

**IN THE COURT OF THE  
CHIEF JUDICIAL MAGISTRATE ::BAKSA.**

**Case No.- PRC 181/18**

**Under Section 279/338 IPC**

**Present :-Smti. D. Boro, AJS,**

**Chief Judicial Magistrate, Baksa.**

**The State of Assam .....Prosecution.**

**-Vs-**

**Jagat Bahadur Magar.....Accused Person.**

Evidence recorded on : - 06-02-2020, 22-03-2021,  
26-11-2021, 24-06-2022.

Argument heard on : - 03-08-2022.

Judgment delivered on : - 11-08-2022.

Advocate Appeared :-

Mr. **Ranjit Basumatary**, A.P.P. for the State of Assam.

Mr. Balen Ch. Boro,

Mr. M. Pd. Upadhyay

Ms. **Ajanta Rabha**,

Ms. **Ramathi Goyary**, Advocate for the accused person.

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

1. The prosecution story in brief is that on 14-05-2017 informant Sumitra Mazumdar lodged an FIR at Barama PS to the effect that on 10-05-2017 at about 3 PM she was returning home with her son Abhisekh Mazumdar, 8 years from Barkurijhar Lakhi Temple. One Alto vehicle bearing no. AS-16E-1973 came from Kadamtal chowk towards Mushalpur at high speed and hit Abhisekh Mazumdar from front side. Her son was immediately taken to Barama Govt. Hospital with the help of co-villager Pradip Kalita and Hemanta Kalita who were present at the place of occurrence

wherefrom he was referred to Nalbari at once. The Doctor of Nalbari referred the injured to Guwahati for better treatment. The injured was taken to Guwahati by 108 vehicle and was admitted at Dispur Hospital. As the vehicle hit Abhisekh Mazumdar with great impact, his one leg was detached and sustained severe head injury. Her son was hospitalised till the time of filling of the FIR.

2. Police registered a case against the accused person u/s 279/338 IPC and after completion of investigation submitted charge-sheet against accused Jagat Bahadur Magar u/s 279/338 IPC.
3. Substances of accusation u/s 279/338 IPC are read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 4 (four) nos. of witnesses.
5. The accused person is examined u/s 313 Cr.P.C. The accused declined to adduce evidence.
6. I have heard argument of the learned Asst. P.P. as well as the learned defence counsel and perused all the relevant documents available on record.
7. **POINTS FOR DETERMINATION:**
  - 1) Whether the accused person had driven Alto vehicle bearing no. AS16E-1973 on the public way so rashly or negligently likely to cause hurt or injury to any other person?
  - 2) Whether Abhisekh Mazumdar had sustained grievous hurt?

3) Whether the accused person had caused grievous hurt to Abhisekha Mazumdar by doing any act so rashly or negligently as to endanger human life or personal safety of others?

**8. DISCUSSIONS, REASONS & DECISION THEREFOR-**

**9. Point No.1, 2 & 3:**

10. PW1 Sumitra Mazumdar is the informant. She has said that on 10-05-2017 at about 3 PM she was returning from Lakhi Temple of the village with her son Abhisekh Mazumdar and some other villagers. The accused came driving Alto vehicle from front side and hit her son. Her son sustained fracture on left leg and injury on head. Her son was taken to Barama Hospital for treatment thereafter to Nalbari hospital and thereafter he was taken to Dispur Hospital, Guwahati. Ext.1 is FIR.
11. Out of the four PWs, PW4 is the IO. PW2 Hemanta Kalita and PW3 Pradip Kalita have also stated when and how the accident took place. They have stated about the taking of the injured to the hospital. PW3 has stated about the injuries sustained by the son of the informant. PW3 has also stated that plate is fixed in the leg of the injured boy. But PW2 and PW3 have not stated before the Court about the person who was driving the vehicle at the relevant time. PW3 has simply said that the vehicle was at speed.
12. Though the prosecution has not examined the MVI as PW, I have perused the MVI report. The report does not show any mechanical or physical damage of the offending vehicle. Speed alone cannot be considered as the sole criteria of negligence

unless accompanied by other acts which show careless and negligence on the part of the accused while driving the offending vehicle on the public way.

13. There is no evidence that after the accident, the vehicle could not be stopped on the place itself or the vehicle had stopped after going a distance.
14. As there is no physical damage of the offending vehicle, we can assume that the vehicle was not at speed otherwise there would have been physical damage of the offending vehicle.
15. It is written in the FIR that the vehicle struck the son of the informant from the front side. The informant/PW1 has also said that the Alto vehicle hit her son from the front side. PW3 Pradip Kalita has said that the vehicle dashed son of Sumitra (informant) from front side. PW2 Hemanta Kalita did not state whether the offending vehicle was coming from the front side or back side.
16. The age of the injured was 8 years at the time of the alleged occurrence. If the content of the FIR, evidence of the informant and PW3 Pradip Kalita are considered as true, then the informant should have been walking with her son keeping him on her right hand side. As the injured was a small boy of 8 years at the relevant time, he would definitely not know how to walk safely on the road at that time. If the informant would have kept her son on her left hand side and the vehicle would have hit the informant coming from the front side, then we would have assumed that definitely the driver of the vehicle had driven the vehicle in a rash or negligent manner. But as the informant was walking by the road keeping her small son on right hand side, the

possibility that the small boy went little towards the middle of the road cannot be overlooked. There is no evidence that the informant was holding hand of her son while walking by the road. Prosecution evidence is silent that the informant took reasonable care while walking by the road with her small son. Rather evidence shows that the informant walked by the road keeping her small son on the right hand side.

17. Only the informant has said that the accused drove the offending vehicle. Negligence/carelessness/rashness on the part of the accused for causing the alleged incident is absent in the present case. If the vehicle came at speed, the boy would have flown away by its impact. But it has not happened. The evidence of the PW2 Hemanta Kalita is interesting. He said that the vehicle was going towards Mushalpur. The vehicle was driven over the leg of the informant's son. PW2 had not said the vehicle hit the son of the informant. The possibility of negligence on the part of the informant in the happening of the incident cannot be rejected in the present case.

18. As such, from the above discussions, I find that there is lack of sufficient evidence regarding rash or negligent driving on the part of the accused. There is nothing to doubt the prosecution story that the son of the informant met with a vehicular accident on the road and he sustained injuries. Although the prosecution has not examined the Medical Officer, the injury report was exhibited through the IO as Ext.4. Ext.4 shows that Abhisekh Mazumdar sustained fracture on right leg and brain injury. The MO has opined the injury as grievous. The defence has not denied the

injuries sustained by the informant's son. Though the Medical Officer was not examined by the prosecution, I find from the injury report- Ext.4 that Abhisekh Mazumdar had sustained grievous hurt.

19. In view of the above discussions, I find that it is not proved that the accused person had driven Alto vehicle bearing no. AS16E-1973 on the public way so rashly or negligently likely to cause hurt or injury to any other person **AND** the accused person had caused grievous hurt to Abhisekh Mazumdar by doing any act so rashly or negligently as to endanger human life or personal safety of others. So, the accused cannot be held guilty u/s 279/338 IPC.
20. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt u/s 279/338 IPC. So, I acquit accused Jagat Bahadur Magar of the charges u/s 279/338 IPC and is set at liberty.
21. Bail bond furnished u/s 437(A) Cr.PC. shall remain in force upto six months from today.
22. Given under my hand and seal of this Court this 11<sup>th</sup> day of August, 2022.

Typed by me—

**D. Boro**  
Chief Judicial Magistrate  
Baksa

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**APENDIX**

**PROSECUTION EXHIBITS:**

- Ext.1- FIR.
- Ext.2- Sketch map.
- Ext.3- Seizure list.
- Ext.4- Injury report.
- Ext.5- MVI report.
- Ext.6- Charge sheet.

**DEFENCE EXHIBITS: NIL.**

**EXHIBITS PRODUCED BY WITNESSES: NIL.**

**COURT EXHIBITS: NIL.**

**PROSECUTION WITNESSES :**

- PW1- Sumitra Mazumdar.
- PW2- Hemanta Kalita.
- PW3- Pradip Kalita.
- PW4- Waz Uddin Ahmed (IO).

**DEFENCE WITNESSES : NIL**

**COURT WITNESSES: NIL.**