

Form A

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, Bidhannagar, North 24-Parganas (Presided Over by ABHIJEET PAKHRIN) (J.O. Code – WB01220) <u>G.R. Case No. 746 of 2013</u> <u>(C.I.S. Registration No. 50 of 2016)</u> <u>CNR: WBNP05-000082-2016</u> <u>(Arising out of Lake Town P.S. Case No.242 dated 11-08-2013 U/S. 279/304A/338 of IPC)</u>	
Complainant	STATE OF WEST BENGAL
Represented by	Ld. APP
Accused	Rakesh Yadav
Represented by	Ld. Advocate

Form B	
Date of offence	11.08.2013
Date of FIR	11.08.2013
Date of Charge sheet	31.10.2013
Date of Framing of Charges (plea)	01.09.2016
Date of commencement of Evidence	17.12.2018
Date on which Judgment is reserved	Nil
Date of the Judgment	16.06.2026
Date of the sentencing Order, if any	Nil

Accused Details							
Rank of the 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 428 Cr.P.C.
1.	Rakesh Yadav	Surrendered Before Trial Court	11.01.2016	S.279/304 A/338 of IPC	Acquitted	No	NA

Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A: Prosecution: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Suresh Kumar Gupta	Other witness
PW 2	Mithilesh Shaw	CPVF
PW 3	Sujoy Mallick	CPVF
PW 4	Arun Kumar Seth	De facto complainant
PW5	Santanu Seth	Other witness

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/P.W.-1	Signature in the seizure list
2	Exhibit P-2/P.W.-2	Signature in the seizure list
3	Exhibit P-2/1/P.W.-3	Signature in the seizure list
4	Exhibit P-2/P.W.-4	The FIR
5	Exhibit P-2/1/P.W.-3	Signature in the seizure list

JUDGMENT

Antecedents

1. The prosecution case has its inception in a written complaint dated 11.08.2013 filed by the *de-facto* complainant namely Arun Kumar Seth to the effect that on that date at 16.30 hours when his uncle and others were coming towards Golaghata, one vehicle bearing no. WB06/5413 coming in a high speed and reckless manner dashed them. The actual driver of the vehicle was giving driving lessons to someone else who was driving at that time. As a result they received blood injury and they were shifted to Daffodil Nursing Home and one person was shifted to R.G.Kar Hospital and the attending doctor declared him dead. Hence, this case.

The Sequent

2. On the strength of the said written complaint, Lake Town P.S Case no.242 dated 11.08.2013 u/s 279/304A/338 of the I.P.C was started against accused person. After endorsement the case was investigated by Sub-Inspector of police and after investigation, the investigating officer submitted charge-sheet against the instant accused person being C/S No. 186 dated 31/10/2013 U/S. 279/304A/338 of the I.P.C. Thereafter, the case is transferred to this Ld. Court after taking cognizance for trial and disposal.

Plea

3. The section being Magistrate triable and summons procedure, the accused person was examined U/S 251 of Cr.P.C and the substance of accusation u/s.279/304A/338 of the IPC,1860 was read over the explained to the accused person in Bengali whereto he pleaded not guilty by saying “Ami Nirdosh” and claimed to be tried. Hence the case entered into trial. The defence has not adduced any evidence and the defence story as comes out from the examination of the accused U/S 313 of Cr.P.C is nothing but mere denial of the prosecution case.

Point for Determination:

1. Whether the accused person is guilty of the offences punishable U/s. 279/304A/338 of the I.P.C?
2. Whether the prosecution has been able to prove the offences U/s. 279/304A/338 of the I.P.C against the accused person beyond the shadow of all reasonable doubt?

Decision With Reasons:

4. For the sake of brevity and scrutiny and to avoid unnecessary repetition, both the points for determination are clubbed together for consideration. It will be apt to delve to scan the evidence on record to come to the conclusion as to whether the prosecution proved its case against the accused person or not. But firstly, what actually constitutes the alleged offence committed by the accused person U/s 279/304A/338 of I.P.C is to be scrutinized and the same are enumerated below.

S.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.

S.304A. Causing death by negligence. —Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

S.338. Causing grievous hurt by act endangering life or personal safety of others. —Whoever causes grievous 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 a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

5. The provisions quoted above show that in order to constitute the offence under sections 279/ 304A IPC, the prosecution has to show that the act done was done rashly and negligently by the accused person. In order to impose criminal liability on the accused, it must be found as a fact that collusion was entirely or mainly due to the rashness or negligence. The hub of the offence is therefore rash and negligent act on the part of the accused person. Rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness, and, in order to amount to criminal rashness or criminal negligence, one must find that the rashness has been of such a degree as to amount to taking hazard knowingly that the hazard was of such a degree that Injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences, criminal negligence is a gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances. It was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the

consequences in the hope that they may not happen. The law does not permit a man to be uncautious on a hope however earnest or honest that hope may be.

6. This section (Section 304A IPC) obviously does not apply to cases where there is an intention to cause death or knowledge that the act done will in all probability cause death. It only applies to cases in which, without any such intention or knowledge, death is caused by what is described as a 'rash' or 'negligent' act. A negligent act is an act done without doing something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or an act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately with the consciousness that the mischievous or Illegal consequences may follow, but with a hope that they win not. But it is not necessary that there should always be this consciousness in a rash act. It has also been observed that in negligence there is no such consciousness of the consequences. (Shiva Ram v State, AIR 1965 All 196)

7. Coming back to the case in hand, on analysis of the available evidences of the prosecution, it transpires that the P.W-4 being the complainant, has stated that he was not present at the time of incident and that he was told about the accident by the police. He further stated that he does not know the name of the accused person nor he knew if any other person expired as a result of that accident. Due to him being busy in treatment of his uncle, he had no further knowledge as to what happened in investigation process. During the examination, his written complaint was marked as Exhibit-2.

8. P.W.-1 being an Independent witness deposed that on the date of incident he heard that there was an accident involving on private car coming from North to South through Service road dashed some person. He saw gathering out there and then police asked him to sign on some document. His signature on the seizure list dated 01.09.2013 was marked as exhibit-1. P.W.-2 and P.W-3 being Civic Volunteers, in their respective depositions stated that there was an accident at the time of the incident and a car was seized and that is why they had signed on the seizure list. Both of them deposed that after the accident they had no idea as to what happened and that they do not know the accused person nor they could recognize if the accused person.

9. P.W.-5 being the victim herein and the uncle of the complainant in his deposition stated that he could not recollect the date of incident but he was walking at that time at Lake Town and suddenly one car from behind dashed him and he fell down. Thereafter he was taken to the hospital. During his cross-examination he admitted that as he was dashed from behind, he did not see the driver not saw the registration number of the said offending vehicle.

10. From the above evidence of the P.Ws it is crystal clear that none had seen this accused person driving the said offending vehicle on that particular date of incident. There is nothing in the evidence of the prosecution not event to a minuscule level, to hold the accused person guilty of the charge framed against him. For the foregoing analysis of the evidence on record I fail to find the ring of truth in the prosecution case. Ac-

Accordingly, none of the charges labeled by the complainant is substantiated against the accused person. Hence, the prosecution case failed.

Hence it appears that the prosecution has failed to prove the offences charged against the accused person u/ss. 279/304A/338 of the I.P.C beyond all shadow of reasonable doubt.

Hence it is

ORDERED

that the accused person namely Rakesh Yadav is not found guilty of the offence punishable u/ss.279/304A/338 of the I.P.C and they are hereby acquitted u/s 255(1) of the Cr.P.C.

He is discharged from his respective bail bond, if any, and set at liberty at once, if not wanted in any other case.

The alams if any, may be disposed of by the IO after the period of Appeal is over.

The D/L, if seized, may be returned to the accused at once.

Thus, the matter is disposed of on contest.

Dictated & corrected by me.

(Abhijeet Pakhrin) (WB01220)
Additional Chief Judicial Magistrate
Bidhannagar, 24 Parganas (N).