

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS,
DIBRUGARH**

PRESENT : SMTI DEEPSIKHA DAS, AJS
(Date of Judgment: 25/02/2022)

G.R. Case No : 3079/2016

(Under section 279,338 and 427 of Indian Penal Code.
FIR No. 219/16 Dated 21/10/2016. P.S- Moran)

COMPLAINANT/INFORMANT	Sri Bimal Chandra Saikia
REPRESENTED BY	LEARNED A.P.P SMTI GOPA CHAKRABORTY.
ACCUSED	Sri Krishna Kalita s/o Mukheswar Kalita DevelopmentArea P.S- Dibrugarh, District- Dibrugarh.
REPRESENTED BY	LEARNED ADVOCATE K. K. Gogoi

Date of Offence	15/10/2016.
Date of FIR	21/10/2016.
Date of Charge sheet	30/10/2016.
Date of Framing of Charges	28/2/2017.
Date of commencement of evidence	28/05/2018.
Date on which judgment is reserved	N/A.
Date of Judgment	25/02/2022.
Date of the Sentencing Order, if any	N/A.

Accused Details:

Rank of the accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec.428 Cr.P.C.
1.	Krishna Kalita	Not arrested	7/2/2017	279, 338 and 427 IPC	Acquitted	N/A	N/A

JUDGMENT

Case of the prosecution

1. The case of the informants namely Sri Bimal Chandra Saikia as reflected in the ejahar in brief is that his son Prabal Saikia was coming to Moran from Tiloi Nagar by his motorcycle no As06-1102 on 15/10/2016. One maruti alto car which was coming from Moran to Dibrugarh driven in rash and negligent manner hit his son at about 4.30 pm, near Kareng Dhaba. His son sustained serious injury and was admitted to Sanjeevani Nursing Home Dibrugarh in ICU in critical condition. The motor cycle was also destroyed. Hence the case.

2. The ejahar was registered as Moran P.S. Case No. 219/2016 under sections 279, 338 and 427 IPC. The police after investigation submitted charge sheet against the accused person Krishna Kalita under sections 279, 338 and 427 IPC.

- 3.** This Court took cognizance under sec 190(b) CrPC and issued summons to the accused under sec 204 CrPC. On appearance of the accused, he was allowed to go on bail. Copies of relevant documents were furnished to her as per section 207 CrPC. The particulars of offences under sections 279, 338 and 427 IPC were explained and read over to him, to which he pleaded not guilty and claimed to be tried.
- 4.** Trial commenced. The prosecution examined 7(seven) witnesses including the informant. The statement of the accused person under section 313, CrPC was recorded. I have heard both sides and perused the evidence on record.
- 5.** Heard the arguments advanced by the Learned Counsel appearing for the informant and the accused.

Points for determination

- i) i) Whether the accused, Krishna Kalita on 15/10/2016, at about 4.30 pm, drove the Maruti Alto car (bearing Registration No.AS-06-N-5823) in a rash or negligent manner and thereby committed an offence punishable under section 279, IPC?

- ii) Whether the accused person at he said relevant time and place, caused grievous hurt to Sri Probal Saikia, the son of the informant by riding the said car so rashly or negligently as to endanger human life, or the personal safety of others, and thereby liable to be punished u/s 338 of I.P.C. ?

- iii) Whether the accused person, on the same day, time and at the same place, by such rash and negligent driving of the said Maruti Alto caused mischief by damaging the motorcycle of the value more than Rs. 50, and thereby committed an offence u/sec 427 of the IPC?

6. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

DECISION AND REASONS THEREOF:

7. To arrive at a judicious decision, the materials on record, including the evidence recorded is gone through carefully, in the light of submission heard and appreciated as follows—

8. In his evidence, **pw1 Sri Bimal Chandra Saikia** stated that he is the informant. the alleged accident took place on 15/10/2016. On that day, his son Prabal Saikia was proceeding towards Moran on a motorcycle from home. in front of Kareng Dhaba he was hit by one Alto Maruti car. He received the information from one of his neighbours. On receiving the information he rushed to the Tilo Hospital where he had seen him in injured state. He sustained injury in his left leg mainly. From Tilo Hospital he was shifted to Sanjeevani Hospital where his surgery was done. Later on, pw1 lodged the ejahar. He identified exhibit 1 as the ejahar and exhibit 1(1) as his signature on it. In the police station, he saw the vehicle which hit his son, bearing registration no AS-06- N-5823. Police seized the RC of the motorcycle as well as the motorcycle of his son. He identified exhibit 2 as the seizure list and exhibit 2(1) as his signature on it. He identified exhibit 3 as the zimma nama and exhibit 3(1) as his signature on it.

In his cross examination he stated that exhibit 1 ejahar is not written in his own language. At the time of the alleged occurrence he was at his home and hence he could not see the alleged occurrence. He stated that he heard from others that his son and the driver of the aforesaid vehicle

were negotiating with the potholes on the road and while doing that the alleged occurrence took place. He did not know for whose fault the alleged occurrence took place. He stated that the place of occurrence was a national highway. He again stated that he did not know what was written in the exhibit 2 and 3.

9. In his evidence, **pw2 Sri Prabal Saikia** stated that on 15.10.2016 he went out of his home at about 4.30 p.m. towards Moran Town. The road condition was not good. He was riding his mother bike in his side and one Maruti Alto car came to his side and hit him while negotiating the pot holes. He fell down and thereafter what happened he did not know. He stated that he regained his consciousness at the Sanjivani Hospital. He sustained injury in my left leg. The bone was broken. He also sustained injury in his neck. In the hospital he had to stay for about one month. He could not know who was driving that Alto Car.

In his cross examination he stated that the motor cycle was registered in the name of his father. He had the driving licence at that time. He denied the suggestion that at the time of the alleged occurrence he did not have any driving licence. . He denied the suggestion that he was riding the bike at a high speed and negligently. He

denied the suggestion that actually he hit the said vehicle. He denied the suggestion that the alleged occurrence took place due to his own fault. As the place of occurrence was a curve so he could not properly see in all the surroundings. He denied the suggestion that he was under treatment in Sanjivani Hospital for one month.

10. In his evidence, **pw3 Sri Sarbeswar Saikai** stated that the informant is his brother and that the accused is known to him. He stated that about two years back, he got information that while his nephew Prabal Saikia was coming from Moran by his motorcycle, one Maruti Alto hit him. After getting the news he went to the Tiloi Hospital and found the victim in serious condition. The bone of his leg was broken. He got treatment in Dibrugarh first and then in Patna.

In his cross examination he stated that he did not know how the accident took place.

11. In his evidence, **pw4 Prasanta Baruah** stated that he did not know both parties. He stated that about two years back one accident took place near his shop. One small car hit one boy who was riding a motorcycle. He stated that he did not see the accident. He went to the place after the

accident took place. He stated that after the accident, he brought the injured in an ambulance.

In his cross examination Pw4 stated that he did not witness the accident. He admitted the fact that the in that place accident takes place regularly. But government has not hanged any banner by declaring it an accident prone area.

12. In his evidence, pw5 Sanjay Sarmah stated that he did not know both parties. He stated that the signature in the seizure list (exhibit 2) is his but he did not remember when and why he put that signature.

In his cross examination Pw5 stated that he did not know what was written in exhibit 2.

13. In his evidence, **pw6 Kunal Saikia, the medical officer** stated that on 15/10/2016 he was in the Tiloι CHC as Sr Medical Officer. He examined Mr Probal Saikia, 19 years s/o Bimal Saikia. He submitted the report on 26/10/2016. On examination he found the patient was unconscious with three episodes of seizures. Secondly, compound fracture on left thigh with mild active bleeding. Thirdly, bleeding from left ear. After primary stabilization, the patient was referred to the AMCH, Dibrugarh. The nature of injury was grievous caused by blunt object. He identified

exhibit 4 as the medico legal report and exhibit 4(1) as his signature.

In his cross examination Pw6 stated that he did not mention the history of the injury, i.e how it happened. The patient was not escorted while going to him. Some unknown persons took the patient to him. He stated that the findings which he brought were based on clinical examination. He could not say the exact height and weight of the patient. He stated that he did not know if the patient was injured due to falling on a hard surface. He stated that this kind of injury can happen by falling also.

14. In his evidence, **pw7 Pratap Borgohain, the I/O** stated that on 15/10/2016, he was working as second officer at Moran Police Station. That day, at about 4.50 pm one information was found that at Tiloi Kareng Dhaba, NH one accident caused between one motorcycle and one Alto. One GD entry was made (no. 341/2016) dated 15/10/2016. I was directed to visit the place of occurrence. Ext. 5 - Extract copy of GD entry no. 341/2016. Ext. 5 (I) - Sign of OC Dulal Mahanta which he recognise. He visited the place of occurrence, one Alto and one motorcycle was found and the injured was already sent to the local Tiloi Hospital. The driver

of Alto was found at the place of occurrence. He recorded the statement of the present witnesses. He drew a sketch map. Ext. 6 is the sketch map and 6(I) is his signature.

The no. of the Alto car was AS-06M-5823. Motor cycle no. was AS-06S-1102. Both the Alto car and motorcycle was brought to the PS and were sent for mechanical examination to DTO. Ext. 2 and 7 are the seizure list and Ext. 2(3) and 7(1) are my signature. The report of the mechanical examination (MVI Report) was collected.

Ext. 8 - MVI Report of Alto

Ext. 9 - MVI report of Motor Cycle

The informant lodged Ejahar on 21/10/2016 at Moran PS, which was registered as Moran PS No. 219/2016 u/s 279, 338 and 427 IPC. The medical report was collected from Tiloj Hospital. He was granted police bail after arrest as the can was bailable. The seized documents were given Zimma to its owner.

Ext. 10 - Zimma nama of Alto Car & its documents

Ext. 10(1) - his signature

Ext. 3 - Zimma nama of Motor Cycle of informants

Ext. 3(2) - his signature

Finally, finding sufficient materials against the driver of the Alto Car namely Krishna Kalita, he submitted the charge-sheet against him on 30/10/2016, u/s 279, 338 and 427 IPC.

Ext. 11 - Charge-sheet

Ext. 11(I) - his signature

In his cross examination Pw7 stated that did not mention in the charge-sheet that he started his investigation on the basis of a GD entry. The informant did not mention, why there was delay in filing the ejahar. The owner of the motorcycle was the father of the injured. It is not mentioned in the case diary whether the injured had driving licence or not. He stated that he did not seize any driving licence of the driver. He did not sent the seized items for production in the court. The injured was 19 years old, at the time of the accident. He did not take any speed marks of the alleged from the place of occurrence. There was a turning near the place of occurrence. After crossing the turning, the incident occurred. He denied the suggestion that he did not investigate the case properly and rushed to submit the charge-sheet.

APPRECIATION OF EVIDENCE

Point for determination no 1 and 2

15. I have perused the evidence of PW'S and on perusal of the evidence of PW'S it appears that there was an accident which took place and this cannot be denied at all.

16. Before I proceed, let us 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.”

17. In order to find a person guilty under Section 279 IPC prosecution is to establish that the accused was driving the vehicle in a public way and that he was driving in a rash or negligent manner.

Similarly, essential elements of 338 of I.P.C. are as follows:

- (1) Accused did some act;
- (2) He did it rashly or negligently;
- (3) The act was such as to endanger human life or personal safety of others;
- (4) Grievous hurt was caused in consequence of such act.

Thus, in order to constitute either of these two offences, the proof of rashness or negligence is essential.

18. In the instant case, the narrated facts of the witnesses adduced by the prosecution reflect that there is no eye-witness to the occurrence. PW-1, the informant Bimal Chandra Saikia , PW2 Prabal Saikia is the victim and pw3 to pw5 are hearsay witnesses and they had not seen the incident either.

Pw1, the informant alleged that the accused has dashed the victim, but from his cross examination it reveals that he has not witnessed the accident. Rather he heard it from others. He arrived at the place of occurrence only after hearing of it.

Pw2, the victim stated that on 15/10/2016 he went out of his home towards Moran Town, the road condition was not good. He stated that one Maruti Alto car came to his side and hit him while negotiating the pot holes. He sustained injury and

had to stay in hospital for about one month. He has not stated whether the Maruti was driven in rash and negligent manner or whether it was driven in excessive speed.

It cannot be denied that one accident took place and the victim had sustained injuries. But no one has stated that they have seen the accident and that they have seen the driver of the car who hit the victim. No witness has stated that the car which hit the motorcycle of the victim was in excessive speed.

Moreover, the witnesses were also not able to winch forth the fact as to how the occurrence took place except the omnibus statement that one vehicle hit the victim.

19. The other official witnesses examined by the prosecution are the medical officer namely Dr Kunal Saikia (pw6) and the investigating officer, (PW-7). Medical officer has stated that the nature of the injury was grievous and caused by blunt object. He stated that heis findings were based on clinical examination, he did not know if the patient was injured due to falling ofn a hard surface.

20. The investigating officer, (PW-7) has recounted the investigation conducted by him and has proved the seizure list, sketch map, charge

sheet and MVI reports as exhibits. There is nothing in his evidence that ties the accused to the alleged offences.

21. During the evidence of these PW'S none of the ingredients of section 279 and 338 of IPC could be brought forward by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the sec 279 and 338 could be proved by the prosecution beyond reasonable doubt.

Point for determination no 3

22. Coming to the offence u/sec 427 IPC, none of the PWs have stated about the damage caused the vehicles involved in the accident. In the absence of any cogent evidence as to the actual damage caused to the vehicles involved in the accident, I am not inclined to hold the accused person guilty u/sec 427 IPC.

23. In the light of the above discussion, I am of the opinion that the prosecution has not been able to establish the guilt of the accused persons u/sec 279, 338 and 427 IPC beyond reasonable doubt.

24. Situated thus, from the scrutiny of record in absence of any incriminatory material against the

accused, it can be inferred that the accused did not commit any offence as alleged in the ejahar. Thus, I find no ground to hold the accused person guilty of the alleged offences u/sec 279, 338 and 427 IPC.

ORDER

- 1.** Accordingly, the accused Krishna Kalita is acquitted of the offences punishable under sections u/sec 279, 338 and 427 IPC of the Indian Penal Code and set at liberty forthwith.
- 2.** The bail bond furnished, shall remain in force till six months from today, as required under sec 437A CrPC.
- 3.** The case is disposed of on compromise.
- 4.** Given under my hand and seal of this Court on this **25/02/2022.**

Deepsikha Das
Judicial Magistrate First Class,
Dibrugarh

APPENDIX

**LIST OF PROSECUTION/DEFENCE/COURT
WITNESSES**

A. PROSECUTION:

RANK	NAME	NATURE OF EVIDENCE
PW1	Bimal Chandra	Informant/
PW2	Saikia	Complainant
Pw3	Prabal Saikia	Victim
Pw4	Sarbeswar Saikia	Other witness
Pw5	Prasanta Baruah	Other witness
Pw6	Sanjay Sarmah	Other witness
Pw7	Dr Kunal Saikia	Medical Officer
	Pratap Borgohain	Investigating officer

B. DEFENCE WITNESSES, IF ANY: NIL.

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. PROSECUTION:

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	Ejahaar
	Exhibit p-2/pw1	Seizure list
	Exhibit p-3/pw1	Zimmanama
	Exhibit p-4/pw6	Medico-legal
	Exhibit p5/pw7	report

	Exhibit p6/pw7	Extract of GD entry
	Exhibit p7/pw7	Sketch map
	Exhibit p8/pw7	Seizure list
	Exhibit p9/pw7	MVI report of Alto
	Exhibit p10/pw7	Exhibit report of bike
	Exhibitp11/pw7	Zimma nama of motorcycle
		Charge-sheet

B. DEFENCE EXHIBITS: None.

Deepsikha Das
Judicial Magistrate First Class,
Dibrugarh.