

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, UDALGURI

G.R. CASE NO. 1317/2017

U/S-323/427/34 IPC

State

Vs.

Sri Arun Kr. Roy & Ors.

Present before : **Kumari Arti, AJS**
For Prosecution : Sri. A. Paurel.
For Defence : Sri M. K. Lahiri
Date of Evidence : 27.07.18, 03.10.18, 30.01.19, 22.02.19,
09.04.19, 07.05.19, 28.05.19, 18.06.19,
Date of argument : 29.07.2019
Date of Judgment : 13.08.2019

JUDGMENT

1. Prosecution case in brief is that on the relevant day informant along with his friends was driving Maruti Alto and it was collided with the post of one Ras Mela and all of sudden one person appeared in front of his vehicle and got injured and over this accused persons damaged the car of the informant and assaulted informant along with two friends. Hence this case.

Compliance of Sec- 207 Cr.P.C.

2. Copies of relevant documents were furnished to the accused persons in accordance with Sec-207 Cr.P.C.

Offence explanation

3. During trial particulars of offence u/s-323/427/34 Indian Penal Code read over and explained to the accused persons to which they pleaded not guilty and claimed to face trial.

Evidence Adduced

4. Prosecution has examined thirteen witnesses. Examination u/s-313 Criminal Procedure Code of accused persons recorded as per law and kept with the record.

Points for determination

5. (i) Whether the accused persons could be hold accountable for the offences levelled against them?
(ii) Whether the prosecution established its case beyond all reasonable doubt?

Discussion, Decision and Reasons thereof

6. **PW1** namely, Sri Madhu Basumatary deposed that he is one of the informants and he can recognize the accused persons. The occurrence took place last December at 06 pm. On the relevant day he was driving Maruti Alto and it was collided with a post of Ras Mela and all of sudden one person appeared in front of his vehicle and got injured. Accused persons came and started beating him and damaged his car and they also assaulted other two persons who are with him. Ext-1 is the FIR and Ext-1(1) is his signature.

In the cross examination he stated that on the relevant day he was driving Maruti Alto and there was a turning nearby the railway gate of Khoirabari station and it was 7pm street lights were on and there was Ras Mela near the railway crossing. People were gathered in large number to see Ras Mela. They were three persons in the car while taking turning then his car collided with the wall and due to crowd he forgot blow the horn. There were so many persons gathered when his car collided with the wall. Accused persons were one of them who physically assaulted him while he was taking turn many persons present there. There were dispersed out of fear they will accident. Accused persons were beaten on his back and they damaged his car. He has seen so many persons gathered at the time of accident but he does not remember the their names. It is not a fact that he has given false case against the accused persons.

7. **PW2** namely, Sri Munsha Narzary deposed that he is the informant and he can recognize the accused persons. The occurrence took place on 25th December, last year. On the relevant day Madhu Basumatary was driving alto car and he was in the car while taking turning one old person all of

sudden appeared in front of his car and in order to save him their car collided with a wall of Ras Mela. Accused persons came and physically assaulted him and other informant and also damaged the car. Ext-1 is the FIR. Ext-1(2) is his signature.

In the cross examination he stated that their car collided with the wall of Ras Mela in order to save one person on the day of accident. There were so many persons gathered at the place of occurrence. There were so many persons indulged in mar-pit but he cannot say their names. Accused persons beaten him on his back when he was sitting in the car. He was sitting on the front seat of the car. There were so many persons present at the place of occurrence and they have restrained them.

8. **PW3** namely, Sri Gopesh Daimari deposed that he can recognize both parties. The occurrence took place last year on 25th November in the evening at 6 pm. On the relevant time they were going towards Khoirabari Town in a car along with two other informants. The vehicle was being driven by Madhu Basumatary and car collided with one post of the Ras Puja then accused persons came and physically assaulted them and broken the car. Ext-1 is the FIR. Ext-1(1) is his signature.

Cross examination of PW-3 is expunged.

9. **PW4** namely, Sri Shyamal Pal deposed that he can recognize the informant as well as the accused persons. The occurrence took place about three months ago. On the relevant day he heard that one quarrel took place over accident between one motorcycle and one four wheeler vehicle.

Cross examination of PW-4 is dispensed with.

10. **PW5** namely, Sri Niranjan Sen deposed that he cannot recognize the informants but can recognize the accused persons. The occurrence took place about one year ago in the evening. On the relevant day near Khoirabari railway station one gate was being organize for Ras Mela and one four wheeler vehicle came and collided with the post of the gate.

In the cross examination he stated that he did not see the accused persons indulged in any fight on the relevant day and when he was going towards paan shop he saw one vehicle colliding with the post of the gate.

11. **PW6** namely, Sri Uttam Swargiary deposed that he can identify the informants but cannot identify the accused persons. On the relevant day

one accident had occurred in which one Alto car hit the bamboo gate of Ras Mela of Khoirabari. He did not notice anybody injured in that accident.

In the cross examination he stated that the accident occurred due to negligent the driver of vehicle.

12. **PW7** namely, Sri Chandra Rabha deposed that he can identify the informants as well as the accused persons. At the relevant time one Alto car was coming in high speed and hit the bamboo gate of Ras Mela at Khoirabari.

In the cross examination he stated that the driver was recklessly drive the vehicle in zigzag and caused the accident. He did not see any mar-pit.

13. **PW8** namely, Sri Prantos Sarkar deposed that he can recognize both parties. The occurrence took place 1 ½ years ago. At the relevant time three persons in a car came in high speed and hit the bamboo gate of Ras Mela.

In the cross examination he stated that he did not see any mar-pit at the place of occurrence.

14. **PW9** namely, Sri Uttam Malakar deposed that he cannot recognize the informant but can recognize the accused persons. The occurrence took place in the month of November 2017. On the relevant day he was standing near the gate of Ras Mela and in the mean time he saw one vehicle came in high speed and hit the gate of Ras Mela.

In the cross examination he stated that he did not see any mar-pit at the place of occurrence.

15. **PW10** namely, Sri Gobinda Daimari deposed that he can recognize both parties. The occurrence took place almost 1-1/2 years ago at about 6.30/07 pm. On the relevant day he just saw gathering of people at the place of occurrence.

Cross examination of PW-10 is expunged.

16. **PW11** namely, Dr. Prabal Kishor Das deposed that on 25.11.17 he was posted at Khoirabari C.H.C. and examined namely, Madhu Basumatary at about 11.30 pm and found injury on the left shoulder. On the same day he examined namely, Munsha Narzary at about 11.35 pm and found injury on the cheek. On the same day he examined Gopesh Daimary at about 11.40 pm and found cut injury on the left cheek and injury on the chest. Ext-2,

Ext-3 & Ext-4 are medical reports. Ext-2(1), Ext-3(1) & Ext-4(1) are his signatures. All the injuries were simple in nature and caused by blunt weapon.

In the cross examination he stated that all the injured persons have simple injury and caused by blunt weapon.

17. **PW12** namely, ASI Mukul Ch. Sarmah deposed that on 25.11.17 he was posted at Khoirabari PS and received an information at 6.30 pm then he made GD entry no. 461 dt. 25.11.17. He proceeded to the place of occurrence to investigate it and seized the vehicle i.e. Alto car. Victim had already reached in the hospital at night and later on, he collected medical report and recorded the statement of witnesses. On 26.01.17 at 12.30 am FIR was received by him. After receiving the FIR he recorded the statement of informant thereafter accused persons were arrested and released on bail. Vehicle was inspected by MVI and he collected the MVI report. He prepared the sketch of the place of occurrence. After completion of preliminary investigation he handed over the CD to O/C. Ext-5 is seizure list. Ext-5(1) is his signature. Ext-6 is sketch map. Ext-6(1) is his signature.

In the cross examination he stated that he was entrusted the case to investigate the time when FIR was registered by the O/C.

18. **PW13** namely, SI Umesh Bordoloi deposed that on 25.11.17 he was received FIR from the informant and same was registered and entrusted to ASI Mukul Ch. Sarmah for preliminary investigation. After preliminary investigation he handed over the CD to him on 27.12.17 and he perused the CD and found investigation had already completed thereafter he filed charge sheet under section 323/427/34 IPC against accused persons namely, Arun Kr. Roy and Tridip Dhar. Ext-7 is charge sheet. Ext-7(1) is his signature.

In the cross examination he stated that statement of few witnesses were recorded before FIR on the basis of GD entry and some of statement recorded after the registration of FIR. He received the information about the incident over phone and informed ASI Mukul Ch. Sarmah to enter GD entry.

19. On discussion of thirteen witnesses examined by the prosecution it becomes clear that accused persons could not be held guilty for the commission of offence as evidence on record was found to be insufficient as there are contradiction in the evidence of witnesses and independent witnesses failed to corroborate the version of informant. Therefore prosecution failed to establish its case beyond reasonable doubt.
20. My discussion above propels me to decide both the points for determination in negative. Accordingly the accused persons held not guilty for commission of the offences punishable u/s-323/427/34 Indian Penal Code.

ORDER

21. Accused persons namely, **Sri Arun Kr. Roy and Sri Tridip Dhar** are acquitted of the offence punishable **u/s- 323/427/34** Indian Penal Code and they are set at liberty.
22. Seizure if any be disposed of in accordance with law.
23. Their bail bond shall be in force for six months from the date of judgment delivered.
24. Given under my hand and seal of this court on 13th day of August, 2019.

KUMARI ARTI
JMFC, Udalguri BTAD, Assam

APPENDIX

PROSECUTION EXHIBITS:

Ext-1 is FIR. Ext-1(1) is signature of PW-1.

Ext-1(2) is signature of PW-2.

Ext-2, Ext-3 & Ext-4 are medical reports.

Ext-2(1), Ext-3(1) & Ext-4(1) are my signature.

Ext-5 seizure list. Ext-5(1) is signature of PW-12.

Ext-6 is sketch map. Ext-6(1) is signature of PW-12.

Ext-7 is charge sheet. Ext-7(1) is signature of PW-13.

DEFENCE EXHIBITS:

NIL

WITNESSES FOR THE PROSECUTION:

P.W.1Sri Madhu Basumatary

P.W.2.....Sri Munsha Narzary

P.W.3.....Sri Gopesh Daimari

P.W.4.....Sri Shyamal Pal

P.W.5.....Sri Niranjan Sen

P.W.6.....Sri Uttam Swargiary

P.W.7.....Sri Chandra Rabha

P.W.8.....Sri Prantos Sarkar

P.W.9.....Sri Uttam Malakar

P.W.10....Sri Gobinda Daimari

P.W.11.....Dr. Prabal Kishor Das

P.W.12.... ASI Mukul Ch. Sarmah

P.W.13....SI Umesh Bordoloi

WITNESSES FOR THE DEFENCE:

NIL

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JMFC, Udalguri BTAD, Assam