

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

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

GR Case No. 1212 of 2017

U/S 279/338 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: MD. RIBUL HOQUE

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. Z. Islam, Learned Advocate.

Offence explained on : 25.06.2018.

Evidence recorded on : 20.09.2018, 08.04.2019, 23.05.2019, 11.09.2019
& 01.11.2019.

Argument heard on : 18.11.2019.

Judgment delivered on : 28.11.2019.

J U D G M E N T

1. The prosecution case in brief is that the informant Md. Tamizuddin Ali lodged an ejahar stating inter alia that on 06.04.2017, at about 8.30 AM, when his son Jiabur Rahman has been going through Nagaon Morigaon road by a bye-cycle, then near Pachim Jaluguti one vehicle bearing registration No. AS-02-AC-9271 came with high speed and hit his son from front side and thereby caused injury to him. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Mikirbheta P.S. Case No. 167/2017 and the matter was investigated upon.

Contd....

3. After completion of investigation police filed a charge-sheet against the accused person Md. Ribul Hoque 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 seven 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 06.04.2017 at about 8.30 A.M. at Pachim Jaluguti under Mikirbheta PS in the Dist. of Morigaon drove his vehicle bearing registration No.AS-02-AC-9271 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 Jiabur Rahman 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 Sri Pradip Dey inter alia deposed that at about 1 year back, at about 6.00/6.30 AM, he heard that at PWD road one *vekuli* vehicle ran over one man. He does not know the victim and driver of the offending vehicle. He does not know as to for whose fault the accident occurred. That he had not seen the accident.

11. PW2 Md. Jiabur Rahman, who is the victim inter alia deposed that
Contd....

the incident took place at about 1 to 1½ year ago, at about 7.30 AM. He was coming by a cycle for his duty. Near Jaluguti Bazar, a *vekuli (chota hati)* vehicle hit him from the front side. He fell down and became senseless. He sustained injuries at his head and teeth. He was treated at Morigaon Civil Hospital and then Dispur Hospital. Police did not interrogate him. He has not seen as to who is the driver of the *vekuli* vehicle. In his cross examination, PW2 inter alia answered that *vekuli* vehicle was coming from Morigaon towards Jaluguti. That he along with 4/5 persons was coming by cycle towards Morigaon.

12. PW3 Md. Tamizuddin Ali, who is the informant inter alia deposed that the incident took place at about 2 years back, at about 7.30/8.00 AM. He was at his home. He was informed that his son Jiabur Rahman met with an accident near Jaluguti Bazar. The injured was taken to Morigaon Civil Hospital. He had seen his son at Morigaon Civil Hospital. He was senseless. He had not seen the driver of the offending vehicle. His son was taken to Dispur Hospital and he lodged the ejahar. In his cross examination, PW3 inter alia answered that he had not seen the incident.

13. PW4 Md. Makib Ali inter alia deposed that he knows nothing about the accident.

14. PW5 Md. Tamijuddin inter alia deposed that at about 2 years ago, at about 7.30/8.00 AM, local public informed him that his son met with an accident at Jaluguti PWD road. He heard that accused Ribul Ali hit his son by driving the *vekuli* vehicle. In his cross examination, PW5 inter alia answered that he had not seen the accident. He cannot say as to for whose fault the accident had taken place.

15. PW6 Md. Habiquil Islam inter alia deposed that at about 2 years back, while his driver was returning back to Morigaon with his TATA vehicle, then the vehicle met with an accident at Jaluguti. He was informed by Jaluguti OP about the accident. He came to Jaluguti OP and found driver Ribul Hoque and vehicle. Police seized the vehicle. He exhibited the seizure list as Ext.1 and his signature as Ext.1(1). He exhibited the zimma nama as Ext.2 and his signature as Ext.2(1). He further deposed that later he took zimma of the vehicle. The accused is still driving his vehicle. In his cross examination, PW6 inter alia answered that he knows nothing about the accident.

16. PW7 Md. Abdul Hasan inter alia deposed that the incident took place at about 3 years back, at about 8.00/8.30 AM. He was returning from

Morigaon towards Tuktuki after selling fishes in a *vekuli* vehicle. At Jaluguti at the PWD road, some people came with cycles. One cycle hit another cycle and the cycle hit at the back side of his vehicle and fell down and rider of the cycle sustained injury. He does not know the victims. The accident did not occur due to fault of accused.

17. I have carefully gone through the evidence on record. From the evidence it appears that Pw-1, Pw-3, Pw-5 and Pw-6 are not the eye witnesses of the accident. The Pw-2 who is victim had not seen the driver of the offending vehicle. Pw-7 who is another eye witness deposed that accident did not occur due to fault of accused. Pw-4 knows nothing about the accident. 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.

18. In view of above discussion, the accused Md. Ribul Hoque is acquitted of offence U/S 279/338 of IPC and set at liberty forthwith.

19. Bail bond shall remain in force for next six months.

20. The zimma of the seized article be disposed of as per law.

21. The case is disposed of on contest.

22. Given under my hand and seal, today, the 28th 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- Sri Pradip Dey.
PW2- Md. Jiabur Rahman.
PW3- Md. Tamizuddin Ali.
PW4- Md. Makib Ali
PW5- Md. Tamijuddin.
PW6- Md. Habiquil Islam.
PW7- Md. Abdul Hasan

Prosecution exhibits:

Ext.1- Seizure list
Ext.2- Zimma Nama

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.