

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 539/2011

STATE VERSUS KOHINOOR BANIKYA

U/Ss 279/338/427 IPC

FOR THE PROSECUTION: MR. S.K.NATH, ASST. P.P

FOR THE DEFENE: Mr. D.J.MUKHERJEE, ADVOCATE

**EVIDENCE RECORDED ON: 10/5/12, 1/9/12, 11/9/12, 9/10/12, 31/10/12,
27/11/12, 10/12/12**

ARGUMENTS HEARD ON: 12/4/2013

JUDGMENT DELIVERED ON: 12/4/2013

JUDGMENT

1. On 19/8/2011 at about 9am Smt. Parbati Basumatary lodged a written ejahar at Bongaigaon P.S alleging that on 22/4/2011 at about 2.15 pm when her husband was coming from P.W.D Office in a scooty bearing registration number AS-19-D-2845, a speeding vehicle (Auto) bearing registration number AS-19-C-3065 coming from the opposite direction knocked down her husband and fled from the place of occurrence. It was further stated in the ejahar that her husband received grievous injuries and was admitted to Lower Assam Hospital but was taken to Popular Nursing Home Patna for better treatment on 28/4/2011. The ejahar was treated as FIR and Bongaigaon P.S Case No. 406/11 u/s 279/338/427 IPC was registered. After completion of investigation police submitted Charge Sheet u/s 279/337/427 IPC against Sri. Kohinoor Banikya.

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 as many as eight witnesses. Defence did not adduce any evidence. The accused was examined u/s 313 Cr.P.C. defence plea was of total denial.
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 22/4/11 at about 2.15 pm drove a vehicle bearing Registration numbers AS-19-C-3065 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 husband 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 amount of fifty rupees or upwards and thereby committed an offence punishable under section 427 IPC?
7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:
8. It is to be noted that PW1 is only the informant and is not an eye witness. She was not present at the place of occurrence and is therefore not a material witness. She lodged the ejahar which was treated as F.I.R and criminal law was set into motion on the basis of her ejahar which she identified as Exhibit 1 and her signature

as Exhibit 1(1). Further PW3, PW5 and PW6 are merely witnesses to the seizure of the vehicles and documents thereof and are not material witnesses of the accident that took place almost four (4) months prior to the seizures being made. Therefore the only material witnesses are PW2 (the victim Rabiram Basumatary), PW4 (Bishnu Basumatary), PW7 (M.V.I) and PW8 (I.O).

9. PW7(M.V.I) examined the two vehicles involved in the accident and found the following damages in the vehicle number AS- 19-C-3065 (Auto) :

- ◆ Right front side slightly damaged.

The damages that were found on the vehicle number AS-19-D-2845 are:

- ◆ Front mudguard damaged
- ◆ Side looking glass damaged
- ◆ Side body damaged

According to the M.V.I both the vehicles were in road worthy condition and had no mechanical defects.

10. The M.V.I was contradicted by the learned defence counsel regarding his findings and the manner of examination of the vehicles and brought to light the fact that the date and time of the accident is not mentioned in the report of the M.V.I.
11. PW1 who is the victim stated that at about 2.30 pm on the date of occurrence when he reached near Railway Institute an auto collided with his scooty from the opposite direction and he became senseless. During his cross examination PW1 stated that he did not notice the number of the auto that knocked him down. PW3 (Biraj Basumatary) stated that his brother (i.e. PW1) told him that the auto lost control as the road was damaged.
12. PW4 stated that he was coming to Bongaigaon from Serfanguri on the date of occurrence when he saw that an auto knocked down the scooty which Rabiram Brahma was riding from the opposite direction. PW4 stated that he did not stop at the place of occurrence, rather he went to the victim's house to inform about the accident and came back again with the victim's family members and took him to Lower Assam Hospital. During cross examination PW4 stated that he did not note the number of the offending vehicle.
13. From what has been stated by the PW4 it appears that it is highly improbable that a person would desert an injured man in the middle of the road and instead of informing police or getting medical help go to his house to inform his family members. Again PW1 stated that someone informed her over phone about the accident. Therefore the statement of PW4 seems to be a concocted

one. Defence contradicted the PW4 regarding his statement made to police that he took the victim to the hospital immediately after the accident. That the PW4 is not a trust worthy witness can be gathered from the fact that the investigating Officer stated in his evidence that the witnesses named in the charge sheet were not eye witness but witnesses in general. Hence I am not inclined to believe the PW4.

14. 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.
15. A careful appreciation of the evidences on record shows that the prosecution could not discharge the burden of proof by showing with just and cogent evidence that it was the accused who was riding the vehicle and he was riding it in a rash and negligent manner as contemplated by section 279 I.P.C. out of the eight witnesses relied on by the prosecution the material witnesses were PW2 (the victim) and PW4 (Bishnu Basumatary). But as discussed above the evidence of PW4 is discarded as he is not a reliable witness. The only material witness therefore is PW1 and he could not state anything regarding the description of driver of the offending vehicle. Since prosecution could not establish the ingredients of section 279 IPC therefore the question of proving the other two offences viz. Section 338 and section 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 Kohinoor Banikya is hereby acquitted of the offences charged with and set at liberty forthwith. Bail Bonds are extended to a period of six months. Given under the hand and seal of this Court on this the 12 th day of April 2013.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

Appendix:

List of Witnesses:

1. PW1: Smt. Parbati Basumatary
2. PW2: Rabiram Basumatary

3. PW3: Biraj Basumatary
4. PW4: Bishnu Basumatary
5. PW5: Ganesh Kalita
6. PW6: Uday Mukherjee
7. PW7: B.C. Deuri
8. PW8: Jitesh Barman, I/O

List of exhibits:

1. Exhibit 1: ejahar
2. Exhibit 1(1): signature of PW1
3. Exhibit 2: Seizure List
4. Exhibit 2(1): Signature of PW3
5. Exhibit 2(2) & 2(3): Signature of IO
6. Exhibit 3: Seizure List
7. Exhibit 3(1): Signature of PW5
8. Exhibit 3(2): Signature of PW6
9. Exhibit 4&5: Reports of M.V.I
10. Exhibit 4(1)& 5(1): Signature of M.V.1
11. Exhibit 6: Charge Sheet
12. Exhibit 6(1): Signature of IO