

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
SONITPUR, TEZPUR, ASSAM

GR CASE NO:- 2062 of 2017

U/S – 279/338 of the Indian Penal Code

State of Assam
Vs
Sri Chitra Chamlagain

Present : Sri. Angshuman Bhattacharjee,
Addl. Chief Judicial Magistrate

For Prosecution : Sri. P. Baruah, Learned Addl. Public Prosecutor.

For the accused : Sri H.P.Sedaj, Learned Advocate.

Evidence recorded on : 25.10.18,06-05-19, 17-08-19,21-10-19,16-03-20

Arguments heard on : 06.02.2021

Judgement delivered on : 06.02.2021

Judgement

1. The prosecution story emanates from the FIR lodged by one Sri Chandrakala Devi stating inter alia that on 14-5-17 at about 8.30 am, her husband Sri Krishna Bhandari was travelling in the vehicle bearing No AS-12K-2079 (Swift Dzire) for marketing for the marriage of his relatives but the vehicle hit a tree in front of a Gadhajuli, Dhekiajuli petrol pump. The driver Sri Chitra Chamlagain drove the said vehicle in a rash and negligent manner. After the accident, the injured Sri Krishna Bhandari was taken to Dhekiajuli hospital and thereafter to TMCH wherefrom he was referred to Guwahati. Hence, this case.

2. After completion of investigation the police filed charge-sheet against the accused Sri Chitra Chamlagain u/s- 279/338 IPC. At the relevant point of time, on receipt of summons the accused appeared before this Court and he was furnished copies as mandated u/s 207 Cr.P.C. Having found a case against the accused u/s- 279/338 IPC, the particulars of offences under

said sections of law were explained to the accused to which he pleaded not guilty and claimed to be tried

3. The prosecution examined 5 (five) witnesses and defence examined none. Considering the evidence of PWs as well as submission made by the prosecution and defence side, further prosecution evidence and examination of accused u/s-313 Cr.P.C. is dispensed with.

Points for determination

- i.** Whether on 14-5-17 at about 8.30 am, the accused rode the 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 Sri Sri Krishna Bhandari and thereby committed an offence punishable under section 279 of the IPC?
- ii.** Whether on the said day, time and place the accused caused grievous hurt to Sri Krishna Bhandari by driving rashly or negligently so as to endanger human life or personal safety of others and thereby committed an offence punishable u/s 338 IPC?

DISCUSSION, DECISION AND REASONS THEREOF

4. PW1, Smti Chandra Kala Devi is the informant of this case deposed that on the fateful day, her husband went to market at Gadhajuli, Dhekiajuli in a Swift Dzire vehicle and the said vehicle dashed with a tree for which her husband sustained injury on his head, eyes and his two tooth. She has identified her ejahar as Ext.1 whereupon Ext.1(1) is her signature.

In cross-examination, she stated that the FIR was written by one Kamal Nath and it was lodged after one moth from the date of accident. She does not know what is written in the FIR. She did not see the accident and she also does not know how the accident took place.

5. PW2 Sri Sushil Das deposed that in the year 2017 when he had opened his shop at about 8 am situated at Gadhajuli, he heard a loud sound from the road side. On approaching the place of occurrence, he saw a Swift Desire vehicle had hit a tree standing beside the road.

On person inside the vehicle had sustained injuries on his chest and thereafter the driver drove the vehicle to the hospital.

In cross-examination, he stated that he does not know who was driving the vehicle at the time of the incident.

6. PW3 Nayak Sudor Doimary deposed that on 14-06-18 he was posted as Nayak at Dhekiajuli PS and on that day his traffic-in-charge Devid Doimary had seized one vehicle being Maruti Swift Desire and he put his signature in the seizure list (Ext.2).

In cross-examination, he denied the fact that on being directed by his officer, he had put his signature in the seizure list without having knowledge of its contents.

7. PW4 Sri Sushil Das deposed that on the day of occurrence, he was going for marketing for his cousin brother's marriage in a vehicle driven by the accused. The said vehicle hit a tree beside the road in order to save a vehicle from dashing into a Tata Sumo vehicle coming from the opposite direction.

In cross-examination, he stated that the accused was driving the vehicle safely.

8. PW5 Sri Krishna Bhandari is the injured and he stated that on 14-5-17 at about 8.30 am he was travelling in the car of accused Sri Chitra Chamlagai and when they reached Gadhajuli, the car dashed against a tree. He became senseless and sustained injuries on his head, eye and he also lost the eyesight of right eye. Two of his teeth have also been dislocated. He does not know in what manner the accused was driving the vehicle at the time of the accident.

In cross-examination he stated that the case has been lodged to get compensation from insurance company. He does not know how the accident took place.

9. I have heard the prosecution and defence side.

10. It is seen that the informant as PW1 did not state anything incriminating against the accused. She even could not say in course of her deposition as to who was driving the vehicle in question at the time of accident. She also stated in course of her cross-examination that she does not know as to what circumstances, the accident took place. PW2 also could not say under what circumstances, the accident took place and also who was driving the vehicle in question at the time of accident. PW3 is only a seizure witness who did not state anything about the cause

of the accident. PW4 who is one of the eye witnesses nowhere made any allegation of rashness or negligent on the part of the accused instead he stated in course of his cross-examination that the accused was driving vehicle safely. PW5 who is the injured did not make any allegation of rashness or negligent on the part of the accused while driving the vehicle at the time of the accident. Instead he stated in his examination-in-chief that he does not know in what manner, the accused was driving the vehicle at the time of the accident. Thus, it is seen that none of the PWs have stated that it was the accused who by driving the vehicle rashly and negligently had caused the accident.

11. This being the position, prosecution case cannot be said to have been proved beyond all reasonable doubt. As such this court holds that the accused Sri Chitra Chamlagain is not guilty of the offence U/S 279/338 of the Indian Penal Code and he be set at liberty forthwith. The bail bond furnished by the accused is hereby extended for six months from today (06-02-2021).

12. Seized vehicle if any, be delivered to his lawful owner after proper verification and following the process of law.

13. Judgement is delivered and pronounced in open court.

14. Given under my hand and seal of this court on this 6th day of February, 2021.

Sri. Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

APPENDIX

Prosecution has examined one witness:-

PW1 Smti Chandra Kala Devi

PW2 Sri Sushil Das

PW3 Nayak Sudor Doimary

PW4 Sri Sushil Das

PW5 Sri Krishna Bhandari

Defence side has not examined any witness.

Documents exhibited by the prosecution :-

Ext.1 ejahar

Documents exhibited by the defence -: Nil

Sri. Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur