

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS AT SONITPUR, TEZPUR

PRESENT: DARSHANA NATH, MA, LLM

JMFC, Tezpur, Sonitpur

GR CASE NO: 1661/17

U/S 279/338/427 IPC

STATE

VS.

Mainul Haque

Evidence recorded on : 25/09/2019

Arguments heard on : 12/02/2021

Judgement delivered on : 25/02/2021

Appearing for Prosecution : Smti. Niva Devi

Appearing for Defence : Smti. Sahida Begum

Smti. R. Begum

JUDGMENT

- 1.** The ejahar was lodged by the informant Manik Borah on 10/05/2017 alleging *inter alia* that on 16/04/2017 at 2.30 p.m. the informant with his Activa Registration No. AS-12P-1331 went to market and waited on the left side at Kamarchuburi for some reasons. At that moment, a super splendor bike Registration No. AS 12P-0042 was driven in a very rash and negligent manner and hit the informant from the back side leaving him injured the whole body. His right leg was broken totally and his Activa was also heavily damaged as a result of the accident. The informant was rushed immediately to the hospital and was operated in B.K. Memorial Hospital and because of this reason, he was late in filing the FIR against the driver of the bike. He prayed in the FIR to find out the driver of the bike and to punish him.
- 2.** Police on receiving the ejahar registered the same as Tezpur P.S. Case No 871/17 u/s 279/338/427 IPC and started investigation of the same. On completion of investigation, police submitted the chargesheet against the accused person Mainul Haque u/s 279/338/427 IPC.
- 3.** Cognizance of the offence was taken and accordingly summons was issued to the accused person. On appearance, the copies were furnished to the accused persons.

4. Considering the nature of the offences, the same were explained to the accused persons, to which they pleaded not guilty and claimed to be tried.
5. During the trial, prosecution has examined four witnesses. Statements of the accused persons are recorded under Section 313 CrPC, but the accused persons have failed to adduce evidence in their support.

I have heard the arguments advanced by the learned Counsel of both sides and carefully perused the evidence on record.

POINTS FOR DETERMINATION:

6. Whether the accused person drove his bike in a rash and negligent manner as to endanger the life of the informant and thereby committed an offence punishable under section 279 IPC?
7. Whether the accused person caused grievous hurt to the informant by driving bike so rashly and negligently as to endanger the life and thereby committed an offence punishable under sections 338 IPC?
8. Whether the accused person commits mischief causing damage to the Activa of the informant and thereby committed an offence punishable under section 427 IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF

9. The informant as PW-1 in his evidence stated that on 16/04/2017 when he came to market on his Activa, a bike hit him and as a result he got injured. But he stated that he could not see the person who hit him on that day. He did not recognize the accused person in the court. In cross-examination, PW-1 stated that he could not even see the bike.
10. PW-2 in his evidence stated that he knew the informant as well as the accused person. He stated that in 2017, at 2.30 p.m. the informant was on his Activa standing at Kamarchuburi, then the accused riding a super splendor bike at high speed knocked down the informant from the front side. The informant got injured on his leg. The police seized the motorcycle and Activa from the place of occurrence. He has put his signature as a seizer witness.
11. In cross-examination, he stated that he was 50 metre away from the place of occurrence. He reached the place of occurrence after hearing the sound. He had not seen the accused person at the place of occurrence and he could not remember the registration no. of the bike. The police recorded his statement after 1 month and put his signature in seizer list after 1 month. He stated that he had not seen the accident himself.

- 12.** Statement of PW-3 is discarded as he did not know about the incident neither he knew the accused person. He only put signature on the seizer list in the market.
- 13.** PW-4 stated that he knew the informant but could not recognize the accused person. He stated that he saw the informant lying on the road near Kamarchuburi ATM. He stated that the informant was coming on a scooty but he did not know which bike hit him.
- 14.** From the evidence given by the all the PWs, it is neither proved that the accused person himself was driving the bike nor he was driving in a rash and negligent manner. PWs did not see the accused person himself hit the informant.
- 15.** Moreover, PW-1 in his FIR stated that the informant from the back side leaving him injured the whole body. But PW-2 stated that the accused riding a super splendor bike at high speed knocked down the informant from the front side. Hence, the statement of the both PW-1 & PW-2 cannot be corroborated.
- 16.** PW-1 in his evidence did not state that a splendor bike Registration No. AS 12P-0042 was driven in a very rash and negligent manner and hit the informant from the back side leaving him injured the whole body which he stated in his FIR. In cross-examination, PW-1 stated that he did not know who and which bike hit him on that day. Hence, the credibility of PW-1 is not beyond doubt.
- 17.** Thus, it is seen that there is no evidence on record to suggest that the accused person drove his bike in a rash and negligent manner as to endanger the life of the informant. Neither prosecution could prove that accused person caused grievous hurt to the informant by driving bike so rashly and negligently endangering his life, nor could prove that the accused person committed mischief by causing damage to the Activa of the informant. Hence, it is considered that the prosecution has failed to prove the allegations against the accused persons beyond reasonable doubt.
- 18.** In the absence of proof of rash driving on a public way, causing grievous hurt by rashly driving, and causing mischief by damaging the Activa of the informant on the part of the accused person, the offences u/s 279/338/427 stand disproved.
- 19.** Thus, all the points for determination are decided in the negative.

ORDER

- 20.** Accordingly, the accused person Mainul Haque acquitted of the offence under section 279/338/427 IPC and set at liberty forthwith. His bail bond is extended for a period of 6 months.
- 21.** The custody of the seized articles is made absolute in favour of the registered owner thereof, if any.

Given in my hand and under the seal of this court on this 25th day of February.
2021.

Darshana Nath
JMFC, Sonitpur, Tezpur

Typed by me:

APPENDIX

Prosecution witness: PW1 Manik Borah
PW2 Uttam Kr Koch
PW3 Sheikh Halim
PW4: Rahul Baruah

Defence witness: none

Prosecution exhibits: Ext. 1: Ejahar
Ext. 1(1): Signature of PW1
Ext. 2: Chargesheet

Defence exhibits: none