

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

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

GR Case No. 2227 of 2015

U/S 279/338/427 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: SRI HARI SAHU

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. P. Bora & Mr. I. Khaklary, Learned Advocates.
Offence explained on : 03.03.2017.
Evidence recorded on : 17.07.2017, 31.08.2017, 15.02.2018, 07.09.2018,
20.07.2019 & 26.08.2019.
Argument heard on : 25.10.2019
Judgment delivered on : 31.10.2019

J U D G M E N T

1. The prosecution case in brief is that the informant Sri Lambudhar Saikia lodged an ejahar stating inter alia that on 7.9.2015, at about 1.30/2.00 PM, when he was coming towards Silchang from Ahatguri, one traveler bearing registration No. AS-09-C-8225 came with high speed and hit his bike from backside and thereby caused injury to him. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Jagiroad P.S. Case No. 409/2015 and the matter was investigated upon.

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

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against the accused person Sri Hori Sahu under section 279/338/427 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 279/338/427 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 six 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 7.9.2015 at about 1.30 P.M. at Amsoigate under Jagiroad PS in the Dist. of Morigaon drove his vehicle bearing registration No. AS-09C-8225 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 Sri Lambudahr Saikia and Nabin Ch. Das and thereby committed an offense punishable U/S 338 of IPC?

(iii) Whether the accused on the same date, time and place committed mischief and caused damage to the motor cycle of informant Lambudahr Saikia and thereby committed an offense punishable U/S 427 of IPC?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

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

10. PW1 Sri Lambudhar Sakia, who is the informant cum victim

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inter alia deposed that on 7.9.2015, at about 12.15 PM, while he had been coming from Silchang towards Ahatguti by riding his own bike along with Nabin Ch. Das then one traveler vehicle going towards Nagaon from Guwahati hit them from the back side at Amsoi Gate and his spinal cord was fractured. Police took him to Nellie hospital. Thereafter, he and Nabin took treatment at Guwahati. He became senseless immediately after the accident. Police seized his bike. The traveler hit when he was in his own side. That he was admitted at Rahman hospital at Guwahati for about 10 days. He does not know the driver of the traveler vehicle. He exhibited the ejahar as Ext.1 and his signature as Ext.1(1). He exhibited the seizure list as Ext.2 and his signature as Ext. 2(1). In his cross examination, PW1 inter alia deposed that he lodged the ejahar after 20/30 days of the accident. He denied the suggestions put to him by Ld. defense counsel.

11. PW2 Sri Krishna Kanta Deka inter alia deposed that the accident took place at about 2 years back, at about 12.00/12.30 PM, at Amsoi Gate Tiniali. He has a Pan shop at about 12 feet away from the P.O. He has seen the accident by his own eyes. One bike going towards Nagaon from Guwahati was dashed by one traveler vehicle going towards same direction. He has seen that the traveler vehicle hitting from the backside. The traveler was in high speed, which hit the slow going bike. The bike was in right side. People gathered and called at the PS. Police took the injured to the hospital and bike was taken to PS. The traveler vehicle fled from the PO after the accident. He could not remember the number of the traveler vehicle. In his cross examination, PW2 inter alia answered that he did not submit shop's documents to the police. He denied the suggestions put to him by Ld. defence counsel.

12. PW3 Sri Krishna Sharma inter alia deposed that he does not know anything about the occurrence.

13. PW4 Dr. Balindra Nath Bezbaruah inter alia deposed that on 07.09.2015, he examined Sri Nabin Ch. Das and found hib-Joint injury following road traffic accident. He also found lumbo sacno (lower backbone) injury swelling and pain. The injury was grievous and caused by blunt object. He exhibited the medical report as Ext.2 and his signature as Ext.2(1). He

further deposed that on the same day, he also examined, Sri Lambudhar Saikia at Nellie State Dispensary and he found grievous injuries in both of his legs. He exhibited the medical report as Ext.3 and his signature as Ext.3(1). In his cross examination, PW4 inter alia answered that Ext.2 is silent as to whether the patient was treated as indoor, or outdoor patient. But he treated him as an outdoor patient .That such type of injury may also happen, if the patient falls from high objects. Both the exhibits are silent about the age of injuries. He denied the suggestions put to him by the Id. Defense counsel.

14. PW5 SI Abdul Khaleque inter alia deposed that on 7.9.2015, he was working as ASI at Nellie Out Post. On that day, I/C Kabir Sing Limbu made a GD entry being No. 132 dtd. 7.9.2015. I/C got an information over phone that one Traveler bearing registration No. AS-09-C-8225 hit one bike and caused injury to two persons. The I/C instructed him to visit the PO Amchoi Gate. He visited the PO and found one motor cycle and two injured persons. The number of the motor cycle is AS-21-E-0639. He sent the victims Lambudhar Saikia and Nabin Ch. Das to Nellie PHC and brought the motor cycle to Nellie out post. The Traveler fled towards Nagaon and he informed the O/C of Nagaon PS regarding the Traveler. After sometimes, he got an information from Raha PS, that Traveler was caught. He brought the traveler to their out-post through Constables. He interrogated the witnesses at the PO and prepared the sketch-map. He interrogated the driver of the traveler namely Hori Sahu and recorded his statement and he arrested the driver of the traveler and released him on bail. He seized the traveler along with the documents. He exhibited the seizure list as Ext.5 and his signature as Ext.5(1). He deposed that on 8.9.2015, he recorded the statement of rider of the motor cycle Lambudhar Saikia and seized his bike. He also exhibited another seizure list as Ext.2 and his signature as Ext.2(2). He deposed that he sent both the seized vehicles for MVI test. He collected MVI report and given the zimma of the seized vehicles. He exhibited the MVI reports as Ext.6 & 7. He stated that he collected the medical reports of the victims. He conducted the investigation on the basis of MCD (Miscellaneous case diary). He exhibited the sketch map as Ext.8 and his signature as Ext.8(1). He deposed that on 23.9.2015 informant Lambudhar Saikia lodged the formal

ejahar which was registered as Jagiroad PS Case No. 409/2015 u/s 279/338 IPC. He collected the medical report after registration of the ejahar. After pre-steps, he handed over the CD to I/C. After registration of ejahar, I/C, Nellie Out-post again entrusted him to take pre-steps. After investigation, I/C Kabir Sing Limbu submitted the charge sheet against the accused person Hori Sahu u/s 279/338/427 IPC. He exhibited the charge sheet as Ext.9 and the signature of I/C K. S. Limbu as Ext.9(1). In his cross examination, PW5 inter alia deposed that he investigated the case on the basis of GD entry No. 132 dtd. 7.9.2015. Extract copy of GD entry is not submitted with the case record. He denied the suggestions put to him by the Id. Defense counsel.

15. CW1 Sri Nabin Ch. Das inter alia deposed that the accident took place in the year 2015, at 1.00/2.00 PM. He was a pillion rider in the bike of Lambudhar Saikia and coming towards Nagaon from Guwahati. At Amchoi gate, one Traveler hit their bike from the back side. He fell down. His waist, head and two teeth were fractured. He became senseless. He has not seen the driver of the offending vehicle. He regained his senses at Nellie state dispensary. Police recorded his statement. Still he is undergoing treatment at Pratiksha Hospital. He is not fully recovered. In his cross examination CW1 inter alia answered that he has not worn helmet at the time of accident. He does not know the number of the offending vehicle. PO is *tiniali*.

16. I have carefully gone through the evidence on record. Pw-4 knows nothing about the case. From the evidence of Pw-1 who is the informant and victim and Cw-1 who is another victim and Pw-2 who is an eye witness it appears that they could not identify the driver of the vehicle which hit the victims. From their evidence it is clear that they could not identify the accused. In view of above discussion I am of the view that the prosecution side has failed to establish the case against the accused beyond all reasonable doubt.

17. In view of above discussion, the accused Sri Hari Sahu is acquitted of offence U/S 279/338/427 of IPC and set at liberty forthwith.

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

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

20. The case is disposed of on contest.

21. Given under my hand and seal, today, the 31st day of October, 2019.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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Addl Chief Judicial Magistrate
Morigaon.

Dictation taken and
transcribed be me.

Computer Typist.

APPENDIX:Prosecution witness:

PW1- Sri Lambudhar Saikia.

PW2- Sri Krishna Kanta Dekka.

PW3- Sri Krishna Sharma.

PW4- Dr. Balindra Nath Bezbaruah.

PW5- SI Abdul Khaleque.

CW1- Sri Nabin Ch. Das.

Prosecution exhibits:

Ext.1- Ejahar.

Ext.2-Medical report.

Ext.3- Medical report.

Ext.2- Seizure list.

Ext.5- Seizure list.

Ext.6- MVI report.

Ext.7- MVI report.

Ext.8- Sketch map.

Ext.9- Charge sheet.

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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