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**G.R No-470 of 2016**  
**(State of Assam Vs Sri Biswajit Saha)**

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**G. R. Case No. 470 of 2016**

Under section 279/337/427 of I.P.C

Present:- **Sri N. J. Haque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

-Vs-

Sri Biswajit Saha

S/O:- Late Nitai Saha

R/O:- Ex-Police Line

P/S:- Tezpur

Dist:-Sonitpur, Assam .....Accused

**Advocate appeared:**

Mr. Nibha Devi, Addl. P.P..... For the State

Mr. J. Dey, Ld. Advocate..... For the accused person

Evidence recorded on	:- 30.10.2017, 14.08.2019 & 22.10.2019
Date of Statement of defence	:- 17.07.2020
Argument heard on	:- 17.07.2020
Judgment delivered on	:- 17.07.2020

**J U D G M E N T**

**History of Prosecution's Case**

1. Prosecution case appears to be in a nutshell is that on 13.02.2016, one Smt. Bugmee Boruah Saikia lodged an Ejahar before the O/C of Tezpur P.S through Mohabhoirab O.P alleging inter alia that on the said date at about 04:00 PM while she was proceeding from Dekargaon Baruh Chuburi towards Nagaon in her Neno vehicle bearing Regd. No. AS-12/H-6544, suddenly, one Bus bearing Regd. No. AS-12/AC-3051, which was coming from Nagaon towards Tezpur, driven in a rash and negligent manner tried to overtake the another vehicle near Gotlong Radio Centre over NH-37(A) and hit her Nano bearing Regd.

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No.AS-12/H-6544 from the front side. As a result of which, she along with her driver Sri Durga Prasad Biswakarma sustained injuries.

**"INVESTIGATION"**

2. On receipt of the Ejahar, Tezpur P.S Case No.247 of 2016 u/s- 279/338/427 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s 279/338/427 of I.P.C against the above-named accused person.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s 207 of CrPC was furnished to the above-named accused person. After hearing both side, particulars of offences u/s- 279/338/427 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused person examined as many as 03 (Three) numbers of witnesses including the informant. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s 313 CrPC and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case are:-**
  - (i.) Whether on 13.02.2016 at about 04:00 PM, at a place called Gotlung Radio Centre, accused drove the Bus bearing Regd. No. AS-12/AC-3051, in a rash and negligent manner and such driving of accused creates endanger to the life of Sri

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Bugmee Baruah Saikia and Sri Durga Prasad Biswakarma and thereby committed an offence punishable u/s 279 of IPC?

(ii.) Whether on the same date, time and place, accused drove the bus bearing Regd. No. AS-12/AC-3051, in a rash & negligent manner and knocked the informant and her driver Sri Durga Prasad Biswakarma causing hurt by imperilling their lives and safety thereby accused committed an offence punishable under section-337 of I.P.C?

(iii.) Whether on the same, date and time, accused drove the vehicle bearing Regd. No. AS-12/AC-3051 (Bus), in a rash and negligent manner, hit the Nano vehicle bearing registration no. AS-12/H-6544 and caused mischief of the Nano amounting to Rs. 50/- or more and thereby committed an offence punishable u/s 427 IPC?

**EVIDENCES OF PROSECUTION SIDE**

7. In the light of criminal jurisprudence predominant in the country the burden lies upon the prosecution to establish the guilt of the accused person by way of proving the indictments beyond any shadow of doubt. In this case the charges u/s- 279/337/427 of IPC was explained against the accused person and for the sake of proper appraisal of the evidence on record, let us discussed all the points for determinations together.
8. PW-1 Smt. Bugmee Baruah Saikia, being the informant of this case deposed that she knows the accused person. She further deposed that the occurrence took place on 13.02.2016 at about 4 PM and on that day, she was going to Nagon in her car driven by her driver. She also deposed that when they reached near Gutlong All India Radio Centre, a Bus coming from the opposite direction driving in rash and negligent manner by over taking another vehicle

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hit their vehicle (Nano) and due to that she and her driver sustained injuries. She further deposed that her driver Durga Prasad Biswakarma sustained injury on his eye (blood was oozing out from his eye) and chest. She also sustained injury on her forehead, arm and face. She also deposed that her car was also severely damaged. The vehicle was caught by police at Parua Chariali. She deposed that police took them to Kanaklata Civil Hospital, Tezpur for medical treatment. Thereafter, she lodged the ejahar. Ext-1 is the ejahar and Ext-1(1) is her signature. She also deposed that police seized her car and the Bus in connection with this case and MVI was conducted.

9. In her cross examination, she testified that there were other vehicles running on the road. She cannot say about the description of vehicle which was overtaking by the alleged bus. She deposed that there were passengers inside the Bus. She also deposed that at the time of incident there was no rush at the place of occurrence and the distance from Dolabari police point to the place of occurrence is about 2 KM. She also deposed that by the term rash and negligent driving, she means to say the alleged bus came in a high speed by overtaking a vehicle and hit her car and left the place of occurrence on full speed.
10. PW-2, Sri Durga Prasad Biswakarma deposed that he does not know the accused of this case. He also deposed that the accident took place in the year 2016 and at the relevant time during the afternoon time, he was proceeding from Tezpur towards Nagaon side by driving a Nano vehicle. When he reached Gutlong Radio Centre, he tried to slow his vehicle on the highway in his left side, one Ultra Bus which was coming in a high speed from opposite side tried to overtake another vehicle and hit his Nano vehicle in the right side. He also deposed that the owner of the said Nano vehicle was also inside the vehicle. He further deposed that he along with the informant sustained injuries on their person. The offending bus immediately left from the place of occurrence.
11. In his cross-examination, he had stated before the police that the offending bus hit their vehicle but he did not say that the said offending vehicle tried to

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overtake another vehicle and hit them. He also deposed that he did not identify who drove the offending bus. He denied the suggestion that the offending bus was not driven in a high speed. PW-3 Sri Gouranga Sarkar who did not know anything about the alleged incident.

**APPRECIATION OF EVIDENCES**

12. In this case offences u/s- 279/337/427 of IPC were explained and read over to the accused and the prosecution side has got the burden of prove to establish the accusations beyond any reasonable doubt. The prosecution needs to establish and prove the facts that on 13.02.2016 at about 04:00 PM, while the informant along with her driven were proceeding from Dekargaon Baruah Chuburi towards Nagaon side in her Nano vehicle bearing Regd. No. AS-12/H-6544 and when they reached near Gotlung Radio Center, one Bus bearing Regd. No. AS-12/AC-3051 which was coming from opposite direction in a rash and negligent manner hit their vehicle for which the Nano got damage and the informant and the driver sustained injuries. The prosecution side to prove the aforesaid contentions examined as many as three numbers of witnesses including the informant and the injured.
13. I have carefully travelled through the testimonies of all the three numbers of witnesses and it finds that PW-1 appears to be the informant of this case and she has supported that on 13.02.2016 at about 4 PM, she was going to Nagon in her car driven by her driver and when they reached near Gutlong All India Radio Centre, a Bus coming from the opposite direction driving in rash and negligent manner by over taking another vehicle hit their vehicle (Nano) and due to that she and her driver sustained injuries. She further deposed that her driver Durga Prasad Biswakarma sustained injury on his eye (blood was oozing out from his eye) and chest and she also sustained injury on her forehead, arm and face. She deposed that her car was also severely damaged. Police took them to Kanaklata Civil Hospital, Tezpur for medical treatment. Later, she lodged the ejahar. Ext-1 is the ejahar and Ext-1(1) is her signature. She also deposed that police seized her car and the Bus in connection with this case and

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MVI was conducted. During her cross examination, she testified that there were other vehicles running on the road. She cannot say about the description of vehicle which was overtaking by the alleged bus.

14. The indication accessible revealed that on the date of incident, the bus bearing Regd. No.AS-12/AC-3051 hit the informant's Nano vehicle bearing Regd. No. AS-12/H-6544. PW-1 did not depose anything to support the fact that alleged vehicle drove by the accused. The informant even though demanded that the vehicle was in high speed and hit their Nano vehicle. But she failed to depose anything to clarify the actual speed of the alleged vehicle.
15. PW-2 being one of the victim testified that on the date of alleged incident he along with the informant (PW-1) were proceeding from Tezpur towards Nagaon and when they reached near Gutlong Radio Centre, one Ultra Bus which was coming in a high speed from opposite side tried to overtake another vehicle and hit their vehicle. He also deposed that he along with the informant sustained injuries on their person. He in his cross-examination testified that he did not identify who drove the vehicle at the time of occurrence. PW-2 admitted in his cross-examination that he did not stated before the police that ULTA Bus hit their vehicle at the time of overtaking another vehicle and that part makes his evidence to be contradictory with his earlier statement. PW-3 not deposed anything against the accused person as he has no personal knowledge about the same.
16. Both PW-1 & PW-2 in their evidence testified that the alleged vehicle driven rash and negligent manner hit the Nano and due to that they sustained injuries. Surprisingly, both the eye witnesses of alleged incident failed to identify the accused as driver of the alleged vehicle. Even during the time of adducing evidence, they failed to identify the accused before the court. PW-1 & PW-2 in their evidence failed to depose anything implicating directly against the accused.
17. Now coming to the settled provisions of law this court finds that in order to convict a person under section 279 IPC the following ingredients are to be

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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. Similarly, in order to convict a person under Section 337 IPC the prosecution is to prove- (a) same act was done rashly or negligently (b) the act endangered human life (c) hurt was caused to any person in doing such act.

18. In the case **of State of Karnataka v. Satish, reported in (1998) 8 SCC 493**, the Apex Court held that –

4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

19. In this case some of both the eye witnesses have deposed that the alleged vehicle driven speedily at the time of incident. The witnesses further found to be unsuccessful to elucidate actual speed or failed to clarify the fact what the high speed actually destined. More also in presence of inconsistencies discloses

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from their evidences, it is hard to opine that alleged vehicle was actually driven in a rash and negligent manner.

20. Section-337 of Indian penal Code relates to the fact of causing hurt or endangering life or personal safety of others. Merely, because the vehicle in question was being driven in a high speed does not speak of either negligent or rashness by itself. High speed is a relative term, it is for the prosecution to bring on record the materials which would establish what is mean by high speed on the facts and circumstances in this case. The essential ingredients of offence u/s-337 of IPC is appears to be same and identical of the offence punishable u/s-279 of IPC. Section-337 of IPC warrants to prove that the accused did some act rash and negligently that create endangered to the life or personal safety of others the person and the person was hurt due to some acts in consequences thereof.
21. In this case both the witnesses have deposed that the alleged offending vehicle rashly and negligently hit their Nano vehicle that was proceeding towards Nagaon over National Highway. Both the witnesses have stated such facts but whether said act of the accused materialized due to rash and negligent driving that was not appears to be established and proved against the accused, as neither the informant nor the victim have deposed anything directly against the accused.
22. Section-427 of IPC relates to the factsof causing damage to the amount of Rs. 50/- in this case, the prosecution side failed to adduce any evidence upon which that the Court may presumed any damages caused by the accused which is Rs. 50/- or upwards. The prosecution side failed to adduce any evidence to substantiate the Section-427 of IPC. Merely the evidence of PW-1 that the Nano got damage does not appears to be the proof of mischief causing damage to the amount of Rs. 50/- or more.
23. Therefore, in the light of all the above said discussions this court finds that prosecution side failed to adduce any cogent, clear, truthful, corroborative and

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coherent evidences to prove the rash and negligent driving of the accused person of this case.

24. Hence, in absence of any cogent evidence this court finds that prosecution side failed to prove the guilty of accused beyond any shadow of doubt. As such the accused person is acquitted and sets liberty. Bail bonds extended for six months in view of section-437A of Cr.P.C.
25. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 17<sup>th</sup> day of July, 2020.

**(Sri N. J. Hoque)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW 1: Smt. Bugmee Baruah Saikia, the informant

PW 2: Sri Durga Prasad Biswakarma

PW 3: Sri Gouranga Sarkar

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:**

Ext 1 : FIR

Ext 1(1): Signature of PW 1

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

Chief Judicial Magistrate  
Sonitpur, Tezpur