



							section 428 of IPC
A-1	Sri Dilip Bhatia			U/S 279/338 of IPC	Acquitted	N/A	N/A

## APPENDIX-13

Date of offence	04/12/2012
Date of FIR	17/12/2012
Date of charge-sheet	31/12/2012
Date of O.E.	29/11/2021
Date of commencement of evidence	26/07/2022
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, Smti Dimbeswari Rajbongshi stating that on 04/12/2012 at about 9:10 A.M., while her husband Sri Naren Rajbongshi after grazing cattle was coming towards home, then near Gopla Mandir of their village the rider of motor cycle bearing no. AS-14-B-9196 rode the motor cycle rashly

and negligently hit her husband. As a result her husband sustained injury. Though he was admitted in Nalbari Hospital, 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, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 914/12, 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 Dilip Bhatia 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 four (04) 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 04/12/2012 at about 9:10 A.M., at Digheli under the jurisdiction of*

*Nalbari P.S. rode a motor cycle 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 husband of the informant Sri Naren Rajbongshi by riding a motor cycle bearing no. AS-14-B-9196 rashly/negligently and thereby committed an offence u/s 338 I.P.C?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

- 6.** The accused is facing trial under section 279/338 of IPC. To constitute an offence under section 279 of IPC and 338 of IPC, along with the actus rea , “mens rea” has to be present in the form of negligence or rashness.
- 7.** In the case at hand, PW-2, informant herself said in her deposition that her husband , who is the victim of the case, was going to the field to tie the cattle and some vehicle blew its horn and the cows got scared and pulled the victim by the rope which her husband was holding and due to which , her husband fell on the road and sustained injury. She exhibited the FIR as **Exhibit P-1** and the allegation made in the FIR has not been supported by her in her evidence. Moreover, it is clear that she has not seen the incident and she has no objection if the accused gets acquittal in this case. No

incriminating material is found in the evidence of the informant against the accused person.

- 8.** PW-4( victim) also says in his deposition that on the relevant day, he was on the road , going to the field and one vehicle blew the horn, due to which , the cow ran and the pulled the rope that the victim was holding. The victim fell on the road and sustained injury. The accused was coming on his bike and the bike rider also fell as the rope entangled the wheel of the bike. The wheel of the bike touched the leg of the victim and the victim became unconscious. In his evidence, it is clear that there is no involvement of the accused and he has no role to play due to which the accident occurred. OPW-4 also has no objection if the accused gets acquittal in this case.
- 9.** PW-4 has not seen the incident and no incriminating material in his evidence against the accused person.
- 10.** PW-1, Lat Gaonburha , was riding the cycle at that time on the road. He saw the victim was crossing the road with his cow and he also saw a bike hit the victim. But he has not seen the bike rider. He does not know the accused.
- 11.** Now, his evidence also reflects that the victim was crossing road with his cows when the incident occurred and according to victim, the incident occurred as the cows pulled the rope by getting sound of horn of the vehicle. Due to which, even the accused fell from the bike and get injured.
- 12.** From the evidences on record, no incriminating material is found against the accused person. 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 Dilip Bhatia 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 28<sup>th</sup> day of September, 2022.**

Sri Jayanta Kumar Saikia  
Addl. Chief Judicial Magistrate  
Nalbari

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

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Rabin Deka	Other witness
PW-2	Smti. Dimbeswari Rajbongshi	Informant
PW-3	Sri Narendra Rajbongshi	Victim
PW-4	Sri Bidyadhar Kalita	Other witness

**B. Defence witnesses, if any: NOT APPLICABLE**

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

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

### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit- P-1	FIR

### **B. Defence: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
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### **C. Court Exhibits: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
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### **D. Material Objects: Not applicable**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
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Sri Jayanta Kumar Saikia  
Addl. Chief Judicial Magistrate  
Nalbari