

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam.

G.R. 1681/2014
U/s 279/338/427 IPC

State of Assam

-Vs-

Sri Pranab Gogoi
S/O: Sri Deb Gogoi
R/O: No. 1 Rampur
P/S: Bihpuria
District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 22.03.2016
Dates of recording evidence of PWs : 01.10.2016, 06.12.2016,
22.06.2017, 01.08.2017,
03.04.2018, 25.03.2019
Date of recording evidence of CWs : 26.06.2018, 06.02.2019
Date of recording of statement u/s 313, Cr.P.C: 16.05.2019
Date of argument : 24.05.2019
Date of judgment : **07.06.2019**

Advocates appeared in the case:-

Sri Prasanta Dutta, Addl. P.P., for the State
Sri Babul Gogoi, Advocate, for the accused person

J U D G M E N T

1. Prosecution case has arisen out of an ejahar lodged on 29.08.2014 by Sri Sukamal Borgohain with the In-charge of Simaluguri Police Outpost under Bihpuria Police Station wherein it has alleged that at about 2:00 PM on 28.08.2014 while his son Sri Bogai Borgohain (aged 40 years) and one Sri Gunes Gogoi, resident of village No. 4

Nimuri Gaon were returning to their house from market by riding motorcycle, the driver of the vehicle bearing registration no. AS-07-D-2243 by driving the said vehicle in a rash and negligent manner and in high speed knocked down the motorcycle at the Tinali of their village road and fled away. As a result of the accident, both the motorcyclist sustained grievous injuries and their motorcycle was also got completely damaged. Meanwhile, after sometime, the owner of the offending vehicle, namely, Sri Chakra Deuri, appeared at the place of occurrence and threatened the informant not to seek help from the law. Hence, the case. Hence, the case.

2. After receiving the FIR, the In-charge of Simaluguri Police Outpost effected a G.D. Entry vide Simaluguri O.P. G.D Entry no. 468 dated 29.08.2014 and forwarded the ejahar to the Officer-in-Charge of Bihpuria Police Station to register a case under proper section of law. The Officer-in-charge of Bihpuria Police Station, on receipt of the ejahar, registered a case vide Bihpuria Police Station Case no. 282/2014, under section 279/338/427/506 of the Indian Penal Code. The investigation in this case was carried out, and after the completion of investigation, the investigating officer submitted charge-sheet under section 279/338/427 of the Indian Penal Code against accused person Sri Pranab Gogoi to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 279/338/427 of the Indian Penal Code was taken as per section 190(1)(b) Code of Criminal Procedure. After the appearance of the accused person before the Court, copies were furnished to him as per section 207 Code of Criminal Procedure. The particulars of the offence under section 279/338/427 of the Indian Penal Code were explained to the accused person to which he pleaded not guilty and claimed to face the trial.

Points for determination:

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused person, at about 2:00 PM, on 28.08.2014, at Jutalibari Tiniali, under Bihpuria Police Station, drove a vehicle bearing registration no. AS-07-D-2243 on the public road 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, and thereby committed an offence punishable under section 279 of the Indian Penal Code ?

(b) Whether the accused person, at about 2:00 PM, on 28.08.2014, at Jutalibari Tiniali, under Bihpuria Police Station, caused grievous hurt to Sri Guneswar Gogoi and Sri Bogai Borgohain who were the rider and pillion rider respectively of motorcycle bearing registration no. AS-22-2538, by doing an act i.e. by driving a vehicle bearing registration no. AS-07-D-2243 on the public road, in a manner so rash or negligent as to endanger human life, and thereby committed an offence punishable under section 338 of the Indian Penal Code ?

(c) Whether the accused person, at about 2:00 PM, on 28.08.2014, at Jutalibari Tiniali, under Bihpuria Police Station, committed mischief by causing wrongful loss by completely damaging the motorcycle bearing registration no. AS-22-2538, and thereby committed an offence punishable under section 427 of the Indian Penal Code ?

5. During the trial the Prosecution side could altogether examine 9 (nine) PWs and 2 (two) CWs, namely, Sri Sukamal Borgohain (PW-1), Sri Raju Gogoi (PW-2), Sri Bipul Duwarah (PW-3), Sri Uma Gogoi (PW-4), Sri Rigen Deuri (PW-5), Sri Chakradhar Deuri (PW-6), Dr. Bharati Gogoi (PW-7), Sri Probin Mili (PW-8), ASI Phul Kr. Barman (PW-9), Sri Guneswar Gogoi (CW-1), Sri Dilip @ Bogai Borgohain (CW-2) and exhibited 8 (eight) documents (Shown in the Annexure appended below). The defence side has cross-examined prosecution witnesses. On closure of the prosecution witnesses all the incriminating materials surfaced thereon against the accused person were put to his explanation under section 313 Code of Criminal Procedure. The defence plea was in complete denial. I have heard the Argument of both sides and thereupon come to the following finding:

Discussion, decision and reasons thereof:

6. Since for adjudication of all the three points requires appreciation of common facts as such for the sake of convenience all these three points are taken together for discussion. Let me, first of all, re-produce herein below the gist of the testimonies of the witnesses examined by the prosecution in this case.

7. PW-7 Dr. Bharati Gogoi stated that on 28.08.2014, she was working as Sr. Medical and Health Officer in North Lakhimpur Civil Hospital. On that day, at 4:50 PM, she had examined in Casualty Department one Guneswar Gogoi with a history of Road Traffic Accident. On examination, she found suspected head injury, bleeding from nose, swelling of left knee, lacerated bleeding injury of tongue of size 1" x ½" x ½". The patient was admitted in Male Surgical Unit and the case was referred to MO Surgery. Final report was to be given by Surgeon on call. She exhibited Ext-1 injury certificate issued by her on 04.12.2014 and Ext-1(1) is her signature. She has further stated that on the same day, at 4:30 PM, she had also examined in Casualty Department one Dilip Borgoahin with a history of Road Traffic Accident (bike and truck). On examination, she found fracture of both leg bone (left) and referred to Surgeon and as such final report was to be collected from Surgery Department. She exhibited Ext-2 as injury certificate issued by her on 15.12.2014 and Ext-2(1) is her signature. In her cross-examination, she has stated that no police personnel had escorted the patients and there was no mention of the time and place of road traffic accident.

8. PW-8 Dr. Probin Mili stated that on 28.08.2014, he was performing duty as Surgeon on call working in the North Lakhimpur Civil Hospital and on that day, in the evening time, he examined a patient named Guneswar Gogoi, with history of road traffic accident, on being referred by Dr. Bharati Gogoi. The patient had sustained suspected head injury, bleeding from nose, swelling of left knee, lacerated injury of tongue, size 1" x ½" x ½", bleeding from tongue

injury. He advised one X-ray left leg AP and lateral view. The X-ray plate number was 283/14 done on 02.09.2014. The finding of the X-ray was fracture upper middle shaft of left tibia. The X-ray was done at North Lakhimpur Civil Hospital. In his opinion, the nature of the left knee injury was grievous, caused by blunt object and the age of injury was fresh. Later, the patient was referred to Orthopaedic Surgeon. He exhibited Ext-1(2) his report and finding and Ext-1(3) is his signature with office seal. He has further stated that on the same day, a patient named Dilip Borgohain, with history of Road Traffic Accident was examined by him on being referred by Dr. Bharati Gogoi. The patient had painful swelling with deformity left leg. For this injury he advised X-ray left leg AP and Lateral view which was done on 29.08.2014. X-ray report number was 32984/2014. The X-ray showed fracture both bone of left leg. In his opinion, the nature of injury was grievous, caused by blunt object, the age of the injury was fresh. The patient was also referred to Medical College for needful. He exhibited Ext-2(2) as his report and finding and Ext-2(3) is his signature. In his cross-examination, he has stated that both the above patients were not escorted by any police personnel. In Ext-1 as well as Ext-2 the time and place of road traffic accident is not mentioned. As per Ext-1, I had advised X-Ray on 28.08.2014, but the X-Ray was done on 02.09.2014.

9. The above medical reports reflect that victim Guneswar Gogoi and Dilip Borgohain had injuries on their person on 28.8.2014 at 4.50 PM and 4.30 PM. Guneswar Gogoi had injuries in head, left knee, tongue and the injuries were grievous in nature and caused by blunt object. Dilip Borgohain had injuries left leg and the injuries were also grievous and caused by blunt object.

10. Now let's see the version of victim Guneswar Gogoi (CW-1) and Sri Dilip Borgohain alias Bogai (CW-2).

11. CW-1 Sri Guneswar Gogoi, victim, has deposed in evidence that at about 2:00 PM on the day of the occurrence he along with Bogai Borgohain were returning home from market by riding motorcycle and

when they reached at Jutulibari Tiniali a truck coming from Keseruguri side driven in high speed knocked down them as a result both of them along with the motorcycle fell down and legs of both of them was broken. His left leg got fractured, motorcycle was damaged and one of his tooth was also dislocated. His younger brother Chandreswar Gogoi came there and he along with villagers took both of them to Chaboti Hospital for their treatment. After undergoing treatment for three days in Chaboti Hospital he was brought to Mid Town Hospital where operation of his leg was done. The offending truck was driven by accused Pranab Gogoi and he is called as Nano in the village. There was damage of about Rs.10,000/- to Rs. 12,000/- of his motorcycle. In his cross-examination, he has stated that he was riding the motorcycle at the time of the occurrence. He admitted to have not possessed any driving license and the motorcycle was also registered in the name of some other person. On the day of the occurrence there was weekly market day at Durpang. The road by which they were coming was a straight and pitch road. After being knocked their motor-cycle was lying on the road and he along with the pillion rider were flung to a 'jeura' (bamboo fencing) by the side of the road. According to him the motorcycle was a pre-used (second hand).

12. CW-2 Sri Dilip @ Bogai Borgohain, another victim, has stated that the occurrence took place in the year 2014, at about 2:30 PM, on the road at Jutalibari Tiniali. At that time, he was returning to his house from the market by pillion riding a motorcycle rode by Gunesh Gogoi. When he reached at Jutalibari Tiniali a truck coming from the opposite direction knocked him down as a result of which he fell down from his motorcycle, got left leg fractured and became unconscious. The co-villagers brought him to North Lakhimpur Civil Hospital by a car where he regained his senses. He was proceeding from Durpang to Jutalibari and the truck was coming from the opposite direction. According to him their motorcycle was on the middle of the road and the occurrence took place at a junction of three roads. The offending truck had suddenly took turn and hit their vehicle as a result he sustained the injuries. According to him, he has not yet recovered from his injuries

and treatment is still underway. He clarified that at the time of the occurrence the accused person was driving the offending truck. Answering to the Court's question, he has stated that he has lodged a case seeking compensation and that case is still pending in Court. In his cross-examination, he has stated to have no knowledge if Gunesh Gogoi (CW-2) possessed any driving license. He could not say for whose fault the accident took place. According to him if both the driver of the motorcycle and the driver of the truck would have driven their vehicles cautiously the accident would not have taken place. However, he added that their motorcycle was at low speed.

13. PW-1 Sri Sukamal Borgohain, informant, has stated that at the time of the occurrence his son Bogai was returning home after doing shopping by pillion riding the motor-cycle rode by Chandreswar when at about 2:00 PM a truck drove by accused knocked down that motor-cycle He went to the place of occurrence on being informed by his son Jaan. She saw that his son Bogai was lying at the place of occurrence in a pool of blood and the truck was parked at the place of the occurrence. The accused driver had already fled away from there and Chandeswar was also lying there with blood in his body. He brought his son to medical and came to know that the leg of his son was fractured. He met the owner of the truck, Sri Chakra Deuri and asked for money from him for the treatment of her son, but he did not bear any expense of the medical treatment of his son and thereafter, he lodged an ejahar at the police station. He has further stated that the accused is his co-villager and related son-in-law and he usually see him driving the truck and for that reason he knows that the accused was driving the truck. In her cross-examination, he has stated that he had not witnessed the occurrence. On reaching the place of the occurrence he saw the offending truck (red coloured) parked there but he could not say its registration number. He clarified to have no knowledge as to who was driving the said vehicle as he was not present at the place of the occurrence. In his cross-examination by defence to Court question, he has stated that he could not say whether on that day the accused drove the said vehicle and caused the accident.

14. PW-2 Sri Raju Gogoi has stated that at about 2:00 PM on the day of occurrence he saw gathering of people at Jutolibari Tiniali and so he went there and saw that Bogai Borgohain @ Dilip was lying by the side of the road in injured condition and he also saw the offending truck there. Bogai Borgohain was shifted to medical accompanied by the son of the owner of the truck. He came to know from the people that the said truck met with an accident with the motorcycle by which Bogai Borgohain and his 'Jethari' were coming. In his cross-examination, he has stated that the injured Bogai was the pillion rider of the motorcycle which met with the accident. The place where the occurrence took place is a Tiniali (junction of three roads) with turning. A road from the village connect with the 'pucca road' i.e. main road forming a Tiniali. He saw the truck standing in between the 'katcha' and 'pucca' road which connects the village road. He saw the truck in the condition while it was on the 'pucca' road. He had not seen in what manner the boys were riding the motorcycle. He saw that the motorcycle had broken the 'jeura' of a person and entered inside the 'bari' (garden) land. He does not know if those boys by riding the motorcycle speedily lost control over it and entered into other's boundary by breaking the 'jeura'.

15. PW-3 Sri Bipul Duwarah stated that while he was in his shop hearing sound of knocking of vehicle he came outside and saw that the truck was on the road and the bike was lying in the middle of the road. He also saw Dilip Gohain lying there in injured condition along with his associate. One Raju Gogoi sent the accused i.e. the driver of the truck from there apprehending that the public might assault him. The injured was shifted to the medical. On the following day of the occurrence the police came to the place of occurrence and examined them. In his cross-examination, he has stated that he saw that the front portion of the truck was on the 'pucca' road. The said truck tried to go to the 'pucca' road from the village 'kucha road. The motorcycle dashed against the truck and struck on the 'jeura' of a 'bari' (garden) land. The occurrence took place on the day of Thursday market and both the injured persons were under the influence of intoxication. He could not exactly say how speedily the motorcycle was rode by the injured. He

also could not say if the injured boys under the influence of the intoxication lost control over the motorcycle at the turning causing the accident. He could not say for whose fault the accident had taken place.

16. PW-4 Sri Uma Gogoi has asseverated that at about 2:00 PM on the day of the occurrence while he was sitting in the courtyard of his house, he saw a truck coming from the eastern direction and turning towards the northern side (towards Durpang). While the truck was taking turn towards northern side, he saw two persons coming on a motorcycle from Durpang side and collide with the said truck. After the collision, the motorcycle along with two persons fell down towards western side. One of those two persons coming on the motorcycle suffered leg fracture and he know him as Bogain Gohain. Though he had seen the other injured person earlier, but he could not recognize him but according to him that person also suffered many injuries in the accident. The injured persons were thereafter taken to North Lakhimpur for medical treatment by their family members. The accused was driving the said truck. In his cross-examination, he has stated that when the truck was turning towards northern side, it was running slowly. The aforesaid two persons came in motorcycle very speedily and collided with the truck. While picking up both the injured persons and bringing them to the road, he got smell of liquor from them.

17. PW-5 Sri Rigen Deuri stated that the accused was the driver of their 709 (Tata Truck) vehicle bearing registration no. AS-07-B-2243. The police had seized their vehicle with documents. He had put his signature on the seizure list (Ext-1) but he does not know anything about the occurrence.

18. PW-6 Sri Chakradhar Deuri, owner of the offending truck, has stated that about 2/3 years ago, one day the police had come to his house and informed him that his 709 vehicle had done an accident. He told to the police that he does not know anything about the accident.

The police took his signature on a piece of paper. In his cross-examination, he has stated that he had not witnessed any occurrence. He does not know for whose fault the occurrence had taken place.

19. PW-9 ASI Phul Kr. Barman, Investigating Officer, has stated that during investigation he visited the P.O. and inspected the same and prepared a sketch map of the P.O., sent the injured persons to the medical, examined the witnesses found at and around the P.O., seized the truck and the motorcycle and examined both the vehicles through the MVI and collected the MVI reports and after completing the preliminary investigation he submitted the Case Diary to the I/C of Simaluguri Police Outpost. Thereafter, SI Manjit Terang submitted the charge sheet against accused Sri Pranab Gogoi u/s 279/338/427/506, IPC. He exhibited Ext-3 sketch map of the P.O., Ext-4 seizure list of motorcycle, Ext-1 seizure list of truck, Ext-5 is the ejahar, Ext-6 and Ext-7 MVI reports, Ext-8 charge sheet. In his cross-examination, he has stated that as per the G.D. Entry the registration number of the truck which met with the accident is AS-07-D-2243 and the said registration number of the truck is also mentioned in Ext-5 ejahar. But as per the seizure list Ext-1 registration number of the seized truck is AS-07-B-2243. **CW-1 Guneswar Gogoi, the rider of the motorcycle, stated before him that the brake of his motorcycle failed.** The sketch map Ext-3 prepared by him shows that the truck was coming from the opposite direction i.e. from the Jutalibari side.

APPRECIATION OF EVIDENCE

20. Thus, the evidence discussed above reveals the fact that victim Guneswar Gogoi and Bogai Borgohain alias Dilip indeed suffered injuries due to a collision between motor-cycle rode by Guneswar Gogoi and a truck drove by accused person. CW-1 victim Guneswar Gogoi himself admitted in evidence that he does not possess driving licence, whereas CW-2 Dilip alias Bogai has clarified in cross-examination that the at the place of the occurrence which is a junction of three roads, the offending truck took turn and hit the motor-cycle in which he was

pillion riding. He clarified that the accident could have been averted had both CW-1 Guneswar Gogoi and accused would drive their respective vehicles cautiously. Before, the I/O, CW-1 Guneswar Gogoi stated that the accident took place due to failure of his brake.

21. PW-4 Sri Uma Gogoi who witnessed the occurrence has averred that while the truck was taking turn towards northern side, he saw two persons coming on a motorcycle from Durpang side and collide with the said truck and he accused driving the said truck. **In his cross-examination, he has stated that when the truck was turning towards northern side, it was running slowly.** The aforesaid two persons came in motorcycle very speedily and collided with the truck. **While picking up both the injured persons and bringing them to the road, he got smell of liquor from them.** PW-3 Sri Bipul Duwarah also supported the fact narrated by PW-4, that the offending truck tried to go to the 'pucca' road from the village 'kucha road when the motorcycle dashed against the truck and struck on the 'jeura' of a 'bari' (garden) land. He has also affirmed that at the time of the occurrence both the injured persons were under the influence of intoxication.

22. Thus, it has established on admission of victim Guneswar Gogoi that he did not possess driving license at the time of the occurrence and eye-witness PW-3 Bipul Duwara and PW-4 Uma Gogoi corroborated the fact that at the time of the occurrence the victims were under influence of intoxicants. They have also stated that the truck was at low speed. Considering the above fact, it has thus established that the accused was not rash or negligent in his driving and as such, I am of the conclusive opinion that the prosecution has failed to bring home the charge under section 279/338/427 of the Indian Penal Code against him.

ORDER

23. In view of the foregoing discussion, I hereby answer all the three points for determination in negative against the prosecution and consequently I hereby acquit accused Sri Pranab Gogoi from the charge under section 279/338/427 of the Indian Penal Code and he is ordered to be set at liberty forthwith.

24. The seized vehicles and other articles be disposed of as per law in due course.

25. The bail-bond of the acquitted accused shall remain in force for a further period of six months.

26. The judgment is delivered and operative part of the same is pronounced in the open court on this 7th day of June, 2019.

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & types by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Sukamal Borgohain (PW-1)
Sri Raju Gogoi (PW-2)
Sri Bipul Duwarah (PW-3)
Sri Uma Gogoi (PW-4)
Sri Rigen Deuri (PW-5)
Sri Chakradhar Deuri (PW-6)
Dr. Bharati Gogoi (PW-7)
Sri Probin Mili (PW-8)
ASI Phul Kr. Barman (PW-9)

PROSECUTION EXHIBIT

Injury certificate (Ext-1)
Seizure list (Ext-1)
Injury certificate (Ext-2)
Sketch map (Ext-3)
Seizure list (Ext-4)
Ejahaar (Ext-5)
MVI report (Ext-6)
MVI report (Ext-7)
Charge-sheet (Ext-8)

COURT WITNESS

Sri Guneswar Gogoi (CW-1)
Sri Dilip @ Bogai Borgohain (CW-2)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur