

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

**PRESENT: SYEDA FARIDA AFZAL ZINNAT**

**G.R CASE NO: 827/2011**

**STATE VERSUS JOBED ALI**

***U/Ss 279/338 IPC***

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

**FOR THE DEFENSE: MR. A.K.DEKA, ADVOCATE**

**EVIDENCE RECORDED ON: 8/10/2012, 9/4/2013, 24/4/2013**

**ARGUMENTS HEARD ON: 24/4/2013**

**JUDGMENT DELIVERED ON: 24/4/2013**

### **JUDGMENT**

1. On 12/12/2011 informant Abu Samad lodged a written ejahar with Dhaligaon P.S. to the effect that on 4/12/2011 at about 8.30 am when his nephew Jatib Ali was going towards Kajalgaon the driver of an auto bearing registration number AS 26-C-0233 driving his auto in high speed and in a very rash and negligent manner knocked his nephew from behind near Upendra Nath Brahma College as a result of which his nephew sustained injuries and was immediately admitted to Lower Assam Hospital for treatment. Upon receiving the FIR it was received and registered as Dhaligaon P.S Case No. 158/11 under section 279/338 IPC.

After investigation police submitted charge sheet under section 279/338 IPC against accused Jobed Ali driver of auto rickshaw bearing registration number AS 26-C-0233.

2. Cognizance was taken under section 279/338 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 under sections 279/338 IPC having been found to be well established against the accused persons, my learned predecessor explained the particulars of the offences under sections 279/338 IPC to the accused person to which he pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of as many as five witnesses. They are:
  - 1) PW1: Md. Abu Samad
  - 2) PW2: Sabura Khatun @ Sabiran Nessa
  - 3) PW3: Jainal Abdin
  - 4) PW4: Hafiz Ali
  - 5) PW5: Mazam Ali
  - 6) PW6: Sri Khirod Kumar Das, M.V.I
6. Following are the list of exhibits exhibited during the trial:
  1. Exhibit 1: FIR
  2. Exhibit 1(1) : Signature of the informant
  3. Exhibit 2: Seizure List
  4. Exhibit 2(1): Signature of PW4
  5. Exhibit 3: M.V.I Report
  6. Exhibit 3(1) : Signature of M.V.I
7. The accused was examined under section 313 Cr. P.C. He pleaded not guilty.
8. 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 4/12/2011 at about 8.30 am drove a vehicle bearing Registration numbers AS-26-C-0233 on

the public way 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 victim Jotib Ali by driving his 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?

9. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

10. PW1 is the informant and according to him he was at his home when the accident took place. PW1 stated to have rushed to the place of occurrence on hearing about the accident where he found his nephew lying on the road in an injured condition and he took him to Lower Assam Hospital for treatment. PW1 did not see the offending vehicle or the accident. He reached the place of occurrence after the accident already took place.
11. PW2 stated that she saw a speeding auto knocked the victim when he was walking on the road but she did not see the driver as the auto did not stop.
12. PW3 also stated that he cannot identify the accused. This witness also reached the place of occurrence after the accident already took place.
13. PW4 is merely witness to the seizure of the vehicle and he is not a material witness.
14. PW is the M.V.I who examined the vehicle on 20/12/11 i.e. 1 days after the alleged accident took place and found no accidental damage in the vehicle. PW6 opined that the vehicle was mechanically roadworthy.
15. From the above discussion it is evident that there is not a single witness who saw the accused driving the vehicle in a rash and negligent manner. None of the witnesses could identify the accused as driver of the offending vehicle, which caused the accident. Rash and negligent driving on the part of the accused facing trial has not been established by the prosecution. In fact prosecution could not even establish the fact that the accused

person was the driver of the auto involved in the accident. In 2011 (3) Gauhati Law Journal 146 ( Anjala Deb Barma versus State of Tripura) it was held by the Hon'ble Gauhati High Court that to constitute an offence under section 279 IPC, the prosecution has to establish that accused was driving offending vehicle in rash and negligent manner at relevant time of accident. Since prosecution could not establish that the accused was the driver of the offending vehicle through just, cogent and corroborating evidence, hence in my considered opinion the accused should be acquitted.

### **Order**

The accused Jobed Ali is hereby acquitted of the offences charged with and set at liberty forthwith. Bail Bonds are extended to a period of six months

Syeda Farida Afzal Zinnat, AJS

J.M (1<sup>st</sup> CLASS) BONGAIGAON

