

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE

SONITPUR, TEZPUR, ASSAM

GR CASE NO:- 2652/15

U/S – 279/338/427 IPC

State of Assam

Vs

**Sri Rabi Ch Seal**

**Accused person**

Present : Sri. Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate

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

For the accused : Smti M Bhagawati, Ld Defence Counsel

Evidence recorded on : 15-12-17,02-05-19,21-08-19,21-01-20,  
08-02-21

Arguments heard on : 15-02-21

Judgement delivered on : 19-02-21

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

1. The prosecution story emanates from the FIR lodged by one Md Abdul Jamal on 03-10-15 stating inter alia that on 22-09-15 at about 2.15 pm, while he was pulling his rickshaw from Kekorapul towards Tribeni, then in front of Moonlit School, one motor cyclist bearing No AS-12-J-5589 coming in a high speed dashed him. As a result, he sustained grievous injury and his rickshaw was also damaged. After the accident he was taken to Kanaklata Civil Hospital, Tezpur for treatment. Hence, this case.

2. After completion of investigation the police filed charge-sheet against the accused Sri Rabi Ch Seal u/s- 279/338/427 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- 279/338/427 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 6 (six) witnesses and defence examined none. The accused was examined u/s-313 Cr.P.C. wherein he stated that the prosecution case is false.

**Points for determination**

- i. Whether 22-09-15 at about 2.15 pm, 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 Md Abdul Jamal 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 Md Abdul Jamal 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?
- iii. Whether the accused, on the same day committed mischief by causing wrongful loss or damage to the property of informant and thereby committed an offence punishable U/S 427 of the IP C ?

**Discussion of evidence**

4. PW1 Md Abdul Jamal is the informant of this case and he in his evidence has stated that about two years three months at about 2.15 pm, when he was pulling his rickshaw, near Moonlit School, Tezpur at that time, accused by driving his motor cycle knocked him down. He fell down and became senseless and was taken to hospital. He sustained injury on his head, waist and back.

In cross-examination, he stated that he does not know the number of the bike and also who was riding the bike. He lodged the ejahar after 9 days of the incident and sine he was illiterate, one man wrote the ejahar and he put his thumb impression. The place of occurrence is a very busy area and since he became senseless, he does not know how the accident took place.

5. PW2 Sri Bishnu Saikia deposed that informant is known to him but the accused is not known to him. The incident took place on 22-09-15 at about 2/2.30 pm near the ATM beside Moonlit School. Informant Abdul Zmal was plying a rickshaw from Kekorapul to Triveni and at that time one motor cycle plied by accused Ravi Sankar Shil in a very rash and negligent manner hit the informant. For the collision informant Abdul Zamal fell down and his rickshaw was capsized and got damaged. At the time of incident he was present and saw the occurrence with his own eyes. He has identified the seizure list as Ext.1 and Ext.2 whereupon Ext.1(1) and 2(1) is his signatures.

In cross-examination, he stated that on the day of the occurrence, he was coming from Tezpur to Bihaguri by riding a motor cycle. He had witnessed the incident from a distance of 8/10 meter. The registration number of the motor cycle is AS-12J/5589. He assisted the public to take the injured to hospital. He denied the fact that he did not witness the occurrence of the incident for which he even could not state about the location of the occurrence. He does not know for whose fault the incident took place.

6. PW3 Sri Dilip Hazarika deposed that on the day of the occurrence, there was a head on collision in between a motor cycle driven by Ravi Sankar Shil and a rickshaw. The rickshaw puller had sustained severe injury and they took him to Kanaklata Civil Hospital. He has identified his signature as Ext.1(2) in the seizure list.

In cross-examination, he stated that he does not know for whose fault, the incident took place.

7. PW4 Sri Pranjal Das deposed that on the day of the accident, he was passing by the place of occurrence and just at that time he saw that the accused was coming on his bike from Tribeni Hall side and his bike dashed against a riskshaw. The accused was riding his bike at speed. He then sent the injured to hospital in another rickshaw.

In cross-examination, he stated that at the time of the accident the place of occurrence was crowded with people. He cannot say for whose fault the accident took place but he observed that the bike of the accused was at little speed.

8. PW5 Dr Bibedita Baruah is the medical officer and she deposed that on 22-09-15 she was performed her duty at the casualty department of Kanaklata Civil Hospital. On that day at about 3 pm, she examined one Md Abdul Jamal who was escorted by ASI, Budhon Baruah and after medically examined Md Abdul Jamal she prepared a medical examination report. Ext.3 is the said report prepared by her and Ext.3(1) is her signature.

9. PW6 ASI Budhan Borah is the investigating officer and he in his evidence has stated that on 4-10-15 he was working at Tezpur PS. On 03-10-15 on receipt of an ejahar from one Abdul Jamal, he was entrusted to investigate the case and accordingly, he proceeded to the place of occurrence, prepared the sketch map, recorded the statements of the witnesses, seized a rickshaw and a bike involved this case. He also got the seized bike examined by MVI and collected report from the latter. He got the injured medically examined and collected the medical examination report. After completing his part of investigation, he handed over the case diary to SI Dhanjit Haloi who subsequently filed charge sheet against the accused.

In cross-examination, he stated that in course of his investigation, he found that the place of occurrence is a crowded area.

#### **DECISION AND REASONS THEREOF**

10. I have heard the prosecution and defence side.

11. Let me now analyse how far prosecution side has been able to prove its case beyond all reasonable doubt against the accused.

12. PW1 who is the informant of this case stated that at the time of the incident, the accused was riding a motor cycle and hit him. There is no allegation by the informant that the accused was riding the motor cycle rashly or negligently. PW3 i.e. Sri Dilip Hazarika could not say for which fault the accident took place. PW4 Sri

Pranjal Das stated in course of his evidence inter alia that the accused was riding his bike at a speed. In course of his cross-examination he stated that he cannot say for which fault the accident took place but he had observed that the bike of the accused was at a little speed. PW5 is the medical officer who had examined the informant and PW6 is the investigating officer. PW2 Sri Bishnu Saikia is the only PW who stated that at the time of the incident he had seen the accused plying the motor cycle in a very rash and negligent manner. However, this PW did not further elucidate as regards the circumstances which made him conclude that the accused was riding the bike in a very rash and negligent manner. For instance this PW has not explained as to whether he had seen the accused trying to overtake other vehicles or that the accused was coming from a wrong side of the road or that he had violated any traffic signal etc. As such, in absence of explanation as regards the manner in which the accused was plying the motor cycle at the time of the incident, mere statement that he was plying his motor cycle in a very rash and negligent manner is not sufficient to hold him responsible for the accident. This becomes very important as the informant himself has stated that the place of occurrence is a very busy area. Again the I/O has also stated in course of his cross-examination that in course of his investigation he had found that the place of occurrence is a crowded area. This being the position, error of judgment on the part of the accused at the time of the incident cannot be ruled out. In addition to the above as regards the statement made by some of the PWs that at the time of the incident, the accused was plying the motor cycle at speed, this court is of the opinion that mere driving a vehicle at speed cannot invite liability U/S 279 IPC. Vehicles are meant to be driven at speed.

13. Considering all the above aspects, I find that the prosecution has totally failed to prove its case against the accused beyond all reasonable doubt. As such this court holds that the accused Sri Rabi Ch Seal is not guilty of the offence U/S - 279/338/427 IPC and he be set at liberty forthwith. The bail bond furnished by the accused person is hereby extended for six months from today (19-02-21).

14. Seized vehicle and articles if any, be delivered to his lawful owner after proper verification and following the process of law.
15. Judgement is delivered and pronounced in open court.
16. Given under my hand and seal of this court on this 19<sup>th</sup> day of February, 2021.

Sri Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate  
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses:-

PW1 Md Abdul Jamal

PW2 Sri Bishnu Saikia

PW3 Sri Dilip Hazarika

PW4 Sri Pranjal Das

PW5 Dr Bibedita Baruah

PW6 ASI Budhan Borah

Defence witness:

Nil

Documents exhibited by the prosecution :-

Ext.1 & 2 seizure lists

Ex.3 Medical report

Ext.7 sketch map

Ext.8 Charge sheet

Documents exhibited by the defence -: Nil

Sri Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate  
Sonitpur, Tezpur