

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.1794/2014

State

Vs.

**Sri Ajit Sarkar
Son of Late Suresh Sarkar
Resident of village- Barkhal
P.S.- Jagiroad,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defense: Md. A.U. Siddique, Advocate

Offences explained: u/s 279/338/427 of IPC

Evidence recorded on: 30-6-2017, 3-10-2017, 26-12-2017 and
11-10-2019

Statement of defense recorded on: 8-11-2019

Argument heard on: 8-11-2019

Judgment delivered on: 22-11-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Anarul Islam lodged a complainant in the court of Chief Judicial Magistrate, Morigaon on 30-8-2014 against the rider of a Yamaha motorcycle bearing registration No.AS-21D-4051 alleging therein that the informant resides within the jurisdiction of the court and on 29-7-2014 at about 9.00 p.m., Md. Rezaul Hasan, who was the nephew of the complainant and who was aged about 20 years at the time of the filing of the

complainant, was returning home from Laharighat by plying his bicycle and when he reached the western side of the bridge at Datalbari, the rider of the aforesaid motorcycle coming at high a speed and negligently from the opposite direction knocked Md. Rezaul Hasan with tremendous speed. As a result of the impact, Md. Rezaul Hasan was thrown away and his head dashed against a post of electric line. As a result thereof, he sustained fracture on his head as well as severe injuries on other parts of his body. At the same time, the bicycle was also broke causing loss. When the complainant came to know of the accident, he immediately came to the place of occurrence and found his nephew lying unconscious on the ground with fractured head. Immediately, the injured was taken to GD Hospital of Nagaon. However, due to the severe nature of the injury of his head, the injured was taken to GNRC Hospital, Guwahati. There was some delay in lodging the complaint as the complainant was busy in the medical treatment of Md. Rezaul Hasan.

2. The said complainant was forwarded to the Officer-in-Charge, Laharighat police station on 30-8-2014, as per prayer of the complainant, for registering a case, for investigation and for submission of report under section 173 CrPC. Accordingly the complaint was received in the Laharighat police station on 1-9-2014 and a Laharighat police station case no. 281/2014 under sections 279/338/427 IPC was registered and one assistant sub inspector of police Md. Muzamel Hazarika was assigned to take preliminary step and sub inspector Md. Roushan Islam, who was the officer in charge of the said police station decided to complete the investigation himself. On completion of investigation, police submitted charge sheet against the accused Sri Ajit Sarkar under sections 279/338/427 IPC.

3. On appearance of the accused person before court, copies of all relevant documents were furnished to the accused person under section 207 CrPC. When the particulars of offences under sections 279/338/427 of IPC were explained to the accused Sri Ajit Sarkar, he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 4 (four) witnesses namely Md. Anarul Islam, Musstt. Khaleda Begum, Md. Afajuddin Ahmed and Md. Rofiquil

Islam, as PW-1, PW-2, PW-3 and PW-4, respectively. One Md. Rezaul Hasan, who was the alleged victim of the case, was examined as a court witness (CW-1), as his evidence was deemed necessary for a just decision of the case. Prosecution in support of its case also exhibited three documents including the ejahar. While under examination under section 313 CrPC, the accused admitted the accident stating that the injured suddenly came in front of his motorcycle but denied all the allegations leveled against him. Defense side refused to adduce any evidence.

5. I have heard the argument Mrs. Alakananda Kakati, the learned APP and the argument of Md. Azad Uddin Siddique, the learned counsel for the defence, perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused, on or about 29-7-2014, at about 9.00 p.m., at village Datialbori, under Laharighat police station of Morigaon district, drove a motorcycle (Yamaha) bearing registration No.AS-21D-4051 at a very high speed and in a manner so rash and negligent so as to endanger human life or so as to be likely to cause hurt or injury to any other person and thereby committed an offence punishable under section 279 IPC?
- ii. Whether the accused, on or about the same day, time and place, caused grievous hurt to Md. Rezaul Hasan, by driving a motorcycle (Yamaha) bearing registration No.AS-21D-4051 so rashly or negligently as to endanger human life or the personal safety of others and thereby committed an offence punishable under section 338 IPC?
- iii. Whether the accused, on or about the same day, time and place committed mischief by damaging the bicycle of Md. Rezaul Hasan and thereby caused loss or damage to the amount of fifty rupees or upwards and thereby committed an offence punishable under section 427 IPC?

Discussion of evidence, decision and reasons therefor:

6. For convenience all the points for determination are taken up together for discussion. The accused in his statement of defense recorded under section 313

CrPC admitted his involvement in the accident but denied that he was at fault. Therefore, it is an admitted fact that the accused was riding the aforementioned Yamaha motorcycle at the time of the occurrence. The informant Md. Anarul Islam deposed before the court as PW-1. His ejahar is proved as exhibit-1 and his signature is proved as exhibit-1(1) and 1(2). In his deposition, he stated that at the time of the occurrence, he was at his house. He heard about the accident from neighbours and reached the place of occurrence and saw that people gathered at the place of occurrence and his nephew was lying down. According to him, Mr. Rezaul Hasan was knocked down by the bike driver, i.e. the accused, by coming from the opposite direction. He (Mr. Rezaul Hasan) was taken to Nagaon hospital wherefrom he was referred to GNRC, Guwahati. The injured was under treatment for 27 (twenty seven) days. This, according to him, was the reason for the delay in lodging the ejahar.

7. Though he has corroborated his ejahar in material particulars; however, while under cross-examination, he has revealed that he did not see the occurrence with his own eyes. Therefore, the information given in his examination-in-chief, so far as the same relates to the accident itself, were obtained from others as he was not present at the place of occurrence and did not see how the accident took place.

8. Likewise, PW-2 Musst. Khaleda Begum, PW-3 Md. Afazuddin Ahmed and PW-4 Md. Rofiqul Islam also did not see the occurrence with their own eyes. According to PW-3 Md. Afazuddin Ahmed, at the time of the occurrence he was sitting on the bridge at Datialbori. At that time he saw a motorcycle coming from the eastern side at high speed. After sometime, he heard a sound and commotion created by people. He went running towards it and saw that two persons were lying on two sides of the road and a motorcycle and a bicycle were also lying near them at that time. Mr. Rezaul Hasan was one of those two persons, who sustained more injuries and blood was oozing out of his head. He informed the uncle of Md. Rezaul Hasan, who came and Mr. Rezaul Hasan was taken to G.D. Nursing Home. Due to severe nature of the injury, Mr. Rezaul Hasan was taken GNRC Hospital, Guwahati.

9. The revelation by Md. Afazuddin Ahmed clearly goes to show that Md. Rezaul Hasan sustained injury in the accident caused by a motorcycle while he was riding a bicycle. Presence of the informant in the place of the occurrence, as narrated by the informant himself in his ejahar is also corroborated by Md. Afazuddin Ahmed. The injury sustained by Md. Rezaul Hasan is also corroborated by Md. Afazuddin Ahmed. However, there is nothing in the deposition of Md. Afazuddin Ahmed that the accused was driving the motorcycle negligently and at a high speed and the occurrence took place due to negligent or rash driving of the accused.

10. PW-2 Musst. Khaleda Begum also arrived at the place of occurrence after hearing about the accident from others and saw the injured when he was taken to hospital. This deposition of PW-2 further corroborated that Md. Rezaul Hasan sustained injuries due to the accident as narrated in the ejahar. PW-4 Md. Rofiqul Islam only heard about the accident and he has no direct knowledge of the same.

11. Md. Rezaul Hasan, i.e. the victim, was examined as CW-1 as his evidence was deemed necessary for a just decision of the case. His deposition also corroborates the deposition given by PW-1 and PW-3. He further stated that while he was returning home from Laharighat market a motorcycle coming at a high speed from the opposite direction knocked him from the front as a result of which he was thrown away and his head dashed against an electric post and he sustained injury on his head. Immediately thereafter, he lost his consciousness, which he regained after two months. His deposition is found to be true in view of the deposition given by PW-1 and PW-3. However, except the indication that the motorcycle knocked him while it was being driven at a high speed, there was no other indication in his deposition that the rider of the said motorcycle was negligent or rash. High speed alone is not always indicative of rashness or negligence on the part of the rider of the motorcycle. Hence, in absence of other evidence to clearly show rashness on the part of the accused, it cannot be concluded that the accused was rash and negligent at the time of the occurrence.

12. Hence, though the occurrence is found to be true, the deposition of CW-1 does not indicate that the present accused was at fault while driving the motorcycle or that he drove the motorcycle in a rash or negligence manner.

13. In view of the depositions of the said witnesses including the CW-1, the prosecution side did not proceed further to summon and examine the remaining official witnesses, as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

14. The element of negligence and rashness on the part of the accused is found to be absent in the depositions of the witnesses. None of them implicated that the accused was driving the motorcycle negligently and due to such driving the accident took place. Except the element of high speed driving, as indicated by PW-3 and CW-1, there are no indications to show rashness or negligence. Therefore, though the occurrence was found to be true, however, it is not proved that due to rash driving the accident took place. As indicated earlier, the accused, while under examination under section 313 CrPC, admitted the occurrence but denied that it took place due to his own fault rather he stated that at the place of occurrence there was a RCC bridge and the nephew of Md. Anarul Islam, coming for a wrong side suddenly came in front of his own bike. This indication by the accused in his examination under section 313 CrPC and absence of any imputation by the witnesses that the accused was rash or negligent at the driving the motorcycle goes to show that the accused was not at fault at the time of driving the motorcycle.

15. For the aforesaid reasons and discussion the points for determination are answered in the negative.

16. The prosecution has failed to prove the case against the accused person. As such, the accused person is found not guilty and accordingly acquitted of offences under sections 279/338/427 IPC alleged against him. He be set at liberty forthwith. His bail bond shall remain in force for six months from today in view of section 437A of CrPC.

17. The zimma of the seized motorcycle (Yamaha) bearing registration No.AS-21D-4051 and related documents, which were given in zimma to accused/owner

Sri Ajit Sarkar vide zimma nama No.31/14, and the zimma of the old bicycle (Hero), which was given in zimma to Md. Anarul Islam vide zimma nama No.30/14 are made absolute as both the zimma namas have not been challenged till date and no other person also came forward seeking zimma of the motorcycle and the bicycle.

18. The judgment is pronounced in open court and given under my hand and seal on this 22nd day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

Ext.-1(1) & 1(2): Signatures of Md. Anarul Islam

Ext.-2: Seizure list

Ext.-2(1) : Signature of Md. Afazuddin Ahmed

Ext.-3 : Zimma Nama

Ext.-3(1): Signature of Md. Afazuddin Ahmed

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

P.W.-1: Md. Anarul Islam

P.W.-2: Musstt. Khaleda Begum

P.W.-3: Md. Afajuddin

P.W.-4: Md. Rofiqul Islam

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

C.W.-1: Md. Rezaul Hasan

Chief Judicial Magistrate, Morigaon