IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4119 & 4181 of 2013
Reserved on: 02.04.2026
Date of Decision: 27.05.2026

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1. Cr. Appeal No. 4119 of 2013

State of H.P. ...Appellant

Versus

Balbir Singh ...Respondent

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2. Cr. Appeal No. 4181 of 2013

State of H.P. ...Appellant

Versus

Dharam Chand ...Respondent

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Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant(s) : Mr Lokender Kutlehria, Additional Advocate General, in both the appeals.

For the Respondent(s) : Mr Naresh Kaul, Advocate for the respondent Balbir Singh.

Mr Karan Kapoor, Advocate for the respondent Dharam Chand.

Rakesh Kainthla, Judge

The present appeals are directed against the judgment dated 30.10.2012 passed by learned Additional Session Judge-I,

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

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Kangra at Dharmshala (learned Appellate Court) vide which the judgment of conviction dated 18.03.2008 and order of sentence dated 02.04.2008 passed by learned Judicial Magistrate First Class, Court No.2, Dehra, District Kangra, H.P. (learned Trial Court) were set aside. Since both the appeals have arisen out of the common judgment, they are being taken up together for disposal by way of a common judgment. (*The parties shall 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 appeals 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, 338 and 304 A of the Indian Penal Code (IPC). It was asserted that the Azad Coach bearing registration No. HP22-6899 was going from Kangra to Sarkaghat, and the bus bearing registration No. HP-39A-1149 was going from Chintpurni towards Dharamshala on 29.07.2001. Both buses reached Bandh at about 3:00 PM. The drivers of both buses were driving them at a high speed. When the buses crossed each other, they scraped against each other. Babli (since deceased) and Anju Bala (PW7), travelling in the bus bearing registration No. HP-39A-1149 had extended their arms and heads outside the bus, and

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Karan, travelling in the bus bearing registration No. HP-22-6899 had extended his arm. All of them sustained injuries. The accident occurred because of the negligence of the drivers of the buses. An intimation was given to the police. ASI Pratap Chand (since deceased) went to the spot and prepared a rukka Mark 'J', which was sent to the Police Station, where FIR (Ext.PW5/A) was registered. Pratap Chand investigated the matter. He prepared the site plan (Ext.PW10/A). He seized the bus bearing registration No. HP-22-6899, along with the documents vide memo (Ext.PA). He also seized the bus bearing registration No. HP-39A-1149, along with the documents vide memo (Ext. PB). Jagdish Chand examined the buses and found that there was no mechanical defect in them that could have led to the accident. He issued the reports (Ext.PC and Ext.PD). Medical examination of Anju was conducted, and it was found that she had suffered a fracture of the left wrist joint and her muscles were badly crushed. Report (Ext.PX) was issued. Medical examination of the injured Karan was conducted, and it was found that he had sustained a fracture and other injuries. MLC (Ex.PE) was issued. Medical examination of Babli was conducted, and the fracture of the right mandible and right arm was detected. MLC (Ext.PE) was issued. Babli subsequently succumbed to her injuries. Her post-mortem examination was conducted, and a

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report (Ext.PH) was issued mentioning that the cause of death was excessive bleeding and multiple fractures. 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. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under Sections 279, 337, 338 and 304A of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 10 witnesses to prove its case. Satish Kumar (PW1) took the photographs. Vinod Kumar (PW2) and Pawan Kumar (PW3) did not support the prosecution's case. Rajeev Kumar (PW4) is the owner of the bus bearing registration No. HP-39A-1149. HC Kuldeep Kumar (PW5) registered the FIR. Veena Kumari (PW6), Anju Bala (PW7) and Naresh Kumar (PW8) are the eyewitnesses. Naresh Azad (PW9) is the owner of the bus bearing registration No. HP-22-6899. Satinder Singh (PW10) was working as SHO and proved the documents prepared by Partap Singh.

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5. The accused Balbir Singh, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), admitted that he was driving the bus from Chintpurni towards Dharmshala. He denied the rest of the prosecution's case. He stated that he was innocent and was falsely implicated. Accused Dharam Chand admitted that he was driving the bus from Sarkaghat to Kangra. He also denied the rest of the prosecution's case. He claimed that a false case was made against him, and the witnesses deposed falsely against him. The accused did not produce any evidence in their defence.

6. The learned Trial Court held that the statements of witnesses Veena Kumari (PW6), Anju Bala (PW7) and Naresh Kumar (PW8) proved that the accused were driving the bus negligently. They had failed to maintain sufficient distance between the buses while crossing each other. The sides of the buses scraped against each other, causing injury to the occupants of the buses. The place of the incident was quite wide, and there was no need to drive the buses close to each other. Babli had succumbed to the injuries. The defence taken by the accused that the passengers had projected their arms and heads outside the buses was not believable. Therefore, the learned Trial Court convicted and sentenced the accused Balbir Singh as follows:

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Sections	*Sentences*
279 of the Indian Penal Code	The accused was sentenced to undergo simple imprisonment for six months, pay a fine of ₹500/-, and, in default of payment of fine, to undergo further simple imprisonment for 15 days.
337 of Indian Penal Code	The accused was sentenced to undergo simple imprisonment for three months, pay a fine of ₹200/-, and, in default of payment of the fine, to undergo further simple imprisonment for 15 days.
338 of Indian Penal Code	The accused was sentenced to undergo simple imprisonment for one year, pay a fine of ₹500/-, and, in default of payment of fine, to undergo further simple imprisonment for one month.
304-A of the Indian Penal Code	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹1000/-, and, in default of payment of fine, to undergo further simple imprisonment for two months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

Accused Dharam Chand was sentenced as follows:

Sections	*Sentences*
279 of the Indian	The accused was sentenced to undergo simple imprisonment for six

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Penal Code	months, pay a fine of ₹500/-, and, in default of payment of fine, to undergo further simple imprisonment for 15 days.
337 of Indian Penal Code	The accused was sentenced to undergo simple imprisonment for three months, pay a fine of ₹200/-, and, in default of payment of the fine, to undergo further simple imprisonment for 15 days.
338 of Indian Penal Code	The accused was sentenced to undergo simple imprisonment for one year, pay a fine of ₹500/-, and, in default of payment of the fine, to undergo further simple imprisonment for 15 days.
304-A of the Indian Penal Code	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹1000/-, and, in default of payment of fine, to undergo further simple imprisonment for two months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Kangra at Dharmshala (learned Appellate Court). The learned Appellate Court held that the accident had occurred during the rainy season. It was admitted by Veena Kumari (PW6) that a tree had fallen on the

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roadside, which made the road quite narrow. The road was slippery, and the possibility of the buses skidding after the sudden application of the brake could not be ruled out. The injured had extended their arms outside the bus, which showed that they had also contributed to the accident. The learned Trial Court erred in convicting and sentencing the accused. Hence, the learned Appellate Court accepted the appeal and acquitted the accused of the charges framed against them.

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 erred in appreciating the material on record. Veena Devi, Anju Bala and Naresh Kumar specifically stated that the accident had occurred because of the negligence of the drivers of the buses and the high speed of the buses. These statements were rejected by the learned Appellate Court without any justification. 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 Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Mr Naresh Kaul, learned counsel for the respondent/accused Balbir Singh and Mr

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Karan Kapoor, learned counsel for the respondent/accused Dharam Chand.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the learned Appellate Court erred in acquitting the accused and setting aside the well-reasoned judgment passed by the learned Trial Court. The prosecution witnesses had specifically asserted that the accused were driving the buses negligently at a high speed. They had driven the buses near each other, leaving insufficient space between them, which caused the injuries to the passengers. The mere fact that the passengers had extended their arms or head outside the buses does not amount to contributory negligence because this is a common behaviour, and the accused should have been alive to it. The accused had failed to provide any explanation as to why they had driven the buses close to each other, and learned Appellate Court erred in holding that there was no negligence on the part of the accused. No witness had deposed that the road was slippery or that the buses had stopped after the application of the brakes. Learned Appellate Court had erred in relying upon this fact to record the acquittal. Hence, he prayed that the present appeals be allowed and the respondent/accused be convicted.

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11. Mr Naresh Kaul, learned counsel for the respondent/accused Balbir Singh, submitted that it was an admitted case of the prosecution that the passengers had extended their arms and heads outside the bus. Learned Trial Court had erred in rejecting this version. The Learned Appellate Court had rightly held that it was a rainy season, and the possibility of the buses skidding after applying the brake could not be ruled out. Learned Appellate Court had taken a reasonable view of the matter, and this Court should not interfere with the reasonable view of the Court acquitting the accused unless it is perverse. No perversity has been shown in the present case. Hence, he prayed that the present appeal be dismissed.

12. Mr Karan Kapoor, learned counsel for the respondent/accused Dharm Chand, adopted the submissions of Mr Naresh Kaul and prayed that the present appeal be dismissed.

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

14. The present appeals have 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

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acquittal if it is patently perverse, is based on misreading of 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 at 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.

15. 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.***

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16. 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:
>
> (a) whether the judgment of acquittal suffers from patent perversity;
>
> (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.'
>
> (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;
>
> (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
>
> (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."

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

18. It was specifically asserted in the FIR that the sides of the buses scraped when they were crossing each other, and the passengers who had extended their arms and heads sustained injuries. Therefore, the learned Trial Court had erred in holding that the passengers had not extended their arms and their heads outside the bus.

19. Veena Kumari (PW6) stated that Anju Bala and Babli had sustained injuries to their head and arms. She specifically denied in her cross-examination that the children had extended their heads and arms outside the bus. She was confronted with the previous statement, where this fact was recorded. Similarly, Anju Bala (PW7) also denied that she had extended her head or arm outside the bus. Naresh Kumar (PW8) denied that the girls had extended their arms and heads outside the bus. Therefore, the eyewitnesses have not supported the prosecution's version that the passengers had extended their arms and heads outside the bus. There is no explanation on record as to how the children could have sustained injuries if they had not extended their arms and heads outside the bus. The copies of the MLCs and the report of the post-mortem

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show that the injuries were sustained on the arms and the head of the victims, which is quite possible if the arms and head were projected outside the bus. Therefore, the eyewitnesses have falsified the prosecution's version regarding the manner of the accident, and their testimonies were rightly rejected by the learned Appellate Court.

20. No witness stated how the accident had occurred. They claimed that the buses were being driven at a high speed and the accused were negligent, which 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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21. 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."

22. 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."

23. 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

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> 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."

24. 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.

54. 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."

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

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> "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."

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

28. Vinod Kumar (PW2) and Pawan Kumar (PW3) did not support the prosecution's case. Veena Devi (PW6), Anju Bala (PW7) and Naresh Kumar (PW8) have not attributed anything except the high speed and negligence to the accused, which is not sufficient. They did not support the prosecution's version that the passengers had extended their arms and head outside the bus, which would have cast a duty upon the accused to take care to avoid possible injury to such passengers. Their statements do not explain the exact manner of the accident, and the learned Appellate Court was justified in discarding their testimonies.

29. Therefore, the learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Appellate Court, acquitting the accused while deciding an appeal against acquittal, even if another view is possible.

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30. In view of the above, the present appeals fail, and are 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 respondents are directed to furnish bail bonds in the sum of ₹50,000/- each with one surety each in 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 respondents 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, shall be sent back forthwith.

(Rakesh Kainthla)
Judge

27th May, 2026
(Nikita)