

**APPENDIX -12**

<p style="text-align: center;">IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR</p> <p style="text-align: center;">Present: <b>Smt. Priyanka Saikia, JMFC</b></p> <p style="text-align: center;">(Date of the Judgment)</p> <p style="text-align: center;"><b>17-06-2022</b></p> <p style="text-align: center;"><b>(CASE NO- G.R. 191/2016)</b></p> <p style="text-align: center;">(Details of FIR/Crime and Police Station)</p>	
Complainant	State of Assam or Sri Indraswar Nath
Represented By	Smti. Bandhana Boro, Learned APP
Accused persons	Sri Biswadev Nath S/o- Late Ratneswar Nath Village- Mekonori Chuburi P.S.- Tezpur Dist- Sonitpur, Assam
Represented by	Sri Gautam Nath

**APPENDIX -13**

Date of offence	09-01-2016
Date of FIR	16-01-2016
Date of charge sheet	31-01-2016
Date of offence explanation	05-07-2017
Date of commencement of evidence	20-09-2017
Date on which judgment is reserved	03-06-2022
Date of judgment	17-06-2022
Date of the sentencing order, if any	NIL

**Accused Details**

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Sri Biswadev Nath	NIL	06-03-17	Sections 279, 337 IPC	Acquitted	NIL	NIL

**APPENDIX -14****LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Sri Indraswar Nath	Informant
PW2	Sri Munindra Nath	Other witness
PW3	Sri Sanjib Nath	Other witness
PW4	Sri Dipu Nath	Other witness
PW5	Sri Tirtha Baruah	Police witness

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS****A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext. 1	Ejahaar
2	Ext.1(1)	Signature
3	Ext.2	Seizure list
4	Ext.2(1)	Signature
5	Ext.3	Charge sheet
6	Ext.3(1)	Signature

**B. Defence:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**C. Court Exhibits:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**D. Material Objects**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

## **J U D G M E N T**

**1.** The brief fact of the prosecution story is that, one Sri Indreswar Nath had lodged an Ejahar before the O/C, Tezpur P.S. on 14.01.2016 reporting that on 09.01.2016, at about 05.30 P.M., when he was coming towards his house by walking, in front of his house One Motor-cycle bearing registration No. AS-12-2687 coming from opposite direction, the driver, Sri Biswa Dev Nath of the Motor-cycle driven negligently and at speed hit him from his front side and he was thrown out. For that the informant got grievous injury on his body including his right knee. Immediately he was taken to TMCH. Hence, the case.

**2.** On receipt of the FIR, Police registered a case as Tezpur P.S. Case No. 87/2016 under Sections 279, 337 IPC and conducted investigation into the matter. On completion of the investigation, the police submitted the charge-sheet against A-1 under Sections 279, 337 IPC and forwarded to face trial before the Court.

**3.** On receipt of summon A-1 was appeared before the court. Copies of relevant documents were furnished to A-1 under Section 207 of Cr.P.C. After perusal of the relevant documents and hearing both sides particulars of offence under Sections 279, 337 IPC were explained to A-1 by my learned Predecessor to which he pleaded not guilty and claimed to be tried.

**4.** In support of the case, prosecution examined 5 (Five) witnesses. After closure of prosecution evidence, the statement under Section 313 of Cr.P.C. is recorded and his plea was total denial. Defense declined to adduce evidence. Heard the argument put forwarded by the learned Counsel for both the sides as well as gone through the evidences available on record.

**5.** Upon hearing both the parties and on perusal of the case record, the following point for determination was formulated by this Court.

**POINTS FOR DETERMINATION**

**(A)** Whether the accused person, on 09.01.2016, at about 05.30 P.M., had drove one Motor-cycle bearing registration No. AS-12-2687 in a rash and negligent manner on a public way and thereby committed an offence punishable under Section 279 of IPC?

**(B)** Whether on same date and time accused person by driving his vehicle rashly and negligently as to endanger life of the informant and thereby committed an offence punishable under Section 337 of IPC?

**6.** I have heard the learned counsels on both side and have gone through the evidence on records which have been outlined below.

**DECISION AND REASONS THEREOF**

**7.** In this case prosecution examined 5 (Five) witnesses.

**8.** PW -1 (Indreswar Nath) had stated in his evidence that on 09.01.2016, when he was returning home by Sagoli Subari Road, a bike belonging to A-1 had hit him. He did not remember the registration number of the bike. The bike was pick up mode, when it hit him. The alleged bike had hit his right knee. Exhibit 1 is the FIR, Exhibit (1) is his signature.

In his cross examination he stated that the village road was pucca road. The bike cannot go beyond 20-30 KM speed.

**9.** PW -2 (Munindra Nath) had also stated in his evidence that when he was walking along with informant towards their home. The incident occurred near the informant's house. The alleged bike had hit him and informant. He sustained minor injuries whereas the informant knee was broken.

In his cross examination he stated that the bike was coming from the front side. They were walking on their side. A-1 came with medium speed and hit them. The informant and A-1 fell down. The informant received money from A-1.

**10.** PW -3 (Sri Sanjib Nath) had also stated in his evidence that on the alleged day, he heard a sound outside his house. When he came outside he saw informant and accused person were lying on road. The accused person rode the bike and hit informant. The informant leg was injured.

In his cross examination he stated that at the time of incident he came out alone from the house. Total 20-25 people gathered at the place of occurrence. He came out on hearing hue and cry. There were many houses at the place of occurrence.

**11.** PW -4 (Dipu Nath) had also stated in his evidence that when informant was coming to his house, the accused on his bike hit the informant. When the informant shouted help, then PW-4 came out and saw both accused and informant were lying on road.

In his cross-examination he stated that He came out on hearing hue and cry. He had not seen the incident. He could not say for whose fault the incident was occurred. The place of occurrence surrounded by many houses, so a vehicle cannot ply with a speed in that road.

**12.** PW-5 (Tritha Baruah, I.O.) had also stated in his evidence that he is the Investigation Officer has deposed that on 14.01.2016, one FIR was received by O/C Bihaguri Out post vide GDE No.219. He was endorsed the case for investigation. The case was forwarded to Tezpur PS vide Tezpur PS No. 87/2016 under Sec.279, 338 of IPC. He was working as ASI at Bihaguri Out Post. After that, he went to the place of occurrence and examined witnesses. He seized the alleged vehicle Exhibit-2 is Seizure list and Ext-2(1) is his signature thereon. After completion of investigation, he had filed charge-sheet. Ext-3 is chargesheet and Ext-3(1) is signature of S.I. Abbas Ali.

In his cross examination he has stated that he had not submitted any documents regarding sanction of authority for investigation. He had not prepared sketch map. The place of occurrence is a PWD Road bifurcating from NH. Police did not examine him.

**13.** A close perusal of the evidence led by the prosecution discloses that almost all public witnesses including the PW-1 were reported witnesses. The informant PW-1 though in his evidence claimed that the accident took place as a result of the rash and negligent driving on the part of the accused, but in his cross-examination he stated that as the road was village road, the speed of the vehicle could not go beyond 20-30 KM/hr almost all PWs asserted that the alleged vehicle had hit the informant and in the result both accused and informant were lying on the road. They also asserted that the accused was driving the vehicle.

**14.** Now, the defence has not disputed that the accused was the driver of the alleged motor-cycle. The defence has also stated that none of the PWs has deposed that the alleged motorcycle was in speed.

**15.** The Apex court in **State of Karnataka vs Satish** reported in **1998 (8) SCC 493** had held in para 4 as follows:

“Merely because the truck was being driven in high speed does not bespeak of either negligence or rashness by itself. None of the witnesses examined by the prosecution could give any indication even approximately as to what they meant by high speed. High speed is a relative term. It was for the for the prosecution to bring on record material to establish as to what is meant by high speed in the facts and circumstances of the case”

**16.** From the evidences of PWs, there is thus nothing from which it could be inferred that the accident took place as a result of rash and negligent driving on the part of A-1. The prosecution had failed to elicit any other facts from PWs to established rash or negligent act on the part of A-1 thereby leading to the accident.

**17.** Accident itself is not penal always but it is the rashness and negligent driving of motor vehicle on road that is the crux of the offence under Sec.279 IPC. It must be understood that the terms "rash" and "negligence" have not been defined in the IPC and both the words are not synonymous. Rashness is an act done in the hope that no untoward consequence will ensue though the person is aware of the likelihood of such consequence. On the other hand, negligence is acting with the awareness that harmful or mischievous consequences will follow. 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.

**18.** It is quite evident that there is no material whatsoever to suggest that A-1 was rash at the time of the incident.

**19.** In the absence of proof of either rashness or negligence on the part of the accused person, the offence under section 279 IPC stands not proved.

**20.** So, from the evidence on record it can be seen nothing incriminatory has transpired against A-1.

**21.** However, the offence under Section 338, IPC is predicated on the proof of rashness or negligence on the part of A-1. Unfortunately for the prosecution, that has not been the case here. As such, the offences under Section 337 IPC also stand not proved.

**22.** Situated thus, all the points for determination are decided in the negative

**ORDER**

**23.** Accordingly, A-1, is acquitted of the offences under Sections 279, 337 of IPC and set at liberty forthwith.

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

**25.** The bail bond furnished by the surety is extended for a period of six months.

Given under my hand and seal of this court on this 17<sup>th</sup> day of June, 2022 at Sonitpur, Assam.

(Priyanka Saikia, AJS)  
Judicial Magistrate 1<sup>st</sup> Class  
Sonitpur, Tezpur