

**IN THE COURT OF Munsiff No. 1 cum JMFC,  
Nalbari**

**Present: Dr. Nabanita Kalita**

(Date of Judgment)  
14.09.2022

**PRC Case No. 492/2020**

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP
ACCUSED	JAIRUL ISLAM
REPRESENTED BY	RAJDEEP PATGIRI, ADVOCATE

Date of Offence	07.07.2019
Date of FIR	15.08.2019
Date of Charge sheet	31.08.2019
Date of offence explanation	30.07.2022
Date of commencement of evidence	08.09.2022
Date on which judgment is reserved	NIL
Date of Judgment	14.09.2022
Date of the Sentencing Order, if any	NIL

**Accused Details:**

Rank of the Accused	Name of Accused	Date of Arrest	Date 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	Jairul Islam	19.08.2019	19.08.2019	279/338 IPC	Acquitted	N/A	N/A

**JUDGMENT**

1. The case of the prosecution in a nutshell is that on 07.07.2019 at about 8.30 pm informant's son namely Rabiul Ali was returning from Ghograpar chowk to his own home at Khatbatra sitting in back seat of Glamour vehicle bearing registration no. AS-25M-0168. It is stated that the driver of the Glamour vehicle driving the vehicle care and negligent manner lost control and the vehicle knocked in the side of the road for which his son fell down from the back seat of the Glamour vehicle as a result he sustained grievous injuries in various part of his body. Informant stated that getting the information of accident, though bystanders admitted his son at Nalbari Civil Hospital, as the injuries were grievous, he was referred to GMCH. Informant further stated that delay caused in filling the ejahar due to busy with the treatment of Rabiul.

2. On receipt of the ejahar, police of Ghograpar PS registered the same as Ghograpar PS Case no 346/2019 under Section 279/338 IPC against the accused person and conducted investigation into the matter.
3. On completion of the investigation, the police submitted Charge sheet against the accused person namely Jairul Islam under Section 279/338 IPC.
4. The accused person entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused person in accordance with section 207 Criminal Procedure Code.
5. Particulars of offence under section 279/338 of IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. During trial, the prosecution examined 2 (two) witnesses. Thereafter, on prayer of the Id. APP, prosecution evidence has been closed as according to the opinion of the Id. APP calling other witnesses will not improve the case.
7. The statement of defence of the accused person has been dispensed with due to lack of incriminating materials against him. Defence declined to adduce DW evidence.

### **POINTS FOR DETERMINATION**

i) Whether the accused person on 07.07.2019 at about 8.30 p.m. riding a motorcycle bearing registration no. AS-25/M-0168 in rash and negligent manner knocked down informant's son Rabiul Ali and thereby committed an offence punishable under section 279 IPC?

ii) Whether the accused person on same date and time caused grievous hurt to informant's son Rabiul Ali by a motorcycle so rash and negligently and thereby committed an offence punishable under section 338 IPC?

8. I have heard the learned counsel for both sides and have gone through the case record.

**EVIDENCE ON RECORD**

9. PW 1 Abbas Ali is the informant of this case. He deposed in his examination-in-chief that he is the informant of this case. Accused is his relative. PW 1 stated that the occurrence took place in the year 2019. At night at about 8.30 pm his son Rabiul Ali was coming from Ghograpar sitting in the back seat of bike of Jiaul Ali. A dog appeared before the vehicle near Neelpur Health Centre and driver lost control. As a result, his son fell down from the vehicle and got injury. PW 1 stated that he lodged the case due to misconception about the occurrence. He does not want to proceed with the case, as the accident did not happen due to fault of

the accused. Ext. P1/PW 1 is ejahar. Ext. P1/PW1 is is his signature.

10. PW 2 Rabiul Ali deposed in his examination-in-chief that his father is informant. He knows the accused. PW 2 stated that the occurrence took place in the year 2019. On that day, at about 8.30 pm, he was coming from Ghograpar towards home as pillion rider in the bike of Jairul. PW 2 stated that while coming suddently a dog appeared before the vehicle and on being pulled break, he fell down. As a result, he got injury on leg and hand. At first, he took treatment at Nalbari Civil Hospital thereafter he took treatment at GMCH. PW 2 stated that his father lodged the case without knowing about the occurrence. He has no allegation against the accused person as the accident did not happen due to fault of the accused person. As such, he does not want to proceed with the case.

### **DISCUSSION, DECISION AND REASONS THEREOF**

11. Since both the points for determination are inter connected as such, I am going to discuss and decide both the points for determination together. After going through the evidence of all the witnesses, it transpires that the witnesses have derailed from the allegations set forth in the FIR. From the deposition of the PW 1 and PW 2, it is seen that they have stated nothing incriminating against

the accused in their evidence. Rather, PW 1 deposed that he lodged the case due to misconception about the occurrence. Both PW 1 and PW 2 in their evidence in chief clearly deposed that accident occurred as suddenly a dog appeared before the vehicle, but the accident did not happen due to fault of the accused person. Neither of the PWs stated that the accident happened due to rash and negligent driving of the accused person. Moreover they also expressed their unwillingness to proceed with the case as they have no allegation against the accused person. Since the PW 1 & PW 2 who are informant and victim, being the most vital witnesses did not implicate the accused person to the alleged crime, I do not find any force in the prosecution case to hold the accused guilty of the alleged crime.

12. Now it is the burden of the prosecution to establish the guilt of the accused person. From the evidence of the prosecution witnesses, it appears that the witnesses have not adduced any evidence to hold the accused person guilty under the alleged sections of IPC. Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused from the charges levelled against him. Hence, the accused person deserves acquittal.

13. Situated thus, it is found that the prosecution has failed to implicate the accused person Jairul Islam of any offence u/s 279/338 of IPC. As such, the points for determination are answered in negative and in favour of the accused person.

### **ORDER**

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution failed to prove beyond reasonable doubt that the accused person had committed the offence under Section 279/338 IPC. As such, the accused person namely Jairul Islam is acquitted of the charge under Section 279/338 IPC and set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of six months from today in compliance with section 437(A) Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and seal of this court on this 14<sup>th</sup> day of September, 2022 at Nalbari, Assam.

(DR. NABANITA KALITA)  
Judicial Magistrate, 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)
PW1	Abbas Ali	Informant
PW2	Rabiul Ali	Eye witness

**B. Defence Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	NIL	N/A

**C. Court Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	NIL	N/A



**LIST OF PROSECUTION/ DEFENCE /  
COURT EXIBITS**

**A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext. P1/PW1	Ejhar
2	Ext-1(1)/PW 1	Signature of PW 1

**B. Defence:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit D1/ DW1	NIL

**C. Court Exhibits:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit C1/ CW1	NIL

**D. Material Objects:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	MO1	NIL

DR. NABANITA KALITA)  
Judicial Magistrate 1st Class,  
Nalbari.