

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TINSUKIA

GR Case No. 2197 of 2015

U/S 279/427 IPC

State of Assam

Versus

Munu Ahmed

.....Accused

Present: Zafreena Begum, AJS

Judicial Magistrate First Class, Tinsukia

For the prosecution:

Sri P.K. Sarma

..... Additional Public Prosecutor for the State

For the defence:

Sri S.K. Pandey

..... Advocate for the accused

Evidence recorded on: 05.09.2018 and 16.08.2020.

Argument heard on: 28.10.2020.

Judgment delivered on: 28.10.2020.

JUDGMENT

1. The prosecution story in brief as unfolded from the 'ejahar' dated 15/09/2015 lodged by informant, Shri Numal Sonowal, SSE/P-way/MJN N.F.RLY, is that on the same day at about 10.30 AM one truck bearing registration number AS-23G- 0371, loaded with sand while coming from HNR towards BPJ hit the railway track barrier mounting the track, thereby damaging 7 nos. of RCC G/Post and one no. of RCC B/Post and as such causing loss of property of value Rs 4200.00.

2. The said ejahar was received and registered as Tsk/ GR P.S. Case No. 23 of 2015 u/S 279 and 427 IPC dated 15/09/2015. The railway police after investigation submitted charge-sheet bearing no. 15/2015 dated 29/09/15 against the above named accused u/S 279 and 427 of the Indian Penal Code.

3. On the basis of chargesheet and other materials on record, cognizance of offences were taken u/s 190(1)(b) of CrPC and accordingly summons was issued to the above named accused person. On his appearance he was allowed to go on bail, thereafter copy of relevant documents were furnished to him as per section 207, Criminal Procedure Code. After hearing and on perusal of the materials on record, particulars of offences u/S 279 and 427 of IPC was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During the course of the trial, the prosecution examined as many as two witnesses.

5. After culmination of the prosecution evidence, the examination of accused person under section 313, Criminal Procedure Code was dispensed with as no incriminating material was found against him.

6. I have heard the arguments of the learned counsels for both sides and have also gone through all the evidence adduced on record. Considering all the aspects, the following points are taken as points for determination.

POINTS FOR DETERMINATION

I) Whether the accused person, Sri Munu Ahmed, on 15/09/2015 at about 10.30 AM at Rly Km no.64/2-3, had driven the offending vehicle bearing registration number AS-23-G-0371 in a manner so rash or

negligent as to endanger the human life, or to be likely to cause hurt or injury to any other person, and thereby committed the offence punishable u/S 279 IPC?

II) Whether the accused person on the same date, time and place committed mischief by causing loss or damage to the amount of fifty rupees or upward and thereby committed the offence punishable u/S 427 IPC?

7. The points for determination shall be decided in the light of the evidence on record.

DECISIONS AND REASONS THEREOF

8. Md. Nassiruddin Ahmed, the owner of the offending vehicle deposing as PW-1 deposed that he does not know anything about the incident.

9. His cross examination was declined.

10. The prosecution then examined Sri Raju Dey as PW-2, who deposed that he don't remember anything about the incident.

11. His cross examination was declined.

Judicial Determination

12. In order to constitute an offence punishable under Section 279 IPC, the prosecution is to establish that the accused was driving the vehicle in a public way and that he was driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person other than the driver. To prove an offence under section 427 IPC, it is to be proved that the accused person with the intent to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property of value fifty rupees or upward, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously.

13. Hon'ble Supreme Court in **Mohammed Aynuddin @ Miyam vs State of Andhra Pradesh, reported in (2000) 7 SCC 72**, explained the meaning of rash and negligent act as:

“A rash act is primarily an overhasty act. It is opposed to deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with the reasonable and proper care and precaution regarding against injury to the public generally or to any individual in particular. It is imperative duty of the driver of a vehicle to adopt such a reasonable and proper care and precaution.”

14. In the instant case, it is alleged that the accident was caused on the railway track by truck bearing registration number AS-23G-0371 as a result of which property of railway amounting to Rs 4200.00 has been damaged. However, every road accident does not make a person liable under the penal law, gross negligence of a very high order and/or rashness amounting to callousness as regard consequence has to be proved by the prosecution. Hence, it is imperative for the prosecution to prove beyond reasonable doubt the rashness and negligence on the part of the accused while he was driving the offending vehicle at the time of the accident.

15. Despite repeated summons, the informed who is the prime witness of the incident did not appear to give evidence. The prosecution have not examined any of the eye witness to the said incident. The two witnesses PW1 and PW2 just deposed that they have no knowledge about the same. Hence, there is nothing on record to prove the rashness or negligence on the part of accused which are the principle ingredients of offence u/S 279 of IPC. As regard to offence under section 427 of the IPC, the main ingredients i.e. intention or knowledge to commit mischief is also not proved.

16. In the light of the above discussion & reasons, it is found that the prosecution has not been able to prove the case u/S 279 and 427 of IPC against the accused person beyond reasonable doubt and as such the accused person is acquitted for offences u/S 279 and 427 IPC.

17. Hence Points No. I and II are decided in negative and goes in favor of the accused.

Decision

18. The standard of proof in criminal law is to prove guilt beyond all reasonable doubt. From the above discussions I come to the conclusion that the prosecution has not been able to establish the allegations u/s 279 and 427 IPC against the accused person. Hence, the accused person Sri Munu Ahmed is acquitted of the charges u/S 279 and 427 of Indian Penal Code. The above named accused person be set to liberty forthwith if not required in any other case.

19. The bail bond of the accused persons shall remain in force for another six months from today as per Section 437-A, Cr.P.C.

Given on this the 28th day of October, 2020 in the open court in presence of accused person under my hand and seal of this court.

(Smti Zafreena Begum)
Judicial Magistrate First Class, Tinsukia

APPENDIX

A. Prosecution Witnesses:-

PW-1: Md. Nassiruddin Ahmed;

PW-2: Sri Raju Dey.

B. Defence Witness:-

None

C. Prosecution Exhibits:-

None

D. Defence Exhibits:-

None

(Smti Zafreena Begum)
Judicial Magistrate First Class, Tinsukia