

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

Present: Dr. M Baruah
Chief Judicial Magistrate,
Sonitpur, Tezpur.

G. R. Case No. 492/2007

U/s 279/338 /427 IPC

State

Vs

Sri Bimal Chandra Das

.....Accused

Appearance:

Counsel for the State : Smti R Chakravorty, Sri N Das.

Counsel for the defense : Sri P. Borah.

Offence explained on : 30-5-2012.

Evidence recorded on : 5-10-12, 10-12-12, 21-6-13, 23-8-13, 30-10-13

Argument heard on : 9-12-2013.

Judgment delivered on : 23-12-2013.

J U D G M E N T

1). The prosecution's case in brief is that, the informant S. N. Pandey lodged an ejahar on 30-4-11 before the I/C, Salonibari OP stating that on 28-4-11 at about 17:30 hrs. when his son Master Ahish Kumar Pandey was going to Goroimari Market on a bicycle and tried to cross the road near Supply Bus stoppage at Haleswar, a bus bearing registration No.AS-12/E- 0433 hit his bicycle from behind. His son fell down and became unconscious. Some bus ran over the bicycle causing damage to the cycle. He arrived at the place of occurrence received information about the incident over telephone and came to know that police sent his son, who

sustained serious injuries, to Kanaklata Civil Hospital for treatment. His son sustained head injury and doctor stitched his injury on his body.

2). Upon receive of the ejahar, the I/C, Salonibari O P made a GDE No.535 and forwarded the same to the O/C Tezpur PS for registering a case. Accordingly, O/C Tezpur PS registered a case being Tezpur P S Case No. 415/11 u/s 279/338/427 IPC and started investigation. After investigation, police filed charge sheet against the accused Bimal Ch. Das u/s 279/338/427 IPC.

3). The accused appeared before the Court and faced trial. Copy of the prosecution documents furnished to the accused. Particulars of offence u/s 279/338/427 IPC were read over and explained to the accused. The accused pleaded not guilty and claimed to be tried.

4). Prosecution adduced evidence of six witnesses including the IO, to prove the case. After close of prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. The plea of the accused was total denial and he declined to adduce evidence in his defence.

5). POINTS FOR DETERMINATION

I). Whether the accused on 28-4-11 at about 17:30 hrs drove the bus bearing Regd. No.AS-12/E- 0433 in a rash and negligent manner endangering human life?

II). Whether the accused on 28-4-11 at about 17:30 hrs. caused grievous hurt to Master Ashish Kr. Pandey by driving the bus bearing Regd. No.AS-12/E- 0433 in a rash or negligent manner?

III). Whether the accused on 28-4-11 at about 17:30 hrs. has caused mischief and thereby caused damaged to the bicycle of Master Ashish Kr. Pandey ?

Heard argument of the defense counsel and the Ld. Addl.P.P. Perused the materials on record.

Now it is to see whether the prosecution has been able to prove the above points beyond doubt.

6). DICISION, DISCUSSION AND REASONS THEREOF

The PW-1 Sri Shyam Narayan Pandey deposed that he was informed by a person that his son Sri Ashish Kr. Pandey met with an accident at 52 National High Way near Goroimari Supply Bus Stop. His son was knocked down by a bus going towards Balipara from behind. Police took his son to the hospital. He saw that his son sustained injuries on his face, head and various parts of the body. His son was discharged from Mission Hospital on the next day. The bicycle of his son got damaged. He filed an ejahar at Salonibari Police Out Post. Ext-1 is the ejahar and Ext-1(1) is his signature.

PW-2 Sri Himaran Hazarika deposed that on the day of occurrence at about 4.30pm he saw the son of the informant lying on the road in an injured stage. He and some other person send the injured to Hospital. Police came and seized the damaged bicycle of the injured. Ext-2 and Ext-3 are the seizure list and Ext-2(1) and Ext-3(1) are his signatures.

PW-3 Sri Ashis Kr. Pandey deposed that on 28/4/11 at about 5.30pm he was about to cross the National High Way No. 52 at Goroimari on his bicycle. He looked both the sides of the road. He saw one bus standing on the direction to Balipara. When he crossed the road the said bus hit him. He became unconscious and was taken to Mission Hospital. He sustained injuries on his head, ear, both hands and right leg. He did not see the driver or the bus number.

During cross examination he stated that the said bus was about 30 meters away from him where he crossed the road. The bus just stopped there. He denied that the bus which was standing there did not hit him. He cannot say the colour of the bus.

PW-4 Sri Jatin Hazarika deposed that he has a shop near the Civil Airport. He heard about an accident that a bus had knocked a boy. Police came and took his signature on the Ext-2 and Ext-3 seizure list.

PW-5 Dr. Indra Gogoi deposed that on 26/4/11 he examined a 14 year old boy Sri Ashis Kr. Pandey at Kanaklata Civil hospital on police requisition of Salonibari Outpost. He found cut injuries on the fore head, abrasion on the chin and right left exterior surface of palm, abrasion on the right knee. Ext-4 is the injury report and Ext-4(1) is his signature.

PW-6 Sri Bidya Ram Kalita deposed that he made preliminary investigation of the case. He went to the place of occurrence and drew a sketch map and seized the bicycle and the bus. He recorded the statement of the witnesses and arrested the accused. The accused was released on bail. He collected the MVI report and medical report of the victim. After

preliminary investigation he handed over the case diary to Sri Dilip Bania who later on filed the charge sheet. Ext-6 is the charge sheet. Ext-6(1) is the signature of S I Sri Dilip Bania.

During cross examination he stated that the G D Entry in the FIR is 535 dated 30/4/11 but the G D Entry in connection of this case is 493.

7). Now scrutinizing the materials on record, I found that the PW-3 is the victim and the rest of the witnesses have not seen the occurrence of the incident. They came to the place of occurrence after the occurrence of the incident. The I O has failed to examine any eye witnesses. The place of occurrence as per the sketch map is on the National High Way No. 52 near a four way crossing. The I O could have collect evidence regarding the occurrence of the incident. The PW-3 stated that he saw the bus standing. So it not clear as to how a bus can suddenly hit the victim while he was crossing the road. The materials available do not show that the accused drove the bus in a rash or negligent manner for which the bus had hit the victim causing injuries. There is no such material to hold the accused guilty of the alleged offence. The prosecution has failed to prove that the accused had acted in a rash or negligent manner for which the victim sustained injuries and his bicycle got damaged.

8). **ORDER**

Considering the facts and circumstances of this case, I found that the prosecution has failed to prove the case against the accused beyond reasonable doubt. As a result the accused is acquitted and set at liberty. The bail bond of the accused stands discharge. The seized materials are to be returned to the respective owner.

9). A copy of the judgment is to be given to the accused free of cost.

10). The judgment is prepared and typed by me.

11). Set my hand and seal of this Court on the 23rd day of December, 2013.

(Manash Baruah)
Chief Judicial Magistrate,
Sonitpur, Tezpur.