

06.11.2009 before the Officer In-Charge, Dhaligaon P.S. alleged that on 06.11.2009 at about 10.30 AM in the morning while the informant's mother Musstt. Kadbhanu Bewa was about to cross the National Highway No. 31 in front of the D.C. Office at Kajalgaon, then the driver of the bike bearing No. AS-18-A-5152 driving the same in rash and negligent manner knocked down her causing injuries on her person.

3. On the basis of the FIR, the Officer In-Charge of Dhaligaon Police Station registered the case being Dhaligaon P.S. Case No. 111/09 under Section 279/338 IPC and launched investigation of the case. After completion of the investigation, the Investigating Officer laid charge-sheet against the present accused/appellant Binay Banerjee, the rider of the bike bearing No. AS-18-A-5152 under Section 279/338 IPC.

4. On appearance of the accused person, necessary copies as required U/S 207 of CrPC were furnished to the accused and on perusal of police report furnished U/S 173 CrPC and hearing the learned counsel for both sides, having find a prima facie case, the learned Additional Chief Judicial Magistrate, Bongaigaon framed charge against the accused Binay Banerjee U/S 279/338 IPC and the same on being read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution side examined as many as 11 (eleven) witnesses. In statement recorded under Section 313 CrPC, the accused person denied all the allegations leveled against him and examined none.

6. After hearing the argument for the parties, the learned Additional CJM, Bongaigaon delivered the judgment dtd. 06.06.2013 and convicted the

accused/appellant as stated above.

7. Being highly aggrieved by and dis-satisfied with the above Judgment and Order dated 06.06.2013, passed by learned Additional CJM, Bongaigaon in G.R. Case No. 582/13 U/S 279/338 of the IPC, the present appellant has preferred this appeal on the ground that the learned trial Court has committed gross illegality and irregularity while passing the order and judgment of sentence and conviction and learned trial court failed to apply her judicious mind while passing the order and judgment of conviction and sentence against the accused and the learned court below failed to appreciate the evidence on record in its proper perspective and as such, the conviction and sentence is liable to be set aside.

8. I have heard the learned counsel appearing for the accused/appellant as well as for the respondent. I have also gone through the memo of appeal, the entire trial Court case record and the impugned judgment and order.

Now the point for decision before me is:

9. Whether the impugned judgment and order of conviction passed by the learned Additional Chief Judicial Magistrate, Bongaigaon in G.R. Case No. 582/09 suffers from any illegality or infirmity ?

DISCUSSION, DECISION AND REASONS THEREOF:

10. During hearing of the appeal, the learned counsel Mr. S.K. Sarkar for the appellant submits before me that the learned Court below committed great error of law while passing the impugned judgment and order of conviction in as much as the evidence on record do not warrant conviction of the accused/appellant U/S 279/338 IPC and as such, the conviction and

sentence of the accused/ appellant being bad in law is liable to be set aside.

11. With the above submissions, the learned counsel for the accused/ appellant, prays for allowing the appeal and set aside the impugned judgment and order of conviction dated 06.06.2013 passed by the learned Additional Chief Judicial Magistrate, Bongaigaon in G.R. Case No. 582/09 convicting the accused/ appellant as stated above.

12. Forcefully resisting the submission made by the learned counsel for the appellant, the learned P.P. for the State submits that the learned Court below after full application of her judicial mind and after carefully considering the evidence and materials before him find that the prosecution has proved the charge U/S 279/338 IPC against the accused/appellant beyond all reasonable doubt and therefore, she has rightly passed the impugned judgment and order of conviction in conformity with law and the same need not be interfered with by this Appellate Court.

13. Further submission of the learned counsel for the respondent is that the standard of proof and rebuttal by the accused must be by cogent evidence and in the present case, the prosecution by cogent and reliable evidence having been able to prove the allegation of rash and negligent driving by the accused/appellant and hence, no error or illegality has been committed by the learned Trial Court below while passing the impugned judgment and order of conviction. Hence, prays for dismissing this Criminal Appeal and affirm the impugned judgment and order of conviction recorded by the learned Court below.

14. I have given my anxious and thoughtful consideration as regards

to the rival contentions raised by the learned counsel for both sides. I have also perused the impugned judgment and order passed by the learned Additional Chief Judicial Magistrate, Bongaigaon in G.R. Case No. 105/12 and the materials available in the record. For appreciating the rival contentions, let us now travel through the evidence and materials so far the prosecution brought on record to prove the charge against the accused/appellant.

15. PW 1 Tara Mia in his evidence deposed that on the relevant day it was informed to him over telephone that one motor cycle knocked down his mother i.e. Musstt. Kadbhanu Bewa (PW 3) on the National Highway near Kajalgaon causing her injuries. Thereafter he lodged the FIR and rushed to see his mother i.e. PW 3 and found her admitted in the Lower Assam Hospital. He saw the injuries on her face and head. During cross he stated that he had not seen the incident.

16. PW 2 Habjur Rohman deposed that on the fateful day at about 10/10.30 AM in the morning he along with the complainant's mother i.e. the victim PW 3 and 25/30 people were going to Kajalgaon DC Office by a Tempo. Thereafter, on reaching their destination the Tempo stopped over the National Highway and everybody got down from it and crossed over the National Highway. As the victim PW 3 was an old lady she was slowly crossing over the National Highway and at that time, they had seen that the accused driving his motorcycle in high speed knocked down the woman resulting profuse of bleeding from her injuries. Immediately the police came and took the woman and admitted her in the Lower Assam Hospital, Bongaigaon. The victim as per the version of PW 2 got injuries on her head, left eye, right hand and chest. During cross he stated that the accident occurred when they by crossing over the National Highway, he was about to go to D.C.

Office. At that time, hearing a sound he turned backside and had seen the injured and the accused lying upon road. He further stated that though he did not remember the number of the bike but he could identify the accused standing in the dock is the person who had driven the vehicle on the fateful day.

17. PW 3 the victim Musstt. Kadbhanu Bibi deposed that on the fateful day she along with Hakim Ali, Anowar Ali, Abdul Gafur and one of her son were going to Kajalgaon by an Auto. When she was about to cross over the National Highway then a bike coming from behind knocked down her. As a result of which she fell down and sustained injuries on her face, hand and various parts of her body. Thereafter, she was admitted in the Lower Assam Hospital, Bongaigaon. During cross she stated that the accident had occurred when they were about to cross over the road. She further stated that she did not know the number of the bike which hit her. She denied the suggestion that she sustained injuries by falling while she got down from the Auto.

18. PW 4 Md. Muslimuddin deposed that on the relevant day he along with PW 3 got down from the Auto near Kajalgaon D.C. Office and when crossed the National Highway, he saw that the victim (PW 3) met with an accident and blood oozing out from her face, and other parts of the body and immediately she was taken to the Lower Assam Hospital. During cross he stated that he was coming by another vehicle behind the victim's vehicle and he had not seen the accident.

19. PW 5 Anowar Ali had not seen the incident. Another witness PW 6 Md. Abdul Gafur and PW 7 Abdul Hussain had seen the victim (PW 3) lying on the the road in injured condition. They admitted her in Lower Assam

Hospital. They had not seen the accident.

20. PW 8 Bhaskarjyoti Baruah, the Medical Officer deposed that the victim received multiple lacerated injuries over her upper lip, upper lid which were fresh at the time of examination, multiple abrasion over her forehead, cheek and right knee which were fresh and simple and subdural haematoma which is grievous in nature. He proved the medical report as Ext.1. In cross examination he stated that the injuries sustained by the victim may cause by fall on hard and rough substance.

21. PW 9 Sri Rajib Ghosh was examined as Court Witness. He deposed that he was informed over telephone that the accused had caused an accident. Thereafter, he went to the police station wherein police seized the motor vehicle along with its documents. He proved the seizure list as Ext.2 and his signature as Ext.2(1).

22. Another Court Witness Ramen Chakraborty examined as PW 10 deposed that he heard that on the relevant day when the accused was proceeding by driving the motorcycle, an accident occurred with another. He was the bailor of the accused. He proved the bail bond as Ext.3.

23. PW 11 S.I. Sri Harekrishna Deka, the Investigating Officer deposed that on being entrusted to investigate the case, he visited the place of occurrence, drew the sketch map of the place of occurrence, examined the witnesses, seized the motorcycle involved in the incident bearing No. AS-18-A-5152 along with its documents, got examined the vehicle by the Motor Vehicle Inspector and thereafter, on being transferred, he has submitted the case diary to the O/C. Thereafter S.I. Akbor Ali submitted charge-sheet against

the accused. He proved the charge-sheet as Ext.4 and signature of the I.O. S.I. Akbar Ali as Ext.4(1). During cross, he stated that in the place of occurrence he did not find the bike as the accused left the place along with the bike.

24. On going through the evidences as mentioned above, it reveals that when the victim PW 3 Kadbhanu Bibi after getting down from the tempo was crossing over the road i.e. the National Highway, then the accused driving the motorcycle bearing No. AS-18-A-5152 knocked down her from behind. Corroborating her evidence the eye witness Habjur Rahman (PW 2) deposed that being an old woman PW 3, the victim was crossing the road slowly and at that time the accused driving the motorcycle rashly knocked down her. The evidence of PW 2 regarding driving the motorcycle speedily remains unrebutted during cross examination. In cross-examination PW 2 identified the accused who drove the motorcycle. There is nothing to disbelieve the testimony of PW 2 and PW 3. The Ld. Trial Court also rightly relied the evidence of PW 9 and PW 10 that the accused had driven the vehicle and seizure list was also proved in that respect.

25. In order to prove the act of negligence and rashness, it must be shown that the act was done without proper regard to its consequences and without precaution taken for ensuring the safety to others. From the materials available on record, I find that the victim (PW 3) stated her age as 70 years and as per evidence of PW 2, the eyewitness, due to old age PW 3 was crossing the road slowly which evidence remain unchallenged in cross-examination. The accident occurred at broad day light. Seeing an old woman crossing the road i.e. National Highway, one should drive a vehicle with precaution. But the accused did not do so and knocked down the old lady. There is no evidence that the injured was on wrong side or in the middle of the road. Motorcycle

was inspected by MVI on next day of the occurrence and found mechanically satisfied.

26. Thus after considering all the matters in its entirety what has been discussed above, I come to the irresistible conclusion that the prosecution has proved beyond reasonable doubt that accused Binoy Banerjee driving the motorcycle bearing No. AS-18-A-5152 at high speed knocked down the victim Kadbhanu Bibi from behind as a result of which she sustained grievous injury due to rash and negligent act of the accused and in my opinion the learned court below rightly convicted the accused u/s 279/338 IPC. As such, I am of the considered view that the trial Court suffers from no infirmity and illegality in convicting the appellant u/s 279/338 IPC vide judgment and order dtd. 06.06.2013. The conviction of the appellant u/s 279/338 IPC is justified and the same does not warrant interference of this Court.

27. Regarding sentence, in my considered opinion, it will be sufficient to mitigate justice, if the accused is sentenced only to pay fine of Rs. 1,000/- u/s 279 IPC and another Rs. 2,000/- for the offence punishable u/s 338 IPC instead of sentencing him to undergo imprisonment for any term for the offence.

28. In the result, this Criminal Appeal is partly allowed on contest. The impugned judgment and order dtd. 06.06.2013 passed by the Ld. Addl. Chief Judicial Magistrate, Bongaigaon in G.R. No. 582/09 is modified to the extent that the accused/appellant is sentenced to pay a fine of Rs. 1,000/- in default simple imprisonment for 15 days for the offence punishable u/s 279 IPC and also to pay another fine of Rs. 2,000/- in default simple imprisonment for one month for the offence punishable u/s 338 IPC. The sentence regarding

imprisonment of the accused person for the offence u/s 279/338 IPC is set aside.

29. The accused/appellant is directed to appear before the Ld. Trial Court on or before 04.03.16 to pay the amount of fine or to serve the sentence as stated above.

30. The LCR of G.R. Case No. 582/09 be sent back to the Ld. Court below along with a copy of this judgment.

31. Judgment is prepared, delivered under my hand and seal of the court on this the 6th day of **February, 2016** at Bongaigaon.

Dictated and Corrected by me,

*(I. Barman)
Sessions Judge,
Bongaigaon.*

*(I. Barman)
Sessions Judge,
Bongaigaon.*
