

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH

G.R. CASE NO.- 3881/2017

U/S 279/427 OF THE IPC

STATE

VS.

SRI RUPAM DEKA BARUAH
S/O SRI HEMANTA DEKA BARUAH
R/O NO-2 MADHO KALI
P.S. KHOWANG
DISTT. DIBRUGARH

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

APPEARANCES:- SMT. LAKHIMI MOHAN.....FOR STATE
SRI BIKASH SINGH SHAHI.....FOR ACCUSED

DATE OF EVIDENCE:- 05/03/19, 04/05/19.

DATE OF ARGUMENT:- 04/05/19.

DATE OF JUDGMENT:- 04/05/19.

JUDGMENT

1. Accused Rupam Deka Baruah stood trial for offences punishable under sections 279/427 of the Indian penal Code, 1860 (the IPC for short).
2. Material facts of the case as appears from the contents of the First Information Report (FIR for short) are as follows:- that, on 17/11/17, as the informant, Tafiquddin Ahmed, was on his way from Sivasagar to Dibrugarh plying his vehicle bearing registration number AS-01/BY-8881, along with his family members, a TATA Nano bearing registration number AS-23/S-0342, approaching from the opposite direction at tremendous speed, collided with his vehicle near Sonowal Dhaba at Borboruah causing extensive damage to his vehicle. However, passengers of his vehicle escaped unscathed.
3. On that day the informant lodged a written FIR before the Officer-in-Charge of Borboruah Police Station which was registered and numbered as

Borboruah P.S. Case No.253/2017 under sections 279/427 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, seized the offending vehicle, collected 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 279/427 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 279/427 of the IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. Prosecution examined four witnesses and closed evidence. 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 17/11/17 near Sonowal Dhaba within Borboruah PS, drove his vehicle bearing registration number AS-23/S-0342 so rashly or negligently as to endanger human life?
- b) Whether the accused on the same day, time and place committed criminal mischief by causing loss to the tune of Rs. 50/- and upwards?

DISCUSSION, DECISION AND REASONS THEREON

8. In order to establish the allegations against the accused person, prosecution examined Ballov Borgohain, Juganta Gogoi, Tafiquddin Ahmed

and Tasmia Daula as PW1, PW2, PW3, PW4 respectively and closed evidence.

9. Among the witnesses examined by the prosecution, PW3 was the informant. He testified that on 17/11/17 he was on his way to Dibrugarh with his wife, Tasmia Daula, plying his own vehicle. At about 07:30 PM, as they reached Sonowal Dhaba, his car was struck on its right hand side by a Nano car causing extensive damage thereto. Thereafter, he filed FIR vide Ext.2 whereon he had affixed his signature vide Ext.2(1). His vehicle was seized vide Ext.3 and Ext.3(1) is his signature thereon.
10. PW4 deposed that the informant is her husband. In her examination-in-chief, she deposed verbatim as was testified by her husband.
11. During the course of their cross-examination, both PW3 and PW4 stated that at the time of filling of the FIR they could not ascertain as to whose fault led to the collision. But later on, they learnt that the offending Nano car was first hit by another vehicle and subsequently it went to collide with their car.
12. PW1 testified that on the date of the occurrence he was travelling towards Moran along with the accused in the latter's Nano car, bearing registration number AS-23/S-0342, which was driven by the accused himself. But as they reached the place of occurrence their vehicle was struck by an Eco Sports car on the driver's side. As a result, accused lost control over the steering wheel and collided with an Audi car. Nearby people gathered at the spot. Police personnel also came to the spot and seized their vehicle. Ext.1 is the seizure list and Ext.1(1) is his signature thereon.
13. PW2, in his examination-in-chief, also testified in the same manner as deposed to by PW1.
14. During the course of their cross-examination, both PW1 and PW2 testified that the accused had no fault for the collision.
15. 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 Rupam Deka Baruah is prosecuted for driving his vehicle bearing registration number AS-23/S-0342 rashly, thereby,

causing damage to the informant's vehicle. Thus, both the offences for which accused Rupam Deka Baruah is arraigned, that is, under sections 279/427 of IPC, are inter connected. Tersely put, rash driving was the cause and criminal mischief was the consequence. But the moot question is, whether this 'cause and effect' be attributed to the accused named-above? In order to arrive at a conclusion, a brief study of section 279 of the IPC, which is the very edifice of the prosecution, will suffice.

16. 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.

17. 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.

18. In the case at hand, identity of the driver of the offending vehicle was established by the prosecution beyond doubt as is evident from the testimonies of PW1 and PW2. But, here again, the question that arises for consideration is whether his driving was rash and negligent that resulted into the collision?

19. In my considered opinion, accused Rupam Deka Baruah was not responsible for rash driving of his vehicle. The evidence available on record is self-explanatory of the fact that his vehicle bearing registration number

AS-23/S-0342 was first hit by another vehicle, thereby, making him loose balance over the steering wheel. This momentary loss of control over his vehicle eventually led to the collision with the informant's Audi car. As such, without question accused Rupam Deka Baruah had not steered his vehicle directly towards the informant's car but was led by another vehicle ultimately leading to the occurrence. In my considered view, criminal rashness or recklessness cannot be attributed to the accused person.

20. To cut a long story short, doubt prevails over the prosecution version about accused Rupam Deka Baruah's involvement in rash driving of the offending vehicle bearing registration number AS-23/S-0342 which again looms large on the subsequent allegation of criminal mischief imputed against him. In my view, he is neither guilty under section 279 of the IPC, nor, under section 427 of the IPC.
21. The points for determination are determined in the negative.

ORDER

22. 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 Rupam Deka Baruah for the offences under sections 279/427 of the IPC beyond all reasonable doubt. As such, the accused is acquitted of the offences under the sections of law indicated above.
23. Accused person be set at liberty forthwith. Bail bond of the accused person stands cancelled. The accused person may obtain copy of the judgment but not without payment.
24. Instant case is disposed of on contest.

Given under my hand and Seal of the Court this 4th 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.- 3881/17
APPENDIX

- 1) Prosecution exhibits:-
 - Ext.1:- Seizure list
 - Ext.1(1):- Signature of Ballov Borgohain
 - Ext.1(2):- Signature of Juganta Gogoi
 - Ext.2:- FIR
 - Ext.2(1):- Signature of Tafiquddin Ahmed
 - Ext.3:- Seizure list
 - Ext.3(1):- Signature of Tafiquddin Ahmed
- 2) Prosecution witnesses:-
 - PW1:- Ballov Borgohain
 - PW2:- Juganta Gogoi
 - PW3:- Tafiquddin Ahmed
 - PW4:- Tasmia Daula
- 3) Defence exhibits.- NIL
- 4) Defence witnesses.- NONE

Judicial Magistrate First Class,
Dibrugarh.