

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

G.R CASE NO: 1427 OF 2014
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. HUSSAIN ALI

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

GR CASE NO: 1427 / 2014

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. HUSSAIN ALI

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: MD. AMINUR RAHMAN

OFFENCE EXPLAINED ON : 05.10.2016
EVIDENCE RECORDED ON : 29.11.2016 & 06.10.2017

ARGUMENT HEARD ON : 28.03.2019
JUDGMENT DELIVERED ON : 28.03.2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that, on 16.07.2014 at about 3.50 P.M, while informant's father Sri Nityananda Hazarika was coming to Bihpuria town from Dikrong bridge by riding his bicycle, at that time the driver of Cruiser vehicle bearing registration No. AS 07 C 2537 hit informant's father by driving the said vehicle in a rash and negligent manner.

Consequently, the informant's father fell down from bicycle and sustained injury. The people nearby then managed to send informant's father to Bihpuria hospital. The informant's father was thereafter taken to Dispur Polyclinic, Guwahati for medical operation due to fracture of bone. After the aforesaid occurrence, the informant lodged an FIR before the O/C of Bihpuria police station.

2. On receipt of the F.I.R the O/C Bihpuria P.S registered a case being numbered as Bihpuria P.S Case No. 244/14. After investigation, I.O of the case submitted charge sheet against accused Md. Hussain Ali for the offences punishable under section 279/338/427 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 under section 279/338/427 of I.P.C 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 two witnesses whereas the accused did not examine any witness in support of his defence. The examination of the accused person u/s 313 CrPC was dispensed with finding no incriminating materials against him. 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 16.07.2014 at about 3.50 P.M, at Bihpuria, hit informant's father Nityananda Hazarika with his vehicle bearing registration No. AS 07 C 2357 by driving the said vehicle in a rash or negligent manner, and thereby committed an offence punishable u/s 279 of IPC ?

(ii) Whether the accused on 16.07.2014 at about 3.50 P.M, at Bihpuria, hit informant's father Nityananda Hazarika with his vehicle bearing registration No. AS 07 C 2357 by driving the said vehicle in a rash or negligent manner and thereby caused injury to informant's father, and thereby committed an offence punishable u/s 338 of IPC ?

(iii) Whether the accused on 16.07.2014 at about 3.50 P.M, at Bihpuria, hit informant's father Nityananda Hazarika with his vehicle bearing registration No. AS 07 C 2357, knowing that he (accused) is likely to cause wrongful loss or

damage to informant's father, to the amount of Rupees. 50/- or upwards, and thereby committed an offence punishable u/s 427 of IPC ?

DISCUSSION OF EVIDENCE, DECISION, AND REASONS THEREOF:

POINT NO.1, 2 & 3

6. For the sake of convenience, and as because point no.1, 2 & 3 are interconnected, hence they are taken up herein together for discussion. As regards the aforesaid points for determination, PW-1 Sri Prabin Hazarika in his evidence-in-chief has stated that he is the informant. He do not know the accused. On 16.07.2014 while he was in his house, he got information that his father while coming back from Bihpuria market, is hit by a vehicle. He then rushed to Bihpuria hospital and came to know that his father was sent to home after giving primary treatment. Thereafter, he took his father to North Lakhimpur hospital. His father told him that a Cruiser vehicle hit him (PW1's father's) after coming in a very high speed on the side of the road. He then came to know that the registration of said vehicle is AS 07 C-2357. Exhibit-1 is the FIR lodged by him in which Exhibit-1(1) is his signature. During his cross-examination, PW-1 has stated that he did not see the occurrence. He do not know that for whose fault the accident took place.

7. PW-2 Akash Seikh in his evidence-in-chief has stated that he do not know the informant and accused. He do not remember anything about the occurrence. During his cross-examination, PW-2 has stated that he do not know anything about the occurrence.

8. At the time of argument, learned Counsel for defence submitted that the prosecution has failed to prove beyond reasonable doubt that the accused has committed the offences as alleged, and as such, the accused is liable to be acquitted from this case.

9. On going through the evidence deposed by PW-1 and PW-2 as narrated above, it is seen that PW-2 do not have any knowledge about the alleged occurrence. Further, though as per PW1, his father told him/PW1 that the vehicle came to the side of the road in a very high speed and hit his bicycle (informant's father's bicycle), but admittedly PW-1 has not stated anywhere that who was driving that vehicle. Also, PW1 has specifically stated that he himself has not seen the alleged occurrence. Therefore, it is clear that the evidence on record is not at

all satisfactory to show that the accused was driving that vehicle at the time of alleged occurrence.

10. Moreover, in my opinion, driving a vehicle in a very high speed alone cannot be understood as rash or negligent driving unless it is shown that such high speed of the vehicle crossed the speed limit prescribed for that particular road, or that driving the vehicle in such high speed in the circumstances of that particular area/place is detrimental to the safety of people. In the case in hand, prosecution has not adduced any evidence to prove the prescribed speed limit of the place of occurrence. Also, the prosecution has not adduced any evidence to show that the circumstances of the place of occurrence was such that the alleged speed of that vehicle was certainly detrimental to the safety of people. Under such circumstances, even if it is presumed that the said vehicle was being driven in a very high speed, then also in my opinion, the evidence available in the case record is not sufficient to prove that the same was driven in a rash or negligent manner.

11. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused by driving the said vehicle in a rash or negligent manner hit informant's father and thereby caused injury. Also, the evidence available in the case record in no way proves that the accused caused destruction of the bicycle belonging to informant's father. Hence, it is clear that the prosecution has failed to prove its case beyond reasonable doubt.

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

ORDER

12 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 doubt that accused Md. Hussain Ali has committed the offence punishable under section 279/338/427 of IPC as alleged, and as such, the said accused person is acquitted of the charge under section 279/338/427 of IPC on benefit of doubt and he be set at liberty forthwith.

The vehicle and documents seized vide M.R No. 89/14 and 90/14 be released to the custody of the persons from whom seized.

The bail bond of the above named accused 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 28th day of March, 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 Prabin Hazarika
P.W. 2 – Md. Akash Seikh.
- (D) **DEFENCE WITNESSES**
Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur