

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR**

GR CASE NO: 1063 of 2016

Under Section 279/338/427 IPC

State

-Versus-

-

Sri Robin Doley Accused Person

**PRESENT : Sri Jayanta Kumar Saikia, AJS
 Judicial Magistrate, First Class
 Lakhimpur, North Lakhimpur.**

ADVOCATES APPEARED-

FOR THE PROSECUTION : Sri Debajit Dutta Borah.

**FOR THE ACCUSED : Sri Arup Borah
 Sri Sanjib Doley**

OFFENCE EXPLAINED ON : 18.02.2017

**EVIDENCE RECORDED ON: 13.11.2017, 14.12.2017
 19.01.2018, 16.08.2018,
 25.10.2018, 20.03.2019**

S/D RECORDED ON : 27.03.2019

ARGUMENT HEARD ON : 24.04.2019

JUDGMENT DELIVERED ON: 07.05.2019.

JUDGMENT

- 1.** The prosecution case in brief, as reveals in the F.I.R. filed by the informant Md. Tofiquil Hussain is that on 23.04.2016 at 9:30 P.M. near the Check gate of Moidumiya village under the jurisdiction of North Lakhimpur Police Station, a Grand I ten vehicle bearing Reg. No. AS07 G 3517 hit his father and ran away from the place of occurrence. Hence, he lodged this case.
- 2.** The Officer-in-charge, North Lakhimpur Police Station, on receipt of Ejahar registered North Lakhimpur P.S. Case No. 432/2016 under section 279/338 of IPC and endorsed the concerned IO for investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against the accused person, Sri Robin Doley under Section 279/338/427 of IPC.
- 3.** In due course, the accused person appeared before the Court on receipt of summon and the copies of relevant documents were furnished to him as per section 207 of Cr.P.C. Having found a prima facie case against the accused person under Section 279/338/427 of IPC, the particulars of offences under section 279/338/427 of IPC are read over and explained to the accused person vide order dated 18.02.2017 by the then Learned JMFC, Lakhimpur, North Lakhimpur to which he pleaded not guilty and claimed to be tried.
- 4.** The prosecution, in support of its case, examined eight (08) witnesses including the Investigating Officer.
- 5.** The accused person is examined under section 313 of Cr.P.C. wherein all the incriminating evidence was put to the accused person. During his examination, he denied his culpability in the alleged offences. Defence side examined no witnesses.
- 6.** I have heard the arguments advanced by the learned Asstt. Public Prosecutor and the Defence Counsel at length and perused the material on record.

POINTS FOR DETERMINATION:-

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7. Upon hearing both sides and on perusal of the record, the following points for determination are framed:

- (i) Whether on 23.04.2016 at about 9:30 pm near Moidomia Check Gate, under the jurisdiction of North Lakhimpur police station, the accused person, drove his vehicle, bearing registration no-AS-07-G-3517 in a public way in a manner so rashly and negligently as to endanger human life or to be likely to cause hurt to the victim, namely, Md. Moinul Hussain and thereby committed an offence punishable under section 279 of IPC?
- (ii) Whether on the same date, same time and at the same place, under the jurisdiction of North Lakhimpur Police station, the accused person, caused hurt to the victim, namely, Md. Moinul Hussain by doing any act so rashly and negligently as to endanger human life or to the personal safety of others and thereby committed an offence punishable under section 338 of IPC?
- (iii) Whether on the same date, same time and at the same place, under the jurisdiction of North Lakhimpur Police station, the accused person, caused mischief by damaging the Tata Magic vehicle bearing Registration no-AS-07-C-1707 belongs to the victim and thereby committed an offence punishable under section 427 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

8. I have carefully gone over the evidence on record and have also given thoughtful considerations to the rivalry submissions made by both sides. For the purpose of convenience and brevity, I intend to discuss and decide the points for determination (i), (ii) and (iii) together.

- 9.** The prosecution side marshaled evidence of (08) eight witnesses including the investigating officer and the Court witness to prove its case. Let us discuss the testimonies of the witnesses one by one.
- 10.** PW1 (informant) deposed that on 23.04.2016, at about 8 pm, he was informed by one Papu Hussain over phone that his father had an accident and that he should come. When he went there, he saw his father falling on the ground on the road. Thereafter, he called ambulance and took his father to Lakhimpur Civil Hospital. He deposed that his father was hit by a Grand I-10 vehicle. He further deposed that his father stayed in the hospital for single night and then he was taken to Numal Das Hospital, where the doctor referred his father to be taken to Guwahati for treatment. He took him to Ganeshguri Dispur Hospital, where he was treated and when his father fully came into senses, he took advice from his father and filed the ejahar on 09.05.2016. Exhibit-1 is the FIR and Exhibit-1(2) is his signature.
- 11.** It is found that in the cross-examination PW1 deposed that he has not seen the alleged incident. He deposed that he was informed about everything by his father. Admittedly, the PW1 is a hearsay witness and his evidence cannot be relied upon.
- 12.** Another witness, **PW2**, namely, Md. Mridul Ahmed knows the informant and the accused person. He supported the prosecution case by stating that the incident occurred on 23.04.2016 a about 7:45 pm at Moudumia Gaon main road. He was waiting on the road and a Magic vehicle was standing on his opposite direction suddenly one I-10 car hit the Tata Magic vehicle on the back side and as such, the Magic vehicle tumbled down into the field. Thereafter, he along with some other people chased the I-10 vehicle and at about 1.50 meter away from the place of incident, they stopped the car and the accused person was beaten by the public. He further deposed that after hitting the Tata Magic, the accused person also hit Md. Moinul Hussain. After stopping the accused person, they took the victim Md. Moinul Hussain to Medical and on the next day, the victim was taken to Guwahati. The victim

stayed in the I.C.U for 16 days. He deposed that the accident took place due to the fault of the accused person as the accused person was in an intoxicated condition and caused the accident.

- 13.** From his cross-examination, it is found that he does not know the number of the car of the accused nor he knows the number of the Tata Magic from which the goods were being unloaded at that point of time for the marriage. His cross-examination also reveals that the light of the vehicle was not on and the start was off. The Tata Magic was parked on the side of the road and there was no driver inside the vehicle.
- 14.** From the evidence of PW2, it could not be concluded whether or not the Grand I-10 vehicle was driven rashly or negligently at the time of alleged occurrence. The evidence only reveals that one I-10 car hit the Tata Magic from the backside and thereafter, hit the victim. It is also found at about 1.50 metres away from the alleged place of occurrence, they stopped the Grand I-10 and the public had beaten the accused person. But his evidence does not implicate that the accident occurred due to the negligence of the accused person nor the PW2 has deposed regarding who was the driver of the offending vehicle.
- 15.** Coming to the evidence of **PW3**, namely, Md. Atiqur Rahman it is found that he knows the informant but he does not know the accused person. The incident occurred about 1 ½ years back, at about 7:40 / 7:45 pm near Moidomia Checkgate. He supported the evidence of PW2 that at that time, a Magic vehicle was being unloaded with goods for the purpose of marriage, then suddenly from the direction of Dhemaji side, another car came in very speedily and hit the Magic vehicle, which tumbled down in the field and after hitting the Magic vehicle, it hit another person, who was standing in the direction of the Magic. As such, they chased the car who hit and the driver was in an intoxicated condition. The front door of the car was damaged. Thereafter, they took the victim to hospital.

- 16.** The cross-examination of PW3, reveals that there was no signal or any other sign showing that the Magic vehicle was parked. It is also found that the car of the accused stopped and they caught the driver. He deposed that he does not know who hit the driver, when police came and who damaged the car of the driver. Now, from his evidence it is clear that he does not know who was driving the vehicle at that time. It is also found that he does not know the accused person, who was present in the dock. It is also worth mentioning that his evidence reveals that the driver of the vehicle was intoxicated condition, but he never deposed implicating that the accused was the driver of the offending vehicle. Though, he deposed in the line of PW1 and PW2, that at that time the Tata Magic Vehicle was parked from which the goods were being unloaded, but it is also found from his evidence the persons who were unloading the goods from the Magic vehicle were not injured, but the victim who was standing in front of the Tata Magic got injured, when the Tata Magic hit the victim. It is also found from his evidence that the Tata Magic was parked in the narrow road without any parking indication, which is also a gross violation of traffic rules. In that case, the driver of the Tata Magic was equally liable for any damage caused by such negligent acts, but in the case at hand, the driver of the Tata Magic vehicle was neither impleaded nor he was made a witness in this case.
- 17.** The **PW4**, namely, Md. Sirajul Hussain, says that he knows the informant but he does not know the accused person. The incident occurred on 23.04.2016 at Moidomia near Petukajan. His house is near the place of occurrence. He deposed that as he was working inside his house, he heard a noise outside. Thereafter, he came out and saw his brother, Md. Mainul Hussain falling on the ground on the side of the road. Afterwards, he came to know that a car accident took place. Thereafter, the victim was taken to medical for treatment. After his treatment, he was taken to Guwahati for further treatment and at present, the victim is fine.

- 18.** In his cross-examination, PW4 deposed that he has not seen the incident. He deposed that he does not know on whose fault the accident took place.
- 19.** The evidence of **PW5**, namely, Md. Moinul Hussain, who is the victim of the case and father of the informant reveals that he does not know the accused person. He deposed in his examination-in-chief that on 23.04.2016, at about 7:30 pm, as his brother's daughter's marriage was going to be organized as such he was supervising the pandel works by standing on the side of the road. Thereafter, suddenly one car came from the direction of Dhemaji side and hit him and then he became unconscious. He further deposed that he does not know, who hit him and what car it was. He deposed that he came to his senses after some days at the I.C.U in Guwahati. He was injured on his head and stomach.
- 20.** In his cross-examination, PW5 deposed that he has not seen what was the car and who hit him. He deposed that he has not stated before the police that he has been injured on his head and stomach.
- 21.** The evidence of victim (PW5), PW4 is not going to assist the prosecution case as none of them has deposed anything incriminating the accused person.
- 22.** **PW6**, namely, Sri Ranjit Kumar Borah, MVI who was posted as MVI at Lakhimpur DTO Office, examined one vehicle i.e Grand I-10, bearing registration No-AS-07-3517 in the name of the accused person, Sri Robin Doley, S/O: Late Deochan Doley, R/O Bahir Jonai, Ratan Pur Dhemaji on 10.05.2016 at North Lakhimpur Police station campus. On examination, he found the following damages due to accident: (i) Front show (ii) Front bumper and grill (iii) Engine Bonnet (iv) Front cross-member (v) Front LHS Fender (vi) Front LSS wheel mudguard (vii) Radiator and Engine Fan assy (viii) Front LSS door outlined (ix) Front wind shield glass broken (x) Front suspension assy (xi) Engine and gear box displaced (xii) Front chasis bent outlined (xiii) Front wheel assy outlined. He further deposed that the mechanical condition of vehicle: the vehicle could

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not be road tested to ascertain the present mechanical condition due to damage. He deposed that the pollution control certificate was not produced. Exhibit-2 is the MVI Report and Exhibit-2(1) is his signature.

23. His cross-examination reveals that the vehicle was examined on 10.05.2016 and it was reported that the date of alleged incident is 23.04.2016. He deposed that he cannot say whether the damages seen on the offending vehicle were prior to the alleged incident or caused thereafter. It is also found from the report that the Grand I-10, bearing registration No-AS-07-3517 in the name of the accused person, Sri Robin Doley, sustained serious damage on that day. It is also found in the cross-examination of PW3 that the public damaged the Grand I-10 vehicle. In that case, there is iota of doubt regarding the cause of the damage seen in the Grand I-10 vehicle.

24. The evidence of **PW7**, namely, Dr. Diganta Dutta, who is the Medical Officer of the case reveals that he was on duty at Causality Department of North Lakhimpur Civil Hospital as MNHO-1 and on 23.04.2016 at about 10:15 pm, Md. Moinul Hussain, S/O: Late Ahmed Hussain, R/O: Moidomia PS: North Lakhimpur was brought by his son, Md. Papu Hussain for medical treatment at about 10:35 pm and on the same date, he received requisition from the same person from Head Constable Sri Jugal Hazarika, North Lakhimpur Traffic Police Station with history of Road Traffic Accident. The patient gives the history of loss consciousness. There is no vomiting. EMV-E3M5V3 at 10:15 pm. Left Temporary area of Head. It was grievous injury with blunt weapon and age of injury was fresh. He further deposed that latter on, at about 7:30 am, he regained full consciousness. CT scan of brain was done. It showed presence of commentated fracture of left temporal bone with oedema of the sculp. Exhibit-3 is the Medical Report and Exhibit-3(1) is his seal and signature.

- 25.** In his cross-examination, PW7 deposed that he was not informed by the patient that he was dashed by what object. He deposed that he informed him that it was a road traffic accident.
- 26.** **PW8**, namely, ASI Umesh Dutta, is the Investigating Officer of the case, and in his evidence he has said about the investigation of the case.
- 27.** Now from the evidence of PW2 and PW3, who are the eye-witnesses, it is found that there is fault in the part of the driver of the Tata Magic Vehicle too in this case who was parking the vehicle without any indicator. The victim PW5 (the victim) stated that he does not know due to whose fault, the alleged incident has occurred.
- 28.** It is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be proved beyond reasonable doubts, but in the present case in hand, in the light of the above discussions and reasons thereof, I am of the considered opinion that the prosecution side has failed to bring home the guilt of the accused person under offence under section 279/338/427 of IPC.

ORDER

In the light of aforesaid discussion and reasons thereof, I am of the considered opinion that the prosecution side failed to prove its case against the accused person beyond reasonable doubt.

Accordingly, the accused person, Sri Robin Doley is acquitted of the offences under section u/s 279/338/427 of IPC and he is set at liberty forthwith.

The bail bonds of the accused person and his surety shall remain in force for a period of 6 months from today as per amended Cr.P.C.

The I.O is to dispose of the seized property as per law.

Given under my hand and seal of this court on this 07th day of May 2019.

Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur

Typed by Steno Gr.III
Debashis Bhuyan

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APPENDIX

PROSECUTION EXHIBITS:

- Exhibit-1: F.I.R.
- Exhibit-2: MVI Report
- Exhibit-3: Medical Report.
- Exhibit-4: Sketch map.
- Exhibit-5: Seizure list
- Exhibit-6: Seizure list
- Exhibit-7: Endorsement order.
- Exhibit-8: Charge-sheet.

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES

- PW-1 : Md. Tafiqul Hussain (informant)
- PW-2 : Md. Mridul Ahmed
- PW-3 : Md. Atifur Rahman.
- PW-4 : Md. Sirajul Hussain.
- PW-5: Md. Moinul Hussain (victim)
- PW-6 : Sri Ranjit Kumar Borah (M.V.I)
- PW-7: Dr. Diganta Dutta (M.O)
- PW8: ASI Umesh Dutta (I.O)

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

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