

**IN THE COURT OF SUB-DIVISIONAL MAGISTRATE (S),  
BONGAIGAON**

**PRESENT: S. HANDIQUE, AJS**

**G.R. 695/08  
{u/s 279/338 IPC}**

**State  
Vs.  
Tarun Sarkar**

For prosecution: Mr. S. Nath

For defence: Mr. S. K. Brahma Choudhury

Evidence recorded on 8-10-14, 20-10-14

Accused examined u/s 313 Cr. P.C. on 20-10-14

Arguments heard on 20-10-14

Judgment delivered on 21-10-14

**JUDGMENT**

1. This G.R Case no. 695/08 got initiated on the basis of a complaint lodged by one Maya Chakravarty before the Id. CJM, Bongaigaon on 20-11-08. The informant stated that on 18-9-08 her son Sri Parmeswar Chakravarty got injured when an auto hit him near a hotel while he was returning home. She alleged that the auto driver was driving the auto bearing regd. No. AS-19c/0584 in high speed and lost control and

- hit her son causing serious injury on his head and other parts of the body and his one leg got broken. The said complaint was forwarded to the Bongaigaon P.S and it was registered as Bongaigaon P.S. Case no. 492/08 u/s 279/338 IPC. After investigation the charge sheet was filed against accused Tarun Sarkar, the driver of the autorikshaw.
2. After filing of the charge sheet, the case was transferred to this court by the learned CJM, Bongaigaon. The accused was then summoned and on his appearance, he was released on bail and in due course of trial he was furnished with necessary copies as per provisions of section 207 Cr. PC. The particulars of offence u/s 279/338 IPC were explained to the accused to which he pleaded not guilty and claimed trial.
  3. The prosecution examined four witnesses including the complainant and the victim. The accused was examined u/s 313 Cr. PC wherein he denied all the incriminating questions put to him. He stated that he was in fact driving the auto but he denied that he was involved in the accident. He explained that the victim was in his auto and as soon as he descended from the auto, a truck coming from the opposite direction hit the victim. He stated that he took the victim to the hospital. Heard arguments from both the sides.
  4. For convenience of discussion, I frame the following points for determination in this case:

**POINTS FOR DETERMINATION:**

1. *Whether accused Tarun Sarkar on 18-9-0 at Bogaigaon was driving the auto bearing regd. No. AS-19 C 0584 in a rash and negligent manner at the relevant time of the accident and committed an offence punishable u/s 279 IPC?*
2. *Whether Tarun Sarkar on 18-9-0 at Bogaigaon was driving the auto bearing regd. No. AS-19 C 0584 in a rash and negligent manner at the relevant time of the accident causing grievous injury to the son of the complainant and thereby committed an offence punishable u/s 338 IPC?*

***DISCUSSIONS, DECISIONS AND REASONS THEREOF:***

***DECISION ON POINT NO. 1 & 2:***

5. The allegation against the accused is that he drove his auto in a rash and negligent manner causing serious injury to the victim. As such both the points are taken up together. The alleged injury is not disputed. Let me examine the testimony of witnesses adduced by prosecution as to whether there was any rashness and negligence on the part of the accused or whether he was involved in the accident or not.
6. ***PW1 Maya Chakravarty is the complainant.*** She deposed that that her son Parmeswar Chakravarty was travelling in an auto and the accident occurred in front of the King Hotel. She is a reported witness. According to her, she met the victim (her son) in the hospital. She stated that the leg of her son got broken in the accident. She further stated that the owner was supposed to pay the cost of the treatment but he did not pay. She admitted that the case was lodged after two months of the accident. She testified during cross examination that the manner of the accident as described in the FIR is not true. Be it noted that the complainant had written in her complaint/ FIR that the auto had lost control and hit her son. She further testified that the owner of the auto bore the medical expenses of her son. She could not say if her son was inside the auto or standing on the road at the time of the accident. She could not say if her son was discharged from hospital on that day itself or whether he was not provided with any treatment. Thus it seems her testimony during trial seems is of little relevance.
7. ***PW2 Parmeswar Chakravarty*** is the victim. He deposed that he was coming in an auto which hit a stationary truck in front of the King Hotel. He stated that his leg was broken and he fell unconscious. According to him, the auto driver was at fault. He testified during cross examination that the auto driver took him to the hospital and also collected Rs 800/- for his treatment. He denied the suggestion that he was hit by a truck while he descended from the auto. He however testified that the auto was not damaged

8. **PW3 Kailash Das** deposed that the accident took place on the date of immersion of the Viswakarma idols. He is a reported witness as he heard about the accident from others. According to him, he accompanied the owner of the auto to the police station. He is a seizure witness. He exhibited the seizure list ( Ext.1). He testified that he has no personal knowledge of the accident.
9. **PW4 Sujit Ch. Dey** is the owner of the auto. He testified that the victim was coming in his auto which was being driven by the accused. He heard that another vehicle had hit the victim after he descended from the auto. He testified that the police had seized his documents relating to the vehicle. He is also a reported witness as well as a seizure witness and does not have any first hand information about the accident.
10. **Section. 279 IPC** provides that *whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

**Section 338 IPC provides:.**

**Causing grievous hurt by act endangering life or personal safety of others —**

*Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.*

11. **Criminal jurisprudence** defines **Criminal rashness** as a hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. **Criminal negligence** on the other hand is the gross and culpable neglect or failure to exercise that proper and reasonable care and precaution to guard against injury either to the

public generally or to an individual particular. It is the cardinal principle of criminal jurisprudence that the commission of an offence has to be proved beyond doubt in order to bring home the charge against an accused.

12. In the present case, apart from the victim, all other PWs are reported witnesses. Though the victim stated that the auto had hit a stationary truck but there is no proof of it. There is nothing on record certifying any damage to the auto. If an auto collides with a stationary truck there is bound to be some damage on the body of the auto. In fact the victim testified that the auto was not damaged at all. The case has been filed after two months of the incident and no satisfactory explanation has been given for the delay in lodging the FIR. Moreover, there are contradictions between the contents of the FIR and the depositions of the victim and his mother/ complainant. The FIR describes that the victim was hit by the auto. But the victim stated that the auto hit a stationary truck. In view of the above inconsistencies in the prosecution case and testimony of the witnesses I hold that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt.

Point no. 1 and 2 are decided in the negative.

### **ORDER**

13. Judgment is delivered in the open court. Accused is held not guilty u/s 279/ 338 IPC and he is acquitted. He is set at liberty forthwith. Bail bond stands discharged. Case is disposed of. Given under my hand and seal of the court on 21-10-14.