

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS,
DIBRUGARH**

PRESENT : SMTI DEEPSIKHA DAS, AJS

(Date of Judgment: 2/4/2022)

G.R. Case No. : 2089/2016

(Under section 279 and 337 of Indian Penal Code. FIR
No. 591/16 Dated 01/08/2016. P.S- Dibrugarh)

COMPLAINANT/ INFORMANT	Mrs Nazma Begum
REPRESENTED BY	LEARNED A.P.P SMTI GOPA CHAKRABORTY.
ACCUSED	Sri Chandra Kumar Das s/o Balin Ch Das r/o Amaraguri Gaon Dibrugarh
REPRESENTED BY	LEARNED ADVOCATE MR K S Islam

Date of Offence	27/07/2016.
Date of FIR	01/08/2016.
Date of Charge sheet	31/08/2016.
Date of Framing of Charges	30/7/2018.
Date of commencement of evidence	26/11/2018.
Date on which judgment is reserved	N/A.
Date of Judgment	02/04/2022
Date of the Sentencing Order, if any	N/A.

Accused Details:

Rank of the accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec.428 Cr.P.C.
1.	Sri Chandra Kumar Das	Not arrested	09/01/18	279, 338 IPC	Acquitted	N/A	N/A

JUDGMENT

1. The genesis of this case had its roots with the lodging of the ejahar, wherein the informant, **Smti. Nazma Begum**, has alleged inter alia that on 27/07/2016 around 1:00 p.m., while the victim (informant's daughter aged 11 years) Parbin Begum was crossing the NH 37 at Rose Gali, one maruti Zen car (bearing registration no. AS-06-C-9077) coming from the Dibrugarh University side in a rash and negligent manner dashed the victim. The car fled away towards Dibrugarh Town. Her daughter fell on the ground and sustained injury on her head and hand. Immediately the victim was taken to Sankardev Hospital Dibrugarh for treatment. Hence the case.
2. The ejahar was registered as Dibrugarh P.S. Case No. 591/2016 under sections 279, 338 IPC. The police after investigation submitted charge sheet against the accused person Sri Chandra Kumar Das, under sections 279, 338 IPC.
3. Cognizance was accordingly taken. On appearance of the accused, copies of relevant documents were

furnished to him in compliance with section 207 CrPC. The particulars of offences under sections 279, 338, IPC were explained to him, to which he pleaded not guilty and claimed to be tried (**trial commenced**).

4. During the trial, the prosecution examined 5(five) witnesses. The informant could not be brought to the court in spite of repeated steps taken. The statement of the accused person was recorded u/s 313 CrPC. The defence declined to adduce any evidence.
5. I have heard both sides and perused the evidence on record.

Points for Determination

- i) Whether the accused, Chandra Kumar Das, on 27/7/2016 around 1:00 p.m., drove the Maruti Zen car (bearing registration no AS-06-C-9077) in a rash or negligent manner and thereby committed an offence punishable under section 279, IPC?
- ii) Whether the accused person at the said relevant time and place, caused grievous hurt to Parbin Begum, by riding the said car so rashly or negligently as to endanger human life, or the personal safety of others, and thereby liable to be punished u/s 338 of I.P.C. ?

Decisions and Reasons Thereof

6. To arrive at a judicious decision, I have gone through the materials on record, including evidence recorded and in the light of arguments heard ,appreciated evidence as follows:
7. **PW-1, Sri Sraban Kumar Das,** stated in his evidence on oath that he did not know the accused

person and that the accused is his brother. She stated that about two years before recording her deposition, one day police came to his pharmacy and asked for the documents of his vehicle bearing registration no AS-06-C-9077 Maruti Zen. He did not know in what connection the documents were asked for by the police. Police asked him to put his signature on some documents. He identified exhibit 1 as the seizure list and his signature as exhibit 1(1). He also identified custody bond as exhibit 2 and his signature as exhibit 2(1).

In his cross examination, PW-1 stated that his brother never uses his vehicle nor drives his vehicle. His brother did not drive his vehicle on 27/07/2016. Police did not ask him anything in connection with the instant case.

8. Pw-2, Mohd. Miftaul Huda, stated that he knew the informant as well as the accused. He said that the incident took place about two years before giving his deposition, one day at about 12/1 pm. He stated that he did not witness the incident. After getting information, he went to the place of occurrence. He heard that one girl was hit by a Maruti car. He saw the girl lying on the ground. After that people brought the girl to the Hospital. The victim got injury on her head. He identified exhibit 1 as the ejahar and exhibit 1(1) as his signature. He stated that he wrote the ejahar as told to him. He also stated that he did not know who was driving the car.

In his cross examination, he stated that he did not have any personal knowledge about the incident.

9. Pw-3, Farukh Hussain, in his evidence on oath stated that he did not know the accused and the informant. He stated that about one year before recording his evidence, one day at about 1.30pm, an accident took place at Rose Gali, Amlapotty. He stated that he did not witness the accident.

In his cross examination, Pw3 stated that he heard that the victim was hit by one car.

10. Pw4 Prakritij Hazarika Gogoi, in his evidence on oath stated that he did not know the informant and the accused. In the year 2016, while he was travelling by car along with his friend from the side of Lepetkata towards Amlapotty, he noticed one Maruti Car was going in front of them in normal speed. He also noticed that two children were playing near the road. The girl was crossing the road without looking at vehicles. She suddenly came in front of the maruti and the Maruti car hit the girl. The car did not stop and fled away. He stated that he stopped there. People gathered there. Pw4 himself admitted the girl in Sankardev Hospital. He stated that police interrogated him.

In his cross examination, pw4 stated that he was sitting on the seat left to the driver. He stated that he did not know who was driving the car committing accident. He also did not remember the number of the car. He denied the suggestion that the accident took place with one 5/6 year old child. He denied the suggestion that the girl got injury and they did not admit her in Sankardev Hospital. He denied the suggestion that he went to the

Milan Nagar outpost for his personal work and he signed because police told him to sign. He denied the suggestion that he did not witness the accident.

11. PW-5 Taposh Bhattachrjee stated in his evidence on oath that he did not know the informant as well as the accused. He stated that about four years ago he went to the Dibrugarh Police Station with one Sraban Kumar Das. He stated that he did not know about the incident. he identified exhibit 1 as the seizure list and exhibit 1(2) as his signature. He stated that he signed there as told by the police.

His cross examination was declined.

Appreciation of evidence

12. I have perused the evidence of PW'S and on perusal of the evidence of PW'S it appears that there was an accident which took place and this cannot be denied at all.

Point for determination no. 1 and 2

13. Before I proceed, let us have a glance at **Section 279** of the Indian Penal Code which lays down about rash driving or riding on a public way.— *“Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

In order to find a person guilty under Section 279 IPC prosecution is to establish that the accused was driving

the vehicle in a public way and that he was driving in a **rash or negligent** manner.

Similarly, to constitute offence under **Section 338 IPC**, the prosecution is to establish that:

- (1) Accused did some act;
- (2) He did it rashly or negligently;
- (3) The act was such as to endanger human life or personal safety of others;
- (4) Grievous hurt was caused in consequence of such act.

Thus, in order to constitute either of these two offences, the proof of rashness or negligence is essential.

The term "**rash**" and "**negligence**" has not been defined in the code and both the words are not synonymous.

If a person does an act with utter indifference of the consequence of which he may be conscious, which he hoped may not take place, he is said to be rash.

Negligence is failure to take that precaution, which a reasonable and prudent person is expected to take. Even if an act is found to be negligent, it may not be construed to mean as rash in a given case.

The Apex Court in the case of **Bhalchandra Vs. State of Maharashtra, reported in AIR 1968 SC1319**, held that criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the

charge has arisen, it was the imperative duty of the accused person to have adopted.

14. In the instant case, the narrated facts of the witnesses adduced by the prosecution reflect that there is no eye-witness to the occurrence. PW-1, the informant Nazma Begum could not be examined as she could not be found in spite of repeated summons by the court. PW-3 and pw-5 are hearsay witnesses and they had not seen the incident either. Even the victim Parbin Begum could not be found and could not be examined.

The informant alleged that the accused has dashed the victim, but no witnesses could tell who was the driver of the car committing the accident.

The only eye witness examined by the prosecution is the pw4 namely Prakritij Hazarika, who stated that he saw a maruti car going in front of their car. He stated that the maruti was in normal speed. He stated that two children were playing on the road and one girl crossed the road without watching anywhere. The girl suddenly came in front of the maruti.

Thus, we can notice contradictions among the versions of the prosecution witnesses.

Thus, the witnesses were not able to winch forth the fact as to how the occurrence took place and who was riding the alleged motorcycle. They were unable to prove the guilt of the accused. They could not prove that the accused was rash and negligent and that he has caused grievous hurt to the victim.

- 15.** During the evidence of these PW'S none of the ingredients of section 279, 338 of IPC could be brought forwarded by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the above mentioned sections could be proved by the prosecution beyond reasonable doubt.
- 16.** The golden rule of criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence.
- 17.** In the case of **V. D. Jhingan V. State of Uttar Pradesh the hon'ble Supreme Court** has held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.
- 18.** A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.
- 19.** In the light of the above discussion & reasons, I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt. Hence, the accused person deserves to be acquitted of the offences levelled against him.
- 20.** Thus, it is apparent that there is no direct evidence to suggest that the accused had been riding the offending

vehicle, let alone in a rash or negligent manner. Hence, it is held that the prosecution has failed to implicate the accused person of any offence.

21. So, I am of the conclusive opinion that the prosecution has failed to bring home the accusation under section 279, 338 of the Indian Penal Code.

ORDER

22. In view of the foregoing discussion, I am of the considered opinion that accused Sri Chandra Kumar Das is acquitted of the charges under section 279 and 338 of the Indian Penal Code and as such he is set at liberty forthwith.

23. Consequently, the bail bond of the accused shall remain in force for a further period of six months from today.

24. The custody of the seized vehicle and its documents is made absolute in favour of the registered owner thereof.

25. Given under my hand and the seal of this Court on this the **02nd April, 2022.**

Class,

Deepsikha Das
Judicial Magistrate First

Dibrugarh

APPENDIX

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. PROSECUTION:

RANK	NAME	NATURE OF EVIDENCE
PW1	Sraban Kumar Das	Other
PW2	Mohd. Miftaul Huda	Other
PW3	Farukh Hussain	Other
PW4	Prakritij Hazarika	Eye witness
PW5	Taposh Chatterjee	Other

B. DEFENCE WITNESSES, IF ANY: NIL.

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. PROSECUTION:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Seizure list
2	Exhibit 2	Seizure list

B. DEFENCE EXHIBITS: None.

Deepsikha Das
Judicial Magistrate First Class,
Dibrugarh