IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 138 of 2014
Reserved on: 24.06.2026
Date of Decision: 03.07.2026

State of H.P. ...Appellant

Versus

Praveen Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant/State: Mr Lokender Kutlehria, Additional Advocate General.

For the Respondent : Ms Radhika Gautam, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 29.11.2013 passed by learned Judicial Magistrate 2nd Class, Court No. 2, Kangra, District Kangra, HP (learned Trial Court) vide which the respondent (accused before learned Trial Court) was acquitted of the commission of offences punishable under Sections 279, 337 and 338 of the Indian Penal Code (IPC). *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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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 offences punishable under Sections 279, 337 and 338 of the IPC. It was asserted that the victim Ranjeet Singh (PW1) was going towards Daulatpur on 01.09.2008 at about 04:15-4:30 p.m. A Mahindra jeep bearing registration No. HP-29B-0267 came from Ranitaal at high speed. The jeep hit the informant and entered a vegetable shop. The driver revealed his name as Praveen Kumar. The accident occurred because of the high speed of the jeep and the negligence of the accused. An intimation was given to the police, and ASI Vijay Kumar (PW9) went to the hospital for verification. He filed an application for the medical examination of Ranjeet Singh (PW1) and obtained the MLC (Ext.PX), showing that Ranjeet Singh had sustained grievous injuries. He recorded the statement of Ranjeet Singh (Ext.PW1/A) and sent it to the Police Station, where FIR (Ext.PW9/A) was registered. ASI Vijay Kumar went to the spot and prepared the spot map (Ext.PW9/C). Sanjay Kumar (PW7) took the photographs (Ext.PW7/A to Ext.PW7/C). ASI Vijay Kumar (PW9) seized the vehicle vide memo (Ext.PW4/A). Durga Dass (PW6) mechanically examined the vehicle and issued the

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reports (Ext.PW6/A and Ext.PW6/B). Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. The 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 offences punishable under Sections 279, 337 and 338 of the IPC, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Informant Ranjeet Singh (PW1) had sustained injuries in the accident. Pradeep Kumar (PW2) and Ramesh Chand (PW3) are the eyewitnesses. Desh Raj (PW4) witnessed the recovery. Piar Chand (PW5), radiographer, took the X-ray of the victim. Durga Dass (PW6) mechanically examined the vehicle. Sanjay Kumar (PW7) took the photographs. Dr B.R. Thakur (PW8) treated the informant. ASI Vijay Kumar (PW9) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Criminal Procedure Code (Cr.P.C.), admitted that the vehicle was seized and it was mechanically examined. He denied

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the rest of the prosecution's case. He claimed that the witnesses deposed falsely against him.

6. The learned Trial Court held that the statement of the mechanical expert showed that the tyre came off the vehicle because of damage to the branding iron. The accident occurred because of a mechanical defect. The mere fact that the vehicle was found in fourth gear was not sufficient to infer the negligence of the accused. The statements of the prosecution witnesses contradicted each other on material aspects, and it was difficult to rely upon their testimonies. Therefore, the learned Trial Court acquitted the accused of the commission of offences punishable under Sections 279, 337 and 338 of the IPC.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court failed to properly appreciate the material on record. The vehicle had hit the shop. The bricks ricocheted and caused injuries to the informant. The witnesses consistently stated that the vehicle was being driven negligently at a high speed. These testimonies were discarded by the learned Trial Court without any cogent reason. Learned Trial Court blew the minor contradictions out of proportion to record an acquittal. The

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minor contradictions were bound to come with time because of the failure of memory. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Ms Radhika Gautam, learned Counsel for the respondent/accused.

9. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. The prosecution witnesses consistently deposed that the accused was negligently driving the vehicle at a high speed. Learned Trial Court erred in discarding the statements of the prosecution witnesses. The mechanical expert also proved that the vehicle was not properly maintained, which showed the negligence of the accused. The vehicle would not have met with an accident had it been properly maintained. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Ms Radhika Gautam, learned counsel for the respondent/accused, submitted that the accident had occurred because of the mechanical defect as per the report of the

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mechanical expert. It is well settled that when two versions are appearing on the record, the version in favour of the accused has to be preferred. Therefore, the learned Trial Court cannot be faulted for acquitting the accused because the possibility of a mechanical defect in the vehicle could not be ruled out. The prosecution has to prove the circumstances showing the negligence of the accused, and the use of negligence or high speed is not sufficient. The prosecution had failed to prove the circumstances showing the negligence of the accused, and the learned Trial Court had rightly acquitted the accused. Learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Therefore, she prayed that the present appeal be dismissed.

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

12. 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) 5 SCC 433: 2025 SCC OnLine SC 176*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of

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evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

> "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.

13. This position was reiterated in ***State of M.P. v. Ramveer Singh, 2025 SCC OnLine SC 1743***, wherein it was observed:

> 21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of ***Babu Sahebagouda Rudragoudar*** **v.** ***State of Karnataka (2024) 8 SCC 149***; ***H.D. Sundara*** **v.** ***State of Karnataka (2023) 9 SCC 581*** and ***Rajesh Prasad*** **v.** ***State of Bihar (2022) 3 SCC 471***.

14. A similar view was taken in ***Tulasareddi v. State of Karnataka, 2026 SCC OnLine SC 89,*** wherein it was observed:

> "**29.** From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:
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> (a) whether the judgment of acquittal suffers from patent perversity;
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> (b) whether the judgment is based on misreading/omission to consider the material evidence on record;
>
> (c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'
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> (d) 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;
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> (e) 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
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> (f) 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."

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

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16. Durga Dass (PW6) examined the vehicle. He stated that he had issued a report (Ext.PW6/A). He had clarified that the step axle of the vehicle was damaged during the movement of the vehicle. He admitted that the accident occurred because of a mechanical defect, and the tyre came off the vehicle because of the mechanical defect.

17. His report (Ext. PW6/A) mentions that the *Gota* (branding iron) and the right side of the pull-push rod were damaged. The front tyre of the driver's side came off because of damage to the branding iron. He clarified vide letter (Ext.PW6/B) that the branding iron can be damaged because of its age. He had examined the vehicle, and the branding iron was found cracked because of the excessive play. This report nowhere mentions that the branding iron or the push-pull rod was damaged because of failure to properly maintain the vehicle. Hence, the submission that the accident occurred because of failure to maintain the vehicle cannot be accepted.

18. The testimony of this witness makes the prosecution's case highly doubtful. He categorically stated that the accident occurred because of a mechanical defect in the vehicle. It was laid down by the Hon'ble Supreme Court in ***Vaibhav v. State of***

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Maharashtra, (2025) 8 SCC 315: 2025 SCC OnLine SC 1304, that when two versions are appearing on record, the version in favour of the accused has to be accepted over the version in favour of the prosecution. It was observed at page 326:

> **31.** In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas the former is expected to discharge its burden beyond a reasonable doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in the facts and circumstances of the case.

19. In the present case, Durga Dass's testimony showed that the accident occurred because of the mechanical defect, and the learned Trial Court cannot be faulted for accepting the version in favour of the accused.

20. Even otherwise, there was no satisfactory proof of the negligence. Ranjeet Singh (PW1) stated that a vehicle came at high speed and hit the shop. He stated in his cross-examination that he was not aware that the axle of the vehicle was damaged. Similarly, Pradeep Kumar (PW2) stated that a vehicle came at a high speed and hit the Shop. He stated in his cross-examination that he could not say that the axle of the vehicle was damaged. He further admitted that the vehicle was being driven at a normal speed.

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21. Thus, it is apparent that both witnesses have asserted that the accident occurred because of the high speed of the vehicle. It was rightly submitted on behalf of the accused that the mere use of the term ‘high speed’ is not sufficient to convict the accused. 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.”

22. 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."

23. This Court also held in ***State of H.P. Vs. Madan Lal 2003 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

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> 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 because witnesses stated that he was driving the vehicle at high speed without any further evidence that the accused was in breach of his duty to take care.

26. The statements of the witnesses that the accused was negligent are also not sufficient. A witness can only depose about the fact which had occurred in his presence, and he is not permitted to draw inferences from the facts. The inferences have to be drawn by the Jury or the Judge when he is sitting without a Jury. It was laid down by Goddard LJ in ***Hollington v. Hawthorn 1943 KB 507*** that a witness cannot depose about negligence. It was observed at 595:

> "It frequently happens that a bystander has a full and complete view of an accident. It is beyond question that while he may inform the court of everything he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide, but in truth, it is because his opinion is not relevant. Any fact that he can prove is relevant, but his opinion is not."

27. Similar is the judgment in ***State of H.P. vs. Niti Raj 2009 Cr.L.J. 1922 (HP)***, where it was held:

> "It is not necessary for a witness to say that the driver of an offending vehicle was driving the vehicle rashly. The issue

> whether the vehicle was being driven in a rash and negligent manner is a conclusion to be drawn based on evidence led before the Court."

28. Therefore, no advantage can be derived from the statements that the accident had occurred because of the negligence of the accused.

29. There was no evidence to show that the accused had acted in violation of the statutory duty, and the learned Trial Court had taken a reasonable view while acquitting the accused. No interference is required with a reasonable view of the learned Trial Court, even if another view is possible.

30. In view of the above, the present appeal fails and is dismissed. Pending applications, if any, also stand disposed of.

31. In view of the provisions of Section 437 A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent is directed to furnish bail bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the

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respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

32. A copy of the judgment, along with the record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

3rd July, 2026
(Nikita)