

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

**TINSUKIA**

**G.R. CASE NO: 621 OF 2016**

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

STATE OF ASSAM

..... PROSECUTOR

**-Vs.-**

SRI RAJANI KT. DAS

S/O: LATE P. DAS

ADDRESS: PARBOTIPUR, JAGUN

P.S.: LEKHAPANI, DIST: TINSUKIA, ASSAM

.....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: SMTI DEEPALI RAVI, LEARNED DEFENCE COUNSEL

OFFENCE EXPLAINED ON: 06-05-17

EVIDENCE RECORDED ON: 17-07-18, 06-03-19, 07-05-19 & 06-07-19

ARGUMENT HEARD ON: 18-07-19

JUDGMENT DELIVERED ON: 31-07-19

## **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 at about 1:35 pm the brother of the informant was on his vehicle bearing No. AS-23-M-1539 towards Margherita. There was another vehicle bearing No. ARX-0256 which was coming from the opposite direction and the said vehicle was driven in a very rash and negligent manner. The said vehicle had knocked down his brother's vehicle which led to grievous injuries and the bike was damaged to a greater extend. Thereby the informant lodged the FIR. The criminal law was set in motion with the lodging of the FIR.
2. In this case the O/C MARGHERITA PS registered as MARGHERITA PS case No. 223/2016 U/sec 279/338/427 of IPC and the case was entrusted to A.S.I. BHULA NATH SONOWAL for pre investigation and SI PRATAP GOGOI will completion of the case and finally after completion of investigation the charge sheet was submitted by him against the accused person U/sec 279/337/427 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 279/337/427 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 FIVE 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 ARX-0256 and thereby endangering human life on 13-09-16 at 1:35 P.M. whereby the accused was driving the vehicle in a very rash and negligent manner and in the said process the caused injuries to the son of the complainant & thereby committed and offence punishable U/sec 279 of IPC?***

**POINT OF DETERMINATION NO.2:**

***Whether the accused person was driving the vehicle bearing registration no. ARX-0256 and at the same time and place had caused hurt to the informant by doing such act and it was driven rashly and negligently as to endanger human life or personal safety of others & thereby committed an offence punishable U/sec 337 of IPC?***

**POINT FOR DETERMINATION NO.3**

***Whether the accused person had caused or likely to cause wrongful loss or damage and thereby cause damage to the vehicle of the informant i.e. AS-23-M-1539 & 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 is the informant of this case. Ext. 1 is the FIR and Ext.1(1) is his signature. In the year 2016 one day at about 1 P.M his brother Shyam Mali were proceeding towards Margherita by his motorcycle. He was informed by someone over phone that his brother met with an accident at Ledo, Birla gate. He rushed to the place of occurrence and found his brother in injured condition lying on the road. His brother sustained injuries on back side of head, chest and legs. Bike was damaged. The people gathered at the place of occurrence told that one bus of Arunachal Pradesh caused the accident which was standing at the place of occurrence. Police arrived the place of occurrence and took his brother to Ledo Mini PHC for treatment. Police also seized the bike and bus. He saw the driver of the bus at Ledo out post. Ext.2 is the seizure list and Ext.2(1) is his signature.
7. In his cross examination he has stated that he reached the place of occurrence after 10 minutes from getting the information. He cannot remember the name of the person who called him over phone and informed about the accident. He did not see the accident. He heard that bus caused the accident. He cannot remember the registration number of the bus. The bus was on the wrong side of road.
8. PW2 in his evidence has deposed that informant is his brother. He know the accused person. He was driving the vehicle near the Birla Gate turning about one and half years ago. The other vehicle came from opposite direction which was the vehicle of APST. The said vehicle was in high speed and knocked him and his motorcycle. He fell down and became senseless. Police came to Civil Hospital, Ledo and recorded his statement and talked about the incident. He sustained injury on his leg, chest, hands

and face. The vehicle which is identified by him kept in the case record. Ext. A is the vehicle which is kept in the record. He saw the person who drive the vehicle at the time of incident.

- 9.** In his cross examination he has stated that he do not know in what time the occurrence took place. He was on his way towards Margherita. At the time of accident the nearby people were present there. He was driving his vehicle and he do not know who was driving the vehicle from the opposite side. The accused person was driving the vehicle at a speed of more than 40 KM per hour. Due to the accident he was unconscious and he do not remember at what time he gained his sense. The suggestion put forward is of total denial.
- 10.** PW3 in his evidence has deposed that he do not know the informant and the accused person. He do not know about the occurrence.
- 11.** His cross examination has been declined by defence side.
- 12.** PW4 in his evidence has deposed that informant is his brother. His brother met with an accident and he was on his way to Margherita and he met with an accident. He heard about the news. The police took him to civil and he went there. The accident took place at 2:00/2:30 pm. He do not know about the occurrence. He met his brother and he told him that he was in his proper direction but the bus took a turn.
- 13.** In his cross examination he has stated that at the time of incident he was in his shop. His shop is about 2/3 kms from the place of occurrence. He got the information after ½ and hour. He did not went to the place of occurrence. He did not see the accident. He do not know due to whose fault the accident took place. He did not see who was driving the bus.
- 14.** PW5 in his evidence has deposed that on 13/09/16 he was working at Ledo PHC. On that day he examined Sri Shyam Mali and on examination he found: (i) multiple abrasion, covered with dark on front of left knee and left flank of abdomen, (ii) one lacerated injury side 1 cm X 1 cm over right side of forehead with oozing of blood. The injury is caused by fall on ground following Road Traffic Accident. The type of injury is simple. The patient was advised skull X-ray and lumbosacral spines X-Ray. But report not yet received. The time since injury is less than four hours. Ext.3 is the injury report, Ext.3(1) is his signature.
- 15.** During cross examination he has stated that the injury is fresh. This are multiple injuries. The injury can take place by rolling down from the bike after the accident by himself.

- 16.** *I have heard the arguments of the learned Asst. PP & the learned defence counsel.*
- 17.** 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.
- 18.** 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."*
- 19.** *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.*
- 20.** *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.*
- 21.** 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 been admitted by PW-2 i.e. the injured that he didn't know who was driving the vehicle from the opposite direction. It has also been admitted by PW2 that the accused person was driving the vehicle at a speed of more than 40 kms per hour. This clearly shows that the vehicle was being driven at a normal speed. But it was PW1 who stated that the vehicle was being driven at a high speed.
- 22.** Even if it is admitted for the sake of the argument that the accused was riding the vehicle at a high speed, it cannot be termed as rash or negligent act as because the

word "*high speed*" is a relative term. A vehicle which is driven in a congested road even at a speed of 40 K.M. may constitute high speed, but driving a vehicle at a speed higher than 40 K.M. in an open road may not be considered driving at high speed. It would depend upon nature and situation of road, concentration of pedestrians and vehicular traffic on it and many such other relevant factors.

- 23.**In the case of ***STATE OF KARNATAKA Vs. SATISH***<sup>1</sup>, the Hon'ble Supreme Court has held "*Merely because the truck was being driven at a "highspeed" does not bespeak of either "negligence" or "rashness" byitself. None of the witnesses examined by the prosecution couldgive any indication, even approximately, as to what they meant by"high speed". "High speed" is a relative term. It was for theprosecution to bring on record material to establish as to what itmeant by "high speed" in the facts and circumstances of the case."*
- 24.**A vehicle which is driven in a congested road even at a speed of 40 K.M. may constitute high speed, but driving a vehicle at a speed higher than 40 K.M. in an open road may not be considered driving at high speed. It would depend upon nature and situation of road, concentration of pedestrians and vehicular traffic on it and many such other relevant factors.
- 25.**The other PW'S i.e. PW3 & PW4 didn't knew much about the occurrence. It has been admitted by PW4 that he didn't saw the accident and he didn't know due to whose fault the accident took place. The accused person couldn't be recognized by PW3 & PW4.
- 26.**The medical officer of this case was examined as PW5. The opinion of the medical officer is of an expert opinion and the said needs corroboration to prove it. It has been admitted by PW5 during his cross examination that the injury can take place by rolling down from the bike after the accident by himself. This evidence of PW5 clearly shows that the said injuries can be sustained by rolling down after the accident.
- 27.**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

<sup>1</sup>(1998) 8 SCC 493

vehicle.

- 28.** The prosecution has also failed to bring to light the ingredients of section 427 of IPC. Even if PW1 & PW2 had stated that the vehicle was damaged but they have failed to mention the loss sustained in this case. The evidence of PW1 & PW2 doesn't find any corroboration with the evidence of other PW'S in this aspect.
- 29.** 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.
- 30.** During the evidence of these PW'S none of the ingredients of section 279/337/427 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.
- 31.** *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.*
- 32.** In the case of **V. D. Jhingan Vs. State of Uttar Pradesh**<sup>2</sup> 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.
- 33.** 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.
- 34.** 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 279/337/427 of IPC and hence the accused person deserved to be acquitted of the offences leveled against him.

### **ORDER**

**35.** *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 279/337/427 of IPC and hence he is acquitted from this case and thereby set at liberty.*

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

**37. The seized articles be handed over to the custody of the actual owners.**

**38. Given under my hand and seal of this court on this the 31<sup>ST</sup> day of JULY, 2019 at MARGHERITA COURT.**

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



**APPENDIX:**

**WITNESSES FROM THE PROSECUTION SIDE:**

PW1: RAJU KUMAR MALI

PW2: SHYAM KUMAR MALI

PW3: LAKHAN GARH

PW4: TARAKESHWAR MALI

PW5: Dr. PULAK PAUL, M/O.

**WITNESSES FROM THE DEFENCE SIDE: NIL**

**PROSECUTION EXHIBITS:**

EXT 1 IS THE FIR

EXT 1(1) IS THE SIGNATURE OF PW1

EXT 2 IS THE SEIZURE LIST

EXT 2(1) IS THE SIGNATURE OF PW1

EXT 3 IS THE INJURY REPORT

EXT 3(1) IS THE SIGNATURE OF PW5

**MATERIAL EXHIBITS:**

M.EXT A IS THE VEHICLE

**DEFENCE EXHIBITS: NIL**

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