

**APPENDIX-12**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR  
TEZPUR

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.  
Chief Judicial Magistrate,  
Sonitpur, Tezpur

[Date of the Judgment]  
**22.11.2022**

**[GR Case No-1028 of 2016]**

(FIR NO-562/2016 DATED-09.04.2016/ACCIDENT CASE AND TEZPUR POLICE  
STATION)

COMPLAINANT :	STATE OF ASSAM OR Smt. Nisha Saikia, W/O:- Sri Jatin Saikia, R/O:- Bebejia, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Md. Anser Ali, S/O:- Late Fazar Ali, R/O:- Damurapara, P/S:- Gosaigaon, Dist:- Kokrajhar, Assam
REPRESENTED BY	Mr. Nizam Uddin, Ld. Counsel Mr. Mozibur Rahman, Ld. Counsel

**APPENDIX-13**

Date of Offence	29.03.2016
Date of FIR	01.04.2016
Date of Charge Sheet	29.04.2016
Date of Offence Explanation	27.10.2017
Date of commencement of evidence	22.12.2017
Date on which judgment is reserved	11.11.2022
Date of Judgment	22.11.2022
Date of the Sentencing Order, if any	NIL

**ACCUSED DETAILS :**

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Anser Ali	NIL	NIL	Section-279/338/427 of IPC	Acquitted	NIL	NIL

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

**G R. Case No-1028 of 2016**

State of Assam

–Vs–

Md. Anser Ali

.....Accused Person

Under section-279/338/427 of I.P.C

*Present:*

*Sri Nabajit Bhatta AJS. MA, LL.B.*

*Chief Judicial Magistrate, Sonitpur at Tezpur*

22<sup>nd</sup> day of November, 2022

Mr. N. K. Mishra, Addl. P.P

..... Advocate for the State

Mr. N. Uddin, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 22.12.2017, 21.02.2018, 17.12.2018  
17.06.2019 & 29.09.2022

Date of Argument : 11.11.2022

Date of Judgment : 22.11.2022

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

1. Prosecution story in brief is as follows that on 01.04.2016 informant, namely, Smt. Nisha Saikia lodged an FIR before the O/C of Tezpur Police Station to the effect that on 29.09.2016 at about 10:10 PM at Mission Chariali over National Highway No-15 one truck bearing Regd. No-NL-01K-0004 coming from Mission Chariali side in a rash and negligent manner had knocked the motor cycle of her son namely, Sri Rana Saikia bearing Regd. No-AS-12/J-7539 and due to that her son sustained grievous injury on his person. It is also stated that due to that accident the motor cycle of her son also caused damages. Hence, the prosecution case.
2. The instant case was registered under section-279/338/427 of Indian Penal Code and police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused person, namely, Md. Anser Ali under section-279/338/427 of I.P.C.

3. That my Ld. Predecessor in Office took cognizance of offence against the accused person. On appearance of the accused, copies of relevant documents were furnished to accused person and particulars of offence under section-279/338/427 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as eight (08) numbers of witnesses including informant, victim and investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of the accused person has been recorded U/S-313 of Cr. P.C.

5. **POINTS FOR DETERMINATION:-**

- (i.) Whether on 29.03.2016 at about 10:10 PM near Mission Chariali over National Highway under Tezpur PS, the accused person drove the truck bearing Regd. No-NL-01K-0004 so rash and negligent manner which is endanger to the life of the informant's son Sri Rana Saikia and thereby committed an offence punishable under section-279 of I.P.C?
- (ii.) Whether on the same day time and place the accused by driving the truck bearing Regd. No-NL-01K-0004 in a rash and negligent manner had knocked the motor cycle of the informant's son Sri Rana Saikia bearing Regd. No-AS-12/J-7539 and due to that the victim sustained grievous injuries on his person and thereby committed an offence punishable under section-338 of I.P.C.?
- (iii.) Whether the accused persons on the same date, time and place drove the truck bearing Regd. No-NL-01K-0004, in a rash and negligent manner, knocked the motor cycle of the

informant's son Sri Rana Saikia bearing Regd. No-AS-12/J-7539 and caused mischief of the said motor cycle and thereby committed an offence punishable under section-427 IPC?

6. Heard argument from both sides. On perusal of the evidences on record and case diary the very findings are as follows.

**DISCUSSION, DECISION AND REASONS THEREOF**

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Smt. Nisha Saikia as PW-1. The PW-1 in her evidence-in-chief has stated that she does not know the accused person of this case. She further stated that the occurrence took place on 29.03.2016 at 10 PM near BP Tiniali on the highway. She also stated that her son, namely, Sri Rana Saikia was coming from Tezpur town to BP Tiniali by riding his bike one truck loaded with core hit him from backside. She also stated that she came to Mission Hospital with police and saw her son with injury on his legs, hands and shoulder where he was admitted for 4 days. Now her son is his own home. She identified the ejahar as Ext-1 wherein she put her signature as Ext-1(1). PW-1 in his cross-examination has stated that she was at her home at the time of incident.
8. PW-2, Sri Bijoy Kalita in his evidence-in-chief has stated that he knows the informant of this case. He also stated that the incident took place on 29.03.2016 at about 02:00 AM and at that time he along with his friend Siba Saikia having betel nut in a shop situated at Balipukhuri Tiniali Center. He also stated that when Rana Saikia was coming from Mission Chariali towards his house at Japikhoza, then one truck bearing Regd. No-NL-01-0004 coming in a rash and negligent manner knocked Rana Saikia from backside and due to that he fell down from the bike. He stated that he had seen the alleged incident. He also stated that the bike

of Rana Saikia was dragging when the offending vehicle fled away from the place of occurrence. Thereafter, he along with Siba Saikia chased the offending vehicle. He stated that the said truck had stopped around one kilometre away from the place of occurrence and after that the driver and handyman of the said truck fled away from the truck. Thereafter, they informed the matter to Bebejia Police Outpost and police arrived at the place of occurrence and took the injured for medical examination. He also stated that police seized the motor cycle and the offending truck. He stated that he only saw the driver was running from there. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(1).

9. PW-2 in his cross-examination stated that the place of occurrence is a Tiniali. He stated that many shops situated near the place of occurrence. He also stated that he was present at a pan shop situated near the place of occurrence. He further stated that the accident occurred in front of him around 10 meters to 15 meters. He also stated that Rana Saikia's house situated at Bebejia.
10. PW-3, Sri Siba Saikia in his evidence-in-chief has stated that he knows the informant of this case. He also stated that the accident took place on 29.03.2016 at about 10 PM to 10:30 PM and at that time he along with his friend Bijoy Kalita having betel nut in a shop situated at Balipukhuri Tiniali. He also stated that his friend Rana Saikia was going towards his house on his own side i.e. left side and while Rana Saikia took turning one truck had knocked him from backside and due to that he fell down towards the left side of the road. In the said accident, the motor cycle of Rana Saikia got damages. He also stated that he had seen the alleged incident. He stated that the motor cycle of Rana Saikia was dragging by the said offending truck. However, he along with Bijoy Kalita chased the offending vehicle but the said truck had stopped around one kilometre away from the place of occurrence. After that the driver and handyman

of the said truck fled away from the truck. He further stated that the injured was taken for medical examination. Thereafter, they informed the matter to police and later police went to the place of occurrence and seized the motor cycle and the offending truck. He stated that he put his signature on the seizure list of motor cycle. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(2). In cross-examination, PW-3 has denied the fact that the truck did not hit the motor cycle.

11. PW-4, Sri Rana Saikia being the victim of this case in his evidence-in-chief has stated that the informant is his mother. He further stated that the incident took place on 29.03.2016 at about 10 PM and on the date of incident, when he was proceeding from Mission Chariali towards his house situated at B.P. Tiniali, one truck had knocked his motor cycle from backside and due to that he sustained fracture injuries on his hand and legs. He also stated that he came to know that in the said accident his bike got burning. He stated that he admitted at Mission Hospital wherein he took treatment for about three days. PW-4 in his cross-examination has stated that police interrogated him in connection with this case.
12. PW-5, Sri Paragjyoti Bora has stated in his evidence that he knows the informant and the accused person. He stated that the incident took place in the year 2016 one day at about 10 PM to 10:30PM. He further stated that he was present at the place of occurrence i.e. B.P. Tiniali and at that he saw one truck coming from Tezpur side towards Dhekiajuli in a high speed. He also stated that in the meantime when Rana Saikia was going towards Dhekiajuli side in his motor cycle from a shop situated nearby the road, then one truck knocked him from back side and due to that Rana Saikia fell down from there. He stated that the motor cycle of Rana Saikia was under the wheel of truck and further dragging the said motor cycle and due to that the said truck and motor cycle got burn. PW-5 in

his cross-examination has stated that the truck was in a high speed. He also stated that there was speed backer at the place of occurrence.

13. PW-6, Sri Raju Borah has stated that he knows the informant and the accused person of this case is the driver of truck. He stated that the incident took place in the year 2016 one day at about 10-10:30 PM at BP Tiniali. He further stated that at the time of incident he was at his shop situated at BP Tiniali. He also stated that the accident took place in front of his shop. He stated that he heard hue and cry and on hearing the same he came out from his shop and saw one motor cycle was dragging by a truck. He further stated that the bike rider was already fell down and the motor cycle and the truck was already got burning just few way of the place of occurrence. He also stated that the public has caught the truck near Beseria. He stated that he saw that public apprehended the accused person. The motor cyclist was sent for medical treatment. PW-6 in his cross-examination has stated that he heard that the truck was in a high speed. He stated that Rana Saikia was in his own side.
14. PW-7, Sri Raj Patangia has stated in his evidence-in-chief that the informant is the daughter of his uncle. He stated that the accident took place in the year 2016 one day at about 11 PM to 11:30 PM at BP Tiniali. He also stated that at the time of incident he came to know about the incident over phone and thereafter he went to the place of occurrence and saw one motor cycle was under the wheel of the truck. He stated that said bike was burning and Rana Saikia sustained injury in the said accident. The cross-examination of PW-7 was declined by defence side.
15. PW-8, Inspector Dipak Das being the investigating officer of this case has stated in his evidence-in-chief that on 09.04.2016, he was posted at Tezpur Bebejia Out Post as IC and on that day as a I/C of Bebejia OP he received an ejahar lodged by one Nisha Saikia and thereafter made an GDE vide No-155, dated-09.04.2016 at 10:30 PM and forwarded the



same before Tezpur P.S. He identified his signature as P. Ext-1(2). Accordingly, on received of the same, the O/C of Tezpur PS registered as Tezpur PS Case No-562/16, U/S-279/338/427 of IPC. Thereafter, O/C of Tezpur P.S. endorsed him to investigate the case. He stated that prior to that on 29.03.2016 at 10:30 PM, he got a information that an accident took place at B.P. Tiniali and after getting the information, he made a GD entry bearing number-646, dated-29.03.2016 and he immediately visited the place of occurrence. He further stated that he found one Rana Saikia was lying side of the road at serious condition and he took him to the Baptist Hospital, Mission Chariali for medical treatment. He stated that he came to know that the said Rana Saikia was coming on a bike and one truck knocked him and carried the bike upto 1 KM. He also stated that he also got the information that the bike was set fire. He prepared sketch map. He identified the sketch map prepared by him as Ext-3. He also recorded the statement of the informant and other witnesses. He stated that he seized one burn condition motor cycle (Bajaj Discover). He identified the seizure list as P. Ext-2 wherein he put his signature as P. Ext-2(3). He further stated that he also seized alleged 12<sup>lv</sup> wheelers truck bearing no registration number-NL-01A-0004. He further identified the seizure list as P. Ext-4 wherein he put his signature as P. Ext-4(1). He stated that both the vehicles were examined through Motor Vehicle Inspector and he collected the medical report of the victim. He further stated that accused had surrendered before him and he was released on bail. He also stated that after completion of the investigation he has submitted charge sheet against the accused u/s-279/338/427 of IPC. He identified the charge sheet submitted by me as Ext-5 wherein he put his signature as Ext-5(1).

16. PW-8 in his cross-examination has stated that he started investigation before receiving the formal ejahar. He further stated that he visited the

place of occurrence at 10:30 PM on 29.03.2016 and he prepared sketch map at the place of occurrence on the next day of the accident. He stated that he forgot to put signature on the sketch map. He also stated that he recorded the statement of witnesses on 30.03.2016.

17. I have minutely perused the evidences on record including the cross examination of the witnesses. In this case prosecution side has examined six numbers of witnesses including the informant, victim, medical officer and investigating officer in support of this case. In this case, PW-1 has deposed that on 29.03.2016 at 10 p.m. her son, Sri Rana Saikia was coming from Tezpur town to BP Tiniali by riding his bike then one truck loaded with core hit him near B.P. Tiniali from backside. Getting the information she came to Mission Hospital with police and saw her son with injury on his legs, hands and shoulder where he was admitted for four days. But in the same time, PW-1 in his cross-examination clearly stated that she was at home at the time of incident. The PW-1 nowhere stated in his evidence that the offending vehicle was driven by accused in a rash and negligent manner at the time when the accident happened.
18. PW-2 has stated in his evidence-in-chief that on 29.03.2016 at about 02:00 AM and at that time he along with his friend Siba Saikia having betel nut in a shop situated at Balipukhuri Tiniali Centre. Then Rana Saikia was coming from Mission Chariali towards his house at Japikhoza, then one truck bearing Regd. No-NL-01-0004 coming in a rash and negligent manner knocked Rana Saikia from backside and due to that he fell down from the bike and he had seen the alleged incident. That the bike of Rana Saikia was dragging when the offending vehicle fled away from the place of occurrence. Thereafter, he along with Siba Saikia chased the offending vehicle. That the said truck had stopped around one kilometre away from the place of occurrence and after that the driver and handyman of the said truck fled away from the truck.

Although, PW-2 in his evidence claimed that the truck had come in a rash and negligent manner but he could not identified the alleged driver. From the evidence of PW-2, it appears that the witness has stated nothing incriminatory materials against the accused.

19. PW-3 has also deposed that on 29.03.2016 at about 10 PM to 10:30 PM his friend Rana Saikia was going towards his house on his own side i.e. left side and while Rana Saikia took turning one truck had knocked him from backside and due to that he fell down towards the left side of the road. He also stated that he had seen the alleged incident and the motor cycle of Rana Saikia was dragging by the said offending truck. However, he along with Bijoy Kalita chased the offending vehicle but the said truck had stopped around one kilometre away from the place of occurrence. After that the driver and handyman of the said truck fled away from the truck. Although, PW-3 in his evidence claimed that the truck had come and knocked Rana Saikia but he could not identified the alleged driver. From the evidence of PW-3, it appears that the witness has stated nothing incriminatory materials against the accused.

20. Victim as PW-4 has deposed that place on 29.03.2016 at about 10 p.m. when he was proceeding from Mission Chariali towards his house situated at B.P. Tiniali, one truck had knocked his motor cycle from backside and due to that he sustained fracture injuries on his hand and legs. From the said accident his bike got burning. But the PW-4 nowhere stated in his evidence that the offending vehicle was driven by accused in a rash and negligent manner at the time when the accident happened. He simply stated that the truck knocked his motor cycle from back side and caused an accident and as such, rashness or negligent cannot be imputed strongly upon the accused as the criminal jurisprudence requires that the guilt on the part of the accused person had to be proved beyond all reasonable doubt.

21. PW-5 has deposed that in the year 2016 one day at about 10 p.m. to 10:30 p.m. when he was present at the place of occurrence i.e. B.P. Tiniali and at that he saw one truck coming from Tezpur side towards Dhekiajuli in a high speed. In the meantime when Rana Saikia was going towards Dhekiajuli side in his motor cycle from a shop situated nearby the road, then one truck knocked him from back side and due to that Rana Saikia fell down from there. That the motor cycle of Rana Saikia was under the wheel of truck and further dragging the said motor cycle and due to that the said truck and motor cycle got burn. Although, PW-5 in his evidence claimed that the truck had come in a rash and negligent manner but he could not identified the alleged driver. From the evidence of PW-5, it appears that the witness has stated nothing incriminatory materials against the accused as PW-5 did not say about the registration number of the offending truck. Hence, from the evidence of PW-5, I have not found anything implicating regarding the rashness and negligent driving on the part of accused person.
22. PW-6 has stated in his evidence-in-chief that in the year 2016 one day at about 10-10:30 PM at BP Tiniali while he was at his shop situated at BP Tiniali he heard hue and cry and on hearing the same he came out from his shop and saw one motor cycle was dragging by a truck. From the evidence of PW-6, it appears that the witness has stated nothing incriminatory materials against the accused as PW-6 did not say about the registration number of the offending truck. Hence, from the evidence of the PW-6, I have not found anything implicating regarding the rashness and negligent driving on the part of accused person.
23. PW-7 has stated that at the time of incident he came to know about the incident over phone and thereafter he went to the place of occurrence and saw one motor cycle was under the wheel of the truck. He stated that said bike was burning and Rana Saikia sustained injury in the said

accident. Hence, from the evidence of PW-7, it appears that PW-7 went to the place of occurrence after the incident had occurred. From the evidence of PW-7 nothing incriminating found against the accused as he did not say a single word about the accused of this case. PW-8 is the Investigating Officer who investigated the case and exhibited the sketch map as Ext-3, seizure list as Ext-4 and charge-sheet as Ext-5.

24. From the above discussions it appears that none of the witnesses have stated that the alleged vehicle was driving by the accused at the time of incident in a rash and negligent manner which is the main ingredient of Sec.279 I.P.C. So, there was nothing incriminatory materials against the accused person. All the witnesses have also failed to say the manner of driving of the alleged vehicle by the driver. None witness had identified the alleged driver of the Truck. Apart from the rash and negligent driving of the driver has been not proved by any witness. Further the injury of the victim was not proved by calling the M.O. Further the M.V.I. was not examined by the prosecution to prove the damage of the motor cycle. From the evidences of PWs nothing implicating found against the accused person.

25. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused person U/S: 279/338/427 of Indian Penal Code. Hence, accused person, namely, Md. Anser Ali is not found guilty.

### **ORDER**

Accused person, namely, Md. Anser Ali is acquitted from the Charges under section-279/338/427 of I.P.C. and set at liberty forthwith.

Bail-bond of the accused person is extended for six months in view of section-437A of Cr.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 22<sup>nd</sup> day of November, 2022 at Tezpur.

**(Sri Nabajit Bhatta)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

Dictated and Corrected by me

Chief Judicial Magistrate,  
Sonitpur: Tezpur

**APPENDIX -14**  
**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Smt. Nisha Saikia	INFORMANT
PW-2	Sri Bijoy Kalita	EYE WITNESS
PW-3	Sri Siba Saikia	EYE WITNESS
PW-4	Sri Rana Saikia	VICTIM
PW-5	Sri Paragjyoti Bora	EYE WITNESS
PW-6	Sri Raju Borah	OTHER WITNESS
PW-7	Sri Raj Patangia	OTHER WITNESS
PW-8	Inspector Dipak Das	POLICE WITNESS

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-1/PW-1	Ejahaar
2	Ext-1(1)	Signature of PW-1
3	Ext-1(2)	Signature of PW-8
4	Ext-2/PW-2	Seizure List
5	Ext-2(1)	Signature of PW-2
6	Ext-2(2)	Signature of PW-3
7	Ext-2(3)	Signature of PW-8
8	Ext-3/PW-8	Sketch Map

9	Ext-3(1)	Signature of PW-8
10	Ext-4/PW-8	Seizure List
11	Ext-4(1)	Signature of PW-8
12	Ext-5/PW-8	Charge Sheet
13	Ext-5(1)	Signature of PW-8

**B. Defence:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**C. Court Exhibits:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

Chief Judicial Magistrate,  
Sonitpur: Tezpur