

							section 428 of IPC
A-1	Sri Manoj Das	05/09/ 2020	05/09 /2020	U/S 279/338 of IPC	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	29/12/2019
Date of FIR	03/09/2020
Date of charge-sheet	30/09/2020
Date of O.E.	19/05/2022
Date of commencement of evidence	17/08/2022
Date on which judgment is reserved	N/A
Date of judgment	03/09/2022
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 Dhrubajyoti Deka stating that on 29/12/2019 at about 12:10 P.M., his mother Smti Ganga Deka was going as a pillion rider in motor cycle bearing registration no. AS-25F-2026, then at Goalpara Chowk suddenly a person came in front of their motor cycle and the rider of the motor cycle pressed the brake, his mother fell from the vehicle and

sustained injury. His mother was taken to GNRC, Guwahati but for better treatment she was taken to Patna Orthopaedic and Trauma Hospital, Beltola, Guwahati. As the informant was busy with the treatment of his mother, hence, the FIR was lodged lately. Hence, this case.

2. The Officer-in-charge, Belsor Police station, on receipt of the Ejahar registered Belsor P.S. Case No. 250/2020, 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 Manoj Das 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 29/12/2019 at about 12:10 P.M., at Goalpara Chowk under the*

jurisdiction of Belsor P.S. rode 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 mother of the informant Smti Ganga Deka by riding a vehicle rashly/negligently and thereby committed an offence u/s 338 I.P.C?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 6.** PW-1, Sri Dhrubajyoti Deka is the informant of this case. According to him when his mother was taking lift as pillion rider of the bike of the accused, his mother fell from the bike when a person suddenly crossed the road. Due to this, his mother sustained injury. During cross-examination PW-1 (informant) clearly says that he has not seen the incident. He heard that the incident occurred due to the fact that a passer by suddenly crossed the road and not due to the fault of the accused.
- 7.** Thus, no incriminating material is found against the accused in the evidence of PW-1 (informant). Moreover, he has not seen the incident.
- 8.** According to PW-2, Md. Mastafa Ali and PW-3, Md. Safar Ali are the hearsay witnesses. They have not seen the incident.

PW-3 clearly stated that he heard from the people gathered that the woman was travelling as a pillion rider and when the bike rider applied brake, the woman fell down from the bike and sustained injury.

9. PW-4, Md. Ramjan Ali says in his deposition that he does not know due to whose fault the alleged incident occurred. Hearing hue and cry and seeing the police, he went to the place of occurrence. The victim was already sent to the medical.

10. Thus, from the evidence of PW-2, PW-3 and PW-4 also no incriminating material could be gathered against the accused person.

11. PW-5 (victim), Smti Ganga Deka deposed that the incident occurred in the year 2019 at 12:00 PM at Goalpara Chowk on village road. She was travelling as a pillion rider on the bike of the accused to the house of her nephew situated at Narddi. She requested the accused for the lift and both were going to her nephew's house. A person suddenly crossed the road and came before the bike all of a sudden, due to which, the accused applied brake. She slipped from the bike and fell on the road. She sustained injury on her head. She was taken to GNRC for treatment. Thereafter, she treated at Patna Hospital, Beltola, Guwahati. PW-5 (victim) further stated that the incident occurred not due to the fault of the accused. It is the fault of the passerby who fell in front of the bike. She has no allegation against the accused.

- 12.** From the evidence of informant, victim and other witnesses it is found that rash and negligent riding is missing which is essential component to make an offence u/s 279/338 of IPC.
- 13.** From the evidence of the victim (PW-5) it is clear that the incident occurred not due to the fault of the accused. It is the fault of the passerby who fell in front of the bike.
- 14.** 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 Manoj Das 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.

Given under my hand and seal of this court on this 03rd 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 Dhrubajyoti Deka	Informant
PW-2	Md. Mastafa Ali	Other witness
PW-3	Md. Safar Ali	Other witness
PW-4	Md. Ramjan Ali	Other witness
PW-5	Smti Ganga Deka	Victim

B. Defence witnesses, if any: NOT APPLICABLE

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE
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		WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit- P-1	FIR
2	Exhibit P-1(1)	Signature of PW-1 (informant), Sri Dhrubajyoti Deka

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

