

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),  
SONITPUR, TEZPUR**

**G.R. CASE No. 50/2014**

U/S 279/338/427 IPC

State

Vs

Bijoy Rai

.....Accused

**PRESENT: Sri B. Acharyya, LL.M., A.J.S.**

Sub-Divisional Judicial Magistrate (S), Sonitpur, Tezpur

**Appearances:**

For the Prosecution: Sri R. Goswami, Ld. APP.

For the Defence: Sri Debasish Bora Ld. Adv.

Offence Explained on: 27.07.2017

Date of Evidences: 04.10.2017 & 22.11.2017

Date of Argument: 07.05.2019

Date of Judgment: 15.05.2019

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

1. The Prosecution case in brief is that one Ratna Bahadur Newar has filed an FIR on 06.01.2014 stating that on 04.01.2014 at about 11:00 A.M., his nephew Sri Ravi Kumar Newar was going in a motorbike bearing registration number "AS-12J-8977" from Lokora towards Balipara at National Highway 52 when one Magic vehicle bearing registration number "AS-12E-3031" coming from the opposite direction in high speed hit his bike as a result of which his nephew sustained grievous injuries as well as his bike was also damaged. Thereafter victim was admitted to Tezpur Civil Hospital for treatment and later was forwarded to Guwahati. Hence this case was filed.

2. The O/C Chariduar P.S on receiving the FIR registered a case vide Chariduar P.S Case No. 03/14 u/s 279/338/427 of the Indian Penal Code. After investigation, the I.O laid down the Charge sheet u/s 279/338/427 of the Indian Penal Code against accused person Bijoy Rai for trial.
3. On appearance before the court, accused person was furnished with copies of relevant documents u/s 207 of the Cr.P.C. Upon perusal of the case record and on hearing the Learned Counsels for both sides, offences u/s 279/338/427 of Indian Penal Code was read over and explained to the accused person and he pleaded not guilty and claimed to be tried.
4. The Prosecution examined only 2 (two) witnesses including the informant of this case. Thereafter, Ld. APP has prayed to close the evidence of the prosecution and accordingly, prayer was allowed.
5. The examination of the accused u/s 313 of the Cr.P.C was dispensed with as there is no incriminating material against him. Defence denied adducing evidence.
6. Heard the arguments put forward by the learned counsel for the accused person and the learned APP for the State and also perused the evidence and materials on record.

**POINTS FOR DETERMINATION:**

7. The following Points have been taken up for determination and discussion in the case:
  1. **Whether the accused person on 04.01.2014 at about 11:00 A.M while driving a vehicle bearing registration No "AS-12E-3031", in a manner so rashly and negligently so as to endanger human life and thereby committed an offence punishable under Section 279 of the Indian Penal Code?**
  2. **Whether the accused person on the same date, time and place, by such rash and negligent driving of the said bike, caused grievous hurt to the nephew of the informant Ravi Newar and thereby committed an offence punishable under Section 338 of the Indian Penal Code?**
  3. **Where the accused person on the same date, time and place, had committed mischief to the nephew of the informant causing loss or damage to the amount of more than fifty Rupees and thereby committed an offence punishable under Section 427 of the Indian Penal Code?**

**DISCUSSION, DECISION & REASONS THEREOF:**

8. Informant Ratna Bahadur Newar as PW 1 had deposed that he does not know the accused person. The incident took place in the year 2014 at about 9:00-10:00 A.M. At the time of incident he was at his house and he was informed by Siva Lal that his nephew Ravi Newar has met with an accident. His nephew was coming in a bike then a vehicle (Magic) bearing registration number "AS-12E-3031" hit his bike as a result of which his nephew sustained grievous injuries. He was first taken to a private hospital at Tezpur and later on shifted to the Down Town Hospital, Guwahati and thereafter taken to Chennai where he was admitted for 1 (one) month for treatment. Ext. 1 is the FIR wherein Ext. 1(1) is his signature. Ext. 2 is the seizure list wherein Ext. 2(1) his signature. He further deposed that he has taken the bike on zimma. Ext. 3 is the zimmanama wherein Ext. 3(1) is his signature.

In his cross examination, PW 1 has stated that his house is about more than 10 (ten) kilometers away from the place of occurrence. He did not go to the place of occurrence. He met the victim at Tezpur Civil Hospital. He did not see the incident with his own eyes. He is illiterate but only knows to put his signature. As he had heard the registration number from others therefore he has stated the number in the Court. Police has interrogated him. He denied the fact that he has deposed falsely.

9. Victim Ravi Kumar Newar as PW 2 had deposed that informant is his relative and he does not know the accused. The incident took place on 04.01.2014 at about 10:00-11:00 AM. He was doing on bike from his home to Balipara then a Magic bearing registration number "AS-12E-3031" coming from opposite direction in high speed hit his bike as a result of which he fell down and sustained injuries in his leg. Thereafter Shiv lal Newar has taken him to Tezpur Civil Hospital for treatment. Later on he took him to Down Town Hospital, Guwahati where victim was admitted for 2 (two) months and later on he was taken to Patna to treatment where he undergone treatment for 1 (one) month.

In his cross examination, PW 2 has stated that he did not see who was driving the magic vehicle. He was coming from Manchiri towards Balipara and there was a turning at the place of accident. Police did not interrogate him. He has also filed a MACT case against the accused person. He has not seen his bike after that accident. At the time of incident his age is about 21-22 years. He heard the registration number from Shiv lal Newar. He denied the fact that he was riding his bike at very high speed and due to his fault the said accident taken place.

10. Upon appreciation of the evidence of the informant available in the record, it is seen that neither the informant nor the victim had seen who has committed the accident and who was driving the alleged Magic vehicle. PW 1 clearly stated that he was not present at the place of occurrence. Both PW 1 as well as PW 2 did not see the Registration number of the Magic vehicle with their own eyes rather heard from some others. Moreover informant himself did not incriminate the accused directly as he did not see the incident. Moreover, seizure witnesses as well as M.O and I.O has not been examined in this case by the Prosecution which is fatal to the Prosecution case.
11. Hence it can be said that Prosecution has failed to prove the ingredients of Sections 279/338/427 against the accused beyond reasonable doubt. In view of above discussion and considerations, it can be said that the alleged offences have not been established against the accused and hence he is entitled to be acquitted of the offences under Sections 279/338/427 of the Indian Penal Code and all the aforesaid Points for determination of this case are decided against the informant and in favour of the accused. There is no basis to convict the accused from the evidences and materials on record.

### **ORDER**

Hence I hold that accused Bijoy Rai is not guilty of committing offences punishable under Sections 279/338/427 of the Indian Penal Code. Accordingly the accused is acquitted from the offences punishable under Sections 279/338/427 of the Indian Penal Code and he is set at liberty forthwith.

The bail bond of the accused shall stand cancelled and surety shall be discharged after the expiry of 6 (six) months period from today.

The case stands disposed of on contest.

The Judgment is delivered in the open Court in presence of the accused and his Advocate. The Judgment is given under my hand and seal of this Court on this the 15<sup>th</sup> day of May 2019.

(B. Acharyya)  
SDJM(S), Sonitpur, Tezpur

**Appendix:**

**Prosecution Witness:**

PW 1: Ratna Bahadur Newar

PW 2: Ravi Kumar Newar

**Documents Exhibited by Prosecution:**

Ext. 1: Ezahar

Ext. 1(1): Signature of the informant

Ext. 2: Seizure list

Ext. 2(1): Signature of the seizure witness

**Defence Witness: Nil**

Documents Exhibited by the defence: Nil

(B. Acharyya)  
SDJM(S), Sonitpur, Tezpur