

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH
G.R. CASE NO.- 3117/2013
U/S 279/337/338/427 OF THE IPC

STATE

VS.

SRI SURESH KEJRIWAL
S/O SRI SHYAM SUNDAR KEJRIWAL
R/O SHANTIPARA T.S. LANE
P.S. DIBRUGARH
DISTT. DIBRUGARH

PRESENT:- KAUSHIK KAMAL BARUAH
JUDICIAL MAGISTRATE FIRST CLASS
AT DIBRUGARH

APPEARANCES:- SMT. LAKHIMI MOHAN.....FOR STATE
SMT APARNA DAS.....FOR ACCUSED

DATE OF EVIDENCE:- 07/11/14, 10/06/15, 05/08/15, 12/04/16
10/06/16, 04/08/16, 30/09/16, 31/02/18,
25/01/19, 15/03/19.

DATE OF ARGUMENT:- 08/05/19.

DATE OF JUDGMENT:- 08/05/19.

JUDGMENT

1. Accused Suresh Kejriwal stood trial for offences punishable under sections 279/337/338/427 of the Indian penal Code, 1860 (the IPC for short).
2. Criminal law was set into motion against the above named accused on the strength of a First Information Report (FIR for short) wherein, informant, Rajesh Yadav, alleged that, on 09/10/13 at about 09:40 PM, his vehicle bearing registration number AS-06/F-6440 was hit by a Scorpio bearing registration number AS-06/K-1021 near Boruah Petrol pump, under Dibrugarh Police Station. Consequently, passengers travelling in his vehicle bearing registration number AS-06/F-6440, namely, Prativa Gohain,

Samiran Gohain, Diganta Borokial and Parmatma Prasad suffered injuries on their person. The informant further alleged in his FIR that the offending vehicle bearing registration number AS-06/K-1021 was being driven in a rash and negligent manner resulting into the road traffic collision.

3. On 22/10/13, informant lodged a written FIR before the Officer-in-Charge of Dibrugarh Police Station which was registered and numbered as Dibrugarh P.S. Case No.1172/2013 under sections 279/337/338/427 of the IPC. During the course of investigation, the investigating officer visited the place of occurrence, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for short), made a rough sketch map of the place of occurrence, collected injury reports of the victims and report from the concerned Motor Vehicle Inspector (MVI), arrested the accused person and released him on bail.
4. After completing the investigation, the Investigating Officer submitted charge-sheet to prosecute the accused person for offences under sections 279/337/338/427 of the IPC.
5. Court processes were issued and on his appearance the accused was allowed to go on bail. Copy of relevant documents was furnished to the accused person. Particulars of the offences under sections 279/337/338/427 of the IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. Prosecution examined thirteen witnesses and evidence stood closed vide order dated- 15/03/19. Thereafter, accused was examined under section 313 of the Cr.PC. He denied the allegations levelled against him *in-toto* and also declined to adduce evidence in his support.
7. Heard arguments advanced by learned Assistant Public Prosecutor and learned defence counsel.

POINTS FOR DETERMINATION

- a) Whether the accused, on 09/10/13 at about 09:40 PM near Boruah Petrol Pump within Dibrugarh PS, drove his vehicle bearing

registration number AS-06/K-1021 so rashly or negligently as to endanger human life?

- b) Whether the accused on the same day, time and place caused simple hurt to Parmatma Prasad and Samiran Gohain by doing a rash act, that is to say, by driving his vehicle bearing registration number AS-06/K-1021 rashly?
- c) Whether the accused on the same day, time and place caused grievous hurt to Prativa Gohain by doing a rash act, that is to say, by driving his vehicle bearing registration number AS-06/K-1021 rashly?
- d) Whether the accused on the same day, time and place committed criminal mischief by causing loss to Rajesh Yadav to the amount of Rs.50/- and upwards?

DISCUSSION, DECISION AND REASONS THEREON

- 8. In order to establish the allegations against the accused person, prosecution examined Rajesh Yadav, Mobidur Rahman, Moon Moon Moran, Naba Kanta Konwar, Samiran Gohain, Prativa Gohain, Sunil Kejriwal, Diganta Borokial, Gunin Buragohain, Dipjyoti Das, Uma Shankar Shah, Dibyanda Dohotia and Markandey Yadav as PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13 respectively and closed evidence.
- 9. PW1 was the informant. Expressing his inability to recall the date of occurrence, he deposed that on the date of the incident at about 08:30 PM when he was in his house, he received a phone call from the PS that his Auto had met with a road traffic collision with a Scorpio near Boruah Petrol Pump and that the driver of his Auto and other injured passengers were already rushed to the Assam Medical College & Hospital (AMCH), Dibrugarh for treatment. Immediately he went to the AMCH where the driver of his Auto, Uma Shankar, informed him that the offending Scorpio collided with his Auto head-on and as a result, Uma Shankar, Parmatma Prasad and

other passengers suffered injuries on their person. Uma Shankar suffered injury on his leg, whereas, Parmatma Prasad suffered severe head-injury and all the victims of the collision were undergoing treatment. Later on he filed FIR complaining about the occurrence vide Ext.1 whereon he affixed his signature vide Ext.1(1). His Auto and its documents were also seized vide Ext.2 and Ext.2(1) is his signature thereon.

10. In his cross-examination he testified that he filed the FIR two days after the occurrence. He admitted that as he was in his house at the time of the collision he was oblivious as to whose fault led to the collision.
11. PW2 testified that he arrived at the place of occurrence 15 to 20 minutes after the collision had happened. He saw a large gathering there and when he reached the spot he could see an Auto being turned turtle. Police personnel arrived at the spot and they took his signature purportedly on a seizure list vide Ext.3. Ext.3(1) is his signature thereon. In his cross-examination, he admitted of not witnessing the collision, neither being conversant with the contents of Ext.3. He further testified that he affixed his signature thereon because he was told to do so by the police personnel.
12. PW3 deposed that a road traffic collision had taken place near Padum Nagar Boruah Petrol Pump. About 15 to 20 minutes thereafter he reached the spot and saw an Auto being turned turtle. Police personnel arrived at the spot and they took his signature purportedly on a seizure list vide Ext.3. Ext.3(2) is his signature thereon. In his cross-examination, he deposed that he had not seen the occurrence taking place and also that his signature was taken on a blank piece of paper.
13. Expressing ignorance about the occurrence, PW4 deposed that on the date of the occurrence he saw a large gathering of people near Padum Nagar Petrol Pump. When he reached there he saw an Auto turned turtle and learnt that a road traffic collision had taken place. In his cross-examination also he admitted that he had not seen the collision taking place and how it happened.
14. PW5 testified that during the Mahalaya of 2013 he along with his niece, Prativa Gohain, was travelling in an Auto. As they reached Padum Nagar

Petrol Pump by around 07:30 PM, the Auto they were travelling on met with a collision with a bigger vehicle head-on. As a result, they were flung away to the road side and, as such, they received injuries on their person. All of them were admitted in the AMCH for treatment. After two days he was referred to Brahmaputra Medical from where he was discharged after 16 days. In his cross-examination he stated that there were altogether five passengers in the Auto including himself. He had neither seen the offending vehicle that collided with their Auto, nor, its driver.

15. PW6 deposed that in the month of October, 2013 she along with others were about to go towards AMCH. But the moment she embarked on an Auto, it was struck by a Scorpio head-on. She received injuries on her person and lost consciousness. Initially all the victims were taken to the AMCH for treatment. Thereafter, she was referred to Brahmaputra Medical from where she was discharged after about 20 days of treatment. Later on she learnt that the son of one Kejriwal, who has a shop near Padum Nagar Petrol Pump, drove the offending vehicle. In her cross-examination she expressed her ignorance about the registration number of the offending vehicle and admitted that she had not seen its driver.
16. PW7 testified that the accused is his brother. On the date of the occurrence, the accused informed him that he had met with an accident but had not mentioned where it took place. Thereafter, police personnel arrived at his shop where they took his signature on a seizure list. Ext.4 is the said seizure list and Ext.4(1) is his signature thereon. In his cross-examination he expressed his complete ignorance about the contents of Ext.4 and about the occurrence as well.
17. PW8 deposed that on the date of the occurrence two of his neighbors, a woman and her daughter, asked him to accompany them to the AMCH. Accordingly, he complied and boarded an Auto. But when the Auto tried to take a turn near Padum Nagar Petrol Pump, it was struck head-on by a Scorpio. As a result, the mother-daughter duo were flung to the road side causing severe injuries on their person. As for himself, he received no

- injuries on his person. He took them to the AMCH for treatment. He further deposed that he had not seen the driver of the offending vehicle.
18. PW9 testified that on the date of the occurrence he was posted at Dibrugarh PS as a Home-guard. On that day ASI Markandey Yadav told him that he had seized a vehicle responsible for a road traffic collision and told him to affix his signature on a seizure list. Accordingly he complied to the command. Ext.2 is the said seizure list and Ext.2(2) is his signature thereon. In his cross-examination he expressed his utter obliviousness about the occurrence and also about the contents of Ext.2.
19. PW10 deposed that on the date of the occurrence he was employed as a driver at the Traffic Branch, Dibrugarh. On that day, his signature was taken on a seizure list concerning the occurrence. Ext.4 is the said seizure list and Ext.4(2) is his signature thereon. In his cross-examination, he admitted that he is not at all conversant with the contents of Ext.4. He affixed his signature thereon as because he was commanded to do so by his senior officer.
20. PW11 testified that the informant is the owner of the Auto which he drove in the night of 09/10/13. On that day at about 09:30 PM, as he was on his way back plying the Auto, he was stopped by four persons for hire to the AMCH. They boarded the Auto and as they were travelling towards AMCH, the Auto was struck head-on by a speeding Scorpio near Padum Nagar Petrol Pump. The Auto turned turtle. He suffered some injuries but crawled out of it and ran for safety. Thereafter, he affixed his signature on a seizure list. Ext.2 is the said seizure list and Ext.2(3) is his signature thereon. In his cross-examination, he admitted that he had not seen the driver of the offending Scorpio and that he does not know its registration number either.
21. PW12 deposed that on 18/10/13 he was posted as MVI, Dibrugarh. On that day he received a requisition from Dibrugarh Traffic Branch in reference to GD Entry No- 285 dtd- 09/10/13 for examination of a Mahindra Scorpio bearing registration number AS-06/K-1021 and an Auto rickshaw bearing registration number AS-06/F-6440. He examined both vehicles in Dibrugarh PS premises and submitted his reports vide Ext.5 and Ext.6 whereon he

had affixed his signatures vide Ext.5(1) and Ext.6(1) respectively. Defence, on its part, declined to cross-examine him.

22. Lastly, PW13 was the investigating officer. He testified that on 09/10/13 he was posted as Assistant Sub-Inspector at Dibrugarh Traffic Branch. On receipt of information from an unknown person, he along with the In-Charge of the PS and police staff proceeded to the place of occurrence. On scrutiny thereof they learnt that it was a collision between a Scorpio and an Auto but the Scorpio had fled. The Auto was seized along with its documents and the victims were taken to the AMCH for medical examination. He made a rough sketch map of the place of occurrence and recorded statements of witnesses. Later on, accused Suresh Kejriwal surrendered in Dibrugarh Sadar PS along with the offending Scorpio. He seized the offending vehicle, recorded statements of the accused, placed him under arrest and allowed him to go on bail as the alleged offences were bailable. On 22/10/13, informant Rajesh Yadav filed FIR concerning the occurrence which was registered and numbered as Dibrugarh PS Case No- 1172/13 under sections 279/337/338/427 of the IPC. In the meantime, he collected injury reports of the victims and the reports from the concerned MVI. After completing the investigation he handed over the case diary to the OC of the PS and later on, SI Kushal Dutta laid charge-sheet against accused Suresh Kejriwal for offences under sections 279/337/338/427 of the IPC. Ext.2, Ext.3, Ext.4 are the seizure lists and Ext.11 is the sketch map respectively whereon he had affixed his signatures vide Ext.2(4), Ext.3(3), Ext.4(3), Ext.11(1) correspondingly. Ext.7, Ext.8, Ext.9 and Ext.10 are the injury reports collected by him during the course of the investigation. Ext.12 is the charge-sheet and Ext.12(1) is the signature of SI Kushal Dutta with which he is duly acquainted

23. Now, the above set of facts as narrated by the witnesses named above is the entire version of the occurrence available with the prosecution. Here, in the case at hand, accused Suresh Kejriwal is prosecuted for driving his vehicle bearing registration number AS-06/K-1021 rashly, thereby, inflicting injuries, simple and grievous, on Samiran Gohain, Prativa Gohain

and Parmatma Prasad and for committing criminal mischief. Thus, the offences for which accused Suresh Kejriwal is arraigned, that is, under sections 279/337/338/427 of IPC, are inter connected. Tersely put, rash driving was the cause and the resultant hurt, including the criminal mischief, were the consequences. But the moot question is, whether this 'cause and effect' be attributed to the accused named-above? In order to arrive at a logical conclusion, a brief study of section 279 of the IPC, which is the very edifice of the prosecution, will suffice.

24. Prosecution, like in all other criminal trial for offences under the General Penal Code, has to establish the allegations against the accused beyond all shadow of doubt. Section 279 of the IPC is, therefore, no exception to this principle. As such, to bring home the offence under section 279 of the I.P.C. the prosecution has to prove the following:-

- (i) Driving of a vehicle on a public way;**
- (ii) Such driving must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person.**

But before establishing the ingredients mentioned above, to bring home the offence under section 279 of the I.P.C., first of all the identity of the author of the rash and negligent must be fixed by proper, cogent and unimpeachable evidence.

25. Therefore, proof of rash or negligent driving is not the sole criterion to procure a conviction of the accused for offence under section 279 of the IPC, but the identity of the driver of the offending vehicle must first be established by means of irreproachable evidence. At this juncture, however, I would like to point out that, accused Suresh Kejriwal was present throughout the proceedings of the case, but none of the witnesses could categorically point their finger towards him to show that it the accused and none else who steered the offending vehicle when the collision took place. In fact, the collision took place in front of the very eyes of PW5, PW6, PW8 and PW11, who were also the victims of the collision, but none

could testify that the author of the rash driving was accused Suresh Kejriwal.

26. Yet, again, even though PW7 testified that the accused was his brother who informed him that he had met with an accident on the date of the occurrence, that statement, in my opinion, is too generally worded and does not criminate the accused for rash driving. The reason for arriving at this opinion is simple; he was not an eye witness to the collision. As such, testimony of PW7 is not the best evidence from which the author of the rash driving can be determined with any amount of certainty.
27. In addition to the above infirmities suffered by the prosecution, the seizure lists that were exhibited by it are also of no consequence. In fact, it was a totally fruitless exercise, for, none of the seizure witnesses were conversant with the contents thereof. Therefore, when the seizure witnesses were themselves in the dark about the contents of the seizure lists on which they affixed their respective signatures, those documents possess no evidentiary value at all.
28. To cut a long story short, doubt prevails over the prosecution version about accused Suresh Kejriwal's involvement in rash driving of the offending vehicle bearing registration number AS-06/K-1021 which again looms large on the consequent injury caused and the criminal mischief as well. In my considered opinion, accused Suresh Kejriwal deserves acquittal from all the offences for which he stood trial.
29. The points for determination are, therefore, answered in the negative.

ORDER

30. As such, from the observation and discussion done hereinbefore, I arrive at the conclusion that the prosecution had failed to establish the allegations against accused Suresh Kejriwal for the offences under sections 279/337/338/427 of the IPC beyond all reasonable doubt. As such, the accused is acquitted of the offences under the sections of law indicated above.

31. Accused person be set at liberty forthwith. Bail bonds of the accused person stands cancelled. The accused person may obtain copy of the judgment without payment.
32. Instant case is disposed of on contest.

Given under my hand and Seal of the Court this 8th day of May, 2019.

Typed and corrected by me and every page bears my signature.

Judicial Magistrate First Class,
Dibrugarh.

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH
G.R. CASE NO.- 3117/13
APPENDIX

- 1) Prosecution exhibits:-
 - Ext.1:- FIR
 - Ext.1(1):- Signature of Rajesh Yadav
 - Ext.2:- Seizure list
 - Ext.2(1):- Signature of Rajesh Yadav
 - Ext.2(2):- Signature of Gunin Buragohain
 - Ext.2(3):- Signature of Uma Shankar Shah
 - Ext.2(4):- Signature of Markandey Yadav
 - Ext.3:- Seizure list
 - Ext.3(1):- Signature of Mobidur Rahman
 - Ext.3(2):- Signature of Moon Moon Moran
 - Ext.3(3):- Signature of Markandey Yadav
 - Ext.4:- Seizure list
 - Ext.4(1):- Signature of Sunil Kejriwal
 - Ext.4(2):- Signature of Dipjyoti Das
 - Ext.4(3):- Signature of Markandey Yadav
 - Ext.5:- MVI report
 - Ext.5(1):- Signature of Dibyananda Dohotia
 - Ext.6:- MVI report
 - Ext.6(1):- Signature of Dibyananda Dohotia
 - Ext.7:- Injury report
 - Ext.8:- Injury report
 - Ext.9:- Injury report
 - Ext.10:- Injury report
 - Ext.11:- Sketch map
 - Ext.11(1):- Signature of Markandey Yadav
 - Ext.12:- Charge sheet
 - Ext.12(1):- Signature of Kushal Dutta
- 2) Prosecution witnesses:-

PW1:- Rajesh Yadav
PW2:- Mobidur Rahman
PW3:- Moon Moon Moran
PW4:- Naba Kanta Konwar
PW5:- Samiran Gohain
PW6:- Prativa Gohain
PW7:- Sunil Kejriwal
PW8:- Diganta Borokial
PW9:- Gunin Buragohain
PW10:- Dipjyoti Das
PW11:- Uma Shankar Shah
PW12:- Dibyananda Dohotia
PW13:- Markandey Yadav

- 3) Defence exhibits.- NIL
- 4) Defence witnesses.- NONE

Judicial Magistrate First Class,
Dibrugarh.