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IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, DIBRUGARH

Present: Smti. Rituparna Sarmah, AJS.

.....
G.R 155 OF 17

Under section 279/427 IPC

State

.....Prosecutor

V.

Sri Bikram Majhi

..... Accused person

.....
Evidence recorded on : 08.11.18

Arguments heard on : 25.11.21

Judgment delivered on : 08.12.21

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Appearing for the Prosecution : Smti. L. Mohan.

Appearing for the Defence : Sri H. Gogoi

: Mrs. I. Gogoi.

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JUDGMENT

1. The brief facts of the prosecution's case is that on 09.01.17 Md. Feroz Khan had lodged an *ejahar* before the Officer-in-charge of Lahowal Police Station, alleging *inter alia* that on 09.01.17 at about 05.00 P.M, while his goods' carrier vehicle bearing registration no. AS-03/AC-9186 coming from Dibrugarh towards Tinisukia and driven by Zufiqar Haque near the Lahowal post office one Truck bearing registration no. AS-Q-9668 coming from the opposite direction knocked his vehicle and thereby caused damage to the same. Hence this case.
2. On the basis of the said *ejahar*, a case was registered as Lahowal P.S. case number 3/17 under section 279/427 IPC and S.I Anjan Saikia was entrusted to investigate the case. On completion of the investigation, the Investigating Officer (hereinafter referred as I.O.) submitted the charge sheet against the accused person Sri Bikram Majhi under section 279/427 IPC.
3. Cognizance was accordingly taken. On appearance by the accused person the copies of relevant documents of the

case were supplied to him in compliance of section 207 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C). The particulars of offence u/s 279/427 IPC was read over and explained to the accused person. On being asked he pleaded not guilty and claimed to be tried.

4. During trial the prosecution has examined as many **2 [two]** witnesses. The accused person was examined under section 313 CrPC. The accused person denied all the allegation leveled against him and also denied to adduce evidence on his behalf.
5. I have heard the argument put forwarded by the learned Assistant Public Prosecutor and the learned Defence Counsel. Thoroughly perused the case record.
6. Upon such hearing and perusal I have framed the following points for just decision of the case.

POINTS FOR DETERMINATION

7. Whether the accused person on 09.01.17 drove a vehicle bearing registration no. AS-Q-9668 in a rash and negligent manner as to endanger human life and thereby committed an offence punishable under section 279, IPC?
8. Whether the accused person, on the relevant date and time had committed mischief by damaging the property of the informant, and thereby caused loss or damage to the

amount of fifty rupees and upwards, hence committed an offence u/s 427 IPC?

DISCUSSION, DECEISION AND REAONS THEREOF

9. **P.W-1, Sri Raju Agarwalla** deposed that he knows the informant but does not know the accused person. He deposed in his evidence that an accident took place in front of his shop. However he could not remember the date of the accident. He deposed that the accident took place between a TATA Ace vehicle and a truck. Police had taken his signature as a witness. Ext-1 is the seizure list and Ext-1(1) is his signature.
10. In cross-examination P.W-1 deposed that he does not know as to how the accident took place.
11. **P.W-2, Abdul Kalam** deposed that he knows the informant but does not know the accused person. That in the year of 2017 an accident took place in front of his shop. At that time he was present there. He saw that a truck coming from the Tinsukia side had knocked a Magic vehicle coming from the Dibrugarh side and thereby caused damage to the Magic vehicle. Police asked him to sign as a witness. Ext-1 is the seizure list and Ext-1(2) is his signature.
12. Now, section 279 IPC punishes the act of a person driving or riding a vehicle on a 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.

13. However, before delving into the other ingredients of the abovementioned provisions; first and foremost thing the prosecution must establish is the identity of the accused person in order to prove his guilt under the abovementioned sections.
14. In that backdrop, now let me appreciate the evidence on record.
15. First of all, let me mention herein that in the instant case, the prosecution has failed to examine the informant in spite of several attempts made by the Ld. APP for the prosecution in this regard.
16. Now from the evidence available on record, it appears that both the witnesses of this case i.e. P.W-1 and P.W-2 are vital witnesses as the accident took place in front of them. However, these eye witnesses of the case has failed to identify the accused person. Furthermore, the prosecution has failed to examine the driver of the informant's vehicle Zulfiquar Haque.
17. Thus, from the evidence on record it appears that, none of the prosecution witnesses could not identify the accused person. They were completely unaware of the fact that who was driving the offending vehicle at the time of the incident. Thus it is crystal clear that the accused is not being identified.

18. Where the accused could not be identified by the prosecution witnesses; the case of the prosecution cannot be said to have been proved beyond reasonable doubt. Conviction of a person cannot be based on mere suspicion as our criminal jurisprudence govern by the principle that ***"Let a hundred culprits may let go free, but no innocent should be punished"***.
19. Since the accused could not be identified; delving into the other essential ingredient of section 279 IPC as well as section 427 IPC does not arise here.
20. Thus from the above discussion I deem it fit to hold that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt that he has committed an offence u/s 279/427 IPC. As such the accused is not found guilty and liable to be acquitted.

ORDER

21. Accordingly, the accused person **Sri Bikram Majhi** is acquitted of the offence under section 279/427 IPC and set at liberty forthwith.
22. The bail bond for the accused person shall be in force for further period of six months in light of section 437-A CrPC.
23. The custody of the vehicles and documents are hereby made absolute in favour of the registered owners thereof.

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24. The judgment is delivered and operative part of the judgment is pronounced by me in the open Court today.

Given under my hand and seal of this court on this 8th day of December, 2021.

Typed by self.

(SMTI RITUPARNA SARMAH)

Judicial Magistrate First Class, Dibrugarh

APPENDIX

PROSECUTION EXHIBITS:

1. Ext-1 : Seizure list
2. Ext-1(1): Signature of P.W-1
3. Ext-1(2): Signature of P.W-2

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. P.W-1: Sri Raju Agarwalla
2. P.W-2: Abdul Kalam

DEFENCE WITNESSES:

NONE

(SMTI RITUPARNA SARMAH)

Judicial Magistrate First Class, Dibrugarh