

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS :
DIBRUGARH

PRESENT : Smti. Zohra Yasmin, A.J.S.,
Judicial Magistrate First Class,
Dibrugarh

Advocate for the Prosecution : Sri. M. Dutta, A.P.P.

Advocates for the accused : Sri. D. Chetry

G.R. Case No. 3355 of 2015

State of Assam

-VS-

Sri. Krishna Bahadur BiswakarmaAccused Person

Under Sections 279/337/427 I.P.C.

Offences Explained on 08.10.2021

Evidence recorded on 06.12.2021

Arguments heard on 23.12.2021

Judgment delivered on 29.12.2021

J U D G M E N T

- 1) The prosecution story in brief is that on 27.11.2015 an Ejahar was lodged by the informant Sri. Ujjal Saikia stating therein that on 25.11.2015 at

about 4.10am, the informant Sri. Ujjal Saikia was going towards his residence situated at 1 No. Duliajan Gaon Tapoban Nagar by his vehicle bearing registration no. AS 23 L 2317. When he was on the way, near B.N Singh Petrol Pump, a bus bearing registration No. AS 23 AC 8185 came from the opposite direction in rush and neglect manner and collided with the car of the informant, as a result of which he sustained serious injuries on his head, leg and stomach. The vehicle of the informants also got damaged due to the accident. Hence, the Ejahar was lodged by the informant.

- 2) On receipt of the Ejahar, Duliajan P.S. Case No. 555/2015 was registered and after the investigation police submitted the charge-sheet bearing charge-sheet no. 356/2015 against the accused person namely, Sri. Krishna Bahadur Biswakarma under Section 279/337/427 of Indian Penal Code before the Learned Chief Judicial Magistrate, Dibrugarh.
- 3) On 08.10.2021 the accused person appeared before the court and on finding sufficient materials against the accused person, particulars of offences U/S 279/337/427 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4) During the course of the trial the prosecution examined three witnesses. After the prosecution evidence was over statement of defence had been recorded under Section 313 Cr.P.C. The defence case is of total denial.
- 5) I have heard the arguments of both sides.

- 6) Considering the materials on record and after hearing the arguments of both sides, the following points are taken as points for determination-

POINTS FOR DETERMINATION-

- (i) Whether the accused person, on 25.11.2015, at about 4.10AM, drove the vehicle bearing registration no. AS 23 AC 8185 (bus) in public way in such a rash or negligent manner so as to endanger human life and thereby committed an offence punishable under Section 279 IPC?
- (ii) Whether the accused person, on 25.11.2015, at about 4.10AM, drove the vehicle bearing registration no. AS 23 AC 8185 (bus) in public way in a rash or negligent manner and caused injury to the informant Sri Ujjal Saikia and thereby committed an offence punishable under Section 337 IPC?
- (iii) Whether the accused person, on 25.11.2015, at about 4.10AM, committed mischief amount of rupees fifty or more caused damage by riding the vehicle bearing registration no. AS 23 AC 8185 (bus) in a public way and caused damage to the vehicle of the informant and thereby committed an offence punishable under Section 427 IPC?

DISCUSSION, DECISION AND REASONS FOR DECISION:

- 7) PW 1, Sri. Ujjal Saikia is the informant of the case. He deposed in his evidence-in-chief that in the month of November, 2015, at around 4 am, he was coming from Selsoni towards Duliajan by his Eon car. He has further deposed that he forgot the number of his car. There was a road construction work going on near Duliajan P.S. and the road was closed from one side. At that time the bus driven by the accused person was coming from the opposite side and seeing the gate at one side he moved the bus to another side and hit the car of PW1. The weather was very foggy at that time. PW1 got senseless after the incident and he got his sense back at Duliajan OIL Hospital. He sustained injuries on his forehead and left knee. The Eon car which PW1 was driving also got damaged in the said incident. After this incident he lodged ejahar. Exhibit 1 is the ejahar and Exhibit 1 (1) is his signature. Exhibit 2 is the seizure list of the vehicles and Exhibit 2 (1) is his signature. Exhibit 3 is the seizure list and Exhibit 3 (1) is his signature.
- 8) In his cross-examination, PW1 has stated that he lodged the ejahar after two days of the incident. He has admitted that the accused person was not on fault and due to the foggy weather the incident took place. He has also admitted that due to the foggy weather he could not see the driver of the offending bus.
- 9) PW2 Sri Mukul Medhi. He has deposed in his evidence-in-chief that informant is his cousin brother. He heard from some person that the car of PW1 met with an accident. He has further deposed that he saw the two

vehicles at the police station. Exhibit 2(2) is his signature. Exhibit 3 is the seizure list and Exhibit 3(2) is his signature.

- 10) In his cross-examination, PW2 has stated that he himself did not see the alleged incident.
- 11) PW3 Sri. Pranjali Saikia. He has deposed in his evidence-in-chief that informant is his brother. The alleged incident occurred in the month of November, 2016. The incident took place near Duliajan P.S. PW1 was coming from Sesonni by his Eon car (white colour). On the next day of the incident he came to know about the incident from his sister-in-law Smt. Astha Upadhyay Saikia. He went to OIL Hospital, Duliajan and saw injuries on the left leg and head of PW1. He then took PW1 home. Exhibit is the seizure list and Exhibit 2(3) is his signature.
- 12) In his cross-examination, PW3 has stated that he did not see anything at the time of putting his signature on Exhibit 2. Police also did not record his statement. He also has no personal knowledge about the incident.
- 13) I have considered the evidence as well as the argument put forward by the prosecution and the defence.
- 14) From the evidence of PWs it appears that an accident took place which is an admitted fact and this not denied by the defence. Before proceeding further, let 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." Thus, in order to hold a person liable under section 279 of the Indian Penal Code, the following ingredients are to be proved- (a) that the accused was driving the vehicle; (b) that the accused was driving the vehicle on a public way; (c) that the accused was driving the vehicle rashly or negligently and (d) that it endangered human life or to likely to cause hurt or injury to any other person. Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

- 15) Thus, from the aforesaid two provisions it is clear that a person in order to commit an offence punishable U/S. 279/337/427 IPC, must not only cause hurt or injury to any person by driving or riding a vehicle but also must have done the act with rashness or negligence.
- 16) When a person, conscious of the fact that his action may cause harm or damage, takes the action with utter indifference, to the consequences, which may ensue from his such act, he is said to have done the act rashly. In other words, when a person, who is aware of the risk, which his action involves, does the act with utter indifference to the consequences, which his action is likely to entail, such an act is rash act. On the other hand, when a person fails to take, while doing and act, such precaution, which a reasonable and prudent person is expected to take or ought to take, before doing the act, such doing of the act would amount to negligence.

- 17) Now, let me discuss whether the prosecution has been able to prove the guilt of the accused person in the light of the above evidence discussed above and whether the act of the accused person can be said to be rash and negligent in the facts and circumstances of the case. For that purpose, it is to be seen as to who are the material witnesses in the instant case and whether the evidence of the PWs are sufficient to prove rashness and negligence on the part of the accused person while driving.
- 18) In the instant case, the most vital witness is the victim i.e., PW1. In his evidence, I have seen nothing incriminating to show any rashness and negligence on the part of the accused person. Rather PW1 has deposed that it was not the fault of accused person but due foggy weather the accident took place.
- 19) In the instant case, none of the prosecution witnesses could state that the accused was driving the bus in a rash and negligent manner. It is well settled that mere collision, as such, between motor vehicles is not made punishable but it is the rashness or negligence in driving/riding the motor vehicle which is made punishable.
- 20) In the case of **V.D. Jhingan Vs State of Uttar Pradesh, AIR 1966 SC 1762**, 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 lies 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.

21) In the light of the 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 under sections 279/337/427 IPC and hence, the accused person deserves to be acquitted of the offences leveled against him.

22) Thus, it is held that it could not be made clear that due to the negligence of the accused person the incident occurred. Hence, the point for determination No. (i), (ii) & (iii) are decided in negative.

23) Thus, it is held that it could not be made clear that due to the negligence of the accused person the incident occurred. Hence, the point for determination No. (i) & (ii) and (iii) are decided in negative.

ORDER

- 24) In view of the above discussions and reasons mentioned above, I am of the view that the prosecution has failed to prove the case against the accused person beyond reasonable doubt under section 279/337/427 of IPC and hence the accused person Sri. Krishna Bahadur Biswakarma is acquitted from the offences under Section 279/337/427 IPC in this case and he is set at liberty forthwith.
- 25) The bail bond of the accused person is extended for six months from today as per the provisions of Section 437A CrPC.
- 26) Make necessary entry in the Judgment register.
- 27) The case is disposed of on contest without cost.

Given under my hand and seal of this court on this 29th day of December, 2021 at Dibrugarh.

SMTI. ZOHRA YASMIN
JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH

APPENDIX

PROSECUTION WITNESSES:

- 1) PW1 Sri. Ujjal Saikia (Informant)
- 2) PW2 Sri. Mukul Medhi
- 3) PW3 Sri. Pranjal Saikia

PROSECUTION EXHIBITS:

- 1) Exhibit 1- Ejahar
- 2) Exhibit 1(1)- Signature of the Informant.
- 3) Exhibit 2 – Seizure list
- 4) Exhibit 2(1) – Signature of the Informant.
- 5) Exhibit 2(2) – Signature of the Mukul Medhi.
- 6) Exhibit 2(3) – Signature of the Pranjal Saikia.
- 7) Exhibit 3 – Seizure list
- 8) Exhibit 3(1) – Signature of the Informant.
- 9) Exhibit 3(2) – Signature of the Mukul Medhi.

DEFENCE WITNESSES:

None

DEFENCE EXHIBITS:

NIL

SMTI. ZOHRA YASMIN
JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH