

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::: BONGAIGAON.**

**GR CASE No. 223/2011.**

**U/Ss. 279/337/427 IPC.**

**State of Assam**

**-Vs-**

**Sri Tapash Roy.**

***Present: Sri A.U. Ahmed, AJS  
Chief Judicial Magistrate,  
Bongaigaon.***

**Name of the informant:**

*Mr. Zakir Hussain,  
Son of Md. Ansar Ali,  
Vill-Dharmasala Part-IV,  
PS -Dharmasala, Dist. Dhubri(Assam).*

**Advocates appeared:**

For the Prosecution: ***Mr. T. Bhowmick, Assistant PP.***  
For the Defence: ***Mr. Ajay Kanti Roy.***

Argument heard on: ***28.05.2013.***

Judgment pronounced and delivered on: ***06.06.2013.***

**J U D G M E N T**

1. The prosecution case in brief is that on 15.04.2011 at 1:20 PM while the informant was going to Kosaipatti, North Bongaigaon with his motor cycle bearing registration No. AS-19/D-6527, at Paglasthan Police Point an Ambulance Van popularly known as “108” bearing Registration No. AS-01BC/5739 coming from opposite direction driven at high

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speed in negligence manner knocked his motor cycle towards Mayapuri as a result, he fell down from the motor cycle and sustained injuries on legs, hands and different parts of body. His motor-cycle also sustained damages. On the same day, the informant to that effect lodged a written ejahar with the Bongaigaon PS. On receipt of the written ejahar, Bongaigaon PS registered a criminal case under sections 279/338/427 IPC and started investigation. On completion of investigation, the charge sheet was submitted under sections 279/337/427 IPC against the accused person. Hence the prosecution case has come up.

2. On completion of appearance of the accused person, copy was supplied to him. The particulars of the offence U/Ss.279/337/427 IPC is duly explained to the accused person to which he pleaded not guilty and claimed to be tried.
3. During trial, prosecution has examined as many as 9(nine) prosecution witnesses. Accused person has been

examined U/S.313 CrPC. Defence has examined none. The plea of defence is of total denial.

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4. : **POINT FOR DETERMINATION** :
- (a) *Whether the accused person has committed the offence U/Ss.279/337/427 IPC?*
5. : **DECISION AND REASONS THEREOF** :

I have very carefully gone through the marathon argument duly advanced by the Ld. Lawyers of the both sides. Now, let us see the evidence on record.

6. PW1 is Md. Zakir Hussain who is the informant-cum-injured person of this case. He has stated in his testimony that on 15.04.2011 at 1:20 PM the occurrence took place. At the time of occurrence while he was going towards North Bongaigaon with his motor-cycle, near Paglasthan Police Point an Ambulance popularly known as 108 Van coming in the right side knocked down his motor-cycle and fled away as a result he fell down and his collar bone was broken and thereafter police on traffic duty took him to traffic office and there from he went to the office of 108 Ambulance Van and demanded

compensation for the damages he suffered. Then, said office informed him that in this regard the office could not do anything. Thereafter, at 10:00 PM he lodged ejahar. Ext1 is the

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ejahar and Ext1(1) is his signature. On the following day police got him medically examined. His front side of motor-cycle was broken.

7. PW2 Sri Shyam Kumar Sarkar who has stated in his testimony that the occurrence took place about one year back at noon while he was going traffic duty at Paglasthan. At that time, while an Ambulance Van popularly known as 108 was going towards Mayapuri in wrong side, knocked down a motor-cycle coming from opposite direction. After knocking down the motor-cycle the said Ambulance Van fled away. Thereafter, a police constable doing duty with him took the motor-cycle to Swagat Hospital.

8. PW3 is Prasanta Barman who has stated in his testimony that the occurrence took place about 1:30/2:00 PM while he was traffic duty at by-lane. At that time seeing the people going towards PO running he came to the PO and found

the injured person lying on the road in injured condition. He had not seen the occurrence. He heard that the injured person was knocked down by a vehicle. Thereafter he and others took the injured person to the hospital.

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9. PW4 is Dulal Ch. Barman who has stated in his testimony that the occurrence took place about three months back at 2/3 PM. At the time of occurrence he was doing duty about 100 meters away from the PO. Seeing the people going towards the PO in running he also came to the PO and found one Ambulance popularly known as 108 standing and one injured person getting into there.

10. PW5 is Dr. Russo Daimary who is the Medical Officer. He has stated in his testimony that on examination of one Zakir Hussain on 16/04/2011 at 12:10 PM found the following injuries (1) Tenderness on both knees, right wrist and left shoulder, (2) Lacerated wound on right knee. In his opinion the said injuries were simple in nature and caused by

blunt object. Ext2 is the injury report and Ext2(1) is his signature.

11. PW6 is the MVI who has stated in his testimony that on examination of vehicle (108 Ambulance) bearing registration No. AS-01/BC-5739 on 20.04.2011 found the said

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vehicle in workable condition without any damage therein. Ext3 is the said report and Ext3(1) is his signature. On examination of Motor-cycle having Registration No. AS-19/D-6527 on 19.04.2011 on police requisition in the premises of Bongaigaon Police Station and found damages on the following parts of the said vehicle- (1) Front mudguard, (2) Headlight, (3) Front wheel, (4) Front shock absorber, (5) Handle broken, (6) Fuel tank affected, (7) Left hand side foot rest damaged and (8) Rear wheel & chassis frame damaged. Ext4 is the said report and Ext4(1) is his signature.

12. PW7 is Jahidul Rahman who has stated in his testimony that the occurrence took place about 2/3 years back and he had not seen the occurrence. He came with the

informant to police station and he saw the motor-cycle of the informant in broken condition.

13. PW8 is Sri Sarabjit Singh who has stated in his testimony that the occurrence took place about 8/9 months back while he was in his shop. After the occurrence the informant coming to his shop informed him that the police

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retained his motor-cycle. Thereafter, he along with the informant came to the traffic point at Paglasthan. At that time the police seized the said motor-cycle in his presence. Ext5 is the said seizure list and Ext5(1) is his signature.

14. PW9 is Sri Domahu Ray who is the Investigation Officer of this case. He has stated in his testimony that on 15.04.2011 while he was attached to Bongaigaon PS, on receipt of report of occurrence making GD Entry he was asked to investigate the matter. He immediately came to the PO and drew the sketch map of the PO and recorded statements of the witnesses found there available. He seized one motor cycle finding lying thereon in presence of witnesses. The injured

person was sent to Swagat Hospital for examination and treatment. There after he went out in search of offending ambulance popularly known as “108”. At the time of occurrence, the offending Ambulance was on duty. On 20.04.2011 the accused person surrendered in Police station with the offending ambulance. There after he seized the said ambulance from the accused person in presence of witnesses vide Ext6. Ext6(1) is the signature of the accused person and

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Ext6(2) is his signature. He got examined the offending ambulance and the motor cycle of the informant being knocked down. On completion of investigation, the charge sheet was submitted under sections 279/337/427 IPC against the accused person. Ext7 is the charge sheet and Ext7(1) is SI Sri Jitesh Barman.

- 15.** Only evidence of PW2 shows that he saw the offending going towards to Mayapuri from Auto Centre in wrong side by the road at the time occurrence and knocking the motor cycle coming from opposite direction. His evidence is silent that at the relevant point of time, the offending

ambulance was driven in rash and negligent manner and at high speed. The evidence of the informant-cum-injured person is totally silent that at the time of occurrence the offending ambulance was driven in wrong side of the road. There is no whisper in his evidence that the offending ambulance was driven in rash and negligent manner. It is immense necessary to prove a case under section 279 IPC first for fastening any person under sections 337/427 IPC. There is doubt that at the time of occurrence, the offending vehicle was driven in rash

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and negligent manner. It is evident that the informant got compensation for damages caused to his motor cycle. It is also found that the injuries sustained by the informant are superficial.

### **O R D E R**

16. *In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubts. Hence on benefit of doubt the accused person is hereby acquitted from the charges brought against him and let him be set at liberty forthwith. The bail bond stands cancelled. Accordingly, this case is disposed of contest.*

17. The Judgment is pronounced and delivered in the open court on this 6<sup>th</sup> June, 2013 under my hand and seal of this Court.

*(Sri A.U. Ahmed)*  
**Chief Judicial Magistrate,  
BONGAIGAON.**

*Dictated and corrected by me.....*

**(Sri A. U. Ahmed)**  
**Chief Judicial Magistrate,  
BONGAIGAON.**

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**: A P P E N D I X :**

The prosecution examined:

1. PW1- Md. Zakir Hussain.
2. PW2- Sri Shyam Kr. Sarkar.
3. PW3- Sri Prasanta Barman.
4. PW4- Sri Dulal Ch. Barman.
5. PW5- Dr. Russo Daimary (MO).
6. PW6- Sri Biren Ch. Deuri.
7. PW7- Md. Jahidul Islam.
8. PW8- Sri Sarabjit Singh.
9. PW9- Sri Domahu Ray (IO).

The prosecution exhibited:

1. Ext1- Ejahar.
2. Ext2- Medical Report.
3. Ext3- MVI report.
4. Ext4- MVI report.
5. Ext5- Seizure List.
6. Ext6- Seizure List.
7. Ext7- Charge-Sheet.

The Defence examined & exhibited: - Nil.

**Magistrate**

(A. U. Ahmed)  
**Chief Judicial**

**BONGAIGAON.**

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