

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

G.R CASE NO: 2466 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. LOKMAN ALI

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

GR CASE NO: 2466 / 2016

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. LOKMAN ALI

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI PANKAJ SAIKIA

OFFENCE EXPLAINED ON : 20.09.2018
EVIDENCE RECORDED ON : 11.12.2018, 12.07.2019, 09.09.2019

ARGUMENT HEARD ON : 01.02.2020
JUDGMENT DELIVERED ON : 13.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

Prosecution's case in brief as it reveals from the F.I.R is that on 22.09.2016 at about 03.10 P.M while the Eon vehicle bearing registration no. AS 07 G 1631 belonging to informant's husband was going through the road near Ganesh Mandir at that time a bus bearing registration no. AS 07 6887 came there and lost control and hit the aforesaid Eon vehicle from the backside thereby causing damage. The informant then lodged an F.I.R about the occurrence before the O/C of North Lakhimpur police station.

On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 976/16 and after investigation I.O of the case submitted charge sheet against accused person Md. Lokman Ali for the offences punishable u/s 279/427 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 279/427 of IPC are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

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

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

POINTS FOR DETERMINATION:

(i) Whether on 22.09.2016 at about 03.10 P.M on the national highway near Ganesh Mandir under North Lakhimpur police station, the accused drove a bus bearing registration no. 6887 in a rash or negligent as a result of which the bus hit informant's Eon vehicle bearing registration no. AS 07 F 1361 from the back side and such act of hitting endangered human life, or was likely to cause injury to informant and her family members or others, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether on 22.09.2016 at about 03.10 P.M on the national highway near Ganesh Mandir under North Lakhimpur police station, the accused with the intention to cause, or knowing that he is likely to cause wrongful loss or damage to the informant, caused destruction of the aforesaid Eon vehicle of informant by hitting the said Eon vehicle with a bus, and thereby committed an offence punishable u/s 427 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

For the sake of convenience, and as because the point no. 1 and 2 are interconnected in law and facts, hence they are taken up herein together for discussion & decision as follows:

As regards the aforesaid points for determination, the prosecution examined four general witnesses and one official witness (i.e. investigating officer). The four general witnesses includes the informant/PW-1 Smt. Jutika Pawe, and her three sisters' in-law Smt. Jyoti Bori (PW2), Smt. Rita Bori (PW3) and Smt. Nilakhi Pawe (PW4). The crux or gist of the evidence deposed by PW-1, PW-2, PW-3 and PW-4 in their respective examination-in-chief is that, on 22.09.2016 at about 03:00 PM while they were coming towards Lakhimpur from Bamundoloni in the Eon vehicle belonging to informant, and reached the National Highway near Ganesh Mandir, at that time the accused came there by driving a bus named 'Kanchanjangha' in a very high speed and hit the aforesaid Eon vehicle from the backside as a result of which the back light and the trunk (dickey) of the said Eon vehicle got damaged. The accused then assured that he will repair the damage caused to the Eon vehicle but did not do so due to which the informant finding no other way lodged this case.

The above evidence deposed by PW-1 to PW-4, in my opinion, if presumed to be true, will attract the ingredients of the offences punishable u/s 279/427 of IPC. Hence, it is necessary to find out that whether the evidence deposed by aforesaid four prosecution witnesses in their respective examination-in-chief can be relied upon to form a conclusive opinion against the accused.

In a quest to find out the credibility of the evidence deposed by PW-1 to PW-4, perusal of their cross-examination shows that the defence had put a suggestion to PW1 that she did not stated before police that the bus named 'Kanchanjangha' under ASTC hit her vehicle. The aforesaid suggestion was denied by PW-1. It seems that the defence tried to point out contradiction in the version of PW-1 by showing that she/PW1 did not mentioned the aforesaid allegation in her statement recorded under section 161 of CrPC. However, it is important to note that the defence did not asked any question to I.O/PW5 Sri Umesh Dutta in order to confirm such omission in the statement of PW1. As such, it is clear that the defence failed to prove the contradiction properly as per the provision of Section 162 CrPC and Section 145 of Indian Evidence Act. Hence, the aforesaid suggestion of defence to PW-1 do not have any adverse effect on the credibility of her version in the examination-in-chief.

Besides the above, though the defence while cross-examining PW-1 to PW-4 has put certain suggestions adverse to the case of prosecution, but those suggestions were denied by the prosecution witnesses. There is nothing substantial in the cross-examination of PW-1 to PW-4 which can create any reasonable doubt regarding the credibility of the versions stated by them in their examination-in-chief. Also, upon perusal of case record, I do not find anything substantial which can create any doubt regarding the credibility of the evidence deposed by PW-1 to PW-4 in their examination in chief.

Hence, considering the above discussion, I find that the witnesses examined by prosecution have been able to prove beyond reasonable doubt that at the time of occurrence while the informant and her family members (i.e., PW2, PW3, PW4 and others) were coming towards Lakhimpur from Bamundoloni in their Eon vehicle, and reached the National Highway near Ganesh Mandir, at that time the accused came there by driving a bus named 'Kanchanjangha' in a very high speed and hit the aforesaid Eon vehicle from the backside as a result of which the back light and the trunk (dickey) of the said Eon vehicle got damaged.

The question which now comes up for determination is that whether the aforesaid facts which are prove by the prosecution witnesses, attracts the ingredients of the offences punishable u/s 279/427 of IPC. To find out the answer, let me first quote down in brief the essential ingredients of the offences punishable u/s 279/427 of IPC.

On a bare perusal of Section 279 of I.P.C, it can be seen that the following essential ingredients are required to be proved in order to attract the offence therein:

- (i) The accused was driving or riding a vehicle ;
- (ii) He was doing so on a public way;
- (iii) He was also doing so rashly or negligently;
- (iv) The act of driving or riding endangered human life, or was likely to cause hurt or injury to any other person.

Again, perusal of Section 425 of I.P.C which provides the definition for the offence of mischief punishable under section 427 of I.P.C shows that the

following ingredients are required to be proved in order to attract the offence u/s 427 of I.P.C:

- (i) The accused must have caused the destruction of some property or some change in it or its situation;
- (ii) Such change must have destroyed or diminished the value or utility of the property or affected it injuriously;
- (iii) Destruction or change in the property or situation thereof must have been done with the intention of causing or with the knowledge that it is likely to cause wrongful loss or damage to the public or any person.

Now, having understood the requirements of Sections 279/427 of I.P.C., as quoted above, let me find out that whether the facts proved by prosecution witnesses as discussed above attracts the ingredients of the aforesaid two sections of law. In this respect, at the very outset, it is noticeable that the accused at the time of occurrence by driving his bus in a very high speed hit the Eon vehicle from the back side on the road. In my opinion, having regard to the common course of human conduct, it can be well presumed that a man of common prudence while driving a vehicle on the road will definitely stop his vehicle if he finds another vehicle in front of him. In the alternative, he will overtake that vehicle to proceed on the road. Either of the aforesaid two actions is necessary to be taken by such person/driver in order to avoid a collision between the two vehicles. Therefore, if a person without stopping his vehicle directly hits the vehicle which is going ahead of him in the same direction then the only inescapable conclusion which can be drawn is that such person was negligent as he did not take recourse to any of the aforesaid two measures to avoid the collision and its resultant damage. Also, such an act on the part of that person/driver clearly shows that he knew that if he does not take recourse to the aforesaid two actions then he would let his vehicle collide with that other vehicle and thereby cause damage to that vehicle.

Therefore, having regard to the above discussion, coming back to the case in hand, it is seen that the accused at the time of occurrence did not take any measure to avoid the collision of his bus with the Eon vehicle of the informant. The accused could have slowed down the speed of his bus, or proceed to overtake the Eon vehicle of informant in order to avoid the collision. However, the accused did not take recourse to any of such

measures and rather he proceeded in a very high speed and ultimately knocked the Eon vehicle of the informant from back side. There is nothing in the case record which can show that the accused for some reasonable or justifiable cause failed to take recourse to any of the measures to prevent the occurrence. Hence, it is evident that the accused was negligent while driving the aforesaid bus at the time of occurrence, due to which the bus hit the Eon vehicle of the informant. Further, in my opinion, a collision between two vehicles on the highway, and that too when the offending vehicle is in a very high speed, will no doubt endanger the life of people sitting in those vehicles and the same is likely to cause injury to the passengers. In fact, the PW3 in her evidence has specifically mentioned that her daughter and niece sustained injury as a result of the collision. Therefore, it is clear that the foregoing facts clearly attracts the ingredients of the offence punishable under section 279 of I.P.C.

Moreover, from the discussion made above, it is by now apparent that the accused in spite of having knowledge that he will cause damage to the Eon vehicle, proceeded in a very high speed and hit the Eon vehicle; thereby causing destruction of the back light and trunk (dickie) of the vehicle. Be it mentioned here that, as per PW1, an amount of Rupees 25,000/- was spent to repair the Eon vehicle. Irrespective of that statement of PW1, keeping in view the cost of a car as on date, it can be presumed that a backlight of Eon vehicle would cost much more than Rupees fifty. Hence, it is clear that the foregoing facts attracts the ingredients of the offence punishable under section 427 of I.P.C.

DECISION: Point no.1 & 2 are therefore decided in the affirmative and hence go in favour of prosecution.

ORDER

In view of the discussion made and decision reached in the point for determination, it is held that the witnesses examined by prosecution have proved beyond reasonable doubts that accused person Md. Lokman Ali has committed the offences punishable under section 279/427 of I.P.C. As such, accused Md. Lokman Ali is held guilty for commission of offences punishable

u/s 279/427 of I.P.C and accordingly he is convicted for the commission of offences punishable under section 279/427 of I.P.C.

As the offences committed caused financial loss to the informant, and also such kind of offences creates a sense of insecurity among the passengers in general, hence I am of the opinion that releasing the accused persons under the provision of Probation of Offenders Act will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offences in future. Hence, I am not inclined to extend the benefits of Probation of Offenders Act to accused Md. Lokman Ali.

I have heard accused Md. Lokman Ali on the point of sentence. The accused persons have pleaded for mercy as he is now earning livelihood by working as day labour and he is an aged person. Considering all aspects, more particularly the age of accused, I am of the opinion that a sentence of imprisonment is not warranted under the facts of circumstances of this case. Hence, accused Md. Lokman Ali is sentenced to pay a fine of Rupees 1000/- (one thousand) for the offence punishable under section 279 of I.P.C, and in default of payment of fine to undergo simple imprisonment for one month. The accused is also sentenced to pay a fine of Rupees 14000/- (Fourteen thousands) for the offence punishable under section 427 of I.P.C, in default to undergo simple imprisonment for one month. The total fine amount of Rupees 15,000/- (Fifteen thousands), if deposited or realized, be paid to informant Smti Jutika Pawe as compensation.

The bus seized vide M.R No. 436 be released to the custody of its registered owner as per law. The Eon car seized vide M.R No. 437 be released to the custody of its registered owner as per law. The documents seized vide M.R No. 436 and M.R No. 437 be released to the custody of the person whose name appears therein.

This judgment is given under my hand and the seal of this court on this the 13th day of February, 2020.

This case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

(A) PROSECUTION EXHIBITS

- Exhibit.1 – F.I.R
- Exhibit.2 – Sketch map
- Exhibit.3 – Seizure list
- Exhibit.4 – Seizure list
- Exhibit.5 – Charge-sheet

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

- P.W. 1 – Smt. Jutika Pawe
- P.W. 2 – Smt. Jyoti Bori
- P.W. 3 – Smt. Rita Bori
- P.W. 4 – Smt. Nilakhi Pawe
- P.W. 5 – Sri Umesh Dutta

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur