

## State vs . Rahul Garg on 31 October, 2019

IN THE COURT OF MS SHEFALI BARNALA TANDON, MM-6 (C),  
TIS HAZARI COURT, DELHI.

FIR No. 150/15  
U/s. : 279/338 IPC  
P.S. : Civil Lines  
State Vs. Rahul Garg

### JUDGMENT

- |   |   |   |
|---|---|---|
| 1. CIS number of the case                         | : | 301418-2016   |
| 2. CNR number of the case                         | : | DLCT02-007274-2016  |
| 3. The date of commission of offence              | : | 06.04.2015  |
| 4. The name of the complainant                    | : | Sh. Ashok Kumar   |
| 5. The name & parentage of accused                | : | Rahul Garg<br>S/o Mr. Vinod Garg<br>R/o House No. BW-44,<br>Shalimar Bagh, Delhi.                 |
| 6. Offence under which notice has been:<br>served | : | U/s 279/338 IPC   |
| 7. The plea of accused                            | : | Pleaded not guilty  |
| 8. Final order                                    | : | Discharged for<br>the offence under<br>Section 279 IPC &<br>offence U/s 338 IPC<br>was compounded |

|                       |   |            |
|-----------------------|---|------------|
| Date of Institution   | : | 13.05.2016 |
| Judgment reserved on  | : | 31.10.2019 |
| Judgment announced on | : | 31.10.2019 |

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### STATEMENT OF THE REASONS FOR THE DECISION :-

1. Briefly stated, the facts of the case as unfolded from the charge-sheet are that on 06.04.2015, at about 08.00 pm, in front of Vidhan Sabh, near Dena Bank, Ring Road, Civil Lines, Delhi, situated

within the jurisdiction of PS Civil Lines, the accused was found driving a car bearing registration No. DL-8C-NB- 2760 in a rash & negligent manner so as to endanger human life and personal safety of others and while driving so, hit against one motorcycle bearing registration No. DL-7S-BX-1759 and caused grievous injuries to its rider/complainant namely, Sh. Ashok Kumar. Thereby, the accused committed the offences punishable u/s. 279/338 IPC and accordingly, charge-sheet was filed.

2. The copy of charge-sheet as well as its annexures were supplied to the accused in compliance of Section 207 Code of Criminal Procedure (hereinafter called as Cr.P.C.) and notice of the accusation u/s 251 Cr.P.C. for the offence U/s 279/338 IPC was served upon accused Rahul Garg vide order dated 14.12.2018, to which he pleaded not guilty and claimed trial.

3. The prosecution was given opportunity to prove the accusation against the accused.

It is pertinent to mention here that accused admitted the genuineness of FIR No. 150/15 Ex. P-1, certificate u/s 65B Ex. P-2 and DD No. 35A Ex. P-3 all prepared by Duty Officer SI Vijay Singh, DD NO. 36PP dated 06.04.2015 Ex. P-4 prepared by Ct. Robin & Superdaginama of offending vehicle Ex. P-5 executed by Sh. Vinod Kumar Gupta (registered owner), during his statement recorded u/s. 294 Cr.PC qua admission/ denial of documents recorded on 14.12.2018. Hence, PWs namely Duty Officer SI Vijay Singh, Ct. Robin and Sh. Vinod Kumar Garg were dropped from the list of witnesses.

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4. It is further pertinent to mention here that during the course of prosecution evidence, complainant/injured was summoned and on 16.08.2019, matter was referred to mediation for settlement where offence U/s 338 IPC was compounded vide order dated 05.09.2019, subject to payment of compensation of Rs.80,000/- to the complainant/injured. It is also stated during mediation proceedings that lenient view may be taken against the accused for offence u/s 279 IPC, as the substantive offence has already been compounded. Accordingly, the offence u/s 338 IPC was compounded with the permission of the Court in view of the Mediation's settlement order vide order dated 26.09.2019.

5. An application has been filed by the accused for exercising power u/s 258 Cr.P.C. for stoppage of proceedings, as the substantive/ main offence has already been compounded and continuing with the trial for minor offence U/s 279 IPC shall be vexing the accused twice as well as nothing fruitful would be achieved.

The accused/ applicant has filed & relied upon the judgment of High Court of Judicature at Bombay in case titled as "Adwait Surendra Aatre Vs The State of Maharashtra & Ors.". He has also filed & relied upon various judgments of other Competent Courts on the point.

6. Be that as it may, Section 279 & 338 of IPC both punished rash and negligent act. The only difference is that in Section 279 IPC, there is rashness and negligence in driving a vehicle which may result in injury and Section 338 IPC is invoked when any rash and negligent act actually results in an injury being caused. Section 338 IPC has been made compoundable but section 279 IPC is not

compoundable. Perhaps, one reason is that, as far as section 338 is concerned, there is a determinable victim i.e. injured persons(s), whereas in offence under section 279 IPC, there is no determinable injured who can compound the offence.

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7. In the case law relied by the accused/ applicant titled as "Adwait Surendra Aatre Vs. The State of Maharashtra & Ors.", in Criminal Application No. 124 of 2011, wherein the Lordship has held and I quote:

"...Therefore, there is an apprehension in the mind of both, the applicant/accused and complainant, that even by approaching the trial Court, they may not be allowed compounding the entire proceeding because of inclusion of Section 279 IPC which is stated to be non compoundable.....after minute reading of both these sections, it is seen that the alleged act of rash and negligent driving, endangering human life, is required to be proved as necessary ingredient to constitute offence under Section 279 IPC and by allegedly doing any act rashly or negligently as to endangering the human life are also the same ingredient to constitute the offence under Section 338 IPC.

Therefore, such ingredients which are common, cannot be separately dealt with. The requirement of offence under Section 338 IPC is all that is covered in Section 279 of IPC. As specifically mentioned in the Code, when the offence under Section 338 IPC is compoundable, there cannot be any impediment or bar to hold that the alleged offence under Section 279 IPC r/w Section 338 IPC could also be compounded. It is not a different act complained of to constitute a separate offence but are the essential ingredients of Section 338 IPC in the present case. In short, the offence u/s 338 IPC is compoundable with permission of the Court, which, amounts to acquittal. After such compounding with the consent of the aggrieved party injured complainant, the accused cannot be prosecuted or tried for the same act which are complained of by different title or read u/s 279 IPC.

FIR No. 150/15 State Vs. Rahul Garg Page No. 4 of 6 PS Civil Lines Though, it may not be a second trial, but the accused who is once acquitted from the charge u/s 338 IPC upon compounding of the charge based on the same evidence, would be vexed, if he directed to under go further trial u/s 279 IPC for lesser punishment. Thus, by the present application, the applicant has made out a case for compounding of offence. I am satisfied that once the offence u/s 338 IPC is compounded, nothing survives for trying the offence u/s 279 IPC. The FIR or charge-sheet for additional section 279 IPC would be meaningless when the cognizance is taken under Section 338 of IPC. the proceedings for the offence under Section 279 IPC, therefore, deserves to be quashed and set aside." (Emphasis supplied)

8. Therefore, the Court is of the view that once injury was received by rash and negligent driving, only Section 338 IPC ought to be invoked i.e. the graver of the two offences and Section 279 IPC is

not made out, and therefore, the Court quashed proceedings under Section 279 IPC and directed the parties to appear before Ld. Magistrate for compounding the offence under Section 279 IPC.

9. The Hon'ble High Court of Bombay was also of the view that once under Section 337/338 IPC is compounded, continuing the trial for the offence under Section 279 IPC shall be vexing the accused twice. The Court has highest regard for the aforesaid view, however, is not fully in agreement with the view that Section 279 IPC loses its significance once section 337/338 IPC is invoked by the police and that Section 337/338 IPC is not independent but only graver form of the offence under Section 279 IPC. However, keeping in view the circumstances of the case, the decision of Bombay High Court and the futility of purpose in proceeding with the trial of minor offence when the major offence FIR No. 150/15 State Vs. Rahul Garg Page No. 5 of 6 PS Civil Lines has already been compounded by the victim, this Court is of the considered opinion that the present case is a fit case for exercising power u/s 258 Cr.P.C.

10. To elaborate it further Section 258 Cr.P.C. is reproduced below which reads as:

"Power to stop proceedings in certain cases. In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

11. With this background, it is directed that the proceedings in the present case are hereby stopped which shall operate as discharge of the accused, as the injured and the IO have not been examined and their evidence has been dispensed with. SHEFALI BARNALA TANDON TANDON Date: 2019.11.01 14:58:47 +0530 ANNOUNCED IN THE OPEN COURT ON 31st October, 2019 (SHEFALI BARNALA TANDON) MM-06 (C)/TIS HAZARI COURT DELHI All pages are duly signed.

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