

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

MORIGAON::::::::::ASSAM.

GR Case No. 33 of 2018

U/S 279/338 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: KAFAZULLAH

Present : Smti. S. Acharyya, AJS,  
Addl. Chief Judicial Magistrate,  
Morigaon.

**APPEARANCE:**

For the State : Mr. P. Hazarika, Ld. Addl. Public Prosecutor.

For the accused person : Mr. A. Rashid, Learned Advocate.

Offence explained on : 12.07.2018.

Evidence recorded on : 12.09.2018, 09.08.2019 and 24.09.2019.

Argument heard on : 20.11.2019.

Judgment delivered on : 27.11.2019.

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

**1.** The prosecution case in brief is that the informant Md. Mabud Ali lodged an ejahar stating inter alia that on 16.12.2017, at about 10.30 AM, when his nephew Washim Aktar was standing in front of his house, at Udkati village, one truck bearing registration No. AS-09-AC-1152 hit him and thereby he sustained injury at his head. The injured was taken to Morigaon Civil Hospital immediately and thereafter he was referred to Guwahati for advance treatment. Hence the case.

**2.** On receipt of the 'ejahar' at the police station, the same was registered as Laharighat P.S. Case No. 3/2018 and the matter was investigated upon.

**3.** After completion of investigation police filed a charge-sheet  
Contd....

against the accused person Md. Kafazullah under section 279/338 IPC.

**4.** On appearance of the accused person, he was allowed to go on bail. Relevant documents of the case were furnished to him. Upon perusal of record particulars of offence, under section 279/338 IPC has been read over and explained to the accused person to which, he pleaded not guilty and claimed to be tried.

**5.** The prosecution in support of its case examined four witnesses. Whereas, the defence side has not examined any witness in support of its defence.

**6.** The statement of accused under section 313 Cr.P.C. is recorded. He denied the allegations brought against him.

**7.** I have heard the argument advanced by the learned counsels for both sides.

**8.** Upon hearing and on perusal of the record I have framed the following points for determination:

(i) Whether the accused person, on 16.12.2017 at about 10.30 A.M. at Udkati under Laharighat PS in the Dist. of Morigaon drove his vehicle bearing registration No.AS-09-AC-1152 in the public road in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person and thereby committed an offense punishable U/S 279 of IPC?

(ii) Whether the accused person, on the said date, time and place drove his vehicle with rashness and negligence and caused grievous hurt to Washim Aktar and thereby committed an offense punishable U/S 338 of IPC?

**DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:**

**9.** For convenience of discussion and for the sake of brevity, I am discussing both the points together.

**10.** PW1 Md. Ibrahim Ali inter alia deposed that in December, 2017, accused person was transporting sand for construction of his house by his Truck. The sand was to be downloaded in front of his house. He heard that the Truck was opened under which his cousin Wasim Aktar (aged about 4/5 years) came. He sustained injury. He does not know much about the

Contd....

occurrence. The labour opened the hood of the Truck for which the accident happened. Defense side declined to cross examine him.

**11.** PW2 Md. Mahbud Ali, who is the informant inter alia deposed that the incident took place at about 2 years back. At the time of the incident, he was not at his home. Mannas Ali informed him that his nephew was hit by one truck in front of his courtyard. He went to Borchala OP and gave the custody of the truck. He forgot the name of his nephew, whose age is about 3 years. He took his nephew to Guwahati for treatment. His nephew sustained injury at his leg and head. Later he lodged the ejahar. That father of his nephew is Abul Malik. That name of his nephew is Wasim Akthar. In his cross examination, PW2 inter alia answered that he was not at his home at the time of the incident. He had not seen that who had been driving the truck.

**12.** PW3 Md. Nekbor Ali, inter alia deposed that the incident took place at about 6 months back, in the evening time, at the courtyard of Akbor Ali. He was present nearby the place of occurrence. One truck hit Washim Aktar when it was trying to back. Wasim Akatar was aged about 2 years at the time of the incident. Later Akbor Ali and his son Ramjan took the injured to Morigaon Civil Hospital. That the accused was driving the truck. Later Pw-3 said that he had not seen who was driving the truck. In his cross examination, PW3 inter alia answered that the truck was stopped and sand was unloaded. The labour opened the truck.

**13.** PW4 Md. Jahur Ali inter alia deposed that he knows nothing about the incident.

**14.** I have carefully gone through the evidence on record. From the evidence it appears that Pw-1 and Pw-2 are not the eye witnesses. The Pw-3 is an eye witness of the accident but he stated that he had not seen who was driving the truck. Pw-4 knows nothing about the case. From the evidence of Pw-1, Pw-2 and Pw-3 it appears that victim Wasim Akthar is of tender age and therefore he is not summoned to adduce evidence. During argument, Ld APP also submitted that the victim is of tender age and therefore he need not be summoned to adduce evidence. The prosecution did not adduce any other evidence. In view of above discussion, I am of the opinion that the prosecution side has failed to establish the case against the accused beyond all reasonable doubt.

- 15.** In view of above discussion, the accused Kafazullah is acquitted of offence U/S 279/338 of IPC and set at liberty forthwith.
- 16.** Bail bond shall remain in force for next six months.
- 17.** The zimma of the seized article be disposed of as per law.
- 18.** The case is disposed of on contest.
- 19.** Given under my hand and seal, today, the 27<sup>th</sup> day of November, 2019.

Dictated and corrected  
by me.

S. ACHARYYA  
Addl Chief Judicial Magistrate  
Morigaon.

S. ACHARYYA  
Addl Chief Judicial Magistrate  
Morigaon.

Dictation taken and  
transcribed be me.

Computer Typist.

APPENDIX:

Prosecution witness:

PW1- Md. Ibrahim Ali.

PW2- Md. Mahbud Ali.

PW3- Md. Nekbor Ali.

PW4- Md. Jahur Ali

Prosecution exhibits:

Nil.

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected  
by me.

S. ACHARYYA  
Addl Chief Judicial Magistrate  
Morigaon.

S. ACHARYYA  
Addl Chief Judicial Magistrate  
Morigaon.

Dictation taken and  
transcribed be me.

Computer Typist.