

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

**Present: Dr. Nabanita Kalita**

(Date of Judgment)  
01.09.2022

**PRC Case No. 893/2019**

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP
ACCUSED	BABUL CHETRI
REPRESENTED BY	RANJIT KR. BAISHYA, SIKHA MANI MAZUMDER, ADVOCATES

Date of Offence	26.10.2018
Date of FIR	04.12.2018
Date of Charge sheet	31.12.2018
Date of offence explanation	04.01.2020
Date of commencement of evidence	18.08.2022
Date on which judgment is reserved	NIL
Date of Judgment	01.09.2022
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	Babul Chetri	31.12.2018	31.12.2018	279/338 IPC	Acquitted	N/A	N/A

**JUDGMENT**

1. The case of the prosecution in a nutshell is that on 26.10.2018, at about 6.30 pm, informant was going from Kaithalkuchi to his own house sitting as pillion rider of the Scooty bearing registration no. AS-14J-0917. It is alleged that the driver Babul Chetri drove the scooty in rash and negligently and lost its control and met with an accident from a little distance from Balijar Mohan Bazar. As a result, informant besides getting injuries on various parts of his body also his right hand was fractured. Though, he was admitted at SMKCH in injured condition, he was admitted at Nalbari Sarathi Hospital for better treatment. It is stated that delay in filling the ejahar was as he was busy with the treatment.

2. On receipt of the ejahar, police of Belsor PS registered the same as Belsor PS Case no 259/2018 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 Babul Chetri 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 1 (one) witness. 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 26.10.2018 at about 6.30 p.m. riding a scooty bearing registration no. AS-14/J-0917 rash and negligent manner collided with an accident 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 by a scooty 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 Jintu Mizar is the informant and victim of this case. He deposed in his examination-in-chief that he lodged the ejarah. He knows the accused person. PW 1 stated that occurrence occurred on 26.10.2018 at about 7.30 pm. On the date of occurrence, he was coming from Kaithalkuchi towards Nalbari sitting in the scooty of Babul Chetri as pillion rider. While they were going it was foggy at that time and at Balijara a cow ran away in front of the vehicle and due to sudden break down, he fell down on the ground. PW 1 also stated that in the said accident, bone of his right shoulder has been fractured. Thereafter, he was taken first to Nalbari Civil Hospital. Later on, he was admitted at Sarathi Hospital for better treatment. He lodged the

ejahar after coming from the hospital. Ext. P1/PW 1 is ejahar. Ext. P1(1)/PW 1 is her signature.

10. During cross examination, PW 1 stated that the driver had no fault in the incident. The accident took place due to fog and cow. He has no objection, if accused is acquitted in this case.

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

11. After going through the evidence of prosecution side, it transpires that PWs have derailed from the allegations set forth in the FIR. From the deposition of the PW 1, it is seen that has stated nothing incriminating against the accused person in his evidence. PW1 has not deposed that the accident occurred due to rash and negligent driving of the accused person also affirmed during his cross examination that the accident did not occur due to fault of driver rather due to fog and the sudden running of a cow in front of the vehicle. Moreover PW1 stated in his cross examination that he has no objection if the accused person is acquitted in this case. Since the PW 1 being the most vital witness 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 witness, it appears that the witness has 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 Babul Chetri 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 Babul Chetri 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 1<sup>st</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	Jintu Mizar	Informant

**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.