

							section 428 of IPC
A-1	Sri Pulak Haloi	18/07/ 2019	18/07 /2019	U/S 279/338 of IPC	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	26/07/2018
Date of FIR	04/07/2019
Date of charge-sheet	31/12/2019
Date of O.E.	17/11/2021
Date of commencement of evidence	20/08/2022
Date on which judgment is reserved	26/09/2022
Date of judgment	26/09/2022
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 Dipak Talukdar stating that on 26/07/2018 at about 8:00 P.M., while he was walking from Kachua to his home, then driver of one ultra bus bearing no. AS-14-C/7429 drove the vehicle at hisgh speed hit him. As a result both of the legs of the informant got fractured. Though the nearby people took him to Mukalmua PHC, but for better treatment

he was referred to GMCH. As the informant was busy in treatment, so, the FIR was lodged lately. Hence, this case.

2. The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 319/2019, under section 279/338 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 Pulak Haloi under Section 279/338 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 Cr.P.C. Particulars of offence u/s 279/338 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 five (05) witnesses. 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 the accused person, on 26/07/2018 at about 8:00 P.M., at Kachua under the jurisdiction of Mukalmua P.S. drove a vehicle 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 informant Sri Dipak Talukdar by driving a bus bearing no. AS-14-C/7429 rashly/negligently and thereby committed an offence u/s 338 I.P.C?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 6.** The informant (PW-1) Sri Dipak Ch Talukdar has exhibited Exhibit P-1 as the FIR and Exhibit P-1(1) is his signature. Exhibit P-1 i.e., FIR reveals that date of occurrence is 26-07-2018 and the case is lodged after almost 1 year i.e., on 03-07-2019. According to the informant as he was busy in treatment hence, he could not lodge the case.
- 7.** Coming to his evidence i.e., PW-1, it is found that he was referred to GMCH. He was admitted there for more than 2 months. He had fractured on both of his legs. He had surgery on both legs and they placed plate on his legs. After about one month, he lodged this case.
- 8.** In the light of the aforesaid evidence of PW-1 (informant) it is seen that PW-1 had not explained that why after 1 year he lodged the case. However, during his evidence he says that he lodged the case after about 1 month. But, the FIR i.e., Exhibit P-1 clearly says that Mukalmua P.S. Case No. 319/19 u/s 279/338 of IPC was registered on 03-07-2019 and a

written complaint was forwarded to the O/C Mukalmua PS vide Doulasal OP GDE No- 44 dated 03/7/19. Hence, there is no doubt that the instant case is registered after 1 year and there is no explanation regarding this fact that why the FIR is lodged in such delay.

- 9.** It is a settled principle that delays in lodging the FIR results in embellishment and the report gets bereft of the advantage of spontaneity. There is also danger of introduction of a coloured version exaggerated account or concocted story as a result of deliberation and consultation. Hence, the evidence of PW-1 (informant) has to be appreciated cautiously.
- 10.** According to PW-2, Sri Nripen Talukdar, PW-3, Sri Rabindra Talukdar and PW-4, Sri Mahesh Deka has not seen the incident. Thus, from the evidence of PW-2, PW-3 and PW-4 no incriminating material could be gathered against the accused person.
- 11.** PW-5 (IO), ASI Tarun Barman says in his deposition that on 03-07-2019, he was on duty as ASI at Doulashal outpost under Mukalmua police station. On that day, informant Dipak Talukdar lodged one FIR against the driver of Ultra bus bearing Rgn. no. AS 14 C 7429 alleging that on 26-7-2018 at 8.00 PM, when he was coming home on foot from Kachua, the driver of the aforesaid vehicle drove his vehicle speedily and negligently and hit the informant from the back side causing fracture to both of his legs. He was taken to Mukalmua PHC and due to his serious condition, he was taken

to GMCH for treatment due to which he lodged the FIR lately. On receipt of the ejahar, SI Monimoy Tamuli, i/c, Doulashal outpost vide Doulashal OP GD entry no. 44 dated 03-7-2019, forwarded the same to the OC Mukalmua for registration of the case under proper section of law and he was endorsed for investigation of the case. The OC Mukalmua registered Mukalmua PS case no. 319/2019, u/s 279/338 of IPC dated 04-7-2019 and he was endorsed with for investigation of the case. He went to the place of occurrence along with the police staff and complainant i.e. Damdama village. He prepared a sketch map of the place of occurrence. **Exhibit P-2** is the sketch map and **Exhibit P-2(1)** is his signature. The statements of the complainant and witnesses namely Mahesh Deka, Nripen Talukdar, Rabin Talukdar, Dibakar Barman were recorded u/s 161 CrPC. He visited the house of the owner of the offending vehicle and the driver and found them absent. The accused Pulak Haloi appeared on 18-7-2019 at the police station. He recorded his statement u/s 161 CrPC. Considering the nature of the offence, accused was released on bail. **Exhibit P-3** is the bail bond of the accused. **Exhibit P-3(1)** is his signature. **Exhibit P-3(2)** is the signature of the accused and **Exhibit P-3(3)** is the signature of the bailor who put their signatures in front of him. He also seized the vehicle (ultra bus) bearing registration number As 14 C 7429 along with registration certificate, insurance certificate and the driving license from the accused Pulak Haloi by preparing

seizure list in presence of seizure witnesses namely Musharaf Hussain and Tapan Barman. He recorded the statements of the seizure witnesses. **Exhibit P-4** is the seizure list and **Exhibit P-4(1)** is his signature. **Exhibit P-4(2)** is the signature of the accused Pulak Haloi who put his signature in front of him. The seizure witnesses namely Musharaf Hussain and Tapan Barman also put their signatures in front of him on the seizure list. **Exhibit P-4 (3)** is the signatures of Musharaf Hussain and **Exhibit P-4 (4)** is the signatures of Tapan Barman. It is found, during investigation, that at the time of the incident the vehicle bearing Rgn. No. As 14 C 7429 was new and no registration and insurance was there at the time of the incident. After verification, it is found that the insurance of vehicle was done on 27-7-2018 after the incident. He gave requisition for the inspection of the vehicle by MVI and inspection was done inside the campus of Doulashal Outpost. He collected the MVI report. He also collected the medical report by post. The medical report was sent from GMCH, signed by MO of GMCH which reveals the patient was admitted on 26-7-2019 at 11.15 PM with alleged history of road traffic accident on 26-07-2018 at 7.15. The nature of injury was grievous. After completion of the investigation, he submitted charge sheet no. 353/2019 dated 31-12-2019, u/s 279/338 of IPC against the FIR name accused Pulak Haloi. **Exhibit P-5** is the charge sheet and **Exhibit P-5(1)** is his signature.

- 12.** From the entire evidence on record it is seen that none of the witnesses stated anything regarding involvement of the accused person in the crime. Not a single witness corroborated the evidence of PW-1 (informant/victim).
- 13.** Situated thus, in my considered opinion the prosecution side has failed to bring home the guilt of the accused person Under Section 279/338 of IPC

CONCLUSION

The prosecution side failed to prove its case that accused person has committed offence u/s 279/338 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 Pulak Haloi is acquitted from the offence under section 279/338 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 (if any) to be disposed of as per law.

**Given under my hand and seal of this court on this 26th
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
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		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Dipak Ch Talukdar	Informant
PW-2	Sri Nripen Talukdar	Other witness
PW-3	Sri Rabindra Talukdar	Other witness
PW-4	Sri Mahesh Deka	Other witness
PW-5	ASI Tarun Barman	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

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

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- P-1	FIR
2.	Exhibit P-2	Sketch map
3.	Exhibit P-3	Bail bond
4.	Exhibit P-4	Seizure list
5.	Exhibit P-5	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