

IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,

AT NORTH LAKHIMPUR

G.R CASE NO: 3244 OF 2016
PROSECUTOR: STATE OF ASSAM VS
ACCUSED: SRI RUPAK SARMAH

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

GR CASE NO: 3244 / 2016

U/S 279/338/323 OF IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI RUPAK SARMAH

PRESENT: MD. F. U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI J. HAZARIKA

OFFENCE EXPLAINED ON : 27.06.2018
EVIDENCE RECORDED ON : 04.09.2018, 05.09.2018, 04.04.2019, 17.08.2019, 31.10.2019,
03.02.2020
ARGUMENT HEARD ON : 15.02.2020
JUDGMENT DELIVERED ON : 18.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the FIR is that on 22.12.2016 at about 11.30 PM while informant Sri Nagen Deuri along with his colleague Sri Minaram Gogoi were going to attend office at Rangajan by riding informant's Yamaha Crux motorcycle bearing registration No. AS 07 B 3233 and arrived at Rajbari area, one

Ertiga vehicle bearing registration No. AS 07 J 9427 came there in a very high speed and negligent manner and hit informant's said motorcycle from the backside while trying to overtake and thereby caused injury to the informant and his said colleague. The informant thereafter lodged an FIR about the occurrence before the OC of Bihpuria police station.

2. On receipt of the FIR, the O/C of Bihpuria police station registered a case being numbered as Bihpuria P.S Case No. 956/16. After investigation, I.O of the case submitted charge-sheet against accused Sri Rupak Sarmah for the offences punishable u/s 279/338/427 of IPC. Copies of relevant documents were furnished to the accused u/s 207 of CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 279/338/323 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 six witnesses whereas the accused did not examine any witness in support of his defence. The accused is examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by the accused and 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. **POINT FOR DETERMINATION:**

(i) Whether the accused on 22.12.2016 at about 11.30 AM at Rajbari under Bihpuria policed station, drove his Ertiga vehicle bearing registration No. AS 07 J 9427 in a public way in a rash or negligent manner as a result of which the said vehicle hit informant's motorcycle bearing registration No. AS 07 B 3233 from the backside, and such act of hitting endangered human life and was likely to cause injury to the informant and his colleague Sri Minaram Gogoi, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused on 22.12.2016 at about 11.30 AM at Rajbari under Bihpuria policed station, drove his Ertiga vehicle bearing registration No. AS 07 J 9427 in a rash

or negligent manner as a result of which the vehicle collided with informant's motorcycle and subsequently the informant and his colleague Sri Minaram Gogoi sustained grievous hurt by falling from the motorcycle, and thereby committed an offence punishable u/s 338 of IPC?

(iii) Whether the accused on 22.12.2016 at about 11.30 AM at Rajbari under Bihpuria policed station, voluntarily hit informant's motorcycle from the backside with an Ertiga vehicle, with the intention to cause hurt, and thereby caused injury to informant and his colleague Sri Minaram Gogoi and thereby committed an offence punishable u/s 323 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1, 2 AND 3:

6. For the sake of convince, and as because point no. 1, 2, & 3 are interconnected, hence they are taken up herein together for discussion and decision.

7. As regards the aforesaid points for determination, the most vital witnesses examined by prosecution are informant/PW-1 Sri Nagen Deuri and informant's colleague/PW-2 Sri Minaram Gogoi. The informant/PW-1 and PW-2 in their respective evidence-in-chief have supported the contention of FIR. The gist or crux of evidence deposed by PW-1 and PW-2 in their respective evidence-in-chief is that at the time of occurrence while they were going to Rangajan on a motorcycle and reached Rajbari area at that time one four wheeler vehicle knocked their bike as a result of which they fell down and sustained injury. Thereafter, the accused persons/passengers in that vehicle took them to hospital. The aforesaid vehicle was in a very high speed at the time of occurrence.

8. On careful perusal of the evidence deposed by PW-1 and PW-2 as narrated above, it is seen that they have nowhere stated anything about the identity of person who was driving the aforesaid offending vehicle at the time of alleged occurrence. In fact, the PW-1/informant and PW-2 in their evidence-in-chief have stated that they do not recognize the accused of this case. In his cross-examination, the PW-1 has further added that he could not recognize that who was the driver of that vehicle. Therefore, it

is clear that there is nothing in the evidence of PW-1 and PW-2 which can show that the accused was driving the aforesaid offending vehicle at the time of alleged occurrence.

9. In the above context, PW-4 Sri Uddhabjyoti Gogoi in his evidence-in-chief has stated that about 2-3 years back he heard that accused knocked a person with his vehicle at Rajbari Tiniali. During his cross-examination, PW-4 has stated that he cannot say that from whom he got the aforesaid information. Therefore, it is clear that the aforesaid statement made by PW-4 in his evidence-in-chief is totally hearsay and the same cannot be believed unless corroborated by some other reliable evidence.

10. Similarly, PW-5 Sri Jaydev Saha in his evidence-in-chief has stated that on a day about 3 years back, the accused took his (PW-5) Ertiga vehicle from his house. After a while he came to know that the accused met with an accident with the aforesaid vehicle at Rajbari area. During his cross-examination, PW-5 has stated that he did not see the occurrence himself. He cannot say that for whose fault the occurrence took place. Therefore, it is clear that the PW-5 was not an eye witness to the occurrence and hence the allegation made by him in his evidence-in-chief against the accused is clearly hearsay evidence which cannot be relied upon unless corroborated by some other reliable evidence.

11. In the above context, PW-3 Sri Gunindra Gogoi in his evidence has stated that in the year 2016 he heard from others that a road traffic accident took place between one motorcycle and one vehicle at Rajbari area and two persons sustained injury in that accident. From the aforesaid evidence deposed by PW-3, it is seen that there is no incriminating material against the accused.

12. As regards the aforesaid points for determination, PW-6 Sri Krishna Chauhan, who investigated this case, in his evidence-in-chief has described in details the steps taken by him during investigation. However, there is nothing specific in the evidence which can prove that the accused was driving the aforesaid offending vehicle at the time of alleged occurrence and that the accused has committed the offences as alleged.

13. Considering the discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused has committed the offences as alleged.

DECISION: Point no.1, 2 & 3 are therefore decided in the negative and goes against the prosecution.

ORDER

14. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Rupak Sarmah has committed the offences punishable under section 279/338/323 of I.P.C as alleged, and as such, the above named accused person is acquitted of the charges under section 279/338/323 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 18th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit.1 – FIR

Exhibit.2 – Seizure list

Exhibit.3 – Zimanama

Exhibit.4 – Sketch map

Exhibit.5 – Seizure list

Exhibit.6 – Charge-sheet

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Nagen Deuri

P.W. 2 – Sri Minaram Gogoi

P.W. 3 – Sri Gunindra Gogoi

P.W. 4 – Sri Uddhabjyoti Gogoi

P.W. 5 – Sri Jaydev Saha

P.W. 6 – Sri Krishna Chauhan (I.O)

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur