

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (SADAR)
TINSUKIA

Present: S. Sultana, AJS
SDJM(S), Tinsukia

GR CASE NO. 1973/2014

U/S 279/337 OF IPC

State of Assam

Vs

Rajib Moran**Accused**

Advocate for prosecution: Learned Banti Hazarika

Advocate for defence: Learned M. Singh

Offence explained on: 10-04-17

Date of Evidence: 20-05-17, 09-06-17, 19-08-17

Date of Argument: 02-08-19

Date of Judgment: 02-08-19

JUDGMENT

1. The prosecution case succinctly is that informant on 04-10-14 lodged an ejahar stating that on 03-10-14 at around 4:00pm, a motor cycle bearing registration no. AS-23D-0946 being driven in high speed by accused knocked victim who was in a bi-cycle.

Thus, the above facts and circumstances led to the filing of the instant complaint and set the prosecution case in motion.

2. Based on the ejahar, Baghjan P.S Case No. 34/14 u/s 279/338 IPC was registered. After completion of investigation, Investigating Officer submitted charge-sheet against accused person namely Rajib Moran u/s 279/337 IPC for his prosecution under the aforesaid sections of law.
3. Relevant copies of documents were furnished to accused Rajib Moran persons as per provision of law. Offences u/s 279/337 IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. In this instant case, 9 (nine) prosecution witnesses (hereinafter referred to as PW) were summoned, examined-in-chief and cross examined.
5. Statement of defence u/s 313 Cr.P.C. has been recorded in which accused has reiterated that he is innocent and not guilty. Defence did not tender any evidence in its support. I have heard arguments advanced by both sides. I have also perused the entire case record.

POINTS FOR DETERMINATION:

6. The points of determinations are as follows:-
 - (i) Whether accused person on 03.10.14 at about 4:00pm being rider of motorcycle bearing registration no.AS-23D-0946 drove it in a rash and negligent way and caused hurt to victim and thereby committed an offence u/s 279 of IPC?
 - (ii) Whether accused person on 03.10.14 at about 4:00pm being rider of motorcycle bearing registration no.AS-23D-0946 caused hurt to the victim by driving the said motor cycle rashly and negligently and thereby committed an offence u/s 337 of IPC?

REASONS, DISCUSSIONS & DECISIONS THEREOF:

7. To arrived at a conclusion, I have gone through the evidence of all the PWs.

8. **PW-1 Bhagirathi Gowala** has deposed that he knows the incident and the incident took place on 03-10-14 after 3:00pm at Baghjan, Dighaltarang, PWD road. PW1 has deposed that he came out of his house on hearing a noise and saw that injured Akash Kumar was lying on one side of the road and on the other side a motor cycle and two persons were lying. A passenger vehicle was coming which was stopped by PW1 and the injured was sent to hospital. The other two persons were also sent to hospital.

PW1 further deposed that one Suresh Ghatowar who was standing near the place of occurrence at the time of incident told PW1 that accused was in an inebriated state at that time and he lost his balance while driving the motor cycle. PW1 has also deposed that injured told him that when he was on his bi-cycle and the accused was coming from the opposite direction on a bike at speed and collided with the bi-cycle of the injured.

In his cross examination, PW1 has deposed that he has not seen the occurrence and he could not say for whose fault the incident took place.

In rest of his cross-examination, PW1 has not deposed anything material.

PW-2 Akash Karmakar has deposed in his evidence that the incident occurred one and half year ago from the date of recording his deposition. PW2 was going back after watching Durga Puja in his bicycle in the evening. PW2 further deposed that when he reached near Baghjan Gaon Tiniali, he met with an accident. At the time of the accident, PW2 saw that one was coming from the opposite direction, the person driving the bike was in a drunken state as PW2 saw that he had lost control over the bike and the bike was dwindling. Thereafter, the bike collided with my bicycle. Thereafter, PW2 fell on the ground and became unconscious. When PW2 regained his senses, he found himself in hospital and he was discharged on the same day and police recorded his statement.

In his cross examination, PW2 has deposed that the incident took place on a PWD Road. PW2 also deposed that at the time of incident, the bike was driven by two persons. PW2 has further deposed that he has not stated before the police that at the time of accident the accused, who was driving the bike was in a drunken state and the bike was dwindling.

In rest of the evidence, PW2 has deposed nothing material.

PW-3 Rabin Kherwal has deposed in his evidence that he could not identify the accused as at the time of incident, the riders of the bicycle and the motor cycle were injured and their faces were covered with blood. PW3 also deposed that the incident took place on Dashami at about 3:30 to 4:00pm and the place of occurrence is 50 mtrs away from his house. PW3 also deposed that he was at home at the time of incident on hearing a noise, PW3 came out and saw one motor cycle on the road and riders were also lying on road in an injured condition.

In his cross-examination, PW3 has deposed that he cannot say that for whose fault the accident took place.

In rest of the evidence, PW3 has deposed nothing material.

PW4- Arun Pator has deposed in his evidence that he does not know the accused. PW4 deposed that he knows the informant and victim. PW4 further deposed that at the time of incident which occurred in October 2014 at 2:30pm, one bike came in high speed and collided with bicycle and both the riders of the bicycle and bike sustained injuries.

In cross- examination, PW4 has deposed that accused is not the person who was riding the motorcycle at the time of accident.

PW-5 Rakhit Pator, PW6- Manual Nando, PW7- Sarvan Telenga, and PW8- Bonashri Karwal have deposed nothing material in their evidence.

PW9-Bikash Das had deposed in his evidence that on 03-10-14, he was working as General Physician at Doomdooma. On that day, PW9 examined Akash Karmakar and found injury on the upper lip and slight abrasion and mild swelling on the forehead. The injury was opined as simple injury.

In cross -examination, PW9 has deposed that victim himself appeared before PW9.

In rest of the evidence, PW9 has deposed nothing material.

9. I have perused the entire case record.
It is found that none of the PWs have deposed in their evidence that accused is the one whose bike collided with the bicycle of the victim. Even victim as PW2 did not

mention that accused is the person whose bike collided with his bicycle as a result of which he sustained injuries.

There is nothing on record that warrants the conviction of the accused person.

10. It has been held in **Rang Bahadur Singh Vs. State of UP, AIR 2000 SC 1209** that the time-tested rule is that acquittal of a guilty should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt, a conviction cannot be passed on the accused.
11. In light of the discussions made above, the inevitable conclusion, therefore is that prosecution has failed to bring home the charges levelled against the accused beyond the pale of reasonable doubt and accordingly, accused person is entitled to acquittal.
12. In the result, accused Rajib Moran is acquitted from charges u/s 279/337 IPC levelled against him and he is set at liberty forthwith.
13. Bail bonds furnished on his behalf shall remain in force for a period of six months.
14. Given under my hand and seal of this Court on this the 2nd day of August, 2019.
15. Case is disposed off hereby on contest.

(Salma Sultana)
Sub-Divisional Judicial Magistrate,
Tinsukia, Assam

ORDER

Accused Rajib Moran is present.

Judgment is ready and has been delivered and pronounced in open Court.

Accused Rajib Moran is acquitted from charges u/s 279/337 IPC levelled against him and he is set at liberty forthwith.

Bail bonds furnished on his behalf shall remain in force for a period of six months.

Given under my hand and seal of this Court on this the 2nd day of August, 2019.

Case is disposed off hereby on contest.

(Salma Sultana)
Sub-Divisional Judicial Magistrate,
Tinsukia, Assam

APPENDIX**1 PROSECUTION EXHIBIT:**

Ext.1 - Ejahar
Ext.2 - Seizure list
Ext.3 - Seizure list
Ext.4 - Medical report

2 DEFENCE EXHIBITS:

None

3 PROSECUTION WITNESS:

PW 1- Bhagirathi Gowala
PW 2- Akash Karmakar
PW 3- Rabin Kherwal
PW 4- Arun Pator
PW 5-Rakhit Pator
PW 6- Manual Nando
PW 7- Sarvan Telenga
PW 8- Bonashri Karwal
PW 9- Bikash Das

4 DEFENCE WITNESS:

None

(Salma Sultana)
Sub-Divisional Judicial Magistrate (S),
Tinsukia, Assam