

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA:
TINSUKIA

G.R. CASE NO: 35 OF 2011

U/ Sec 279/337/338/427 OF IPC

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

SRI BIKASH SARMAH

S/O: SRI P.K.SARMAH

ADDRESS: MIAO SINGPHO GAON

P.S.: MIAO, DIST: CHANGLANG, ARUNACHAL PRADESH

.....ACCUSED

PRESENT: SALEH AHAMMAD, LL.M. AJS
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA,

TINSUKIA

FOR THE STATE: Mr. BAPA PURU KASHYTA, LEARNED ASST.PP

FOR THE ACCUSED: Mrs. DEEPALI RAVI, LEARNED DEFENCE COUNSEL

OFFENCE EXPLAINED ON: 19-04-17

EVIDENCE RECORDED ON: 22-09-17, 15-12-17, 20-06-18, 14-11-18, 04-02-19,
28-02-19 & 14-03-19

ARGUMENT HEARD ON: 27-06-19

JUDGMENT DELIVERED ON: 11-07-2019

JUDGMENT:

1. The genesis of this case had its roots with the lodging of First Information Report (in short as F.I.R) wherein the informant has alleged that on 14-01-2011 at about 8-30 pm one Maruti 800 car vide Reg. No. AS-23-C-2499 was coming from Tinsukia with rash and negligent driving and knocked down his neighbour Sri Ram Dayal Sahu at Chariali Digboi and his said neighbour sustained grievous injuries on his body due to the negligent driving of the said vehicle. The said vehicle also knocked three other persons namely Sri Rakhal Das, Sri Hari Rai and Nijut Moran and they have also got injuries on their body. Moreover, the said vehicle knocked one motorcyclist and one bicyclist sustained injuries and damage their cycle. Thereafter, the said vehicle also collided with a petrol tanker near Charali police point Digboi. Thereafter, he took his neighbour to the IOC hospital. The delay of lodging the ejarah was because he was busy with the treatment of his said neighbours. The criminal law was set in motion with the lodging of the FIR.
2. In this case the O/C Digboi PS registered as Digboi PS case No. 15/11 U/sec 279/338/427 of IPC and the case was entrusted to ASI GHANA KT. GOGOI for pre-investigation and finally after completion of investigation the charge-sheet was submitted by MOHESH CH. BORAH against the accused person U/sec 279/337/338/427 of IPC.
3. In this case the accused person appeared before the court and he was allowed to go on bail by my Ld. Predecessor and as per section 207 of CrPC & the offences U/sec 279/337/338/427 of IPC was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. In this case the prosecution has adduced as many as ten PW'S to prove the case. In this case the statement of the accused person is hereby recorded and his plea is of total denial. The defence does not want to adduce any DW's from their side.
4. I have heard arguments of the learned defence counsel and the learned Asst. P.P. I have perused the evidence on record and scrutinized the evidence on record.
5. After hearing both sides the following are determined point of determination.

POINT OF DETERMINATION

POINT FOR DETERMINATION NO.1:

Whether the accused person was driving the vehicle vide Reg. No. AS-23-C-2499 and thereby endangering human life at about 8-30

pm whereby the accused was driving the vehicle in a very rash and negligent manner and in the said process the caused injuries to the neighbour of the complainant as well as other persons & thereby committed and offence punishable U/sec 279 of IPC?

POINT OF DETERMINATION NO.2:

Whether the accused person was driving the vehicle and at the same time and place had caused hurt to the neighbour of the complainant as well as other persons by doing such act and it was driven rashly and negligently as to endanger human life or personal safety of others & thereby committed and offence punishable U/sec 337 of IPC?

POINT OF DETERMINATION NO.3:

Whether the accused person was driving the vehicle and at the same time and place had caused grievous hurt to the neighbour of the complainant as well as other persons by doing such act and it was driven rashly and negligently as to endanger human life or personal safety of others & thereby committed and offence punishable U/sec 338 of IPC?

POINT FOR DETERMINATION NO.4:

Whether the accused person had caused or likely to cause wrongful loss or damage and thereby cause damage to the vehicle & cycle and thereby caused damage at the same time and place and thereby committed an offence U/sec 427 of IPC?

Discussion, Decision and Reasons there on:

For the sake of convenience all the points are clubbed together:

6. PW1 in his evidence has deposed that he know the informant of this case. But he do not know the accused person. On 14-01-2011 at about 8:15 to 8:30 pm he met with an accident in front of Khaitan Cycle store when he was proceeding from Digboi Chariali towards his house. The accident was committed by Maruti-800 car which was proceeding from Tinsukia side. Instantly, he became senseless and he was taken to IOC hospital, Digboi and given treatment. Thereafter he was referred to Brahmaputra Hospital, Dibrugarh. He came to know that the offending vehicle also knocked down Rakhal Das, Hari Rai and another person. Amongst them Hari Rai died after about one month from the date of accident. As a result of the accident his right leg was broken. His neck was also severely injured and some of his teeth were also dislocated. Police recorded his statement in connection with this case.
7. During cross examination he has stated that he do not know the number of the offending vehicle. He also do not know the owner of the vehicle and

the driver. At the time of accident it was dark. Since it was dark at the time of accident therefore, he did not see which vehicle knocked him down.

- 8.** PW2 in his evidence has deposed that he did not know the informant and the accused of this case. The incident took place about 3 to 4 years back at about 8:15 pm. He has a vegetable shop in front of Khaitan Cycle store, on the other side of the road. At the relevant time a Maruti car knocked down Ram Dayal Sahu while he was coming by a bicycle. The offending vehicle also knocked down some other bicyclists. The vehicle ran away from the place of occurrence. They took the injured to IOC, Digboi hospital. Police seized the bicycle and he put his signature as a seizure witness. Afterwards the vehicle was seized by police and he put his signature as a seizure witness in burned condition of the vehicle. Ext. 1 is the seizure list of Maruti car and Ext.1(1) is his signature. Ext. 2 is the seizure list of the bicycle and Ext.2(1) is his signature. Thereafter police recorded his statement in connection with this case.
- 9.** During cross examination he has stated that at the time of accident he was sitting in his shop. He do not know the number of the offending vehicle. He also do not know the owner of the vehicle and the driver. At the time of accident it was dark. The seizure list was prepared at the place of occurrence. He did not see the public burning the vehicle.
- 10.** PW3 in his evidence has deposed that he do not know the informant and the accused of this case. The incident took place in the year 2011 one evening. At the relevant time he was proceeding from Digboi traffic point towards his house. Suddenly a Maruti car knocked him down from the front. At that time he was riding a vespa scooter. As a result of the accident he fell down but got up himself. Then he went to a nearby shop. The local public took him to IOC, hospital at Digboi. He sustained injury on his forehead and thigh. After hitting him the offending vehicle also knocked down some others. Police seized his scooter in connection with this case vide Ext.3. Ext.3(1) is his signature. Police also recorded his statement in connection with this case.
- 11.** During cross examination he has stated that the accident took place at about 8:30 pm.
- 12.** PW4 in his evidence has deposed that he do not know the informant and the accused of this case. The incident took place on 14-01-2011 during evening time. At the relevant time he was at Digboi petrol pump. Some of their villagers called him over phone that their co-villager Nozot Moran met with an accident. Hearing about it he came to the place of

occurrence. In the meantime he was taken to hospital but his vespa scooter and other things were lying at the place of accident. At first he went to the medical. On the following day he was called at the PS where he was asked to put signature in the seizure list. Ext. 3 is the seizure list in respect of the vespa scooter of Nizot Moran and Ext.3(2) is his signature. Police also recorded his statement in connection with this case.

13. During cross examination he has stated that he did not see the accident taking place of his own eyes. He do not know for whose fault the accident took place.

14. PW5 in his evidence has deposed that he do not know the informant as well as the accused person of this case. On the date of occurrence at about 8:00 pm he was eating chowmein at Digboi Chariali. Suddenly, a vehicle coming from Tinsukia side knocked him from behind. Instantly, he became senseless. He was taken to the hospital. As a result of the accident his left leg was broken. He also sustained injuries on other parts of the body. He was treated in the hospital for 20/25 days. He did not file any case against the driver of the offending vehicle. Police met him and recorded his statement in connection with this case.

15. His cross examination has been declined by defence side.

16. PW-6 in his evidence has deposed that he do not know the informant and the accused person. In the year 2011 while he was at Digboi P.S for some personal work, one police asked him to put his signature in a seizure list. On being asked by police he put his signature. Ext. 3 is the seizure list and Ext.3(1) is his signature.

17. During cross examination he has stated that he has no knowledge about any accident. Ext.3 was not read over to him.

18. PW7 in his evidence has deposed that he do not know the informant and the accused person. The incident took place in the year 2011. On the day of occurrence at about 9:00 pm he was at his shop at Digboi Chariali. He heard hulla that one accident took place. One bike was lying on the road. Police asked him to put his signature on a paper. Ext.2 is the seizure list and Ext.2(2) is his signature.

19. During cross examination he has stated that he had not seen the accident.

20. PW8 in his evidence has deposed that he is the complainant of this case. On 14-01-11 there was an accident of Digboi Chariali near Khaitan Cycle Store with one Maruti Van which knocked them. The van came from Tinsukia side. The occurrence took place approx. 8:00 pm. The victim is Ram Dayal Sahu and he heard about it. But he did not saw it. He saw Ram

Dayal Sahu was riding a cycle and he met with an accident. He did not see it. The injured sustained injuries. He took him to IOC medical and later to Dibrugarh at Archana Hospital. He heard that approx. 2/3 persons were injured in the accident. The said vehicle did this which he knew. The case was lodged on the next day. Ext.5 is the FIR and Ext.5(1) is his signature.

21. During cross examination he has stated that the FIR was written in the police station by some person. He had read the contents of the FIR but he does not know what is written in the FIR. The FIR was written as per his version. He does not remember the number of the Maruti Van. He was approximately about 20/30 meter away from the place of occurrence. After 1¹/₂ / 2 minutes he reached the place of occurrence. He did not know the driver of the vehicle and he does not know who was driving the vehicle. But later came to know at the hospital. The suggestion put forward is total denial.

22. PW9 in his evidence has deposed that during the Mag Bihu in the year 2011 he was present at the Digboi police station and at that time he heard about an accident at the Digboi chariali police point. They went there along with police staff. They saw one Maruti Car was burned. They heard that the said vehicle had committed an accident and the public set ablaze the vehicle. The vehicle was seized and he signed in the seizure list. Ext.1 is the seizure list and Ext.1(2) is his signature.

23. During cross examination he has stated he signed the seizure list at the place of occurrence and he knew the contents of seizure list it was read over to him. He does not know how the accident took place.

24. PW10 in his evidence has deposed that he does not know the informant of this case. He knew the accused as he is his driver. The accused was asked to drop one person at Tinsukia and he did not know what happened on the way. He was the driver of his Maruti 800. The incident took place about 4/5 years ago. The vehicle was burnt by the public. He signed the seizure list. Ext 3 is the seizure list and Ext.3(2) is his signature.

25. During cross examination he has stated that he does not know due to whose fault the accident took place.

26. ***I have heard the arguments of the learned Asst. PP & the learned defence counsel.***

27. I have perused the evidence of PW'S and on perusal of the evidence of PW'S it appears that there was an accident which took place and this cannot be denied at all.

28. Before I proceed let us have a glance at Section 279 of the Indian

Penal Code which lays down about rash driving or riding on a public way.—
“Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

29. *There is a distinction between a rash act and negligent act. Under the English law rashness means recklessness. A reckless act has to be understood in two different senses - subjective and objective. In the subjective sense, it means the limited or cause us taking off and justify the risk which could be easily foreseen and in the circumstances of the case was unreasonable to take. In this sense it almost amounts to an oblique intent on the part of the accused. In the objective sense, the accused is not conscious of the result though he ought to be aware that might follow and in this sense it is almost equivalent to negligence. In other words, negligence involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid it.*

30. *The word rash & negligent has not been defined in the IPC. However, as per Black’s Law Dictionary the word “negligent” is characterized by a person’s failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances.*

31. In the case at hand, it appears that the injured person had sustained injuries and it cannot be denied at all. However, it appears that the PW’S didn’t know how the accident took place and due to whose fault the accident took place. It has also been admitted by the PW’S including the victims that they didn’t know who was driving the vehicle and they were even unable to recognize the accused person. The only fact which came to light is that there was an involvement of Maruti Car.

32. But in this case there was no such evidence brought to light that the vehicle was being driven in a rash and negligent manner and the accused person was driving the vehicle.

33. There was also damage caused to the vehicles and cycles but the prosecution side has failed to bring to light the ingredients of section 427 of IPC.

34. This court had taken into consideration the statement of the accused person u/sec 313 of CrPC it has been admitted by the accused

that his plea is of total denial.

35. During the evidence of these PW'S none of the ingredients of section 279/337/338/427 of IPC could be brought forward by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the above mentioned sections could be proved by the prosecution beyond reasonable doubt.

36. *The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of innocence is a human right as envisaged under Art.14 (2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948 also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

37. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh**¹ the hon'ble supreme court has held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.

38. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

39. In the light of above discussions and reasons I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt u/sec 279/337/338/427 of IPC and hence the accused person deserved to be acquitted of the offences leveled against him.

ORDER

40. *In view of the above discussions and reasons mentioned above I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt U/sec 279/337/338/427 of IPC and hence he is acquitted from this case and thereby set at liberty.*

41. *The seized articles be handed over to the custody of the*

actual owners.

42. *Make necessary entry in the Judgment register.*

43. Given under my hand and seal of this court on this the 11TH day of JULY, 2019 at MARGHERITA COURT.

SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: SRI RAM DAYAL SAHU

PW2: SRI RAJU VERMA

PW3: SRI NIJUT MORAN

PW4: SRI APURBA HAZARIKA

PW5: SRI RAKHAL DEY

PW6: SRI BIKASH KEDIA

PW7: SRI SANJIB SHARMA

PW8: SRI ASHOK KUMAR SINGH

PW9: SRI DHIRAJ KR. VERMA

PW10: MD ABDUL MALIK

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE SEIZURE LIST

EXT 1(1), 1(2) ARE THE SIGNATURES OF PW2 & PW9

EXT 2 IS THE SEIZURE LIST

EXT 2(1), 2(2) ARE THE SIGNATURES OF PW2 & PW7

EXT 3 IS THE SEIZURE LIST

EXT 3(1), 1(A), 3(2), 2(A) ARE THE SIGNATURES OF PW3, PW-4, PW6 & PW10

EXT 5 IS THE FIR

EXT 5(1) IS THE SIGNATURE OF PW8

DEFENCE EXHIBITS: NIL

**SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA**