IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH

Crl. Ptn. No. 15 (AP) 2018

1. SRI NERI TALAP,
   Son of Late Neri Tangam,
   Resident of Village - Belo-II, P.O./P.S. - Kimin,
   District - Papum Pare, Arunachal Pradesh.

2. SRI HAI TAKIO,
   Son of Sri Hai Tasa,
   Resident of Village - Hai Machi,
   P.O.- Pipsorang, P.S. - Palin,
   District – Kra Dadi, Arunachal Pradesh.

..... *Petitioners.*

– VERSUS –

1. THE STATE OF ARUNACHAL PRADESH,
   Represented by Public Prosecutor.

2. SRI LONGU TAKID,
   Camp - N. vihar,
   Division - IV, P.O. & P.S. – Itanagar,
   Arunachal Pradesh.

..... *Respondents.*

Advocates for the Petitioners : Mr. C. Modi,
Mr. A. Saring,
Mr. K. Gara,
Mr. N. Rama,
Mr. N. Taniya,
Mr. A. Perme,
Mr. N. Maj,
Mr. B. Ori, Advocates.

Advocates for the Respondents : Public Prosecutor,,
Arunachal Pradesh,
For Respondent No. 1.

Mr. R. Pait,
Mr. T. Char,
Mr. M. Tunar, Advocates.
For the respondent No. 2

::: BEFORE :::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of Hearing and Order : 08-06-2018

JUDGMENT AND ORDER (Oral)

Heard Mr. Chorpok Modi, learned counsel for the petitioners. Also heard Mr. Kholi Tado, learned Public Prosecutor of the State for the respondent No.1 and Mr. R. Pait, learned counsel for the respondent No.2.

2. The petitioner No.1 is the charges sheeted accused in Itanagar Police Station Case No. 277/2012 corresponding to GR Case No. 491/2012 under Sections 279/337 IPC and the petitioner No. 2 is the victim of the case and further, the respondent No. 2 is the informant of the Case.

3. By this application under section 482 CrPC the petitioners have prayed for quashing and setting aside the proceeding of said GR Case No. 491/2012 along with the Itanagar P.S. Case No. 277/2012 stating that if the said proceeding is allowed to continue it would cause irreparable loss to the alleged accused/ petitioner No.1 since he along with the petitioner No. 2, the victim of the case has already amicably settled their disputes by executing an 'Agreement of Amicable Settlement' between them on 16.02.2018. It is also placed before the Court that the medical report of the victim, petitioner No. 2 reveals that in the said accident occurred on 06.12.2012 the said victim sustained only simple injury. It is also stated by the petitioners that that the said incident is personal to the victim without affecting the society at large.

4. Mr. Tado, learned Public Prosecutor submits that though section 337 IPC is compoundable at the instance of the victim but section 279 IPC is not a compoundable offence.

5. However, Mr. R. Pait, learned counsel appearing for the respondent No.2, the informant of the case on instruction submits that the victim is his brother-in-law and as the victim himself has amicably settled the disputes between him and the accused petitioner outside the Court; as such he does not have any objection if the alleged accused petitioner No.1 is relieved of the charges of said GR case No. 491/2012 arising out of Itanagar P.S Case No.277/2012 as the said accused petitioner has already amicably settled the matter with the victim and the informant of the case outside the Court.

6. It is also stated that the when the family members and local residents of their families met to resolve the disputes, they came to know that accused petitioner No. 1 is the brother-in-law of the victim petitioner No. 2 and in presence of the their family members they amicably settled the matter among themselves, out of Court. For the said reasons the petitioners have filed this petition praying for necessary direction of the Court in that regard. The petitioners have also placed the agreement of amicable settlement between them dated 16.02.2018 before the Court.

7. Perused the record of the case and from the medical report of the victim, issued by the authorities of Ram Krishna Mission Hospital, Itanagar, it is seen that petitioner No. 2, the victim in the said accident occurred on 06.12.2012 around 08:00 pm at night sustained simple injury.

8. The charge sheet No. 65/2013 dated 13.04.2013 was filed in said Itanagar PS Case No. 277/2012 corresponding to GR Case No. 491/2012 also reflects that on 06.12.2012 around 08:00 at night a tempo vehicle bearing Registration No. AR-01/6859 driven by the petitioner No.1 took a u-turn in the Highway near Ane Hotel, Itanagar and Bus Stand Bank Tiniali, Itanagar and the victim while coming from the side of Ganga, Itanagar dashed the said tempo from the rare side as it took a sudden u-turn and in said accident the victim

sustained simple injury as per the medical certificate given by the R K Mission Hospital, Itanagar and due to said accident both the tempo vehicle in its rare side and the motor cycle in the front side were partially damaged.

9. In the said charge sheet it was also stated that the motor cycle involved in the said accident was without any registration number. The concerned Investigating Officer after recording the statements of the owner of the motor cycle, informant of the case-respondent No.2, the victim-petitioner No. 2, the owner of the tempo and the driver of the said tempo-petitioner No. 1, on obtaining the medical report of the victim, report of the Motor Vehicle Inspector etc. finding prima facie materials under Section 279/337 IPC, submitted the charge-sheet in the case against the petitioner. It is also seen that except the petitioner No.1, the accused tempo driver and the petitioner No.2, rider of the motor cycle, the victim, there is no other witness, including independent witness to the said incident.

10. From the case record it is also seen that on 04.06.2013 cognizance of the offences under Section 279/337 IPC was taken against the petitioner in said GR Case No. No. 491/2012 arising out of Itanagar PS Case No. 277/2012 and the said GR case is presently pending for disposal before the learned Chief Judicial Magistrate, Capital Complex, Yupia, where the evidence of the prosecution witnesses are yet to be recorded.

11. Section 279 IPC reads as follows:

> ***"279. 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.*

Punishment for the offence of Section 279 IPC is imprisonment for 6 months, or fine of Rs. 1,000/- or both, which is a cognizable and bailable offence, Triable by any Magistrate but is not compoundable.

12. Section 337 IPC reads as follows:

337. Causing hurt by act endangering life or personal safety of others *– Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*

13. Punishment for the offence of Section 337 IPC is imprisonment for 6 months, or fine of Rs. 500/- or both, which is a cognizable and bailable offence, Triable by any Magistrate but compoundable by any person to whom hurt is caused with permission of the Court.

14. From the reading of Section 279 IPC, the essential ingredients of said Section are found that there must be (i) driving of a vehicle or riding on a public way and (ii) Such driving or riding must be so rash or a negligent as to endanger human life or to be likely to cause her or in duty to any other person.

15. With regard to Section 279 it is already held that –

"apart from the same on the identity being fixed, to prove an offence under Section 279 IPC, the prosecution has to establish that (a) the accused was driving a vehicle or was riding on a public way and (b) such driving of a vehicle or riding was 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. To constitute an offence under Section 279 IPC, proof of criminal rashness or criminal negligence is essential and in order to establish criminal liability, the facts must be such that the negligence of the accused went beyond a mere matter of civil liability and compensation and showed such disregard for life and safety of others as to amount to a crime. There must be proof that the rash or negligent act of the accused was the proximate cause of the injury/death etc. Simple lack of care such as will constitute civil liability is not enough. For a liability under the Criminal Law, a very high degree of negligence is required to be proved. Probably, if all the epithets that can be applied, 'reckless' most nearly covers the case. Accident merely due to an error of judgment of the driver or without anything to show that he was conscious about the risk that evil consequences would follow or that his rash driving was of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby would not make the driver criminally liable for an offence under Section 279 IPC."

16. In the case of *S.N. Hussain -Vs- State of A.P.,* reported in *(1972) 3 SCC 18* the Hon'ble Supreme Court have held that –

"Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, 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."

17. The Hon'ble Supreme Court in the case of *Ravi Kapur -Vs- State of Rajasthan,* reported in *(2012) 9 SCC 284* have held that –

"Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life". The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

"Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.

A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty

of the driver of a vehicle to adopt such reasonable and proper care and precaution."

18. In the case of *Srinivas Gopal -Vs-. Union Territory of Arunachal Pradesh, I* reported in *(1988) 4 SCC 36*, the Hon'ble Supreme Court have held that –

> *"The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society."*

19. It is seen from the records that the accident occurred on the night of 06.12.2012 at 08:00 pm in the Highway at Itanagar, Arunachal Pradesh, when the winter has already set in. The records does not reveal the either the driver of Tempo or rider of the bike were in drunken state. The incident is of December 2012 and till date recording of prosecution witnesses have not began. The inury sustained by the victim, the bike rider is simple in nature and he dashed the tempo from the back allegedly due to the sudden U turn taken by the tempo driver in the midst of the Highway and as held by the Hon'ble Supreme Court, such incident is neither a grave and heinous offence nor an offence against the community. The petition in hand has been filed by both the driver of the offending vehicle and the victim bike rider for quashing of both the proceedings of said GR Case No. 491/2012 arising out of Itanagar PS Case No. 277/2012 since both of them in the advice of their family members have the settled the dispute between them amicably and the victim has no grievances against the accused driver.

20. In the above circumstances of the case in hand, this Court is of the opinion that no useful purpose would be served by continuing the proceeding as there is no possibility of the accused being convicted for the alleged offence and it would be unnecessary harassment and a futile attempt if the prosecution is allowed to continue.

21. As such to secure the ends of justice, in exercise of the powers conferred under Section 482 CrPC the proceeding of GR Case No. 491/2012 along with Itanagar PS Case No. 277/2012, now pending before the learned Chief Judicial

Magistrate, Capital Complex, Yupia, Arunachal Pradesh is hereby set aside and quashed.

22. The petitioners shall place a certified copy of this order before the learned Chief Judicial Magistrate, Capital Complex, Yupia for necessary consequential order.

23. Registry shall return LCR forthwith.

24. With the aforesaid observation, this criminal petition stands allowed.

JUDGE

Rupam