

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

Present: Smti. Nadia Rehman, AJS, JMFC, Nalbari

Dated:07.09.2022

PR Case No.714 of 2018

Nalbari P.S. Case No.735/15 u/s 279/338/427 I.P.C.

COMPLAINANT :	State of Assam
REPRESENTED BY	Mr. Hem Chandra Sarma, Ld. APP
ACCUSED	1. Bichitra Kr. Baishya (A-1),
REPRESENTED BY	Smti. Bijulee Baishya, Ld. Defence Counsel.

Date of Offence	13/10/2015
Date of FIR	26/10/2015
Date of Charge sheet	25/11/2015
Date of offence explanation	18/12/2018

Date of commencement of evidence	30/01/2019
Date on which judgment is reserved	N/A
Date of Judgment	07/09/2022
Date of the Sentencing Order, if any	Acquitted

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	Bichitra Kr. Baishya	Not arrested	N/A	U/S 279,338 of IPC	Acquitted	N/A	N/A

JUDGMENT

1. In this case the accused person namely Sri Bichitra Kr. Baishya, S/O:Lt. Balit Ch. Baishya, Village:Gharpara

Chuburi, P.S.: Tezpur, Dist:-Tezpur (Assam), stood for trial u/s 279/338 of the IPC.

2. The silhouette of the prosecution case as per F.I.R. lodged by the informant namely Ramen Das before the O/C of Nalbari P.S. is that on 13-10-2015, Tuesday, at about 1:00 p.m. when the elder brother of the informant Khagen Ranjan Das was going towards Nalbari town by riding his Hero Splendor motor cycle bearing registration No.AS-14/E-0141 through NH-31 from Patacharkuchi and when he reached at Sandha then a Sentro vehicle bearing registration No.AS-12/J-6910 which is driven by it's driver in rash and negligent manner coming from same direction dashed him from backside. As a result of which his elder brother along with his motor cycle skidded off from the road. As a result of which his brother got severe injuries on his head, chest, hand and shoulder. Immediately, he was admitted at G.N.R.C., Hospital. As the informant was busy with the treatment of his brother, he lodged the ejahar after few days of the occurrence. Hence, this case.
3. On receiving the ejahar, the Officer-in-Charge of Nalbari Police Station registered the case as Nalbari P.S. Case No.735/15 u/s 279/338/427 I.P.C. and started investigating the case. On completion of investigation, the investigating officer submitted the charge-sheet

against the accused person namely Sri Bichitra Kr. Baishya (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 Sri Bichitra Kr. Baishya (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 8 (eight) witnesses and declined to adduce further evidence. The accused Sri Bichitra Kr. Baishya (A-1) was examined u/s 313 of Cr.P.C., wherein his plea was of total denial. Defence declined to adduce evidence on his behalf.
6. I have heard argument of both sides.

POINT FOR DETERMINATION:

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

I) Whether on 13-10-2015, at about 1 p.m., at Sandha, on NH-31 under Nalbari P.S., the accused Sri Bichitra Kr. Baishya (A-1) drove his Sentro vehicle bearing Registration No. AS-12/J-6910 in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to the informant's elder brother and thereby committed an offence under section 279 I.P.C.?

II) Whether the above named accused person on the said date, time and place had voluntarily caused grievous hurt to the informant's elder brother by riding his Sentro vehicle, so rashly and negligently, so as to endanger their life or the personal safety to them and thereby committed an offence punishable under Section 338 of I.P.C.?

DISCUSSION, DECISION AND REASONS THEREON:

8. I have carefully gone through the entire evidence-on-record and materials placed before me.
9. There is allegation of offence u/s 279/338 I.P.C. against the accused 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.

10. Section 279 I.P.C. provides that,

"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."

11. Section 338 I.P.C. provides that,

"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."

12. 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.

13. 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 Bichitra Kumar Baishya (A-1) satisfying the ingredients of the said sections.

14. PW1/the informant Ramen Das during his examination-in-chief has deposed that he is the informant of this case. He knows the informant. The occurrence took place on 13.10.2015 at about 12:30 p.m., to 12:45 p.m. At the time of occurrence he was at his school then one Devkanta Medhi informed him that his elder brother Khagen Ranjan Das met with an accident and he was brought to hospital and therefore he went to hospital and saw that his elder brother Khagen suffered injuries on his hand, waist and brain. Devkanta informed him that at the time of occurrence he was present at the place of occurrence, and he saw when the elder brother of the informant was going to Nalbari by riding his own Splender bike and in front of the the house of one Sarbeswar Kalita, there was a little turn and when his brother took turned in slow speed, at that moment the accused person driving his own Santro vehicle hit him from back side in full force and his elder brother skidded off from the road and got severe injuries on his person. Immediately, Devkanta brought his elder brother to hospital by the vehicle of the accused person. His brother avail preliminary treatment at Baruah Nursing Home, Nalbari. As his elder brother suffered injuries on his head, so the informant brought his elder brother to GNRC, Guwahati for treatment. At GNRC the doctor informed him that blood was clotted on his head and availed treatment in the hospital for eight days as an indoor patient. Later on he filed ejahar against the accused person. Ext.1 is the FIR and Ext.1(1) is his signature. Later on his elder

brother told him that the occurrence was as stated by Devkanta.

15 During cross-examination PW1 admitted that he had not seen the occurrence by himself. He also admitted that as Devkanta stated before him about the occurrence he lodged the ejahar.

He denied the suggestion that after three days of occurrence he lodged the ejahar.

16. P.W.2/ Kumud Das during his examination-in-chief has deposed that he knows the informant, he is his brother and he does not know the accused person. The occurrence took place on 13.10.2015 at about 12:45 p.m. at Paikarkuchi chowk in front of the house of one Sarbeswar Kalita. At the time of occurrence he was at his school then one Sir informed him that his brother Khagen Ranjan Das met with an accident and immediately he went to the place of occurrence. From there he went to hospital and saw that Khagen got injuries on his head, stomach, chest etc. At the time of occurrence one student of Khagen was present who informed that when the injured was riding a Splender bike in slow speed and took turning at that moment the driver of the Sentro vehicle drove the vehicle in high speed knocked down Khagen from backside. As a result of which Khagen fell down on the ground and got grievous injuries on his person. Lots of people gathered at the place of occurrence and stopped the Sentro vehicle brought the injured person to hospital by the same vehicle. Khagen got severe head injuries and he was

immediately admitted at Baruah Nursing Home and from there he was referred to GNRC, Guwahati and was admitted there for about eight days. Later on his younger brother filed Ejahar. When he reached the place of occurrence police seized the Splender bike in front of his vide seizure list and took his signature thereon. Ext.2 is the seizure list and Ext.2(1) is his signature.

17. During cross-examination PW2 admitted that he had not seen the occurrence. He also admitted that he put his signature on seizure list at police station. He also admitted that he had not seen the occurrence as to whose fault the occurrence took place.

18. P.W.3 Kailash Kalita during his examination-in-chief has deposed that he knows the informant but he does not know the accused person. The incident occurred about three years ago, at that time he was not present, later on he heard that a accident occurred near his house, and a vehicle hit someone. He does not know any details of the accident.

Cross-examination declined by defence.

19. P.W.4 Prahlad Kalita during his examination-in-chief has deposed that he neither know the informant of this case nor the accused person Sri Bichitra Baishya. The incident occurred around 4/5 years ago, at around 12:30 p.m., to 1 p.m., at Sandha, near his house. At the time of incident, he was not at home, he went for a lunch invitation and when he came home, his wife Sewali Kalita, told him that an accident took

place near their house between a cycle and a vehicle. He does not know the details of the accident.

Cross-examination declined by defence.

20. PW5/ victim Khagen Ranjan Das during his examination-in-chief has deposed that he know the informant of this case, the informant is his younger brother. He does not know the accused person. The incident occurred in the month of October,2015 at around 12:30 p.m., at Sondha, at that time he was coming towards Nalbari, by riding his Hero Honda motor cycle bearing registration No.AS-14/0141 and he was on the correct side of the road and when he reached Sondha, then from behind the offending vehicle (Santro), him him in force and he fell down and got hurt in his head and hand and got unconscious. He was taken to Baruah Nursing Home and after that he was referred to GNRC, and he underwent treatment for 11 days and for two days he was in ICU. The accident occurred due to fault of the offending vehicle and his brother lodged the ejahar. The police seized his motor cycle and later he got zimma of his motor cycle.

21. During cross-examination PW5 admitted that the place of occurrence is a turning and the offending vehicle was behind him and it was also on correct side. He also admitted that in the offending vehicle only he was brought to the hospital. He denied that the offending vehicle was not in high speed. He also denied that the offending vehicle was not in high speed. Further he admitted that it was a turning and he was in high

speed and he did not see the offending vehicle, and when the offending vehicle applied brakes and he hit the vehicle and fell down. He again denied that the accident took place due to his fault and he was not wearing Helmet.

22. PW6/ Ranju Baishya during his examination-in-chief has deposed that he does not know the informant of this case but he knows the accused person and the accused person is her distant relative. The incident was took place about 2 years ago at night and on the next day in the morning the accused Bichitra Baishya came to her house and informed her that yesterday night he met with an accident at Paikarkuchi Chowk and the police seized his four wheeler in regard to the accident and he asked her to accompany him to the police station so that he could release his vehicle. So, she went with him to the police station and police took her signature as seizure witness and told them that after the Motor Vehicle Inspection he would give zimma of the offending vehicle and its relevant documents. Ext.3 is the Zabda Namma and Ext.3(1) is her signature.

Cross-examination declined by defence.

23. PW7/ Dwijen Baishya during his examination-in-chief has deposed that he knows the accused of this case, the accused is his cousin brother. The occurrence took place in the year of 2015 at village:- Sandha, Nalbari. On that day, the wedding ceremony of his daughter ws going on and the accused Bichitra Baishya was coming from Tezpur to attend the

ceremony by his car. That day, he was busy in the wedding ceremony of his daughter, then he got to know from the accused that he met with an accident at village Sandha, Nalbari. Later on police seized the car of the accused and took his signature in the seizure list. Ext.3 is the seizure list and Ext.3(2) is his signature. He does not know more about the occurrence.

Cross-examination declined by defence.

24. PW8 (I.O.) Dipankar Saikia in his examination-in-chief has deposed that on 13.10.2015, he was working at Nalbari P.S., as I/C traffic branch. On 13.10.2015, he got information from one namely Kalish Kalita that an accident took place on the Highway at Sandha, Nalbari due to collision of a bike and a Santro car. On getting the information he made one GD entry vide No.375 (Traffic branch, Nalbari P.S.) dated 13.10.2015. On the same day, he visited the place of occurrence and drew sketch map of the place of occurrence and seized one motor cycle bearing registration No.AS-14/E-0141 with the documents of the motor cycle. On the same day, he recorded the statements of three witnesses and one injured person namely Khagen Ranjan Das, who were present at the place of occurrence during the time of accident. On 16.10.2015, he seized Santro car bearing registration No.AS-12/J-6910, which was brought to the police station by you, upon calling by them. On the same day, he recorded your statement and also on the same day MVI was done and the seized car was given to the custody of the registered owner after executing a

zimma bond. After that, he collected the MVI report. The informant Ramen Das lodged an FIR on 26.10.2015 at Nalbari P.S. which was registered as Nalbari P.S.Case No.735/15 u/s-279/338/427 of IPC, wherein he was entrusted the duty as I.O. After that he recorded the statement of the informant. After that, he collected the injury report of victim Khagen Ranjan Das. You were released on police bail. On 25.11.2015 after that having found sufficient materials, he filed charge-sheet against you on u/s 279/338 of IPC vide CS No.428/15 dated 25.11.2015. Ext.2 is the seizure list of the motor cycle with relevant documents and Ext.P-2(2)/PW-8 is his signature. Ext.3 is the seizure list of the Santro car and Ext.P-3(3)/PW-8 is his signature. Ext.P-4/PW-8 is sketch map and Ext.P-4(1)/PW-8 is his signature. Ext.P-5/PW-8 is the charge sheet and Ext.P-5(1)/PW-8 is his signature.

Cross-examination declined by defence.

:APPRECIATION OF EVIDENCE:

25. For the sake of convenience, let us take both the points for determination no.(I) and (II) together, for the purpose of appreciation.

26. I have perused all the evidence re-produced in this judgment. On perusal it appears that PW1, PW2, PW3, PW4, PW6 and PW7 are not eye witnesses to this accident and have deposed based on hearsay evidence in the court. Further it reflects from the deposition of PW1 that one

Sarbeswar Kalita was present at the time of accident and had seen the accident and PW2 deposed regarding one student of the victim who was present at the time of accident but none of them have not examined by the prosecution as witnesses. In this case the only witnesses who was present at the time of accident was the victim himself and had deposed that the offending vehicle had hit him from his behind due to which he got hurt but during his cross he also admitted that the place of accident was a turning of road and he himself was also in high speed. Further he also admitted that the offending vehicle had applied brakes and had hit the vehicle and thereafter fell down which *prima facie* reflects that the accused person had intended to take precaution to avoid the accident. Although it is proved in this case that there was an accident on 13.10.2015 by one Sentro vehicle which is also reflected through Ext.3. However, the prosecution's evidence is silent at who was riding the vehicle and how the accident took place as now one saw the accused person driving the vehicle at the relevant time of accident. The I.O., of this case had charge-sheeted against the accused person u/s 279,338 of the IPC, to bring home charges under the said sections against the accused person the prosecution evidence is silent. Although occurred of an accident is proved. The prosecution side had also not examined the M.O., of this case to prove the injury of the victim nor had exhibited any medical report.

27. Hence, in light of the above discussions, it is seen that as there are no incriminating materials against the "rash or negligent" driving of the accused person, it could not be proved that the accident took place due to the fault of the accused person due to which the victim of this case sustained injuries and his scooter got damaged .

28. Hence, learned prosecution has failed to bring home charges u/s 279, 338, IPC against the accused person beyond reasonable doubt.

ORDER

29. This court finds that the prosecution has failed to establish the guilt of the accused person beyond reasonable doubt. Accordingly, accused Bichitra Kumar Baishya is not held guilty of the offence punishable u/s 279,338 IPC and accordingly, he is acquitted and set at liberty forthwith.

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

31. The seized articles/vehicle and documents mentioned in MR No.295/2015 and MR No.296/2015 are to be handed over to the custody of the actual/lawful owner.

32. The judgment is pronounced in the open court.
33. Make necessary entry in the Judgment register.
34. Given under my hand and seal of this court on this 07th day of September, 2022.

SMTI NADIA REHMAN, AJS
J. M. 1ST CLASS, 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	Ramen Das	Informant
PW-2	Kumud Das	Other witness
PW-3	Kailash Kalita	Other witness
PW-4	Prahlad Kalita	Other witness
PW-5	Khagen Ranjan Das	Victim
PW-6	Ranju Baishya	Other witness
PW-7	Dwijen Baishya	Other witness
PW-8	Dipankar Saikia	I.O., of this case

B. Defence Witnesses, if any: Nil

C. Court Witnesses, if any : Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr.	Exhibit Number	Description
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No.		
1	Exhibit 1	Ejahaar
2	Exhibit 1(i)	Signature of PW1
3	Exhibit 2	Seizure list vide MR No.295/15
4	Exhibit-2(1)	Signature of PW-1
5	Exhibit-3	Zabda Nama vide MR No.296/15
6	Exhibit-3(1)	Signature of PW6
7	Exhibit-3	Seizure list
8	Exhibit-3(2)	Signature of PW7
9	Exhibit-P-4/PW-8	Sketch map
10	Exhibit-P-4(1)/PW- 8	Signature of PW8
11	Exhibit P5/PW8	Charge sheet
12	Exhibit P-5(1)/PW-8	Signature of PW8

B. Defence : Nil

C. Court Exhibits: Nil

D. Material Objects: Nil

J.M.F.C., Nalbari