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The section must be read along with sections 336 and 337 of the Code. The concept of rashness and negligence has been explained under the discussions of section 304-A of the Code. Whereas section 337 is attracted when hurt is caused, section 338 is attracted when grievous hurt is caused by doing a rash or negligent act which endangers human life or personal safety of others. Intentional act on the part of an offender negatives rashness or negligence. Running over a boy sleeping on a road by allowing a cart to proceed unattended along the road was held to be punishable under this section. A husband having sexual intercourse with his eleven year old wife resulting in her death was held guilty under this section – This will amount to rape as well under clause 6 of section 375 of the Code. Where a school building collapsed resulting in deaths of a large number of students and grievous and simple injuries to many, the manager of the school could not be held guilty under this section as he had not controlled its construction.

If the evidence so warranted a case against the construction engineer or supervisor could be brought. The municipal authorities also could have been more careful by holding periodical inspections and then the tragedy could have been averted. It may be kept in mind with respect to motor accident cases that non-possession of driving licence or not blowing the horn cannot be ipso facto interpreted as rashness or negligence. Similarly, blowing the horn may not necessarily mean absence of rashness or negligence on the part of a driver. The offence under section 338 is cognizable, bailable and compoundable when permitted by the court trying the case, and is triable by any magistrate. Of Wrongful Restraint and Wrongful Confinement Sections

339 to 348 of the Code deal with the offences of wrongful restraint and wrongful confinement. Both these offences have been defined and punishments prescribed for the commission of them. Punishments for committing wrongful confinements under certain special situations have also been prescribed in this part.