

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS: NALBARI

P.R.C. NO. 798 OF 2019

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

STATE

Vs.

SANKAR DAS ACCUSED

PRESENT

SMRITI REKHA BHUYAN, A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS, NALBARI

ADVOCATE FOR THE STATE : HEM SARMA, LEARNED A.P.P.

ADVOCATE FOR THE ACCUSED : UMESH M.B. BARUAH

EVIDENCE RECORDED ON : 06.01.2022

ARGUMENTS HEARD ON : 12.01.2022

JUDGMENT DELIVERED ON : 12.01.2022

J U D G M E N T

1. The gist of the prosecution case is that, on 03/06/2018 the informant Sri Ghana Shyam Borah lodged an ejahar at Belsor P.S alleging inter alia that on 23/05/2018 at around 09:30 A.M., while his son Dipankar Borah was coming towards his home, in a Pulsur 220 motorcycle bearing Reg. no. As-14-G-3733, riding by the accused from Belsor Singimara in a rash and negligent manner, then about 1 K.M. distance from Belsor Singimara, suddenly the said motorcycle met with an accident, and as a result informant's son fell down and got grievous injuries

on various parts of his body and also severed his right leg. Informant's son was taken to United Hospital, Nalbari in injured condition for treatment. Hence, this case.

2. The ejahar was received and registered as Belsor P.S. Case No. 111/18 u/s 279/338 of IPC. On completion of investigation the investigating officer of the case submitted charge sheet against the accused person Sankar Das u/s 279/338 IPC.
3. Cognizance of offence was taken accordingly u/s 279/338 IPC. On receiving summons the accused person appeared before this court and he was allowed to go on bail. Copy was furnished to the accused person under section 207 Cr.P.C. Particulars of offence under section 279/338 of IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. Prosecution has examined two witnesses. The statement of accused person under section 313 was dispensed with as there was no incriminating materials against him. The defence declined to adduce any evidence.
5. Heard the arguments advanced by the Learned APP and the Learned Defence Counsel.

POINTS FOR DETERMINATION :

I. Whether the accused person Sankar Das on 23/05/2018 at around 09:30 A.M. at a distance about 1 K.M. from Belsor Singimara under Belsor P.S. had driven his motorcycle bearing no. Reg. no. As-14-G-3733, on a public road, so rash and negligent as to endanger the life of the informant's son/others or to be likely to cause hurt or injury to the informant's son/others and thereby committed an offence punishable u/s 279 IPC as alleged?

II. Whether the above named accused person on the said date ,time and place had voluntarily caused grievous hurt to the informant's son by riding the said motorcycle, so rashly and negligently so as to endanger life of the informant's son/others or the personal safety of the informant's son/others and thereby committed an offence punishable under Section 338 of IPC as alleged?

DISCUSSION, DECISION AND REASONS THEREON:

6. I have carefully gone through the entire evidence-on-record and materials placed before this court.
7. Both the two points for determination are decided together for the sake of convenience.
8. There are allegations of offences U/S 279/338 I.P.C. against the accused person in the instant case and

this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.

9. Section 279 I.P.C. provides that, *"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."*
10. Section 338 I.P.C. provides that, *"Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*
11. Thus, from the aforesaid provisions, it is clear that a person in order to commit an offence punishable u/s 279/338 IPC must not only cause hurt or injury to any person by driving a vehicle but also must have done the act with rashness or negligence.
12. Now let's have a discussion on the evidence-on-record deposed by the two prosecution witnesses and after that to reach in a conclusion whether any offence u/s 279/338 I.P.C. is made out against accused Sankar Das satisfying the ingredients of the said sections.
13. P.W. 1 Ghanashyam Borah, the informant, deposed in his examination-in-chief that, the accident took

place in the year of 2018 at about 9.30 AM on the road of Belsor-Singimara road. In that accident, his son Dipankar Borah got injured. The accused and his son were coming towards his house from Belsor in a motorcycle riding by the accused. His son and the accused both got injured in the said accident. Accordingly, he lodged ejahar at Belsor P.S. after some days of the accident against the accused. However, later on, he got to know that the accident had not taken place due to the fault of the accused. As such, he did not want to proceed with this case against the accused. Exhibit 1 is the ejahar and Exhibit 1(1) is his signature. Exhibit 2 is the seizure list and Exhibit 2(1) is his signature.

14. During cross-examination, P.W.1 deposed that he did not have any grievance against the accused.
15. P.W.2 Dipankar Borah, the victim, deposed in his examination-in-chief that, the accident took place in the year of 2018 at about 9.30 AM on the road of Belsor-Singimara road. He along with the accused were coming towards his house from Belsor in a motorcycle riding by the accused. On the road, a goat suddenly came in front of the motorcycle and they both fell down along with the motorcycle riding by the accused. Both of them got injured in the said accident. The accident had not taken place due to the fault of the accused.

16. During cross-examination, P.W.2 deposed that he did not have any grievance against the accused.
17. On perusal of the entire evidence-on-record, it is seen that in the instant case, neither the informant nor the victim has stated anything about rash or negligence act on the part of the accused Sankar Das, which either endangered human life or caused the death of the victim. There is no evidence to prove that the accident was the result of rashness or negligence on the part of the accused. It is found that the victim & informant stated that the accident has not taken place due to the fault of the accused person. As such, the informant did not want to proceed in the case.
18. Therefore, the only two witnesses examined by prosecution side, have not supported the prosecution case. Hence, in view of the discussions made above, it can be held that the prosecution has miserably failed in establishing the guilt of the accused under Sections 279/338 I.P.C. beyond reasonable doubt against the accused Sankar Das, thereby making him not guilty under the said Sections.

ORDER

19. This court finds that the prosecution has failed to establish the guilt of the accused person Sankar Das beyond reasonable doubt. Accordingly, accused Sankar Das is not held guilty of the offence punishable u/s 279/338 IPC and accordingly, he is acquitted and set at liberty forthwith.
20. The bail bond furnished on behalf of the accused shall remain in force for a further period of six months.
21. The seized articles/vehicle and documents are to be handed over to the custody of the registered/actual/lawful owner as per law.
22. The judgment is pronounced in the open court.
23. Make necessary entry in the Judgment register.
24. Given under my hand and seal of this court on this on this 12th day of January, 2022.

SMRITI REKHA BHUYAN
J. M. 1ST CLASS, NALBARI

Typed & corrected by me

Smriti Rekha Bhuyan, J.M.F.C., Nalbari.

A P P E N D I X

LIST OF PROSECUTION WITNESS:

P.W.1 : Ghanashyam Borah

P.W.2 : Dipankar Borah

LIST OF DEFENCE WITNESS:

D.W. : NIL

PROSECUTION EXHIBITS:

EXHIBIT 1 : Ejahar

EXHIBIT 1(1) : Signature of P.W.1

EXHIBIT 2 : Seizure list

EXHIBIT 2(1) : Signature of P.W.1

SMRITI REKHA BHUYAN

JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.