

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS:::::NALBARI

Present: SMTI NADIA REHMAN, AJS, JMFC, Nalbari

Dated:13.09.2022

P.R. Case No.391 of 2020

Mukalmua P.S. Case No.305/2019 u/s 279/338 I.P.C.

COMPLAINANT :	State of Assam
REPRESENTED BY	Mr. Hem Chandra Sarma, Ld. APP
ACCUSED	1. Bipul Ch. Medhi (A-1),
REPRESENTED BY	Phanidhar Deka, Ld. Defence Counsel.

Date of Offence	15/05/2019
Date of FIR	21/06/2019
Date of Charge sheet	30/11/2019
Date of offence explanation	24/08/2022
Date of commencement of evidence	05/09/2022
Date on which judgment is reserved	N/A

Date of Judgment	13/09/2022
Date of the Sentencing Order, if any	Acquitted

Accused Details:

Rank of 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	1. Bipul Ch. Medhi (A-1)	Not arrested	N/A	U/S. 279/338 of IPC	Acquitted	N/A	N/A

(J U D G M E N T)

1. In this case the accused person namely Bipul Ch. Medhi, S/O:Lt. Jiten Medhi, Village: Hidilattary, P.S.:Mukalmua, Dist:-Nalbari (Assam), stood for trial u/s 279/338 of the IPC.
2. Prosecution case as unfolded from the ejahar, dated 21.06.2019, lodged before O/C Mukalmua P.S., by the informant Rupak Deka is that on 15.05.2019 at about 4:30 p.m., the minor daughter of the informant namely

Kristi Deka was knocked down by a Scooty bearing registration No.AS-01/AV-3577 driven by its rider in front of his house. As a result of which her four numbers of teeth broke down and she also got injuries over her collar bone. She availed treatment at G.M.C.H. The accused person promised her to bear all medical expenditure of his daughter but later on refused to give the medical expenditure of his daughter. As he was busy with treatment of his daughter he lodged the FIR after few days. Hence, this case.

3. On receiving the ejahar, the Officer-in-Charge of Mukalmua Police Station registered the case as Mukalmua P.S. Case No.305/2019 u/s 279/338 I.P.C. and started investigating the case. On completion of investigation, the investigating officer submitted the charge-sheet against the accused person namely Bipul Ch. Medhi (A-1) u/s 279/338 I.P.C.
4. After charge-sheet was filed, cognizance was taken by the court u/s 279/338 I.P.C. and issued summons for appearance of the accused person. All the necessary copies of police report and other documents relating to the case were supplied to the accused person. Finding *prima-facie* materials against the accused person Bipul Ch. Medhi (A-1) u/s 279/338 I.P.C., particulars of offence and substance of accusation u/s 279/338 I.P.C.

were explained to the accused person, to which he pleaded not guilty and claimed to be tried.

5. Prosecution in support of the case examined sole witness and declined to adduce further evidence. The examination of the accused person u/s 313 of Cr.P.C. was dispensed with as no incriminating material was found against him. Defence declined to adduce evidence on their behalf.

6. I have heard argument of both sides.

POINTS FOR DETERMINATION:

7. Upon hearing and perusal of the record, I have framed the following points for determination:

8. *Whether the accused Bipul Ch. Medhi (A-1) on 15/05/2019 at about 4:30 p.m., at village Damdoma Pathar, under Mukalmua P.S., drove a Scooty bearing registration No.AS-01/AV-3577, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to the victim namely Kristi Deka and thereby committed an offence under section 279 I.P.C.?*

9. *Whether the accused Bipul Ch. Medhi (A-1) at the same time, date and place as aforementioned, caused grievous hurt to the victim Kristi Deka by riding the Scooty bearing registration No.AS-01/AV-3577, so rashly or negligently as to endanger human life, or the personal safety of others and thereby committed an offence under section 338 I.P.C.?*

DISCUSSION, DECISION AND REASONS THEREON:

10. I have carefully gone through the entire evidence-on-record and materials placed before me.

11. Both the points for determination are decided together for the sake of convenience.

12. There are allegations of offences U/S 279/338 I.P.C. against the accused person in the instant case and this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.

Section 279 I.P.C. provides that,

13. *"Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any*

other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 338 I.P.C. provides that,

14. *"Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*

15. Thus, from the aforesaid provisions it is clear that a person in order to commit an offence punishable u/s 279/338 IPC must not only cause hurt, injury or death to any person by driving a vehicle but also must have done the act with rashness or negligence.

16. Now let's have a discussion on the evidence-on-record deposed by the two prosecution witnesses and after that to reach in a conclusion whether any offence u/s 279/338 I.P.C. is made out against accused Bipul Ch. Medhi (A-1) satisfying the ingredients of the said sections.

17. PW1/the informant Rupak Deka deposed in his examination-in-chief that he is the informant of this case. He does not know the accused before the accident. The incident took place three years ago in front of his house of his daughter aged three years at about 2 p.m., on the village road. His daughter was chasing a ball due to which she came out of the campus without their knowledge and unknowingly came in front of the vehicle of the accused person. After the accident his daughter suffered minor injuries and the accused person have covered expenses of the medical treatment and presently he has good relation with the accused person due to which he does not want to proceed with the case and has no objection if the accused person is acquitted from this case. Ext.P-1/PW-1 is the ejahar and Ext.P-1(1)/PW-1 is his signature.

18. Cross-examination declined by defence.

19. On perusal of the entire evidence-on-record, it is seen that in the instant case, the informant has not stated anything about rash or negligence act on the part of the accused Bipul Ch. Medhi (A-1), which either endangered human life or caused grievous hurt to the victim. There is no evidence to prove that the accident

was the result of rashness or negligence on the part of the accused. The informant stated that he does want to proceed with this case as he has good relation with the accused person. He has no objection if the accused person is acquitted.

20. Therefore, the sole witness examined by prosecution side, has not supported the prosecution case. Hence, in view of the discussions made, it can be held that the prosecution has miserably failed in establishing the guilt of the accused under Sections 279/338 I.P.C. beyond reasonable doubt against the accused Bipul Ch. Medhi (A-1), thereby making him not guilty under the said Sections.

ORDER

21. This court finds that the prosecution has failed to establish the guilt of the accused person beyond reasonable doubt. Accordingly, accused Bipul Ch. Medhi (A-1) is not held guilty of the offence punishable u/s 279/338 IPC and accordingly, he is acquitted and set at liberty forthwith.

22. The bail bond furnished on behalf of the accused shall remain in force for a further period of six months.

23. The seized articles/vehicle and documents mentioned in MR No.201/2019 is to be handed over to the custody of the actual/lawful owner.
24. The judgment is pronounced in the open court.
25. Make necessary entry in the Judgment register.
26. Given under my hand and seal of this court on this 13th day of September, 2022.

SMTI NADIA REHMAN, LL.M., AJS
J. M. 1ST CLASS, NALBARI

Typed & corrected by me

Smti. Nadia Rehman, J.M.F.C., Nalbari.

APPENDIX

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	Rupak Deka	Informant

B. Defence Witnesses, if any: Nil

C. Court Witnesses, if any : Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exh. P-1/PW-1	Ejhar
2	Exh. P-1(1)/PW-1	Signature of the informant

B. Defence : Nil

C. Court Exhibits: Nil

D. Material Objects: Nil

SMTI NADIA REHMAN, LLM, AJS

J.M.F.C. Nalbari