

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

**Present: Dr. Nabanita Kalita**

(Date of Judgment)  
12.09.2022

**PRC Case No. 836/2021**

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP
ACCUSED	IKRAMUL HUSSAIN
REPRESENTED BY	RAFIUL AMIN, ADVOCATE

Date of Offence	29.09.2020
Date of FIR	19.11.2020
Date of Charge sheet	31.01.2021
Date of offence explanation	21.07.2022
Date of commencement of evidence	25.08.2022
Date on which judgment is reserved	NIL
Date of Judgment	12.09.2022
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	Ikramul Hussain	23.11.2020	23.11.2020	279/338 IPC	Acquitted	N/A	N/A

**JUDGMENT**

1. The case of the prosecution in a nutshell is that on 29.09.2020 at about 4.30 pm while informant's son namely Adam Choudhury was sitting in the back seat of Super Splendor motorcycle of rider Ikramul Hussain and going from Baraliarpar to Mukalmua, at Sapkata the vehicle lost control and collided with an accident due to high speed and negligent of the rider. As a result, informant's son Adam Choudhury sustained greivous injury and though local people immediately admitted him at Mukalmua Primary Health Centre, as the injuries were grievous, he was taken to GNRC hospital and subsequently, he was referred to Patna for better treatment.

2. On receipt of the ejahar, police of Mukalmua PS registered the same as Mukalmua PS Case no

516/20 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 Ikramul Hussain 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 29.09.2020 at about 4.30 p.m. riding a Super Splendor bike bearing registration no. AS-14/K-8358 rash and

negligent manner knocked down informant's husband namely Adam Choudhury 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 husband by a Super Splendor 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 Oweluddin Choudhury is the informant of this case. He deposed in his examination-in-chief that he lodged the ejahar. PW 1 stated that the occurrence took place in the year 2020 at about 4.30 pm. His son was coming to Mukalmua sitting in the bike of the accused. While coming, the vehicle met with an accident at Sapkata. He does not know why accident occurred. PW 1 also stated that accused is from same village. As the accident was not happened due to fault of the accused, he has no allegation against the accused. He does not want to proceed with the case. Ext. P1/PW 1 is ejahar. Ext. P1(1)/PW 1 is his signature.

10. PW 2 Adam Choudhury deposed in his evidence in chief that informant is his father. He knows the accused. He and accused are employee of same

shop. PW 2 stated that on the date of occurrence, at about 4.30 pm while he was coming from Baraliarpar to Mukalmua sitting as pillion rider in the bike of accused Ikramul Hussain, at Sapkata due to coming in contact of something ahead of the vehicle, Ikramul suddently had to push break as a result, he fell down. He got injury in leg. PW 2 stated that the accident did not happen due to fault of the accused. Therefore, he has no allegation against the accused. His father lodged the case due to misunderstanding. 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 it is seen that he has stated nothing incriminating against the accused in his evidence. Rather, he deposed that he did not know how the accident occurred and he also stated that the accident did not happen due to fault of the accused person. It appears that PW 1 is not an eye witness and he has no personal knowledge about the accident. He also expressed his

unwillingness to proceed with the case. Having gone through the evidence of PW 2 it is evident that he has not stated that the accident happened due to the negligent and rash driving of the accused person. Rather he stated that the accident happened as something suddenly came into contact with the vehicle for which accused had to pull the break. From the deposition of PW1 and PW2 it appears that they have no allegation against the accused person since in their opinion accident did not occur due to fault of the accused person. Moreover PW2 in his evidence has stated that his father lodged the case due to misunderstanding. 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 Ikramul Hussain 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 Ikramul Hussain 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 12<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	Oweluddin Choudhury	Informant
PW2	Adam Choudhury	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	P.Ext-1/PW1	FIR
2	P.Ext-1 <sub>1</sub> /PW1	Signature of PW1

**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.