

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE ::BAKSA.
PRC Case No. 70 of 2021
Under Section 279/337/427 IPC

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

The State of AssamProsecution.
-Vs-
Kiran Ch. Sarma.....Accused Person.

Evidence recorded on : - 08-02-2022, 23-03-2022,
07-06-2022.
Argument heard on : - 08-07-2022.
Judgment delivered on : - 19-07-2022.

Advocate Appeared :-

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

Mr. **P.K. Sarma**, Advocate for the accused person.

J U D G M E N T

1. The prosecution story in brief is that on 10-11-2022, informant Daimong Machahary lodged an FIR at Barama P.S. to the effect that on 24-10-2020 at about 4.30 PM, the informant's father Basanta Machahary was bringing back cow from the field on his own side. Suddenly the driver of a four wheeler vehicle bearing no. AS-01-DB-7311 came driving from Guwahati side at very high speed and in careless manner knocked Basanta Machahary from back side at Barama

Madhapur near Shiv temple on NH-31. As a result, his father sustained injury on various parts of his person. The local people immediately rushed him to Barama PHC wherefrom he was referred to Nalbari for better treatment. The informant got his father admitted at Sarathi Hospital, Nalbari. The FIR is lodged delayed due to remaining busy in the treatment of the injured.

2. Police registered a case against the accused person u/s 279/338 IPC and after completion of investigation submitted charge-sheet against accused Kiran Ch. Sarma u/s 279/338 IPC.
3. Substances of accusation u/s 279/337/427 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 5 (five) 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 vehicle bearing no. AS-01-DB-7311 on the public way so rashly or negligently likely to cause hurt or injury to any other person?
 - 2) Whether Basanta Machahary had sustained hurt?

- 3) Whether the accused person had caused hurt to Basanta Machahary by doing any act so rashly or negligently as to endanger human life?
- 4) Whether the accused person had committed mischief causing damage amounting to Rs. 50 or upwards?

8. DISCUSSIONS, REASONS & DECISION THEREFOR-

9. Point No.1, 2, 3 & 4:

10. PW1 Daimong Machahary (informant) said that the injured Basanta Machahary is his father. He had not seen the driver on the day of the occurrence. He is unable to recognise the accused. On 24-10-2020 at about 4.30 PM the incident took place at Madhapur on national highway. His father was bringing cow from the field. At that time, one WagonR vehicle came from backside without blowing any horn and dashed him. He fell down and sustained injury on eyes and leg. He received seven stitches on eyes and three stitches on leg. He had abrasion on forehead. At first, his father was taken to Barama Medical wherefrom he was taken to Tapan Deka Nursing Home, Nalbari. His father stayed there for three days. He lodged the FIR after about one week. Delay is caused due to treatment of his father. Ext. 1 is FIR.

11. In cross-examination, PW1 has said that he had not seen the occurrence. He does not know whether horn was blown or not. He does not know, for whose fault the accident had taken place.

12. PW2 Basanta Machahary said that the informant is his son. He does not know the accused. The incident took place more

than one year ago at about 5.30 PM near Madhapur Shiv temple on the main road. He was bringing back cow and the cow ran. He was knocked by vehicle from backside. He was taken to medical. He did not have sense and regained his senses at medical. He sustained injuries on eyes and waist. He stayed in hospital for two days. He was taken to Nalbari hospital.

13. In cross-examination, PW2 said that he was coming with a bull. The bull ran with the rope and he happened to reach middle of the road. He got flown and fell over the vehicle. He cannot say whether the accident took place due to the fault of the driver or not. He reached middle of the road from the side of the road as the bull pulled him for which the accident took place.

14. PW3 Dilip Swargiary said that he knows the informant, the injured and the accused person. The incident took place in 2020 at about 4.30 PM at Madhapur near Shiv temple on NH 31. He was working on the Nursery adjacent to the national highway. He saw that one WagonR vehicle came from Guwahati side at speed. Basanta Machahary was bringing cow and the vehicle dashed him from backside. Basanta Machahary fell down and sustained injury on eyes, cheek, hand and leg. They took him to Barama medical. Therefrom, he was taken to Sarathi Hospital, Nalbari. Nowadays, he has become very sick.

15. In cross-examination, PW3 said that he does not know what was the speed of the vehicle.

- 16.** PW4 Biswajit Boro said that the incident took place on 24-10-2020 at about 4.30 PM at Madhapur on NH-31. There is a Nursery adjacent to NH-31. The Nursery is of his grandfather. He helps in the work of the Nursery. He was in the Nursery at the relevant time. Basanta Machahary was bringing cow. One four wheeler vehicle came from the east side and dashed him from backside. The vehicle was WagonR. Basanta Machahary sustained lots of injury. He sustained injury on hand, leg and head. Basanta was taken to Barama medical wherefrom he was taken to Nalbari.
- 17.** PW5 Baharul Islam had not seen any accident. He had not seen the driver, any injured or the offending vehicle.
- 18.** To establish an offence u/s 279 IPC, the prosecution has to prove that ---- (1) the accused was driving a vehicle or riding; (2) he was doing so on public way;(3) he was also doing so rashly or negligently;(4) the act of driving or riding was to endanger human life or was likely to cause hurt or injury to any other person.
- 19.** The injured/PW2 has himself admitted in his cross-examination that the accident took place as the bull pulled him from the side of the road to the middle of the road.
- 20.** Though none of the PWs said that the accused was driving the offending vehicle at the relevant time, but the accused has admitted during his examination u/s 313 Cr.P.C. that he was driving the vehicle when the accident took place. So, we can see that the accused was driving the vehicle on the public way. No evidence of any rash or negligence has come out in

the evidence on the part of the accused in causing the incident. Under such circumstances, I find that section 279 IPC is not proved in our case.

- 21.** Though the Medical Officer is not examined by the prosecution, but the evidence has been cogent that Basanta Mochahary had met with a vehicular accident and he sustained injuries. The defence has not denied the fact of the accident and injuries sustained by Basanta Mochahary. Under such circumstance, I find that Basanta Mochahary had sustained hurt. But as rash or negligent driving by the accused is not proved, I find that the accused person had caused hurt to Basanta Machahary by doing any act so rashly or negligently as to endanger human life.
- 22.** Again there is no evidence that Basanta Mochahary had sustained any kind of damage due to the alleged incident. Hence, I find that it is proved that the accused person had committed mischief causing damage amounting to Rs. 50 or upwards.
- 23.** So, the accused cannot be held guilty u/s 279/337/427 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 279/337/427 IPC. So, I acquit accused Kiran Ch. Sarma of the charges u/s 279/337/427 IPC and is set at liberty.
- 25.** Bail-bond furnished u/s 437(A) Cr. P.c. shall remain in force upto six months from today.

26. Given under my hand and seal of this Court this 19th day of July, 2022.

Typed by me—

D. Boro
Chief Judicial Magistrate
Baksa

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Chief Judicial Magistrate
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APPENDIX

PROSECUTION EXHIBITS:

Ext.1- FIR.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Daimong Muchahary.

PW2- Basanta Muchahary.

PW3- Dilip Swargiary.

PW4- Biswajit Boro.

PW5- Baharul Islam.

DEFENCE WITNESSES : NIL

COURT WITNESSES: NIL.