

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS

G.R CASE NO: 24/2012

STATE OF ASSAM VERSUS HAKIMUDDIN ALI

U/Ss 279/337/427 IPC

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

FOR THE DEFENCE: MR. P.SHARMA, LEARNED ADVOCATE

EVIDENCE RECORDED ON: 19.12.2013, 9.1.2014

ARGUMENTS HEARD ON: 9.1.2014

JUDGMENT DELIVERED ON: 9.1.2014

JUDGMENT

1. Sri Ansula Basumatary lodged a written ejahar at Garubhasha O.P on 9.1.2012 alleging that on 8.1.2012 at about 8.30 pm when his nephew Swgwmsar Basumatary was going to Kokrajhar from Shyamthaibari on the National Highway No. 31, in his Tata Sumo bearing registration number AS-16-9151, a Bolero bearing registration number AS-26-4191 coming from the

opposite direction at a high speed being driven in a rash and negligent manner collided with the Sumo at Lauripara as result of which his nephew received grievous injuries on his body and was admitted to Lower Assam Hospital, Bongaigaon and the Sumo was damaged completely. The ejahar was received at Garubhasha O.P vide G.D entry No. 174 dated 9/1/12 and was forwarded to Sidli P.S for registering a case where Sidli P.S Case No. 2/12 u/s 279/338/427 I.P.C was registered. After completion of investigation police submitted Charge Sheet u/s 279/338/427 IPC against Hakimuddin Ali.

2. Cognizance was taken under section 279/338/427 I.P.C 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 I.P.C having been found to be well established against the accused person the particulars of the offences under sections 279/338/427 I.P.C were explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of as many as six witnesses. Defence did not adduce any evidence. The examination of the accused u/s 313 Cr.P.C. was dispensed with.

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 9.1.2012 at about 8.30 pm drove a vehicle bearing Registration number AS-26-4191 on the National Highway No. 31 at Lauripara 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 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 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 Khirod Kumar Das is the MVI who inspected both the vehicles. On 11.1.2012 he examined the Bolero (alleged to be the offending vehicle) bearing registration No. AS-26-4191 on police requisition vide G.D Entry No. 160 dated 8/1/2012 and found the following damages:

- Front Bonnet and Bumper Damaged.

He reported that the vehicle was found to be in mechanically working condition. He exhibited the report as Exhibit 1 and his signature as Exhibit 1 (1).

On 12/1/2012 he examined another vehicle bearing registration number AS-16-9151 (Tata Sumo) and found the following damages:

- Front wind shield glass, head lamp, indicator lamp and all glasses broken.
- Front bonnet, bumper, grill damaged.
- Complete body shell with all doors and fenders damaged.
- Cooling system, electrical system damaged.
- Steering system, suspension system, transmission assembly damaged.
- Engine, gear box, clutch damaged.
- All sheets, dash board damaged.

The vehicle could not be road tested as the vehicle is completely smashed. He exhibited his

report as Exhibit 2 and his signature as Exhibit 2 (1).

The MVI opined that considering the damages of both the vehicles involvement of both the vehicles in the accident seems to be highly improbable. During cross examination he stated that he examined the vehicles on the basis of different G.D entries.

8. PW2 Manmohan Das UBC 133 stated that the occurrence took place about 2 years ago. That, he was doing his duty at Shyamthaibari and at about 3.30 pm an auto rickshaw driver informed him that an accident had taken place at Lauripara between a Sumo and Bolero. That, on getting this information, he informed the Out Post and took an injured man to Lower Assam Hospital in the vehicle provided by the Out Post. He further stated that two persons were injured but he took the more severely injured to the hospital. He also stated that he does not remember if police recorded his statement or not.

9. During cross examination PW2 stated that Lauripara is about a kilometre and a half away from Shyamthaibari where he was doing his traffic duty.

10. PW3 Swgwmsar Basumatary is the victim and the driver of the Tata Sumo. According to him the occurrence took place on 8/1/2012 at about 7 pm. He stated that he was coming from

Kokrajhar to Kajalgaon in the Tata Sumo owned by his uncle Ansula Basumatary. That, he was driving the vehicle alone. That, at the time of occurrence the National Highway consisted of only one lane and that a truck collided with his Sumo from the opposite direction and that the Sumo turned twice and capsized. He also stated that the Bolero was coming behind him and lost control because of the accident and knocked his Sumo from behind. He stated to have lost his consciousness and regained his consciousness at Lower Assam Hospital on the next day at 4 am.

11. During cross examination PW3 stated that the accident did not take place because of the driver of the Bolero. He also stated that his uncle did not consult him before lodging the ejahar. To a question put to him by the learned defence counsel he answered that it may be possible that since the truck could not be apprehended and since insurance amount cannot be claimed without providing number of a vehicle therefore the Bolero was wrongly implicated in this case.

12. PW4 Holong Basumatary and PW5 Promod Basumatary both stated that they do not know the accused and the informant. That, about 2 years ago one night they heard a sound at the National Highway and came out to the road and found a vehicle lying there. But they

expressed their ignorance as to how the accident took place.

13. PW6 Mahendra Nath is the investigating Officer. He stated that on 8/1/2012 at about 7.10 pm one Lohit Chandra Basumatary of Shyamthaibari informed him over phone that to the west of the Tiniali at Shyamthaibari an accident took place between a Tata Sumo and a Bolero at National Highway No. 31. The information was entered into the General Diary vide entry No. 160 dated 8/1/2012 and he along with in charge M.R. Medhi and ASI Subodh Das went to the place of occurrence and found a Sumo AS-16-9151 and a Bolero AS-26-4191 at the place of occurrence lying on the Highway. He stated that they found an injured person under the Sumo and took him to Lower Assam Hospital. He stated to have recorded the statements of Holong Basumatary and Promod Basumatary on that day and he drew the sketch map. Seized the documents of the vehicles on the next day from the owners. After receiving the ejahar, he collected the reports from MVI and the medical reports and submitted the charge sheet which he exhibited as Exhibit 3 and his signature as Exhibit 3 (1).
14. A careful perusal of the evidence on record shows that except PW3 who is the driver of the ill fated Tata Sumo there is no material witness to the accident. PW3 is the most

important witness and according to him the accident had nothing to do with the Bolero which lost control because of the accident that took place between the Sumo and the unknown truck. There is no incriminating evidence against the accused who is the driver of the Bolero. Hence he is acquitted from the offences charged with and set at liberty.

15. The decision that follows from the discussions made above is that prosecution failed to establish the guilt of the accused person beyond all reasonable doubt.

Order

The accused Hakimuddin Ali is hereby acquitted of the offences charged with. Bail Bond is extended to a period of six months. Given under the hand and seal of this Court on this the 9th day of January, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

Appendix:

List of Witnesses:

1. PW1: Khirod Kumar Das, MVI
2. PW2: Manmohan Das
3. PW3: Swgwmsar Basumatary
4. PW4: Holong Basumatary
5. PW5: Promod Basumatary

6. PW6 Mahendra Nath

List of Exhibits:

1. Exhibit 1,2: Report of MVI
2. Exhibit 1(1, 2(1)): Signature of PW1 i.e.
MVI
3. Exhibit 3: Charge Sheet
4. Exhibit 3(1) : Signature of PW6

