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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 332 of 2012
Reserved on: 02.09.2025
Date of Decision: 11.09.2025.

State of H.P. ...Appellant

Versus

Ram Pal ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellant : Mr. Prashant Sen, Deputy Advocate General.

For the Respondent : Mr. Divya Raj Singh, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 30.04.2012, passed by learned Additional Sessions Judge, Fast Track Court, Una (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 01.07.2011, passed by learned Chief Judicial Magistrate, Una, District H.P. (learned Trial Court) were set aside. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience*).

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 279 of the Indian Penal Code (hereinafter referred to as 'IPC'). It was asserted that informant Bhisham Chander (PW4) had gone to drop his son at DAV School on 21.07.2009, in his vehicle bearing registration No. HP20B-5246. He parked the car on the left side of the road, with one tyre on the kachha portion and another on the pucca portion. He and his son were sitting in the vehicle. An HRTC bus bearing registration No. HP 72-0173 hit the car at high speed. Ram Pal (accused) was driving the car. The accident occurred due to the negligence of the accused. The matter was reported to the police. SI Sham Lal (PW10) reached the spot. He recorded the statement of informant Bhisham Chander (Ex.PW4/A), and sent it to the Police Station, where FIR (Ex.PW8/A) was registered. Photographs of the spot (Ex.PW10/A and Ex.PW10/B) were taken. The site plan (Ex.PW10/C) was prepared. The bus and car were seized vide memos (Ex. PW.2/A and Ex.PW2/B). Documents of the car were seized vide memo (Ex.PW4/B). The driving license of the accused (Ex.PW10/D) was seized vide memo (Ex.PW1/A). HHC

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Saroop Lal (PW7) conducted the mechanical examination of the vehicles and found that there was no mechanical defect in the vehicles which could have led to the accident. He issued the reports (Ex.PW7/A and Ex. PW7/B). Statements of the prosecution witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 279 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined ten witnesses to prove its case. Baldev Singh (PW1) proved the documents of the vehicle and the appointment order of the accused. Mohinder Kumar (PW2) is the witness to recovery. Vipan Kumar (PW3) is the eyewitness, but he did not support the prosecution's case. Bhisham Chander (PW4) is the informant. Ravinder Singh (PW5) produced the documents of the vehicle. Pranav Sharma (PW6) is the witness to recovery. HHC Saroop Lal (PW7) conducted the

mechanical examination of the vehicles. Inspector Rajinder (PW8) signed the FIR. Constable Gulshan Kumar (PW9) is the witness to the recovery of the vehicles. SI Sham Lal (PW10) conducted the investigation.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that he was innocent. He did not produce any evidence in his defence.

6. Learned Trial Court held that the accused was driving the bus at the time of the accident. He hit the car from the rear. The place of the incident was straight, and the accused could have easily stopped the bus. There were skid marks on the road, showing that the accused was driving the vehicle at a high speed. Therefore, the accused was convicted of the commission of an offence punishable under Section 279 of the IPC. He was sentenced to undergo simple imprisonment for six months, pay a fine of ₹1,000/- and, in default of payment of the fine, to undergo further simple imprisonment for one month.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused filed an appeal which was

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decided by the learned Additional Sessions Judge, Fast Track Court, Una, District Una, H.P., (learned Appellate Court). Learned Appellate Court held that the defence version, that the informant applied his brakes and the bus hit the car, was highly probable. Vipin Kumar (PW3) did not support the prosecution's case. There was insufficient material to conclude the negligence of the accused. Hence, the accused was acquitted.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal, asserting that the learned Appellate Court failed to appreciate the evidence on record. It was wrongly held that the informant might have suddenly applied the brakes of the car, which led to the accident. The car was parked on the edge of the road, and the question of suddenly applying the brakes did not arise. The site plan (Ex.PW10/C) and the mechanical reports (Ex.PW7/A & Ex.PW7/B) established the negligence of the accused. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr. Prashant Sen, learned Deputy Advocate General, for the appellant/State and Mr. Divya Raj Singh, learned Counsel, for the respondent/accused.

10. Mr. Prashant Sen, learned Deputy Advocate General for the appellant/State, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment of the learned Trial Court. The informant stated that he had parked the car towards the left side of the road and the bus hit the car at high speed. Learned Trial Court rightly pointed out that the place of the incident was a straight road, and the accused could have seen the car parked on the road. He failed to avoid the collision with the car, which shows his negligence. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Mr. Divya Raj Singh, learned counsel for the respondent/accused, supported the judgment of the learned Appellate Court and submitted that the learned Appellate Court had taken a reasonable view and this Court should not interfere with it while deciding an appeal against acquittal. He prayed that the present appeal be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

> "**23.** Recently, in the case of ***Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 SCC OnLine SC 4035***, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:
>
> > "**38.** First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.
> >
> > 39. This Court in ***Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)
> >
> > > "29. After referring to a catena of judgments, this Court culled out the following general principles

regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (***Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325***], SCC p. 432, para 42)

> '*42.* From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Criminal Procedure Code, 1973, puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.
>
> (3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every

> person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

40. Further, in ***H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748]***, this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

> *8. ... 8.1.* The acquittal of the accused further strengthens the presumption of innocence.
>
> *8.2.* The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence.
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> *8.3.* The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record.
>
> *8.4.* If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
>
> *8.5.* The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

> 41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:
>
> **41.1.** That the judgment of acquittal suffers from patent perversity.
>
> **41.2.** That the same is based on a misreading/omission to consider material evidence on record; and
>
> **41.3.** That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."
>
> **24.** It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

14. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. Vipin Kumar (PW3) did not support the prosecution's case. He stated that the bus hit the car, and the car moved 25-30 feet. He came out of the shop after hearing the noise of the impact. He was permitted to be cross-examined. He admitted that one tyre of the car was on the pucca portion of the road and one tyre was on the kaccha portion of the road. A bus bearing registration No. HP72-0173 had hit the car. He denied that the

accident occurred due to the negligence of the accused. He stated in his cross-examination that he had not seen the collision between the vehicles. He came out after hearing the noise. He was not aware that the driver of the car applied the brakes suddenly, and the accident occurred due to his negligence.

16. The testimony of this witness is highly contradictory. He stated in his examination-in-chief that the bus had hit the car; thereafter, he stated that he came out of the shop after hearing the noise. He reiterated in his cross-examination that he had not seen the actual collision, and he came out after hearing the noise. These contradictions in the statement of the witness make it difficult to rely upon his testimony, and his testimony cannot be used to conclude that the negligence of the accused led to the accident.

17. Informant, Bhisham Chander (PW4) stated that he had parked the car on the left side of the road, having one tyre on the pucca portion and one tyre on the kachha portion. A bus bearing registration No. HP72-0173 hit the car from the rear. The car moved 30 feet. The accident occurred due to the negligence of the accused, who was driving the bus. He stated in his cross-

examination that a vehicle was coming from the opposite side, and his car was in the neutral gear. He admitted that he had not switched on the parking indicators.

18. It is an admitted case that the accident occurred on the Una-Nangal highway. Rule 15 of the Rules of the Road Regulations, 1989, deals with the parking of the vehicle and reads that every driver of a Motor Vehicle parking on any road shall park it in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. Rule 15(2) reads that the driver of the Motor Vehicle shall not park his vehicle on a main road or one carrying fast traffic. Thus, it is apparent that, as per this rule, a vehicle cannot be parked on a main road or a road carrying fast traffic. It was laid down by ***Mohandas Nair S/O E Kumaran Nair vs M/S Vivek Transporters M.F.A. No.24179/2012, decided on 28 March, 2019***that parking a vehicle on a highway without switching on indicators amounts to negligence. It was observed:

> "102. No negligence can be attributed to the driver of the car, as on a National Highway, the vehicles would normally move at a greater speed than on an ordinary road or a road in a city or a town. On account of there being no indication whatsoever that the container lorry was parked towards the left side of the road, the driver of

the car who was also proceeding on the left side could not imagine gauge or expect that there was a vehicle that was parked towards the left side of the road. In the absence of the driver of the car being aware about the parking of the lorry towards the left side of the road and the car also proceeding towards the left side of the road, it hit the lorry from behind. Even if the car was proceeding at a moderate speed, the driver could not have avoided the stationed lorry, which was unattended and without any light or indicator on, so as to indicate to the drivers of the vehicles proceeding in the same direction that the lorry was parked to avoid hitting the lorry. In fact, in the instant case, the brake marks on the road as noted in the panchnama would indicate that the driver of the vehicle has tried his best to avoid a collision with the lorry, but could not do so. Thus, total negligence was on the driver of the lorry to have left it unattended and without any parking lights on, which is in violation of the duty cast under the Act as well as in common law. Hence, there being a breach of duty to take care, it is held that the driver and owner of the lorry were totally negligent and committed a tortuous act in causing the accident and that there was no composite negligence nor contributory negligence on the part of the driver of the car. As a result, the driver, owner and insurer of the car are exonerated from their liability to satisfy the awards. Hence, point No. 1 is answered in favour of the claimants and New India Assurance Co. Ltd., and against the driver/owner and insurer of the lorry."

19. A similar view was taken in ***Sushma v. Nitin Ganapati Rangole, 2024 SCC OnLine SC 2584,*** wherein it was observed:

> "**25.** Common sense requires that no vehicle can be left parked and unattended in the middle of the road, as it would definitely be a traffic hazard posing a risk to other road users.

26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

27. A highway or a road is a public place as defined in Section 2(34) of the Act: —

> "**2(34)** "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.

29. Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any "public place" in such a position or such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or the passengers.

30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.

31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.

32. Regulation 15 of the Rules of Road Regulation, 1989, which was prevailing on the date of the incident, provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road

> users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road."

20. Therefore, the informant was negligent in parking the car on the road without switching on the parking lights or the indicators.

21. The informant stated that the accident occurred due to the high speed of the bus. This by itself is not sufficient. It was laid down by the Hon'ble Supreme Court in ***Mohanta Lal vs. State of West Bengal 1968 ACJ 124*** that the use of the term 'high speed' by a witness amounts to nothing unless it is elicited from the witness what is understood by the term 'high speed'. It was observed:

> "Further, no attempt was made to find out what this witness understood by high speed. To one man, the speed of even 10 or 20 miles per hour may appear to be high, while to another, even a speed of 25 or 30 miles per hour may appear to be a reasonable speed. On the evidence in this case, therefore, it could not be held that the appellant was driving the bus at a speed which would justify holding that he was driving the bus rashly and negligently. The evidence of the two conductors indicates that he tried to stop the bus by applying the brakes; yet, Gopinath Dey was struck by the bus, though not from the front side of the bus, as he did not fall in front of the bus but fell sideways near the corner of the two roads. It is quite possible that he carelessly tried to run across the road, dashed into the bus and was thrown back by the moving bus, with the result that he received the injuries that resulted in his death."

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22. This position was reiterated in ***State of Karnataka vs. Satish 1998 (8) SCC 493,*** *wherein* it was held:

> "Merely because the truck was being driven at a "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 prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution, and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject, of course, to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur."

23. This Court also held in the ***State of H.P. Vs. Madan Lal 2005 Latest H.L.J. (2) 925*** that speed alone is not a criterion for judging rashness or negligence. It was observed: -

> "It may be pointed out that speed alone is not a criterion to decide rashness or negligence on the part of a driver. The deciding factor, however, is the situation in which the accident occurs."

24. This position was reiterated in ***State of H.P. Vs. Parmodh Singh 2008 Latest HLJ (2) 1360*** wherein it was held: -

> "Thus, negligent or rash driving of the vehicle has to be proved by the prosecution during the trial, which cannot

> be automatically presumed even on the basis of the doctrine of res ipsa loquitur. Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, speed is no criterion to establish the fact of rash and negligent driving of a vehicle. It is only a rash and negligent act as its ingredients, to which the prosecution has failed to prove in the instant case."

25. Thus, the accused cannot be held liable based on the statement of a witness that he was driving the vehicle at a high speed, and the prosecution has to establish specific negligence of the accused.

26. In the present case, there is no evidence of the negligence of the accused; rather, the evidence indicates the negligence of the informant. Therefore, the learned Appellate Court had taken a reasonable view which could have been taken based on the evidence, and no interference is required with it while deciding an appeal against the acquittal.

27. No other point was urged.

28. In view of the above, the judgment passed by the learned Appellate Court is sustainable. Hence, the present appeal fails, and the same is dismissed.

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29. Record of learned Courts below be sent back forthwith along with a copy of the judgment. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

11th September, 2025
(Anurag)