IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 4119 of 2013
Reserved on: 09.05.2025
Date of Decision: 24.06.2025

Deep Raj ...Petitioner

Versus

State of H.P. ...Respondent

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

For the Petitioner : Mr. Nand Lal Chauhan, Advocate.[2]
For the Respondent : Mr. Jitender K.Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 13.05.2013 passed by learned Sessions Judge, Hamirpur, District Hamirpur, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 02.11.2011 passed by learned Chief Judicial Magistrate Hamirpur, District Hamirpur, H.P. (learned Trial Court) were upheld (*Parties shall*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.
[2] Correction carried out in the name of learned counsel for the petitioner in compliance of the order dated 9.5.2025.

hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that police presented the challan before the learned Trial Court for the commission of offences punishable under Sections 279 and 337 of the Indian Penal Code (IPC) and Sections 181 and 187 of the Motor Vehicles Act (M.V. Act). It was asserted that informant Pritam Chand (PW-10) was travelling in a bus bearing registration No. HP-HP38A-8033. When the bus reached near Hatli Bridge at about 12:30 a.m., a truck bearing registration No. HP63-5015 came from the opposite side. Both vehicles were moving at a high speed, and their drivers could not control them. The vehicles hit each other. The accident occurred due to the negligence and high speed of the drivers of the bus and the truck. The Police registered F.I.R. (Ext.PW-4/A). Govind Ram (PW-11) conducted the investigation. He visited the spot and prepared the site plan (Ext.PW-11/B). He seized the Truck bearing registration No. HP63-5015 vide memo (Ext.PW-1/A). The Truck had 180 cement bags, which were handed over to Brij Lal (PW-5). Ramesh Chand (PW-6) conducted the mechanical examination of the bus and the truck and found that there was no defect in them

which could have led to the accident. Statements of the prosecution witnesses were recorded as per their version. It was found after the investigation that the accident had occurred due to the negligence of the accused, who was driving the truck in a state of intoxication at the time of the accident. The accused also did not have a valid driving license to drive the truck. Hence, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court put the notice of accusation to the accused for the commission of offences punishable under Section 279 of IPC and Sections 187 and 181 of M.V. Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses to prove its case. Hari Ram (PW-1) is the witness to the recovery of the truck and cement bags. Sunil Kumar (PW-2) was travelling in the bus, but he did not support the prosecution's case. Sunil Kumar (PW-3) proved the entry in the Daily Diary. SHO Anjani Kumar (PW-4) signed the FIR. Brij Lal (PW-5) is the owner of the truck to whom the cement bags were handed over on Sapurdari. Ramesh Chand (PW-6) conducted the mechanical examination of the truck. Arun Sharma (PW-7) and Kishori Lal (PW-12) were travelling in the

bus. Dinesh Kumar (PW-8) proved the entry in the Daily Diary. Krishan Chand (PW-9) arrested the accused. Pritam Singh (PW-10) is the informant. Govind Ram (PW-11) 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 not driving the truck. He was called from home and was falsely implicated. No defence was sought to be adduced by the accused.

6. Learned Trial Court held that the driver of the truck fled away from the spot. However, the owner of the truck stated that he had employed the accused as a driver. He also issued a certificate (Ext. PW-5/A) to this effect. It was proved on record that the truck was being driven at a high speed. The driver of the bus had stopped it after seeing the truck; however, the truck hit the bus. The accused failed to stop the vehicle. He did not produce any driving licence, and fled away from the spot. Hence, the accused was convicted for the commission of an offence punishable under Section 279 of IPC and sentenced to undergo simple imprisonment for one month, pay a fine of ₹ 1,000/- and

in default of payment of fine to undergo further imprisonment for one month. He was further sentenced to undergo simple imprisonment for 15 days and pay a fine of ₹ 500/- each for the commission of offences punishable under Sections 187 and 181 of the M.V. Act. It was also directed that all the sentences of imprisonment would run concurrently.

7. Being aggrieved from the judgment of conviction and order of sentence passed by the learned Trial Court, the petitioner preferred an appeal. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the identity of the accused was duly proved by the testimony of Brij Lal (PW-5). There was nothing in his cross-examination to doubt his testimony. The statements of the eyewitnesses proved that the bus driver had stopped it, however, the truck driver hit the bus, as he was unable to control it due to the high speed. His negligence led to the accident. He failed to produce his driving licence, which also points to his guilt. He ran away from the spot after the accident. The accused was rightly convicted and sentenced by the learned Trial Court. Consequently, the appeal filed by the accused was dismissed.

8. Feeling aggrieved and dissatisfied with the judgments and order passed by the learned Courts below, the accused has filed the present petition. It has been asserted that the learned Courts below failed to properly appreciate the material on record. The judgments and order passed by the learned Courts below are based on conjecture and surmises. The presumption of innocence in a criminal case was not considered by the learned Courts below. The identity of the truck driver was not established. The accused specifically stated in his statement recorded under Section 313 of Cr. P.C. that he was not driving the vehicle on the date of the accident. It was for the prosecution to prove its case beyond a reasonable doubt that the accused was driving the vehicle at the time of the accident; however, this fact was not proved. Learned Courts below erred in convicting and sentencing the accused. Therefore, it was prayed that the present petition be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr. Nand Lal Chauhan[3], learned counsel for the petitioner and Mr. Jitender K. Sharma, learned Additional General for the respondent-State.

[3] Correction carried out in the name of learned counsel for the petitioner in para 9 of the judgment in compliance of the order dated 9.5.2025.

10. Mr. Nand Lal Chauhan[4], learned counsel for the petitioner/ accused, submitted that the learned Courts below erred in convicting and sentencing the accused. The identity of the truck driver was not proved, and the learned Courts below erred in relying upon the certificate issued by Brij Lal (PW-5). His testimony did not prove that he had employed the accused as driver; rather he stated that he had employed Kuldeep Chand as a driver, which made the prosecution's case highly suspect. The learned Courts below did not appreciate this aspect. Hence, it was prayed that the present revision petition be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr. Jitender K. Sharma, learned Additional Advocate General for the respondent/State, submitted that the identity of the accused was duly proved by the testimony of Brij Lal (PW-5). He was not cross-examined regarding the identity of the accused, and the learned Courts below had rightly held that the accused was driving the truck at the time of the accident. This Court should not reappreciate the evidence while deciding the petition. Hence, he prayed that the present petition be dismissed.

[4] Correction carried out in the name of learned counsel for the petitioner in para 10 of the judgment in compliance of the order dated 9.5.2025.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

"**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:

> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the

question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > "*5.* ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless

any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

"*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the

courts may not interfere with the decision in exercise of their revisional jurisdiction."

14. In the above case, also conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

"**16.** It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

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

18. Brij Lal (PW-5) stated that he is the owner of the truck bearing registration No. HP63-5015. The police informed that his truck had met with an accident and the driver had run away from

the spot. He had employed Kuldeep Chand as a driver one month before the accident. He produced the documents before the police. The name of the accused is also Deep Chand. He had issued the certificate (Ext.PW-5/A) regarding this fact.

19. The order sheet maintained by the learned Trial Court shows that Brij Lal (PW-5) was examined on 14.01.2009, and the accused was present with his counsel on that day; however, Brij Lal (PW-5) was not asked to identify the accused. It was laid down by the Hon'ble Supreme Court in ***Tukesh Singh v. State of Chhattisgarh, 2025 SCC OnLine SC 1110,*** that the identification of the accused sitting in the Court by the witnesses is highly important, and the statement of a witness naming the accused is not sufficient. It was observed:-

> "**21.** In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that "he had seen A, B and C killing X and he

knew A, B and C". Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that "he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased." In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.

22. In the present case, in the case of two eyewitnesses, in the cross-examination, it is brought on record that the accused persons named by them were sitting in the Court. However, they did not identify a particular accused by ascribing him a role. None of the eyewitnesses has specifically identified any of the accused in the Court.

23. In this case, the failure of the eyewitnesses to identify the accused in the court as the accused they had seen committing the crime is fatal to the prosecution's case..."

20. Since in the present case the owner did not identify the accused present in the Court, and he had stated that he employed Kuldeep Chand one month before the accident, his statement was not sufficient to prove the identity of the truck driver.

21. A heavy reliance was placed upon the certificate (Ext.PW5/B), in which it was mentioned that Deep Raj, son of Babu

Ram, was employed as a driver by Brij Lal (PW-5) on 01.11.2007. This certificate is like a statement made by the witness to the police during the investigation. A statement made by a witness to the police during an investigation is hit by Section 162 of Cr.P.C. and cannot be proved in a Court of Law. This provision cannot be said at nought by the Investigating Officer by not writing the statement himself, but asking the witness to write it. In ***Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048: 1973 SCC OnLine SC 286***, a letter was written by a witness to the SHO, Police Station, Renuka, which was relied upon to record the conviction. It was held by the Hon'ble Supreme Court that the letter written by the witness to the SHO is like a statement made by him to the police and is inadmissible in evidence. It was observed at page 817:-

> **"17.** The last piece of evidence upon which the High Court has maintained the conviction of the accused consists of the confession of the accused contained in letter PEEE sent by Sahi Ram (PW 4) to the Station House Officer Renuka, The first question which arises for consideration in respect of letter PEEE is whether it is admissible in evidence. Section 162 of the Code of Criminal Procedure reads as under:
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> > "162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or

trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1) of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

Bare perusal of the provision reproduced above makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1), or for the purposes mentioned in sub-section (2) with which we are not concerned in the present case. The prohibition contained in the Section relates to all statements made during the course of an investigation. Letter PEEE, which was addressed by Sahi Ram to the Station House Officer, was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion, would constitute a statement for the purpose of Section 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible,

except for the purposes mentioned in Section 162, the same would be true of a letter containing a narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in Section 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement.

18. It has been argued by Mr Khanna on behalf of the State that at the time letter PEEE was addressed by Sahi Ram to the police, no investigation had been made by the police against the accused and, as such, the aforesaid letter cannot be held to be inadmissible. This contention, in our opinion, is wholly devoid of force. The restriction placed by Section 162 on the use of statement made during the course of investigation is in general terms. There is nothing in the Section to show that the investigation must relate to any particular accused before a statement to the police pertaining to that accused can be held to be inadmissible.

19. Reference has been made by Mr Khanna to the case of ***Sita Ram v. State of Uttar Pradesh [AIR 1966 SC 1906: 1966 Supp SCR 265: (1967) 1 SCJ 809: 1966 Cri LJ 1519]*** wherein it was held by majority that a letter addressed by the accused to a Sub-Inspector of police containing his confession was not inadmissible under Section 25 of the Indian Evidence Act. There is nothing in the aforesaid judgment to show that the letter in question had been written during the course of the investigation of the case. As such, this Court in that case did not consider the question as to whether the letter in question was inadmissible under Section 162 of the Code of Criminal Procedure. As such, the State cannot derive much help from that authority.

20. We would, therefore, hold that letter PEEE is inadmissible in evidence."

22. This judgment was followed by the Hon'ble Supreme Court in ***Vinod Chaturvedi v. State of M.P., (1984) 2 SCC 350: 1984 SCC***

(Cri) 250: 1984 SCC OnLine SC, and it was held that the letter written by a witness to the police will not be admissible. It was observed at page 352:-

> "**5.** The High Court fell into a clear error in relying on the two letters marked as Exhibit P-1 and Exhibit P-9. Exhibit P-1 was a letter of PW 1, Sunderlal, to the Superintendent of Police. Admittedly, by April 29, 1973, when this letter is said to have been written, investigation had started on the basis of the first information report, and, therefore, a letter written by PW 1, who stood in the place of the prosecutor, would not at all be admissible in evidence. No detailed reasons are warranted for this conclusion as the position is clearly covered by a decision of this Court in the case of ***Kali Ram v. State of H.P. [(1973) 2 SCC 808: 1973 SCC (Cri) 1048: (1974) 1 SCR 722: AIR 1973 SC 2773]*** Learned Counsel for the State did not refute this conclusion.
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> **6.** So far as the other document is concerned, as already indicated by us, it is a letter written by the Superintendent of Police to his administrative superior. The writer of the letter has not been examined as a witness. No opportunity has been given to the defence to cross-examine the writer. To rely on the contents of that letter in such circumstances is totally misconceived. The document was not available to be relied upon for any purpose, and the High Court clearly went wrong in seeking support from it by way of corroboration of the oral evidence."

23. The certificate (Ext.PW-5/A) issued by Brij Lal (PW-5) was inadmissible in evidence, and the learned Courts below erred in relying upon it.

24. Therefore, there was insufficient evidence to prove that the accused was driving the truck at the time of the incident.

25. Even otherwise, the negligence of the truck driver was not proved. The informant Pritam Singh (PW-10) stated that the truck bearing registration No. HP63-5015 came with high speed and hit the bus. 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 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."

26. This position was reiterated in ***State of Karnataka vs. Satish 1998 (8) SCC 493, and*** 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."

27. This Court also held in ***State of H.P. Vs. Madan Lal 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."

28. 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."

29. Thus, the accused cannot be held liable based on high speed alone without any further evidence that the accused was in breach of his duty to take care, which he had failed to do.

30. It was specifically mentioned in the FIR that both vehicles were moving at a high speed, and the accident occurred due to the negligence of the drivers of both vehicles. The prosecution changed this version during the Trial and projected by examining Arun Sharma (PW-7) and Sunil Kumar (PW-1) that the bus was stopped and the truck hit a stationary bus. Thus, the prosecution changed the very edifice on which the prosecution is based. It was laid down by the Hon'ble Supreme Court in ***State of M.P. v. Dhirendra Kumar, (1997) 1 SCC 93: 1997 SCC (Cri) 54*** that when the prosecution projects a different case during the Trial, its case becomes suspect. It was observed:

> "**11.** It was very emphatically contended by Shri Gambhir that as in the first information report (FIR), there is no mention of the dying declaration, we should discard the evidence of PW 1 and PW 2 regarding the dying declaration, because of what has been pointed out by this Court in ***Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026]*** We do not, however, agree with Shri Gambhir, for the reason that what was observed in ***Ram Kumar case [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC***

> ***1026]*** after noting the broad facts, was that *material omission in the FIR would cast doubt on the veracity of the prosecution case, despite the general law being that statements made in the FIR can be used to corroborate or contradict its maker. This view owes its origin to the thinking that if there be a material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause a dent to the edifice on which the prosecution case is built, as the substratum of the prosecution case then gets altered. The prosecution cannot project two entirely different versions of a case.* This is entirely different from thinking that some omission in the FIR would require disbelieving the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested for its strength or weakness. While doing so, if the fact deposed be a material part of the prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question."

31. Therefore, the learned Trial Court could not have accepted a case that the truck had hit a stationary bus when initially it was projected that both the vehicles were moving.

32. In any case, Kishori Lal (PW-12) and Pritam Singh (PW-10) did not say that the bus was stopped, and this version was made highly doubtful.

33. Therefore, both the learned Courts below erred in convicting and sentencing the accused, and it was wrongly held that the identity of the accused was established by relying upon inadmissible evidence. The fact that the prosecution had changed

the sub-stratum of its case was overlooked; therefore, the judgments and order passed by the learned Courts below are liable to be interfered with even while exercising a revisional jurisdiction.

34. In view of the above, the present petition is allowed and the judgment of conviction and order of sentence dated 02.11.2011 passed by learned Trial Court and affirmed by learned Appellate Court are set aside and the accused is acquitted of the commission of offences punishable under Sections of 279 of IPC and Sections 187 and 181 of M.V. Act. The fine amount, if deposited by the petitioner, be refunded to him after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Apex Court.

35. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in an event of a Special Leave

Petition being filed against this judgment or on grant of the leave, the petitioner on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

36. In view of the above, the present petition stands disposed of, so also the pending miscellaneous application(s), if any.

37. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

24th June,2025
(ravinder)