337 I.P.C?

(iii) Whether on the same day, time and place the accused caused grievous hurt to the elder brother of the informant Pankaj Kalita by driving a Winger bearing registration no. AS-28-C/0434 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

(iv) Whether on the same day, time and place, the accused with intent to cause, or knowing likely to cause wrongful loss or damage to the bike and bicycle by driving a Winger bearing registration no. AS-28-C/0434 rashly/negligently and thereby committed an offence u/s 427 of I.P.C?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** In the instant case the accused is facing trial u/s 279/337/338/427 of IPC.
- 9.** PW-1 (informant), Sri Bhupen Kalita deposed that he is the informant. He does not know the accused. The accident took place at about 7.30 PM in between Bhuyar Chowk and Jagannath Mandir Chowk. He was in his house. One winger hit his elder brother while he was coming in his bicycle towards Nalbari from Arikuchi. One local person informed him over phone about the incident. He came to the P.O. He did not find his elder brother at the PO as he was already taken to SMK Civil hospital, Nalbari. He met his elder brother at the

medical. There were two other injured persons who were taken to the medical at Guwahati. He saw bandage over the head of his elder brother and saw injuries in his right hand elbow. His elder brother was admitted for about three days at medical. He filed the ejahar Exhibit 1 is the ejahar and Exhibit 1(1) is his signature. During his cross examination he says that he did not state before the police that he saw bandage over the head of his elder brother and saw injuries in his right hand elbow. He has seen the incident as he was in his house at the time of the incident. He found many persons at the PO. He does not know the registration no. of the Winger and also do not know who was the driver of the Winger. He met Abani Kalita at the PO.

10. Thus, from the evidence of PW-1 (informant) it is seen that He does not know the registration no. of the Winger and also do not know who was the driver of the Winger.

11. PW-2, Sri Sailen Deka is the seizure witness. He stated that he does not know the informant and the accused person. An accident took place in the year 2011 at about 7:30 pm at Bagal chowk. One winger vehicle hit one bicycle. He has not seen the accident. Police came to the P.O and recorded his statement. Police took his signature in the seizure list. Ext 2 is the seizure list and Ext 2(1) is his signature. Ext 3 is the seizure list and Ext 3(1) is his signature. Ext 4 is the seizure list and Ext 4(1) is his

signature. During cross examination he says that he put signature on the seizure list as per instruction of police.

- 12.** PW-3, Dr. R.C. Goswami deposed that On 16-12-2011 he was working at SMK civil hospital as Sr.M. & H.O. On that day at about 8.15 pm he examined Pradip Das aged about 40 years, male, residents of village- Arikuchi, P.S. & Dist- Nalbari vide emergency registration number 44099/2011. On examination he found (i) Multiple Abrasion over face. Age is fresh. Colour reddish, Fresh, Nature of object- Blunt. Nature of injury simple. Injury no. (ii) suspected compound fracture of lower end of right limbs.(iii) Fracture of right Ulna, fracture of middle finger. (iv) Suspected head injury. The patient was referred to GMCH on that day. On the same day at about 8.25 pm he examined Pankaj Kalita vide emergency registration number 44100/2011 resident of village- Borkuriha, P.S. Nalbari. On examination he found abrasion over forehead, reddish in colour, age fresh. He advised X-ray Skull AP Lateral. Report not submitted on that day. Nature of injury simple and weapon- Blunt. On the same day at about 8.35 pm he examined Manti Das (Monoronjon Das) vide emergency registration number 44101/2011. On examination he found (i) suspected head injury. (ii) Compound # of right hip joint. The case was referred on that day to GMCH. Exhibit 5 is the injury report and exhibit 5(1) is his signature. During cross examination he says that the injury sustained by the aforesaid three victims may also be

caused by falling on hard surface. Till date no report of the victims has been received who were referred to the GMCH by him.

13. PW-4 Sri Pankaj Kalita deposed that he knows the informant. The informant is his younger brother. He knows the accused present in the dock. He saw him on the road. He is the victim of this case. The incident occurred about 7 years back at about 7.00 PM, at Arikuchi on the Nalbari-Hajo road. He was returning home from Bijulighat by riding his cycle. After crossing Kusia Chowk, a winger hit him from the back. He fell on the road and turned senseless. He was admitted in Nalbari Civil Hospital. He was there for 3 days. He sustained injury on his forehead. Police recorded his statement. During cross examination he says that he was riding the cycle alone. He can not say who was the driver of the offending vehicle. Apart from the winger, two motorcyclist were also hit in the incident. There are neighboring people at the alleged place of occurrence. PW-4 during cross-examination clearly says that he does not know who was the driver of the offending vehicle.

14. PW-5 Sri Pradip Das stated that he does not know the informant. He does not know the accused. The incident occurred on 16/12/2011 at about 6 / 7 PM at Kusia Chowk on Hajo-Nalbari road. He was coming back from his office situated at Gopal Bazar, Nalbari to his house situated at Katpuha by riding his motorcycle. His asstt. Mantu Das was pillion rider. One winger colluded his motorcycle on head to

head. He fell on the road and became senseless. He was admitted at Nalbari Civil Hospital but he was referred to Guwahati. He was admitted at Hayat Hospital for one and half month. He had fractured on four places on his right leg. Police recorded his statement. During cross examination he says that it is not a fact that one cyclist also injured in that alleged incident. He can not say who was driving the winger. He also can not say the registration no. of the winger. He can not say whether he stated to police or not that he had fractured on four places on his right leg. He had not stated to police that he was admitted at Hayat Hospital for one and half month.

- 15.** PW-6, Sri Manahari Patgiri stated that he does not know the informant. He does not know the victim. On 16/12/2011, at about 7.00 PM on Hajo – Nalbari road in front of his house situated at Barkuriha the incident occurred. He was at his home. He heard a sound from the road and came to the place of occurrence. He saw one bike met with an accident and was lying in the jungle on the eastern side of the road. One person was also lying in the jungle. He was unconscious. He called 108 Ambulance service and sent the victim to SMK Civil hospital. After 3 minutes he also found another injured person was lying on the side of the road. He was again sent to SMK Civil Hospital by calling one 108 Ambulance service. Police recorded his statement. During cross examination he says that it is a fact that he has not stated to police in his statement recorded u/s 161 CrPC that

two victims were sent to SMK Civil Hospital by 108 Ambulance service. When he came out of his house he has not seen any other person at the alleged place of occurrence.

16. PW-7 (victim), Mantu Das stated that he does not know the informant of this case. He does not know Sri Pankaj Kalita. He knows the accused person Pranab Roy Medhi. He is driver of Winger. The Winger runs to Nalbari- Guwahati by Hajo Nalbari road. He used to travel as a passenger by his Winger. The incident occurred on 16/12/2011 at about 6.00 PM on Hajo Nalbari road near Jagannath Mandir. He was coming back from his office situated at Nalbari to his home as pillion rider on the bike of Sri Pradeep Das. Sri Pradeep Das is also his colleague who works in PWD office. He was riding the bike at that time. One Winger was coming from opposite direction. The Winger driver was trying to save one cyclist and collided their bike from front side. Thereafter he became unconscious. He had fractured on his leg and also fractured on back side. He was admitted at SMK Civil Hospital and thereafter admitted at GMCH. He was discharged after 2 / 3 months. Police recorded my statement. During cross examination he says that he does not know the registered number of the Winger. He does not know who was the driver of the Winger at that time.

17. PW-8, MVI Diganta Deka deposed that on 19-12-2011, he was at Nalbari DTO office working as MVI. On that day, at Nalbari Police station he inspected the MV bearing no.

AS 28 C 0434 and found the pollution of the vehicle as mechanically road worthy. He found on inspection the following damages- I) Front wind shield glass, ii) front bumper, iii) bonnet, iv) right hand side rear view mirror, v) right hand side head lamp assembly, vi) right hand side fender, vii) right hand side front mudguard viii) front right hand side wheel rim, ix) right hand side door. Place of accident was at Bhuyapara on 16-12-2011 at 7.20 PM. Remarks: the vehicle was mechanically found in road worthy condition at the time of inspection. The requisition authority was i/c Traffic, Nalbari in connection with Nalbari PS case no. 745/2011. In connection with the case vide inspection report of MV no. AS 28 C 0434 i.e. a Tata Winger LMV Taxi and the registered owner was Mr. Hemen Sarma, R/o- Barkuriha, Nalbari and driver was Sri Pranab Roy Medhi, R/o- Barkuriha, Nalbari. The driving license no. 3879/NB/2007/Misc, valid up to 13-02-2014, authorized to drive LMV etc. The insurance policy was valid for the period from 28-02-2011 to 27-02-2012. Road tax was paid up to 31-12-2011. The permit was valid up to 11-03-2014. Certificate of fitness was valid up to 09-03-2012. PUC valid up to 27-03-2012. There is no information furnished regarding whether the vehicle was overloaded or not. **Exhibit P-6/PW-8** is the MVI report prepared and submitted by me and **Exhibit P-6(1)** is his signature. He has also inspected MV no. AS 14 A 1022 i.e. Yamaha Motor Cycle at Nalbari Police Station on 15-02-

2012 in connection with Nalbari PS case no. 745/2011 and found condition of the vehicle as mechanically of road. On inspection he found damages : I) Leg guard , ii) Front indicator, iii) Fuel tank, iv) Handle bar, v) Engine not started. Place of accident was at Barkuriha on 16-12-2011 at 7.20 PM. The vehicle could not be road tested mechanically due to the extent of damages found with. The name of the registered owner of the vehicle was Naren Das, R/o- Katpuha, Nalbari and the name and address of the driver is Mr. Pradip Kr Das, R/o- Katpuha, Nalbari. The driving license of the driver was valid up to 23-10-2014 and authorized to drive motor cycle only. No insurance policy was furnished and no receipt for road tax was furnished. No PUC was furnished. No information is furnished to report that whether the vehicle was overloaded or not. **Exhibit P-7/PW-8** is the MVI report prepared and submitted by him and **Exhibit P-7(1)** is his signature.

- 18.** PW-9, (IO) SI Bhaben Das deposed that on 16-12-2011, he was on duty as traffic in charge at Nalbari Police Station. On that day, at 7.30 PM, he received a telephonic communication from one Sailen Deka informing that about a little time prior on Nalbari Hajo Path at Bhuya chowk one winger bearing Rgn. No. AS-28 C 0434 hit 2 / 3 persons and while running away, the public caught them at Bagals Road. On receipt of the information, vide GD entry No. 406 dated 16-12-2011, he went to the place of occurrence along with

the police staff. He reached Bagals Road found the winger there bearing Rgn. No. AS-28 C 0434. He seized the vehicle vide MR no. 214 / 2012 by preparing seizure list in presence of seizure witness Sri Sailen Deka and Mahesh Kalita. **Exhibit P-2/PW-9** is the seizure list and **Exhibit P-2(2)/PW-9** is his signature. he recorded the statements of the seizure witnesses. He found the driver namely Pranab Ray Medhi who was caught by the public at Bagals Road. He brought the accused and the seized vehicle to the police station. Thereafter, he went to the place of occurrence i.e. Barkuriha Gaon on Nalbari Hajo Road near Jagannath Mandir. The victims were already taken to the hospital by 108 ambulance service. He found one motor cycle and one cycle lying at the place of occurrence. He has seized the motor cycle bearing Rgn. No. AS 14 A 1022, Yaamaha vide MR no. 213 / 2012 by preparing seizure list in presence of witnesses Sailen Deka and Mahesh Kalita. **Exhibit P-3** is the seizure list and **Exhibit P-3(1)** is his signature. He has also seized one cycle (Hero Royal bicycle) vide MR no. 215 2012 in presence of seizure witnesses. **Exhibit P-4/PW-9** is the seizure list and **Exhibit P-4(1)/PW-9** is his signature. Both the seized motor cycle and bicycle were in damage condition. He has prepared the sketch map of the place of occurrence. **Exhibit P-5/PW-9** is the sketch map and **Exhibit P-5(1)/PW-9** is his signature. He recorded the statements of witnesses namely Satish Patgiri, Nagen Kalita, Manhari Patgiri u/e 161

CrPC. The seized material were sent to the police station. He went to the Nalbari SMK Civil Hospital and found that two of the victims namely Pradip Das and Manoranjan Das were referred to GMCH. Victim Pankaj Kalita was undergoing treatment at Nalbari Civil Hospital. He has closed the MCD on that day. On 17-12-2011, informant Bhupen Kalita lodged the FIR. The then OC, D. Baishya of Nalbari Police Station registered Nalbari PS case No. 745/2011 u/s 279/338/427 of IPC and endorsed him for investigation of the case. He recorded the statement of the informant at the police station. The accused who was found at Bagals Road on 16-12-2011 was already medically examined. He recorded his statement and considering theailable nature of the offence he was released on bail. He produced the seized vehicle for inspection before MVI who examined and inspected the vehicle inside the campus of Police Station and submitted report. He gave custody of the winger vide zimma no. 132/2012, the bike vide zimma no. 131/2012 and the bicycle vide zimma no.133/2012 to the owners. He has recorded the statements of the victims and collected the medical reports. After completion of the investigation, he submitted charge sheet no. 240/2012 dated 28-6-2012 against the accused Pranab Ray Medhi. **Exhibit P-6/PW-9** is the charge sheet and **Exhibit P-6(1)/PW-9** is his signature.

19. From the entire evidence on record it can be seen that not a single person has seen that it was the accused who was driving the offending vehicle.

20. The rash and negligent driving is the crux of the offence u/s 279/337/338/427 of IPC. From the evidence it is found that not a single witness has deposed incriminating against the accused saying that at the time of the incident the accused was driving in rash and negligent manner.

21. Hence, from the aforesaid discussions and decisions, it is clear that prosecution side failed to adduce credible evidence to prove that on the day of the incident it is the accused who was driving the vehicle in high speed and hit the victim.

CONCLUSION

22. The prosecution side failed to prove its case that accused person has committed an offence u/s 279/337/338/427 of IPC.

ORDER

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

Accordingly, the accused Sri Pranab Ray Medhi is acquitted from the offence under section 279/337/338/427 of IPC and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC. The seized materials to be disposed of as per law.

Given under my hand and seal of this court on this 28th day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Bhupen Kalita	Informant
PW-2	Sri Sailen Deka	Other witness
PW-3	Dr. R.C. Goswami	Medical witness
PW-4	Sri Pankaj Kalita	Other witness
PW-5	Sri Pradip Das	Other witness
PW-6	Sri Manahari Patgiri	Other witness
PW-7	Sri Mantu Das	Witness (victim)
PW-8	Sri Diganta Deka	Witness (MVI)
PW-9	SI Bhaben Das	Police Witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH
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		WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	Ejahaar
2.	Exhibit -2	Seizure list
3.	Exhibit -3	Seizure list
4.	Exhibit - 4	Seizure list
5.	Exhibit -5	Injury report
6.	Exhibit P-6/PW-8	MVI report
4	Exhibit P-7/PW-8	MVI report
5.	Exhibit P-2/PW-9	Seizure list
6.	Exhibit P-3	Seizure list
7.	Exhibit P-4/PW-9	Seizure lis

8.	Exhibit P-5/PW-9	Sketch map
9.	Exhibit P-6/PW-9	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari