

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
NALBARI**

Present : Imdad Ahmed, Chief Judicial Magistrate, Nalbari.

Date of Judgment – 23/09/2022

Case – PRC no. 940/2018

The case arose out of FIR lodged by informant Sri Amulya Barman, registered on 03/04/2018 vide Nalbari P.S case no. 195 u/s 279/338 IPC under Nalbari District.

Complainant :	State of Assam Or Name of the complainant (Sri Amulya Barman)
Represented by	Mr. D. Talukdar (Ld. APP)
Accused	1. Sri Bitopan Dutta / A-1, S/o – Sri Biren Dutta, Village – Niz Pakowa, PS - Belsor & Dist – Nalbari.
Represented by	Mr. Gautam Barman (Ld. Defence Advocate)

Date of Offence	02/04/2018
Date of FIR	03/04/2018
Date of Charge sheet	26/04/2018 vide Charge sheet

	no. 112
Date of Framing of Charges	25/02/2019
Date of commencement of evidence	03/04/2019
Date on which judgment is reserved	16/09/2022
Date of Judgment	23/09/2022
Date of the Sentencing Order, if any	N/A

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 03/04/2018 filed by the informant Sri Amulya Barman is that on 02/04/2018 at about 6 pm during evening, he was returning from work at Biren Garage, Nalbari and was crossing the road at Nalbari – Hajo road in front of Hyundai dealer and at that time the offending vehicle being TVS Apache 160 motorcycle bearing registration no. AS-14-H-2292 which was driven by its rider in a rash and negligent way knocked him down from behind resulting which he sustained grievous injury on his head and leg. He was immediately taken to SMK civil hospital, Nalbari by the local people present at the P.O. Hence the case.

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2. The said 'ejahar' was received and registered as Nalbari PS case no. 195/2018 u/s 279/338 I.P.C. After completion of investigation charge-sheet no. 112 dated 26/04/2018 was submitted against accused Bitopan Dutta u/s 279/338 I.P.C. Copy was furnished to the accused person. Particulars of offence and substance of accusation u/s 279/338 IPC was read over and explained to the accused person to which the accused pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION

(i) Whether on 02/04/2018 at about 6 pm at Hajo road in front of Hyundai dealer under Nalbari P.S, the accused drove TVS Apache 160 motorcycle bearing registration no. AS-14-H-2292 in a public way in a 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 02/04/2018 at about 6 pm at Hajo road in front of Hyundai dealer under Nalbari P.S, the accused caused grievous hurt to Amulya Barman by driving TVS Apache 160 motorcycle bearing registration no. AS-14-H-2292 rashly/negligently and thereby committed an offence u/s 338 I.P.C?

4. DECISION AND REASONS THEREOF:

The prosecution examined four (4) witnesses. The defence declined to adduce any evidence. The statement in

defence of the accused person u/s 313 Cr.P.C was recorded. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows –

5. PW-1, Amulya Barman who is the informant cum victim deposed that he know the accused person. The incident took place 1 year ago at about 5:30 pm during evening. At that time he was returning home and three bikes were coming and when he looked back, the accused knocked him down in front of Hyundai showroom. The accused knocked him down with an Apache bike causing bone injury of his knee. He fell down on the road at a distance due to the accident. The accused was riding the motorcycle in a high speed. He was admitted in Nalbari hospital by nearby people. He later took treatment at Sarathi hospital. He filed the ejahar. Exhibit 1 is the FIR and Exhibit 1(1) is his signature.

6. PW-1 during cross-examination deposed that he has stated in the ejahar that the accident took place while he was crossing the road. He does not know what is written in the ejahar. The place of occurrence is a busy road plied by many vehicles. He was knocked down from behind. After falling down due to the collision he did not see anything. It is not a fact that he has not taken treatment at Sarathi hospital.

7. PW-2, Ratul Barman deposed that he does not know the informant. One accident took place. While he was working

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at Nalbari Hyundai showroom police came and recorded his statement.

8. PW-3, Dr. Arun Chandra Barman who is the M.O deposed that on 02/04/2018 he was working at SMK Civil Hospital, Nalbari and on that day at about 6:30 pm, he examined Amulya Barman who was accompanied by his family members and upon examination the patient was advised X-ray of left lower limb, AP and lateral view. Finding was fracture of tibia on 1/3 level of both bone. Injury was grievous, fresh and caused by blunt object. Exhibit 2 is the medical report and Exhibit 2(1) is his signature.

9. PW-4, Dipak Bargiary who is the I/O deposed that on 03/04/2018 he was working as Traffic Incharge at Nalbari PS and on that day Amulya Barman filed an ejahar at Nalbari PS which was received and registered as Nalbari PS case no. 195/18 u/s 279/338 IPC. He started investigation and recorded the statement of complainant. He then visited the place of occurrence, drew sketch map and recorded the statement of witnesses at the P.O. On the next day he seized one motorcycle from the possession of accused who appeared before the P.S. He recorded the statement of accused, arrested him and allowed him to go on bail. He sent the seized motorcycle for MVI requisition and later collected the same. The victim went for medical treatment on own and later he collected the injury report of the victim. After completion of investigation, he filed charge-sheet against accused Bitopan Dutta u/s 279/338 IPC.

Exhibit 3 is the sketch map and Exhibit 3(1) is his signature. Exhibit 4 is the seizure list and Exhibit 4(1) is his signature. Exhibit 5 is the charge-sheet and Exhibit 5(1) is his signature.

10. In order to constitute an offence u/s 279 I.P.C it must be established that the accused was driving the vehicle in a rash & negligent manner so as to endanger human life or likely to cause hurt or injury to other persons. Negligence connotes want of proper care and caution while rashness conveys idea of reckless doing of an act without consideration of any consequences. Rashness or negligence to be established must be more than mere error of judgment.

11. It appears that there is not sufficient materials against the accused in this case as the prosecution failed to examine any eye witness apart from the informant / victim. The evidence of the victim is also does not inspire confidence as he has stated that he was knocked down from behind by a bike and he fell some distance away after being hit by the bike. Hence, it appears that PW-1 was not in a position to witness the person or the bike that knocked him down as the offending bike came from behind. Further PW-1 himself stated in the cross-examination that after being thrown in the air and descending on the ground by the impact of the forceful knock, he did not see anything. Hence, the evidence of PW-1 appears to be not sufficient enough to hold that the accused was riding the offending bike. Further PW-1 stated that there were three bikes coming from behind along with the offending bike and

hence there is possibility of involvement of another bike. The prosecution examined PW-2 who does not know anything about the accident. PW-3 is the M.O and PW-4 is the I.O. Further I.O has stated that the offending bike was seized and the accused was arrested in the police station. Hence, the bike and the accused was not picked up from the place of occurrence which further raises doubt in the case of the prosecution.

12. On appreciation of the testimonies of witnesses and the materials available on record, I find that there is no evidence to show that the accused was driving the TVS Apache 160 motorcycle bearing registration no. AS-14-H-2292 in a rash and negligent manner, thereby causing injury/hurt to the informant / victim. The prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

13. The accused Sri Bitopan Dutta is found not guilty u/s 279/338 I.P.C and hence, acquitted and set at liberty forthwith. Bail bond shall remain in force for a further period of six months.

14. Judgment is pronounced in open court. Case is disposed of on contest. Given under my hand and seal of this court on this 23rd day of September, 2022.

Chief Judicial Magistrate
Nalbari

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of release on bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C
A-1	Bitopan Dutta	04/04/2018	04/04/2018	279/338 IPC	Acquitted	N/A	N/A

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List of Prosecution / Defence / Court Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
PW-1	Amulya Barman	Informant/victim
PW-2	Ratul Barman	Other witness
PW-3	Dr. Arun Chandra Barman	Medical Officer
PW-4	Sri Dipak Bargiary	Investigating Officer

B. Defence Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Nil		

C. Court Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Nil		

Chief Judicial Magistrate
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LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit number	Description
1.	Exhibit -1	Ejahaar
2.	Exhibit - 1(1)	Signature of informant
3.	Exhibit – 2	Injury report
4.	Exhibit – 2(1)	Signature of Medical Officer
5.	Exhibit – 3	Sketch map
6.	Exhibit – 3(1)	Signature of I/O
7.	Exhibit – 4	Seizure list
8.	Exhibit – 4(1)	Signature of I/O
9.	Exhibit - 5	Charge-sheet
10.	Exhibit – 5(1)	Signature of I/O

B. Defence:

Sr. No.	Exhibit Number	Description
Nil		

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
Nil		

D. Material Objects:

Sr. No.	Exhibit Number	Description
Nil		

Chief Judicial Magistrate
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