

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE ::BAKSA.
G.R. Case No. 326 of 2018
Under Section 279/338 IPC

Present: Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.

The State of AssamProsecution.

-Vs-

Kishor Swargiary.....Accused Person.

Evidence recorded on : - 28-01-2019, 27-03-2019,
26-07-2019, 16-03-2022.

Argument heard on : - 09-12-2022.

Judgment delivered on : - 09-12-2022.

Advocate Appeared :-

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

Mr. **Mrityunjoy Mazumdar**,.....Advocate for the accused person.

J U D G M E N T

1. The prosecution story in brief is that on 12-07-2016 informant Aswini Nath lodged an FIR before I/C, Athiabari OP under Mushalpur PS to the effect that on 10-07-2016 at about 4.30 pm one Maruti Suzuki ALTO-800 LXI, Chassis No. MAZEUA61500827758, Engine No.FBDN5596000 came from Bebejia Para towards Auniati in careless and high speed and dashed the informant's child Kaushik Nath and caused grievous

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injury on head and other body parts. Immediately, the child was taken to GMCH for treatment.

2. The police registered Mushalpur PS C/No.103/2016 against the accused person u/s 279/338 IPC and after completion of investigation submitted charge-sheet against the accused u/s 279/338 IPC.
3. Substances of accusation u/s 279/338 was 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 6 (six) nos. of witnesses and defence examined none.
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 A.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 Maruti Suzuki ALTO-800 LXI, Chassis No. MAZEUA61500827758, Engine No.FBDN5596000, on the public way so rashly or negligently likely to cause hurt or injury to any other person?
2. Whether Kaushik Nath had sustained grievous hurt?
3. Whether the accused person had caused grievous hurt to Kaushik Nath by doing any act so rashly or negligently as to endanger human life or personal safety of others?

8. DISCUSSION, REASONS AND DECISION:

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9. POINT NO. 1, 2 and 3:

10. The prosecution has examined the informant as PW1. The PW1 is the father of the alleged victim child Kaushik Nath. PW1 has exhibited the FIR as Ext.1. On perusal of the FIR we would find that the informant was not present at the time of the alleged incident. The age of the boy is not stated in the FIR. It is not clear in the FIR whether the Maruti ALTO vehicle dashed the boy from front side or back side. It is also not clear in the FIR what was the small boy doing on the road. Whether the boy was with attendant or without any attendant or was going somewhere along with attendant or was playing on the road is also not stated in the FIR.

11. The FIR is lodged after two days of the alleged incident. The cause of delay is also not written in the FIR. Now let us see what the informant has said before the Court.

12. PW1 Aswini Nath has said that he knows the accused person. As understandable from the FIR, the informant has said that on 10-07-2018 at about 4.30 pm he was at his shop at Athiabari Chowk. At that time, his brothers viz. Gakul Nath, Kailyan Nath and Trailokya Nath separately informed him that one Maruti Alto card which was driven by the driver at very high speed negligently dashed his three year old son, who was going by the side of the road with his brothers and dragged underneath the car. Hearing that, he rushed to the spot and found his son in badly injured condition. He immediately took him to GMCH after first aid at

home. After two days, he was released from the hospital. Accordingly, he filed the FIR. Ext.1 is FIR.

13. PW2 Krishna Kanta Nath said that one day in the year 2016 at around 4.30 pm, the son of the informant i.e. Kaushik Nath, age 3 years met with a road accident in a place between Chutiapara and Bebejia. One numberless Alto car, white in colour dashed him. At that time, he was standing about 100 feet away from the accident spot and saw the entire incident. The vehicle was driven by the accused at a very high speed. He did not hear the driver applying horn before the accident. After the accident, the injured boy was immediately taken to hospital at Athiabari and therefrom he was shifted to GMCH, Guwahati. Someone informed the police and they came to the place of occurrence. Police seized the vehicle in his presence. Ext.2 is seizure list.

14. PW3 Kalyan Nath said that one day in the month of July, 2016 at around 4.30 pm, the son of the informant Kaushik Nath, age 3 years was hit by one numberless car, white in colour in a place between Chutiapara and Bebejiapara. He was standing by the side of the road and the injured boy was with him. At that time, the vehicle came in a very high speed and hit the boy and threw him about 10 feet away. Later on, the injured was taken to hospital. Police came and seized the vehicle. Ext.2 is seizure list. He does not remember whether the accused was the driver or not.

15. PW4 Gakul Nath said that about three years ago, one day at around 3.30 to 4.00 pm he was standing in front of his house by

the side of the road. The three year old son of his elder brother Kaushik Nath was also with him. At that time, one Maruti 800 car white colour came from their back side hit the boy. The public apprehended the offending vehicle. He along with others took his injured nephew to a nearby pharmacy and after giving first aid took him to GMCH, Guwahati where his injured nephew was admitted for 3/4 days and thereafter, he recovered. In cross-examination, PW4 said that he does not know the number of the offending vehicle and the driver who was driving the offending vehicle at the relevant time. He said that he and only his nephew were present at the accident spot.

16. PW5 Naba Kanta Ramchiary said that he knows nothing about the incident.

17. PW6 Champak Nath said that one day about 6 years ago at noon, he learnt that an accident took place on the road at Bebejiapara. He went to police station to take information about the accused hearing that the accused was at police station for accident. Then the police took his signature as witness for taking the documents of the vehicle. The vehicle was ALTO 800. He heard that one small boy fell before the vehicle. Ext.3 is seizure list.

18. From perusal of the evidence, we can see that PW2 Krishna Kanta Nath was about 100 feet away from the accident spot. He did not hear horn of the vehicle which dashed the son of the informant. Normally, horn is applied when people are in front side

otherwise horn is not applied. So, we can assume that the boy was not in front of the vehicle.

19. PW3 Kalyan Nath and PW4 Gakul Nath are both brothers and both said that Kaushik Nath, the then 3 year old son of the informant was with them. According to PW4 the vehicle dashed Kaushik Nath from back side.

20. The evidence is silent whether mother of the boy was present at the relevant time or not. The informant has admitted that he was at his shop at the time of the accident. The sketch map does not show house of the informant near the place of occurrence. Hence, definitely, the boy had gone to the road with other person. Relationship of PW3 and PW4 with the informant is not known. It is not known what the boy was doing on the road in absence of his mother with PW3 & PW4. Is it so that PW3 and PW4 brought the small boy to the road? The accused stated during his examination u/s 313 Cr.PC that the boy came running to the road all of a sudden as such the right side of the vehicle was touched. There is no evidence that the attendants were holding hand of the small boy while by the side of the road. It is usually found that small children run by the front of the vehicle due to ignorance or out of fun without any knowledge of the probable consequence. So, it is the responsibility of the attendants while standing by the side of the road with small children to always hold hand of small children, so that they cannot run towards the road. Evidence is silent that any such

care of the son of the informant was taken by the attendants viz. PW3 & PW4.

21. Though the prosecution has not examined the medical officer and exhibited the medical report of the injured boy, I have perused the same which is in the CR. The medical report shows only abrasion in the left side of occipital region of scalp and abrasion in the left shoulder of Kaushik Nath, 3 years. Had the vehicle dashed Kaushik Nath at high speed as alleged, the injury would have been grievous. But it is not so, the injuries are simple injuries.

22. Except the deposition of the PW1 & 2, that the vehicle came at high speed, there is no sign of rashness or negligence on the part of the driver/accused in causing the accident. There is no doubt regarding the fact that son of the informant Kaushik Nath met with an accident and he sustained injury. But rashness or negligence on the part of the accused is absent in the evidence.

23. Under such circumstance, I find that it is proved that Kaushik Nath had sustained hurt. But it is not proved that the accused person had driven Maruti Suzuki ALTO-800 LXI, Chassis No. MAZEUA61500827758, Engine No.FBDN5596000, on the public way so rashly or negligently likely to cause hurt or injury to any other person **AND** Kaushik Nath had sustained grievous hurt **AND** the accused person had caused hurt or grievous hurt to Kaushik Nath by doing any act so rashly or negligently as to endanger human life or personal safety of others. So, the accused person cannot be held guilty u/s. 279/338 IPC.

24. 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 Kishor Swargiary of the charge u/s 279/338 IPC and is set at liberty.

25. The custody of the seized material vide MR No. 45/16, zimma No. 23/16, MR No. 46/16, zimma No. 23/16, is made absolute.

26. Given under my hand and seal of this Court this 9th day of December, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APPENDIX

PROSECUTION EXHIBITS:

- Ext.1- FIR.
Ext.2- Seizure List
Ext.3- Seizure List

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

- PW1- Aswini Nath.
PW2- Krishna Kanta Nath.
PW3- Kalyan Nath.
PW4- Gakul Nath.
PW5- Naba Kanta Ramchiary
PW6- Champak Nath.

DEFENCE WITNESSES :NIL.