

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE AT DHUBRI.

GR(DBB) 390 OF 2008

279/429 of IPC.

State of Assam.

-Versus-

1. Baktar Ali. (Accused)

Present: Smti Sangeeta Gogoi Bora. A.J.S.

Chief Judicial Magistrate, Dhubri.

Advocates appeared:

1. Sri Imran Ali, learned Addl.P.P., for prosecution.
2. Sri M. Mondal, learned Advocate, for defence.

Evidence recorded on: 15.03.11, 15.11.11, 08.04.2013.

Argument heard on: 20.04.2013.

Judgment delivered on: 03.05.2013.

JUDGMENT

- 1 The prosecution case in brief is that on 10.07.08 the complainant Sakbul Hussain filed an ejahar before the In-charge of Soulmari Watch Post stating inter alia that on 09.07.08 at about 8 P.M. when he was returning from paddy field to his house at Hazipara village his two buffaloes were tied on his courtyard. At that time the accused came in a very high speed and hit the buffaloes. The buffaloes were seriously injured. The veterinary doctor came. But he declared them dead. The cost of the buffaloes was about Rs.15,000/-.
- 2 On receiving the above ejahar, the concerned I/C forwarded the same to O/C of Dhubri PS to register a case. Accordingly, a case vide Dhubri PS Case No. 390/08 U/s. 279/429 of IPC was registered and investigation was caused. On completion of investigation Charge-Sheet was submitted against the accused U/s. 279/429 of IPC.
- 3 Summons was issued to accused and on appearance he was released on bail. Copy was furnished and charge U/s. 279/429 of IPC was framed against the accused and read over to which the accused pleaded not guilty and claimed to be tried.
- 4 In order to prove its case prosecution examined six witnesses including the Investigating Officer. Statement of the accused was recorded U/s. 313 of Cr.P.C. Defence plea is of total denial of the charge and declined to adduce any evidence for defence. Heard argument from both sides.

5 Points For Determination

- I) Whether the accused on 09.07.08 at 8 P.M. drove his Tractor bearing No. AS-17 9144 in rash and negligent manner on the public road endangering human life?
- II) Whether on the same night, time and place the accused by driving his aforesaid tractor killed the buffalo of Sakbul Hussain by knocking it down thereby caused mischief of rupees 50 or above?

DISCUSSIONS, DECISIONS AND REASONS THEREOF

- 6 PW.1 Sakbul Hussain stated in his evidence that he is the complainant. About two years ago at about 7 P.M. one tractor coming from Kasarihat side towards Kalahat at Khananbari hit one of his buffalo which was kept tying due to which after two hours the buffalo died. Veterinary doctor declared the buffalo to be dead. The driver of the tractor was Baktar Ali. The number of the tractor was 9146. The price of the buffalo was about Rs.15,000/-. In his cross he admitted that Baktar Ali filed a case against him alleging that at about 10/11 P.M. he went to the house of Baktar Ali, brought the number of the tractor and scolded him with filthy language. The buffalo was on the down-side of the road. He also admitted that many vehicles ply on that road.
- 7 PW.2 Abul Hussain stated in his evidence that about two years ago at about 8 P.M. the occurrence took place. At that time one buffalo was tied up near his house when the accused person came by driving a tractor and hit the buffalo injuring it. Later doctor came and declared the buffalo to be dead. The value of the buffalo is Rs.15,000/-. Later his brother filed this case. In his cross he stated that the buffalo was tied up near the road, but not on the buffalo shed. He admitted that he has not seen the occurrence. He came to the place of occurrence after about five minutes. He also admitted that the accused filed a case against him alleging that he went to the house of the accused and took the tractor number.
- 8 PW.3 Abul Kashem stated that two years ago at about 8 P.M. the accused came by driving a tractor and hit one buffalo of the complainant by the side of the road. Later doctor declared the buffalo as dead. The value of the buffalo is about Rs. 15,000/-. In his cross he stated that at the time of incident he was tying his cows in his cowshed. He admitted that they could not stop the tractor. He also admitted that the accused filed a case against him alleging that they went to the house of the accused for taking the number of the tractor.

- 9 PW.4 Aynal Hoque stated that about two years ago at about 8 P.M. the accused came by driving a tractor and hit a buffalo which was tied up near the road and injured it. Later the buffalo died. The value of the buffalo is about fifteen thousand rupees. In his cross he stated that the house of the accused is about four kilometers away from his house.
- 10 PW.5 Rofiquil Islam also stated the same that about two years ago at about 8-30 P.M. when he was standing on the road of Debattar Hasdah he saw a tractor coming without a headlight and went over a buffalo who was sleeping on the road. Later the buffalo died. He does not know the driver of the tractor.
- 11 Heard learned counsels for the parties and perused the record carefully. I find that PW.2 Abul Hussain, PW.3 Abul Kashem, PW.4 Aynal Hoque stated that they have not seen the incident. PW.5 Rofiquil Islam, who claimed to have seen the occurrence, stated that he does not know the driver of the tractor. Except PW.5, PW.2, 3 and 4 are the brother of the complainant and PW.1 is the complainant himself. PW.5 is an independent witness, but he did not implicate the accused as the driver of the tractor. No P.Ws stated that the driver of the tractor was driving the tractor in a rush and negligent manner. The prosecution has not proved the fault of the driver. Moreover, though the complainant and the other PWs stated that the veterinary doctor came to treat the buffalo, but no such report is found on the record. The place of occurrence is disputed as in the FIR the complainant stated that the buffaloes were tied up near the road on his courtyard. Whereas PW.2 and PW.3 stated that the buffalo was tied up on the road.
- 12 It is also an admitted fact that the accused has also filed a case alleging that the complainant and his brothers went to their house at night and took the registration number of the tractor. It is also admitted that the buffaloes were tied up near the road and not in the shed. The prosecution failed to prove that the buffalo died due to any accident and mischief caused by the accused. The MVI in his report i.e Ext.3 reported that " No fresh external damages was noticed with the vehicle at the time of inspection."
- 13 The ingredients of section 279 IPC are that the accused was driving the vehicle on a public way and such driving must be so rush and negligent as to endanger human life and likely to cause hurt or injury to any other person.
- 14 Hence, from the above facts and reasons discussed, I find that the prosecution failed to prove the ingredients of the sections 279 and 429 of IPC beyond reasonable doubts.

15 I find the accused not guilty u/s 279/429 IPC. I exonerate the accused from the offences punishable under the above sections setting him at liberty forthwith.

16 The bail-bond of the accused stands cancelled and this case is disposed of on contest.

17 Given under my hand and seal on this 03rd May, 2013.

Sangeeta Gogoi Bora
C.J.M.,Dhubri.