

PR 132/2020
(State of Assam Vs Sri Rupjyoti Borah)

<u>IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE</u> <u>SONITPUR, TEZPUR, ASSAM</u> Present : Smti P Chakravarty Addl. Chief Judicial Magistrate Sonitpur, Tezpur Date of judgment : -03.09.2022 U/S 279/338 of IPC Details of FIR/Crime and Police Station	
Complainant :	State of Assam Or Md Meru Hussain S/O- Lt Ismile Hussain Vill- Kamar Chuburi PS-Thelamara Dist- Sonitpur
Represented by :	Sri. P. Baruah, Learned Addl. Public Prosecutor
Accused :	Sri Rupjyoti Borah S/O Pradip Ch Borah Vill- Borachuba PS-Mangaldai Dist- Darrang
Represented by :	Mr Pranab Kr Saikia

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Date of offence :	15-02-2019
Date of FIR :	19-02-2019
Date of Charge sheet :	30-11-2019
Date of commencement of evidence :	19-01-22
Date on which judgment is reserved :	
Date of judgment :	03-09-2022
Date of Sentencing order, if any :	Nil

ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Sri Rupjyoti Borah	Nil	01-12-21	U/S 279/338 IPC	Acquitted	Nil	Nil

JUDGMENT

1. The prosecution case arises out of an ejahar lodged by one Md Miru Hussain stating inter alia that on 15-02-2019 at about 4 pm while his mother Khatija Bhanu was coming from Belsiri centre towards her home on foot, a vehicle bearing Registration No AS-01-AV-5224 driven by its driver in a high speed dashed his mother at Belsiri Centre on National Highway. His mother was thrown on the road and sustained grievous injuries all over her bodies. Hence, this case.

2. On receipt of ejahar, Thelamara PS case no.21/19U/S-279/338 IPC was registered and SI(P) Hirak Jyoti Mazumdar was entrusted with the investigation of this case. After completion of investigation the police filed charge-sheet against the

accused Sri Rupjyoti Bora U/S279/338 of the Indian Penal Code. The accused person appeared before the court and he was furnished copies as mandated u/s 207 Cr.PC. Having found a case against the accused person U/S- 279/338 IPC, particulars under the said section of law was explained to the accused person to which the pleaded not guilty and claimed to be tried.

3. The prosecution examined only 3 (three) witnesses and on the oral prayer of prosecution and defence sides, further prosecution evidence is dispensed with. After closure of prosecution evidence, statement of defence was recorded. Defence plea is of total denial.

Points for determination :-

- i. Whether on 15-02-2019 at about 4 pm the accused rode the vehicle bearing Registration No AS-01-AV-5224 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 Mustt Khatija Bhanu and thereby committed an offence punishable under section 279 of the IPC?
- ii. Whether on the said day time and place the accused by his rash and negligent act caused grievous hurt to Mustt Khatija Bhanu and thereby committed an offence punishable u/s 338 IPC?

DISCUSSION OF EVIDENCE

4. **PW1 Md Nazar Ali** deposed that he knows the informant of this case who resides near his village. He also stated that one evening in the year 2020 he was at his shop at Belsiri centre and on hearing a loud sound, he came out of the shop and saw that the informant's mother whose name he does not know was lying on the road. She had sustained fracture in her leg. He also saw a small four wheeler vehicle standing nearby. He stated that he does not remember the particulars of the said vehicle. He added that he cannot say how the incident had taken place and he also cannot say who was the driver of the said vehicle at the relevant time.

5. **PW2 Md Abdul Hanif** deposed that he knows the informant of this case who resides near his house. He also stated that in the year 2020 one evening at about 4

pm he was sitting at a shop at Belsiri centre. Just at that time on hearing hue and cry, he went out of the shop and saw that informant's mother had met with an accident and she was lying on the road. He and the nearby people then sent her to hospital. He stated that he doesnot know how the accident took place.

In his cross-examination, he stated that he does not know who had hit the injured person.

6. **PW3 Md Abdul Nessar** deposed that he knows the informant of this case who resides in his village. In the year 2020 one evening at about 4 pm, he was sitting at his shop at Belsiri centre. His stated that his shop is located at about 20 meters away from high way. Just at that time on hearing hue and cry, he went out of the shop and saw that one woman had met with an accident and she was lying on the road. The said woman was then sent to hospital. He then came back to his shop. He stated that he does not know how the accident took place.

DECISION AND REASONS THEREOF

5. I have heard the prosecution and defence side.

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

7. Upon careful perusal of the case-record, it appears that the prosecution has examined only three witnesses but in spite of best effort, prosecution could not examine the victim and informant who are vital witnesses of this case. Summons issued to them returned unserved with report that the said witnesses are not found in the given address. Moreover, the witnesses who have been examined as PW1, PW2 and PW3 have stated that on hearing hue and cry, they went out and saw that one woman had met with an accident and she was lying on the road. All of them categorically stated that they do not know how the accident took place and who had caused the accident.

8. Upon careful scrutiny of the evidence of prosecution witnesses put forwarded by the prosecution side, it appears that the witnesses could neither identify the accused nor state anything implicating against the accused in regard to the offence charged. Hence, there arises no question of warranting conviction U/S-279/338, IPC against the accused person.

11. In the result, the prosecution has totally failed to prove the offences under Section 279/338 of IPC against the accused person beyond all reasonable doubt. Hence, the accused Sri Rupjyoti Borah is held not guilty of the said offences and is hereby acquitted and set at liberty forthwith.

12. The bail bond furnished by the accused persons is hereby extended for six months from today (03.09.22).

13. Judgement is delivered and pronounced in open court.

14. Given under my hand and seal of this court on this 03rd day of September, 2022.

Smti P Chakravarty
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

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LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md Nazar Ali	Other Witness
PW2	Md Abdul Hanif	Other Witness
PW2	Md Abdul Nessar	Other Witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

1. Prosecution:

Sr. No	Exhibit Number	Description
1	Nil	Nil

B. Defence:

Sr. No	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
	Nil	Nil