

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

G.R CASE NO: 1206 OF 2018  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI NABADIP DAS

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

GR CASE NO: 1206 / 2018

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI NABADIP DAS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P  
ADVOCATE FOR THE ACCUSED: MD. AFILUDDIN AHMED

OFFENCE EXPLAINED ON : 18.07.2019  
EVIDENCE RECORDED ON : 19.09.2019, 20.12.2019

ARGUMENT HEARD ON : 21.12.2019  
JUDGMENT DELIVERED ON : 21.12.2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the FIR is that on 09.05.2018 at about 6.30 PM, while informant's elder brother Sri Bipul Bodo was going to home from Kadam Tiniali through the NH-15 by walking and reached at Moinapara Tiniali, at that time a vehicle bearing registration No. AS 01 AE 3950 came from Gogamukh side in a very high speed and negligent manner and then hit informant's said brother and thereby caused severe injury to him. The people nearby then took informant's said brother to North

Lakhimpur Civil Hospital but he was referred to Dispur Nursing Home as his injuries were severe. The informant thereafter lodged an FIR about the occurrence before the O/C of Boginadi police station.

2. On receipt of the F.I.R, the O/C Boginadi P.S registered a case being numbered as Boginadi P.S Case No. 91/18 and after investigation I.O of the case submitted charge sheet against accused Sri Nabadip Das for the offences punishable under section 279/338 of I.P.C. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 279/338 of IPC are read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined four witnesses whereas the accused did not adduced evidence of any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements 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-

**POINTS FOR DETERMINATION:**

(i) Whether the accused person on 09.05.2018 at about 6.30 PM at Moinapara Tinali under Boginadi PS, drove his vehicle bearing registration No. AS 01 AE 3950 on the public way in a rash or negligent manner and thereby hit informant's brother Sri Bipul Bodo and caused injury to him and also endangered his life, and thereby committed an offence punishable u/s 279 of IPC?

(ii) Whether the accused person on 09.05.2018 at about 6.30 PM at Moinapara Tinali under Boginadi PS, drove his vehicle bearing registration No. AS 01 AE 3950 on the public way in a rash or negligent manner and hit informant's brother Sri Bipul Bodo thereby causing grievous hurt to informant's said brother and also endangered the life and personal safety of informant's said brother, and thereby committed an offence punishable u/s 338 of IPC?

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

**POINT NO. 1 & 2**

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

6. As regards the aforesaid points for determination, informant Sri Sansuma Boro in his evidence-in-chief as PW-1 has stated that about one year back on a day in the evening a person from Moinapara area informed him over phone that his brother Sri Bipul Bodo met with an accident and is taken to hospital. He then rushed to Saboti hospital and saw his brother in an injured condition. Thereafter, his brother was taken to Guwahati for treatment. After the aforesaid occurrence, he came to know from the accused that the aforesaid accident was committed by the accused. He do not know that how the occurrence took place. During his cross-examination, PW-1 has stated that he did not see the occurrence himself. He do not now that for whose fault the occurrence took place.

7. PW-2 Sri Rameswar Swargiary in his evidence-in-chief has stated that he knows the informant but he do not know the accused. About one year back on a day in the evening, while he was at his home, at that time he came to know from his younger brother that his elder brother Bipul Bodo met with an accident and is taken to hospital. He then rushed to the hospital and saw his elder brother in an injured condition. His brother was then taken to Guwahati for treatment. He do not know that for whose fault the occurrence took place.

8. PW-3 Sri Bipul Bodo in his evidence-in-chief has stated that the informant is his younger brother. He do not know the accused. On 09.05.2018 at about 6.30 PM, while he was going to home from Kadam Tiniali by walking and reached Moinapara Tiniali at that time one Santro vehicle came from Gogamukh side and hit him from his front side due to which he became senseless. He regained his senses after about one month and at that time he found himself under treatment at Guwahati. He sustained fracture on his left and right legs. After coming back from Guwahati he came to know that one Sri Nabadip Das was driving the aforesaid vehicle. During his cross-examination, PW-3 has stated that he do not know the aforesaid Nabadip Das and he has never seen said Nabadip Das and he even cannot say that whether said Nabadip Das is present in the court today. He do not know that who is the owner of aforesaid vehicle.

9. PW-4 Sri Pranjal Chetia in his evidence-in-chief has stated that he knows the informant and accused. About 1 1/2 years back on a day at about 6.30 PM, while he was going to Boginadi from Lakhimpur at that time he saw Sri Bipul Bodo lying on the ground near Kadam Tiniali. He came to know that a road traffic accident took place there. Thereafter, he went away from that place. During his cross-examination, PW-4 has stated that he cannot say that whether the accused is involved in the alleged occurrence.

10. At the time of argument, learned counsel for the defence submitted that the prosecution has failed to prove its case as alleged and hence the accused is liable to be acquitted from this case.

11. On perusal of evidence deposited by PW-1, PW-2 and PW-4, it is seen that they were not present in the place of occurrence at the exact time of alleged occurrence and they have not seen the alleged occurrence. In that view of the matter, the statements made by PW-1, PW-2 and PW-4 in their respective evidence-in-chief as regards the alleged occurrence are clearly hearsay evidence which cannot be believed unless corroborated by some other reliable evidence. Moreover, the PW-1, PW-2 and PW-4 in their respective evidences have nowhere stated the circumstances in which the alleged occurrence took place. As such, there is nothing in the evidence of PW-1, PW-2 and PW-4 from which it can be concluded that the aforesaid vehicle was being driven in a rash or negligent manner at the time of alleged occurrence. Also, the PW-2 and PW-4 have not stated anything regarding the identity of the driver of that vehicle.

12. In the above context, the victim/PW-3 in his evidence-in-chief has clearly stated that he came to know after coming back from Guwahati that the offending vehicle was driven by one Sri Nabadip Das. These makes it clear that the PW-3 himself has not seen Sri Nabadip Das driving the aforesaid vehicle at the time of alleged occurrence. As such, the aforesaid statement of PW-3 is a piece of hearsay evidence which cannot be believed unless corroborated by some other material evidence. Moreover, during his cross-examination, the PW-3 has made it clear that he do not know said Nabadip Das and he has never seen said Nabadip Das. As such, it is clear that the PW-3 do not have any direct knowledge about the identity of person who was driving the aforesaid vehicle at the time of alleged occurrence.

13. In addition to the above, the PW-3 in his evidence-in-chief has not specifically stated that whether he was walking on the footpath besides the road, or over the road, at the time of alleged occurrence. PW3 has also not specified that whether the aforesaid vehicle crossed boarder of road and hit him after coming to footpath. Therefore, in the absence of specific mention of such circumstances, it cannot be ascertained properly from the evidence of PW-3 that whether the driver of aforesaid vehicle was negligent at the time of alleged occurrence.

14. 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**

15. In view of the discussions made above and the decisions 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 Nabadip Das has committed the offences punishable under section 279/338 of IPC as alleged, and as such, the said 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 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 21<sup>st</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 – F.I.R

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Sansuma Boro

P.W. 2 – Sri Rameswar Swargiary

P.W. 3 – Sri Bipul Bodo

P.W. 4 – Sri Pranjal Chetia

DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur