

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

G.R CASE NO: 1283 OF 2016  
PROSECUTOR: STATE OF ASSAM VS  
ACCUSED: SRI KHAGEN GOGOI

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

GR CASE NO: 1283 / 2016

U/S 279/338 OF IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI KHAGEN GOGOI

PRESENT: MD. F. U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATE FOR THE ACCUSED: SMTI G. MAHANTA

OFFENCE EXPLAINED ON : 31/10/2017  
EVIDENCE RECORDED ON : 17/02/18, 21/04/18, 21/08/18, 12/12/18, 27/02/19  
20/06/19, 21/06/19, 16/08/19, 15/10/19  
ARGUMENT HEARD ON : 17/12/2019  
JUDGMENT DELIVERED ON: 17/12/2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF:**

1. Prosecution's case in brief as it reveals from the F.I.R is that on 30/04/2016 at about 06:30 P.M, while informant's brother Md. Hafijul Ali was going through the Town Bantow road and reached near Haijan bridge at that time a motorcycle bearing registration no. AS 07 J 2116 came from the back

side in a very high speed and knocked informant's said brother as a result of which informant's said brother sustained injury and the pinion rider of the motorcycle also fell down from the motorcycle. The matter was then informed to Khelmati police O.P verbally and accordingly the traffic police forwarded the injured to civil hospital. Informant's said brother was then referred to G.M.C.H as his condition was critical. The informant then lodged an F.I.R about the occurrence before the O/C of North Lakhimpur P.S.

2. On receipt of the FIR, the O/C of North Lakhimpur P.S registered a case vide North Lakhimpur P.S Case No. 521/16. After investigation, I.O of the case submitted charge-sheet against accused Sri Khagen Gogoi for the offences punishable u/s 279/338 of IPC. Copies of relevant documents were furnished to the accused person u/s 207 of CrPC. Considering the relevant documents and hearing both the parties, particulars of the offences punishable u/s 279/338 of IPC are read over and explained to said accused person 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 them defence. Three more witnesses were examined as court witnesses. The accused was examined under section 313 of CrPC. Defence case is of denial as it reveals from the statement made by 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:

**POINT FOR DETERMINATION:**

(i) Whether the accused person on 30/04/2016 at about 06:30 P.M at Town Bantow road near Haijan river bridge under North Lakhimpur P.S, drove his motorcycle bearing registration number AS 07 J 2116 on the public way in a rash or negligent manner which was likely to cause hurt or injury to informant's brother Md. Hafijul Ali or others, and also hit informant's said brother thereby endangering his life, and thereby committed an offence punishable under section 279 of I.P.C?

(ii) Whether the accused person on 30/04/2016 at about 06:30 P.M at Town Bantow road near Haijan river bridge under North Lakhimpur P.S, drove his motorcycle bearing registration number AS 07 J 2116 on the public way in a rash or negligent manner and hit informant's brother Md. Hafijul Ali thereby causing grievous hurt to informant's said and also endangered the life and personal safety of informant's said brother, and thereby committed an offence punishable under section 304(A) of I.P.C?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**

**POINT NO. 1, & 2**

5. For the sake of convenience, and as because the point no.1 & 2 are inter-connected, hence they are taken up herein together for discussion and decision. As regards the aforesaid points for determination, PW1 Md. Kaju Choudhury in his evidence in chief has stated that in the year 2016 on a day in the afternoon he came to know that the accused rode a motorcycle and knocked a person riding bicycle who sustained injury. During his cross-examination, PW1 has stated that he was not present at the time of alleged occurrence and he did not see the occurrence. He cannot say for whose fault the alleged occurrence took place. He did not see the injury sustained by victim.

6. PW2 Md. Nasir Uddin Ahmed in his evidence in chief has stated that about 1 ½ years back on a day at about 04:00 P.M, while he was at Tezpur, he learned from his family members that a person named Khagen was riding the offending bike at the time of occurrence and the victim was a boy working behind his house. During his cross-examination, PW2 has stated that he did not heard that the alleged occurrence was committed by the accused. He cannot say the nature of injuries sustained by the victim. He cannot say for whose negligence the alleged occurrence took place.

7. PW3 Md. Kashmir Ali in his evidence in chief has stated that he is the informant of this case. On a day in the year 2016 at about 06:00 P.M, while his brother Hafijul Ali was coming home on foot and reached near Haijan Bridge, at that time the accused came there by riding a bike and knocked his said brother from the back side due to which his brother sustained injury on the head. His brother was then taken to North Lakhimpur Civil Hospital from where he was

referred to Guwahati for treatment. After coming back from Guwahati, he lodged an F.I.R about the occurrence. Exhibit – 1 is that F.I.R in which exhibit – 1(1) is his signature. During his cross-examination, PW1 has stated that at the time of occurrence he was at his home. He has not seen the accused at the time of occurrence.

8. PW4 Md. Sadiqul Amin in his evidence in chief has stated that about 2-3 years back he learnt that an accident took place near town bantow. PW5 ASI Promod Das in his evidence in chief has described the steps taken by him during investigation of this case. PW5 has stated that during investigation details of investigation he visited the place of occurrence and found a motorcycle and seized the same. He then searched for accused Khagen Gogoi but did not find the accused. Later on, the father of said accused produced the accused in police station.

9. PW6 Dr. Moromi Kalita in her evidence in chief has stated that on 30/04/2016 she was posted as M & H.O – I at casualty department of North Lakhimpur Civil Hospital. On that day, she examined Md. Hafijur Rahman and Sri Ranjan Bikash Gogoi and found injuries on their body. Exhibit – 6 & 7 are the medical reports submitted by her in respect of the said examinations.

10. CW1 Md. Hafijul Rahman in his evidence in chief has stated that on 30/04/2016 at about 06:30 P.M, while he was going through Haijan Bridge by walking, at that time a motorcycle came there from the back side and hit him as a result of which he fell down on the ground and sustained fracture on his head and became senseless. During his cross-examination, CW1 has stated that he do not know that who hit him with the motorcycle from the back side.

11. CW2 Sri Ranjan Bikash Gogoi in his evidence in chief has stated that at the time of occurrence on 30/04/2016 he was not present at North Lakhimpur as he was in Barpeta district on that day. After coming back from Barpeta he came to know that police served a notice in the name if his father. He was not treated at North Lakhimpur Civil Hospital or any other hospital in connection with this case.

12. CW3 Sri Pradip Dutta in his evidence in chief has stated that on 30/05/2016 he was working as a constable in the traffic branch of North

Lakhimpur P.S. On that day, he escorted victim Sri Ranjan Bikash Gogoi to Civil Hospital for treatment.

13. At the time of argument, learned counsel for defence submitted that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused has committed the offences as alleged, and hence, the accused is liable to be acquitted from this case.

14. On perusal of the evidence deposed by PW1, PW2 & PW3 as narrated above, it is seen that they were not present in the place of occurrence at the time of alleged occurrence and hence they have not seen the alleged occurrence with their own eyes. In that view of the matter, it is evident that the statements made by PW1, PW2 & PW3 in their respective evidence as regards the alleged riding of that motorcycle by the accused, are totally hearsay evidence and the same cannot be relied upon unless corroborated by some other reliable evidence.

15. Further, one of the victim/CW1 Md. Hafijul Rahman in his cross-examination has specifically stated that he do know that who hit him from the back side by riding the motorcycle. Be it mentioned here that the CW1 in his evidence in chief has also not stated that who rode the offending motorcycle at the time of alleged occurrence. As such, it is clear that there is nothing in the evidence of CW1 which can show that the accused was riding the offending motorcycle at the time of alleged occurrence. Similarly, another alleged victim/CW2 in his evidence has not supported the case of prosecution and has even stated that he was not present in the place of occurrence at the time of alleged occurrence as he was in Barpeta district at that time.

16. In addition to the above, the PW1, PW2 & PW3 in their respective evidence have not stated the circumstances in which the alleged occurrence took place. As such, there is nothing in the evidence on record which can show that the aforesaid motorcycle was being ridden in a rash or negligent manner at the time of occurrence.

17. Needless to mention here that the PW4 has not stated anything in support of the prosecution. Also, the PW5 & PW6 are official witnesses, and there is

nothing specific in their evidence which can show that the accused was riding the offending motorcycle at the time of alleged occurrence.

18. Therefore, considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused has committed the offences as alleged.

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

### **ORDER**

19. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Khagen Gogoi has committed the offences punishable under section 279/338 of IPC as alleged, and as such, the accused person is acquitted of the charges under section 279/338 of IPC on benefit of doubt and he be set at liberty forthwith.

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

The motorcycle and bicycle seized vide M.R No. 140/16 be released to the custody of its registered owner. Also, the documents seized vide the said vide M.R No. 140/16 be released to the custody of the person whose name appears therein as owner.

This judgment is given under my hand, and seal of this court on this the 17<sup>th</sup> day of December, 2019.

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 – Sketch map.

Exhibit .3 – Seizure list.

Exhibit .4 – Charge Sheet.

Exhibit.5 – Medical requisition form.

Exhibit.6 – Medical injury report.

Exhibit.7 – Medical injury report.

**(B) DEFENCE EXHIBITS**

Nil

**(C) PROSECUTION WITNESSES**

P.W. 1 – Md. Kaju Choudhury.

P.W. 2 – Md. Nasir Uddin Ahmed.

P.W. 3 – Md. Kashmir Ali.

P.W. 4 – Md. Sadiqul Amin.

P.W. 5 – ASI Promod Das.

P.W. 6 – Dr. Moromi Kalita.

**(D) DEFENCE WITNESSES**

Nil

**(E) COURT WITNESS**

C.W. 1 – Md. Hazijul Rahman.

C.W. 2 – Sri Ranjan Bikash Gogoi.

C.W. 3 – Sri Pradip Dutta.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur