

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 844/2013

STATE OF ASSAM VERSUS ZAGIR HUSSAIN

U/S 279/338/ 427 I.P.C

FOR THE PROSECUTION: MR. R.C.MAHATO, ASST. P.P

FOR THE DEFENE: MR.N.I. SIDDIQUE, MRS. BINDU SEBEDI, ADVOCATES

EVIDENCE RECORDED ON: 4/9/2014, 26/3/2015

ARGUMENTS HEARD ON: 23/4/2015

JUDGMENT FIXED ON: 30/4/2015

JUDGMENT DELIVERED ON: 30/4/2015

JUDGMENT

1. On 10/11/2013 informant Md. Azad Ali lodged a written ejahar at Bongaigaon P.S alleging that on 9/11/2013 at about 11 a.m., when his son-in-law Nur Hussain was going to his place of work at Birenpara B.S.F Camp on his motor-cycle bearing registration number AS-01-M-6159, a tractor bearing registration number AS-19-C-6130 hit him from behind at National Highway No. 31 near Mission as a result of

which his son-in-law received grievous injuries and was admitted at Lower Assam Hospital, Bongaigaon but had to be taken to Hayat Hospital, Guwahati because of his serious condition. The ejahar was received and Bongaigaon P.S Case No. 550/13 u/s 279/338 IPC was registered. After completion of investigation police submitted Charge Sheet u/s 279/338/427 IPC against accused Zagir @ Jakir Hussain.

2. Cognizance was taken under section 279/338/427 IPC against the accused person above named.
3. Upon appearance copies of the relevant documents were supplied to the accused person in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police and prima facie materials u/s 279/338/427 IPC having been found to be well established against the accused person the particulars of the offences under sections 279/338/427 IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of four witnesses. At the close of prosecution evidence accused was examined u/s 313 Cr.P.C. He denied all the allegations levelled against him but declined to adduce any evidence.
6. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:
 - 1) Whether the accused person, on 9/10/2013 at about 11 a.m. drove a vehicle bearing Registration numbers AS-19-C-6130 in a manner so rash or negligent as to endanger human life, or to be likely to cause death or injury to any other person, and thereby committed an offence punishable U/S 279 IPC?
 - 2) Whether the accused person on the same date, time and place caused grievous hurt to the son-in-law of the informant by driving the vehicle so rashly and negligently as to endanger human life or the personal safety of others and thereby committed an offence punishable under section 338 IPC?

- 3) Whether the accused person on the same date, time and place committed mischief causing loss and damage to the bi-cycle of the deceased, to the amount of fifty rupees or upwards and thereby committed an offence punishable under section 427 IPC?

DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

7. PW1 (Dulla Ali) stated that the accused is the driver of a tractor owned by his cousin's wife and that the accused was driving the vehicle on the date of occurrence. That, at the time of the occurrence which took place at about 11 a.m. in front of a church near Kishan Bazar, he was in Bongaigaon and that his cousin Nur Islam informed him over phone about the occurrence in the afternoon. That, he went to the police station in the evening and police seized the vehicle and its documents in his presence through seizure list which he exhibited as Exhibit 1 and his signature as Exhibit 1(1).
8. PW2 Kalipada Das stated that he knows both the accused and the informant. That, he was coming to Bongaigaon in his bi-cycle at about 11 a.m. on the date of the occurrence when he saw a gathering near the church at Kishan Bazar and went near the gathering and saw that Nur Hussain is lying on the road in injured condition and a bike was also lying nearby. He then took Nur Hussain to the hospital. He stated that police seized the motor-cycle in his presence through Exhibit 2 and he identified his signature as Exhibit 2(1).
9. PW3 Nur Islam stated that the accused is the driver of the tractor owned by his wife and the accused was driving the tractor on the date of occurrence. That, he was at Bijni at the time of occurrence and he received information about the accident at noon. Thereafter he called his brother Dulla Ali and went to the police station in the afternoon. After two days he went to the police station with the tractor where police seized the tractor in presence of him and Dulla Ali through seizure list which he exhibited as Exhibit 1 and his signature as Exhibit 1(2). He stated that he stood as bailor of the accused and exhibited the bail bond as Exhibit 3 and his signature as Exhibit 3(1).
10. During cross examination PW3 stated that he does not know who was driving the tractor at the time of the occurrence.

11. PW4 Rabial Ali stated that he does not know anything about the occurrence.
12. There are two essential ingredients in order to constitute the offence u/s 279 IPC, viz. (a) driving of a vehicle and (b) such driving must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person.
13. A careful appreciation of the evidences on record shows that there is no evidence to show that the accused person was driving the vehicle in a rash and negligent manner. Prosecution could not discharge the burden of proof by showing with just and cogent evidence that the accused was driving the vehicle in a rash and negligent manner as contemplated by section 279 I.P.C. Since prosecution could not establish the ingredients of section 279 IPC therefore the question of proving the other offences viz. Section 338/427 I.P.C does not arise. Having discussed as above I am of the considered opinion that the prosecution failed to establish the charges against the accused person and hence an order of acquittal would serve the ends of justice.

Order

The accused Zagir @ Jakir Hussain is hereby acquitted of the offences charged with and set at liberty forthwith. Bail Bond is extended to a period of six months. Given under the hand and seal of this Court on this the 30th day of April 2015.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

Appendix:

List of Witnesses:

1. PW1: Dulla Ali
2. PW2: Kalipada Das
3. PW3: Nur Islam
4. PW4: Rabial Ali

List of exhibits:

1. Exhibit 1, 2: Seizure Lists
2. Exhibit 1(1): Signature of PW1
3. Exhibit 1(2): Signature of PW3
4. Exhibit 2 (1): Signature of PW2
5. Exhibit 3: Bail Bond
6. Exhibit 3(1): Signature of PW3