

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 2495 OF 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI ANIL BHATTACHARJEE

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 2495 / 2015

U/S 279/338/427 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI ANIL BHATTACHARJEE

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI BABUL GOGOI

OFFENCE EXAPLAINED ON : 03/11/2016
EVIDENCE RECORDED ON : 26/12/16, 12/10/17, 11/10/18,
19/12/18, 06/05/19, 17/12/19,
17/03/2020
ARGUMENT HEARD ON : 19/12/2020
JUDGMENT DELIVERED ON : 02/01/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 14.11.2015 informant's brother Sri Nabajyoti Singh purchased a tractor bearing registration No. AS 26 C 1890 from Mahindra dealer, Guwahati and then proceeded towards his home (i.e., Dhemaji) on that tractor along with two drivers, namely, Sri Jagat Chutia and Sri Debajit Chutia. At around 05:00 P.M on that day, while they reached near Barbheta Bridge under Narayanpur police

station, at that time accused Sri Anil Bhattacharjee came from the opposite direction by driving a Maruti 800 vehicle bearing registration No. AS 07 F 8858 in a very high speed and then knocked the aforesaid tractor as a result of which the tractor got damaged and both the above named drivers along with informant's brother sustained injuries on various parts of their body. Thereafter, all of them were taken to hospital for treatment. The informant then lodged an FIR about the occurrence before the O/C of Narayanpur police station.

2. On receipt of the F.I.R, a case was registered being numbered as Narayanpur P.S Case No. 197/15. After investigation, I.O of the case submitted charge sheet against accused Sri Anil Bhattacharjee for the offences punishable u/s 279/338/427 of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 279/338/427 of IPC are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined ten witnesses, whereas the defence did not examined any witness. The accused person was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused on 14.11.2015 at about 5.00 PM, drove his Maruti 800 vehicle bearing registration No. AS 07 F 8858 on the National Highway near Barbheta bridge under Narayanpur police station, in a rash or negligent manner and thereby knocked the tractor bearing registration No. AS 26 C 1890 and consequently caused hurt or injury to informant's brother Sri Nabajyoti Singh and two others (above named drivers) and also endangered their life, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused on 14.11.2015 at about 5.00 PM drove his vehicle bearing registration No. AS 07 F 8858, in a rash or negligent manner and consequently knocked the tractor bearing registration No. AS 26 C 1890 due to which informant's brother and two others (above named drivers) who were sitting on that tractor sustained grievous hurt and their life or personal safety was endangered, and thereby committed an offence punishable u/s 338 of IPC?

(iii) Whether the accused on 14.11.2015 at about 5.00 PM drove the vehicle bearing registration No. AS 07 F 8858 and then knocked the tractor bearing registration No. AS 26 C 1890 belonging to informant's brother Sri Nabajyoti Singh with the intent to cause, or knowing that he is likely to cause, wrongful loss or damage to informant's said brother, and thereby caused destruction of that tractor amounting to Rupees 50/- or upwards, and thereby committed an offence punishable u/s 427 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1, 2 and 3:

6. For the sake of convenience and as because point no. 1, 2 and 3 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, the prosecution has examined nine witnesses, in total, out of which two are official witnesses and another three have deposed hearsay evidence. Therefore, let me proceed with the discussion of evidence deposed by eye witnesses first. The eye witnesses examined by prosecution are informant's brother/PW-5 Sri Nabajyoti Singh, driver/PW-7 Sri Debajit Chutia and another driver/PW-8 Sri Jagat Chutia.

8. Informant's brother/PW-5 Sri Nabajyoti Singh in his evidence has specifically stated that at the time of occurrence he along with driver Durna Chutia and one helper were going towards Dhemaji from Guwahati on a tractor. When they arrived in an area between Narayanpur and Dhalpur, at that time the accused came from the opposite direction by driving a Maruti 800 vehicle in a zigzag manner and hit the rear tyre of that tractor as a result

of which the tractor dwindled in the drain besides the road and he along with said driver and helper sustained injuries.

9. In the above context, PW-7 Sri Debajit Chutia has corroborated the allegations made by PW-5 by stating that at the time of occurrence the accused came from the opposite direction by driving a Maruti 800 vehicle and suddenly turned that vehicle towards the tractor and knocked the front tyre of that tractor, as a result of which the tractor dwindled in the drain besides the road due to which he along with informant and helper Jagat Chutia sustained injuries.

10. Similarly, PW-8 Sri Jagat Chutia in his evidence has supported the aforesaid allegations by stating that at the time of occurrence one white Maruti 800 vehicle came from the opposite direction and suddenly knocked the front tyre of the tractor as a result of which the tractor dwindled in the drain besides the road and he along with the informant and Debajit Chutia sustained injuries.

11. From the evidence deposed by PW-5, PW-7 and PW-8 as narrated above, it is seen that the PW-6 and PW-7 have specifically stated that the accused was driving the offending Maruti 800 vehicle at the time of occurrence. Be it mentioned here that there is nothing substantial in the cross-examination of PW-7 and PW-8 which can create any doubt regarding the reliability of their foregoing statement. Moreover, the accused at the time of his examination u/s 313 of CrPC has specifically mentioned that he was driving the Maruti 800 vehicle at the time of alleged occurrence. As such, it is clear beyond all reasonable doubts that the accused was driving the aforesaid Maruti 800 vehicle at the time of alleged occurrence.

12. The next question which comes up for determination is that whether the accused drove the said vehicle in a rash or negligent manner as required u/s 279/338 of IPC. In this respect, PW-5 in his evidence has mentioned that the accused drove the said Maruti vehicle in a zigzag manner in the National Highway. During his cross-examination, PW-5 has denied the suggestion of defence that he did not mentioned the aforesaid allegations in his statement before I/O. However, the I.O/PW-9 Sri Jayanta Deka in his cross-examination has confirmed that the PW-5 did not mentioned in his statement u/s 161 of

CrPC that the accused drove the vehicle in a zigzag manner. In my opinion, the aforesaid allegation is a material part of the alleged occurrence, and hence, the same should have been mentioned by PW5 in his statement u/s 161 of CrPC. As such, the failure of PW5 to mention the aforesaid allegation in his statement before I/O is a material contradiction as per section 162 of CrPC and the same creates doubt as regards the reliability of that allegation made by PW5.

13. In the above context, PW-7 Sri Debajit Chutia in his evidence has mentioned that he was driving the tractor on the left side of the road and the accused came from opposite direction by driving a Maruti 800 vehicle and thereafter suddenly turned the Maruti 800 vehicle towards the tractor, and as such, came into the wrong side of that road and then knocked the front wheel of that tractor. Now, as regards the reliability of the foregoing allegation, I do not find anything substantial in the cross-examination of PW-7 which can create any reasonable doubt.

14. Similarly, PW-8 Sri Jagat Chutia in his evidence has specifically mentioned that the Maruti 800 vehicle came from the opposite direction and knocked the front tyre of the tractor.

15. Therefore, going by the above evidence deposed by the PW-7 and PW-8, I find that the accused at the time of occurrence suddenly turned the Maruti 800 vehicle towards his right side and entered the wrong lane of the road and then knocked the front tyre of the aforesaid tractor. Be it mentioned here that there is nothing in the case record which can justify that the accused turned the Maruti vehicle towards his right side for some genuine or reasonable cause. Under such circumstances, such turning of his vehicle by the accused without any reason is clearly a rash or negligent act on his part. Moreover, such rash or negligent act of the accused, in my opinion, clearly shows that the accused had knowledge that he will cause damage to that tractor by such act.

16. Considering the above, it is clear that the prosecution has proved beyond reasonable doubts that the accused drove his Maruti 800 vehicle in a rash or negligent manner at the time of occurrence and also knew that he will cause damage to the tractor by such rash or negligent driving.

17. The next question which comes up for determination is that whether the PW-5, PW-7 or PW-8 sustained any injury due to the occurrence, and if yes, then what is the nature of such injury?

18. In this respect, PW-5 has stated that he sustained cut injury in his right hand along with fracture in his leg. Similarly, PW-8 has stated that he sustained injury in his left hand and head. The aforesaid statements of PW-5 and PW-6 are supported by the evidence of medical officer Dr. Pankaj Pegu, who is examined by prosecution as PW-9. The PW-9/M.O has specifically stated that he found bleeding from right wrist joint and swelling for excessive pain on the right hip joint of Sri Nabajyoti Singh. He also found bleeding from the upper part of the head of Sri Jagat Chutia. As per PW9/M.O, the aforesaid injuries detected in the body of both the victims are grievous in nature.

19. Therefore, from the above evidence, it is clear that PW-5 and PW-8 have sustained grievous injury due to the aforesaid rash or negligent driving of the accused.

20. Now, as regards the alleged damage of tractor, the aforesaid three witnesses have specifically stated that the said tractor dwindled into the drain besides the road on being knocked by the Maruti 800 car. This version of aforesaid three witnesses gets support from the evidence deposed by other witnesses examined by the prosecution. To be more specific, PW2 Sri Simanta Baruah, PW3 Sri Samujjal Sarmah, and PW3 Sri Ratul Sahu have specifically stated that they saw a Maruti 800 car standing on the road and one tractor lying in the drain besides that road in the place of occurrence. Therefore, the foregoing evidence makes clear beyond reasonable doubt that the tractor fell off into the drain besides the road on being knocked by the Maruti 800 car.

21. The fact that the said tractor fell off from the road into the drain, in my opinion, makes it evidence that some sort of damage/denting must have been caused to the vehicle. Also, considering the price of a tractor as on date, it can be easily understood that a damage/denting of such nature will obviously cost more than Rupees 50/-.

21. In view of the entire discussion made above, it is held that the witnesses examined by prosecution have proved beyond reasonable doubt that the accused has committed the offences punishable u/s 279/338/427 of IPC.

DECISION: Point no.1, 2 & 3 are therefore decided in the affirmative and goes in favour of the prosecution.

ORDER

23. In view of the discussion made and decision reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have proved beyond reasonable doubts that accused person Sri Anil Bhattacharya has committed the offences punishable under section 279/338/427 of IPC. As such, accused Sri Anil Bhattacharya is held guilty for commission of offence punishable u/s 279/338/427 of IPC and accordingly he is convicted for the commission of aforesaid offences.

24. As the offences are committed in broad day light thereby causing grievous injuries to the victims and also endangered the life & safety of public in general, hence, I am not inclined to release the convict person under the provision of Probation of Offenders Act as the same will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offence in future.

25. I have heard convict Sri Anil Bhattacharjee on the point of sentence. He has stated that his present age is about 70 years and he is suffering from high blood pressure and other ailments due to which he will face serious problem if sentenced to imprisonment, and hence, he has prayed to release him by imposing fine only. Considering the submission made by the convict persons, and having regard to the matter in its entirety, convict Sri Anil Bhattacharjee is sentenced to pay a fine of Rupees 8000/- (eight thousands) each for the offence u/s 427 of I.P.C, in default, to suffer S.I for three months, and also sentenced to pay a fine of Rupees 1000/- for the offence u/s 279 of IPC, in default, to suffer S.I for one month, and also sentenced to pay a fine of Rupees 1000/- for the offence u/s 338 of IPC, in default, to suffer S.I for one month. The total fine amount of Rupees 10,000/-, as and when paid or realized, be handed over to victim Sri Nabajyoti Singh (PW5) and Sri Jagat

Chutia (PW8) in two equal shares i.e., Rupees 5000/- each, as compensation u/s 357 of CrPC.

This Judgment is given under my hand and the seal of this court on this the 02nd day of January, 2021.

This case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**EXHIBITS:**

- Exhibit.1 – FIR
- Exhibit.2 – Seizure list
- Exhibit.3 – Sketch map
- Exhibit.4 – Copy of G.D entry
- Exhibit.5 – Charge-sheet
- Exhibit.6 – Medical report
- Exhibit.7 – Medical report

PROSECUTION WITNESSES:

1. PW-1 – Sri Manujyoti Singh
2. PW-2 – Sri Simanta Baruah
3. PW-3 – Sri Hamujjal Sarmah
4. PW-4 – Sri Ratul Sahu
5. PW-5 – Sri Nabajyoti Singh
6. PW-6 – Sri Sun Borah
7. PW-7 – Sri Debajit Chutia
8. PW-8 – Sri Jagat Chutia
9. PW-9 – Sri Jayanta Deka
10. PW-9 – Dr. Pankaj Pegu

DEFENCE WITNESSES:

NIL

DEFENCE EXHIBITS:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur