

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

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1086/2015

Under section 279/338 of the Indian Penal Code

State of Assam

-Vs-

Sri Pankaj Mahanta

.....Accused

Date of offence explanation : 15.02.2018
Dates of recording evidence of PWs : 22.08.2019, 17.10.2019,
08.11.2019
Statement u/s 313, Cr.P.C recorded on : 07.12.2019
Date of argument : 25.01.2021
Date of judgment : **30.01.2021**

Advocates appeared in the case:-

Mr. Prasanta Dutta, Addl. P.P., for the State

Mrs. Gitanjali Mahanta, Advocate, for the accused

J U D G M E N T

1. The prosecution case, in brief, is that on 06.06.2015 one Sri Deep Hazarika had lodged an ejahar before the Officer-in-charge of North Lakhimpur Police Station reporting that on 02.06.2015, at about 4:00 PM while his brother-in-law was returning home in his bike from his work place then on the way at K.B Road, his bike got some mechanical defect for which he had to stop his vehicle. Then a motorcycle bearing registration No- AS-07-E-8573 coming in high speed had

knocked down his said brother in law for which he sustained injury on his left leg and had to be hospitalized. Hence, the case.

2. The Officer-in-charge of North Lakhimpur Police Station, on receipt of the ejahar, registered a case vide North Lakhimpur P.S Case No. 567/2015 under section 279/338 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 279/338 of the Indian Penal Code against accused Sri Pankaj Mahanta to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 279/338 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused entered his appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. The particulars of the offence under section 279/338 of the Indian Penal Code were explained to the accused to which he pleaded not guilty and claimed to be tried.

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 rode his motor-cycle in a rash and negligent manner ?

(b) Whether the accused with his rash and negligent riding of his motor-cycle had knocked down Sri Dilip Borpatra Gohain, the brother-in-law of the informant causing grievous injuries to him?

5. During the trial the prosecution side examined 7 (seven) prosecution witnesses viz. Sri Dip Hazarika as PW-1, Sri Dilip Borpatra Gohain as PW-2, Sri Bijoy Konwar as PW-3, Sri Rakesh Pathak as PW-4, Sri Arun Dutta as PW-5, Dr. Chandan Dulakasharia the M/O as PW-6 and Inspector Jibon Das, the I/O as PW-7. The prosecution had exhibited the ejahar as Ext-1 and the signature of the informant therein as Ext-1(1), the seizure list as Ext-2 and the signature of the witnesses therein as Ext-2(1), Ext-2(2) and Ext-2(3) and the signature of the seizing officer as Ext-2(4), the Injury report as Ext-3 and the signature of the M/O therein as Ext-3(1), the rough sketch map of P/O as Ext-4 and the signature of the I/O therein as Ext-4(1), the MVI report as Ext-5, the charge-sheet as Ext-6 and the signature of the I/O therein as Ext-6(1) .

6. After the closure of the prosecution evidence, the statement under section 313 of the Code of Criminal Procedure was recorded. The defence plea is of total denial and the defence side declined to adduce evidence in defence.

7. Both the sides advanced their respective argument in this case.

DISCUSSION, DECISION AND REASONS THEREOF:

8. Now in order to decide the aforesaid points of determination let us go through the evidence of the Prosecution witnesses. The core of the extract of the evidence of the PWs are as follows:

9. The PW-1 Sri Dip Hazarika, who is the informant of this case testified that on 02.06.2015 at about 4:00 PM his brother-in-law Sri Dilip Borpatra Gohain met with an accident at K.B Road while he was going towards his home in his motor-cycle as the accused coming in a motor-cycle from the opposite direction had hit his said brother-in-law

in his left leg causing injury to him. He sustained fracture of his left leg and after taking first aid treatment at North Lakhimpur Civil Hospital.

10. Again the PW-2 Sri Dilip Borparta Gohain in his evidence stated that on the date of incident i.e. 02.06.2015 at about 4:00 PM he was going along with Sankar Gogoi in his motorcycle sitting as a pillion rider. Then on the way in front of the house of Gautam Baruah the said motorcycle in which he was going got some mechanical defect for which they stopped. At that the accused coming from the Panigaon side towards North Lakhimpur town in his motorcycle had hit him in the knee of his left leg for which he sustained injury and was referred to Guwahati for treatment from the Civil Hospital North Lakhimpur.

11. Now a look at the evidence of PW-3, PW-4 and PW-5 goes to show that they gave another version. The PW-3 Bijay Konwar stated that on the date of incident in the evening time there was an accident at K.B. Road and many people gathered there. Since he was going through that road that time he asked the nearby persons that what had happened and they told that the motorcyclist and the in the bike who met with the accident fell on their own from their motorcycle. PW-3 in his cross-examination stated that the said bike had sustained some mechanical default. He further stated in his cross-examination that the police had taken signature in the seizure list and he didn't see any seized articles.

12. PW-4 Rakesh Pathak also deposed that on the date of incident in the evening time there was an accident at K.B. Road. He was present near the place of occurrence and could see a person going on a motorcycle fell on his own. When he went near that person who fell from the bike he told him that his said motorcycle got locked and his brake got jammed for which the accident occurred and he fell down. He

sustained simple injury in his leg. Police later came to the spot and took his signature in the seizure list.

13. PW-4 in his cross-examination stated that he didn't see the bike of accused Pankaj Mahanta colliding with the bike that met with the accident.

14. Again PW-5 Sri Arun Dutta deposed that on the date of incident at about 4:00/5:00 PM he was present at K.B. Road where the accident occurred. He saw many persons gathering at the place of occurrence and on going near he could see that a person fell down from his bike and on asking the said person said that due to some problem in the gear of his bike he fell down and sustained injury.

15. So the PW-4 who is an eyewitness and also the PW-3 and PW-5 were also present there at place of occurrence categorically stated that the victim fell on his own from his motorcycle as his said motorcycle sustained some mechanical defects. PW-4 Rakesh Pathak the eyewitness of this case in his cross-examination clarified that the bike of the accused didn't hit the bike that met with accident.

16. So the PW-3, PW-4 and PW-5 have totally contradicted the version of PW-1 and PW-2 as the former PWs stated that the motorcycle that met with the accident in fact fell on its own on sustaining some mechanical defects and was not hit by the bike of the accused. So they negated the version of PW-1 and PW-2 that the accused had hit the PW with his motorcycle causing the accident.

17. In the given position when the eyewitness didn't support and rather contradicted the version of PW-1 and PW-2 the evidence of the PW-1 and PW-2 as such cannot be relied upon and are found to be not credible.

18. From the discussion above, it is found that it can no way be concluded that the accused was riding his motorcycle in a rash and negligent manner and due to his such rash and negligent riding the accident occurred and the victim sustained injury.

19. Hence, the aforesaid points for determination are held in negative.

20. The prosecution as such has failed to prove the case against the accused under section 279/338 of the Indian Penal Code and as such he is acquitted from the said offences and is set at liberty.

Seized articles be retained with lawful owners.

Bail bonds are extended to for the further 6(six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 30th day of January, 2021.

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Dip Hazarika (PW-1)
Sri Dilip Borpatra Gohain (PW-2)
Sri Bijoy Konwar (PW-3)
Sri Rakesh Pathak (PW-4)
Sri Arun Dutta as (PW-5)
Dr. Chandan Dulakasharia (PW-6)
Inspector Jibon Das (PW-7)

PROSECUTION EXHIBIT

Ejhar (Ext-1)
signature of the informant [Ext-1(1)]
Seizure list (Ext-2)
Signature of the witnesses [Ext-2(1), Ext-2(2) and Ext-2(3)]
Signature of the seizing officer [Ext-2(4)]
Injury report (Ext-3)
Signature of the M/O [Ext-3(1)]
Rough sketch map of P/O (Ext-4)
Signature of the I/O [Ext-4(1)]
MVI report (Ext-5)
Charge-sheet (Ext-6)
Signature of the I/O [Ext-6(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

(Shri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur