IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 416 of 2014
Reserved on: 31.03.2026
Date of Decision: 15.05.2026.

State of H.P. ...Appellant

Versus

Kaman Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr Ajit Sharma, Deputy Advocate General.

For the respondent : Mr Naveen K. Bhardwaj, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 02.04.2014, passed by the learned Judicial Magistrate First Class, Court No. II, Nurpur, District Kangra H.P. (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 in

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

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which they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a charge sheet against the accused before the learned Trial Court for the commission of offences punishable under Sections 279, 337 and 338 of the IPC and Sections 181 and 187 of the Motor Vehicles Act (MV Act). It was asserted that the informant Suresh Kumar (PW3) was driving the Bus bearing registration No. HP-38-3632 to Jawali on 01.10.2001. The Bus reached Bharmoli at 3:30 PM. He had stopped the bus to enable the passengers to get off. A scooter bearing registration No. PB-02H-7398 hit the bus from the rear at high speed. The pillion rider sustained injuries in the accident, and he was taken to the hospital. The driver of the Scooter sped away from the spot. The accident occurred due to the negligence of the driver of the Scooter and the high speed of the Scooter. The matter was reported to the police. SI/SHO Ramesh Kumar (PW13) and HHC Ram Singh went to the spot. Suresh Kumar (PW3) made a statement (Ext.PW3/A), which was sent to the Police Station, where FIR (Ext.PW9/A) was registered. SI/SHO Ramesh Kumar (PW13) investigated the

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matter. He prepared the site plan (Ext.PW13/A). The photographs of the spot (Ext.PH-1 to Ext.PH6) were taken. Dr Vivek Sood (PW1) examined Gopal Dass and found that he had sustained simple and grievous injuries which could have been caused within 6 hours of the examination in a Motor Vehicle accident. He issued the MLC (Ext.PW1/A). Dr Rajeev Sehgal (PW2) treated the patient Gopal Dass. He issued the treatment summary (Ext.PW2/A) and the X-Ray (Ext.P1 and Ext.P2). The scooter and its documents were seized vide memos (Ext.PW8/A and Ext.PW7/A). Ravinder Singh (PW5) examined the scooter and found that the scooter had suffered damage due to the accident, but there was no mechanical defect in it that could have led to the accident. 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, a notice of accusation was put to him for the commission of offences punishable under Sections 279, 337 and 338 of the IPC and

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Section 181 of the Motor Vehicle Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 14 witnesses to prove its case. Dr Vivek Sood (PW1) initially examined the injured Gopal Dass. Dr Rajeev Sehgal (PW2) treated the injured Gopal Dass. Suresh Kumar (PW3), the informant, was driving the bus. Rajinder Soga (PW4) took the photographs. Ravinder Singh (PW5) mechanically examined the scooter. Lata Devi (PW6) is an eyewitness. Subhash (PW7), Balwant Singh (PW8), Pawan Singh (PW10) and Karnail Singh (PW11) witnessed the recoveries. Salwinder Singh (PW9) signed the FIR and prepared the challan. Baldev Singh (PW12) is an eyewitness. SI/SHO Ramesh Kumar (PW13) investigated the matter. Gopal Dass (PW14) is a pillion rider who had sustained injuries in the accident.

5. The accused, in his statement filed under Section 313 (5) of Cr.P.C., asserted that he was not driving the scooter in a rash and negligent manner, and he was falsely implicated. The witnesses deposed falsely against him. The bus driver suddenly stopped the bus, though there was no stop. He tried his best to

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stop the scooter, but the accident occurred. He did not produce any evidence in defence.

6. The learned Trial Court held that the informant Suresh Kumar (PW3) was driving the bus, and it was not possible for him to see the scooter coming from the rear side of the bus. Gopal Dass (PW14), the pillion rider, did not support the prosecution's case. The defence taken by the accused was highly probable. The accused failed to produce a driver's license. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 181 of the MV Act but acquitted him 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. Suresh Kumar (PW3) and Lata Devi (PW6) had specifically stated that the accused was driving the scooter at high speed and hit the scooter against the stationary bus. Baldev Singh (PW12) and Gopal Dass (PW14) specifically stated that the accused was driving the scooter at the

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time of the accident. The width of the road was 18 feet, and the scooter could have easily crossed the bus. The accused failed to control the scooter and hit the stationary bus, which shows his negligence. Hence, 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 Ajit Sharma, learned Deputy Advocate General, for the appellant/State and Mr Naveen K. Bhardwaj, learned counsel for the respondent/accused.

9. Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State, submitted that the learned Trial Court failed to notice Rule 23 of the Road Rules Regulation, which requires the driver of a vehicle following another vehicle to maintain a sufficient distance to avoid collision in case of the sudden brake. The accused explained in the statement filed under Section 313 (5) of Cr.P.C. that the driver of the bus had suddenly stopped the bus. Therefore, Rule 23 applied to the present case. The failure to maintain the distance led to the accident, and the learned Trial Court erred in acquitting the accused. Hence, he prayed that the

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present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Naveen K Bhardwaj, learned counsel for the respondent, submitted that the prosecution witnesses asserted that the vehicle was being driven at a high speed without specifying the approximate speed of the vehicle. The use of the term high speed is not sufficient to infer negligence. Learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. He relied upon the judgments of ***State of Karnataka versus Satish (1998) 8 SCC 493*** in support of his submission.

11. I have given 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 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

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reached at a conclusion which no reasonable person could have reached. It was observed on page 440:

> "12. 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 ***P. Somaraju v. State of A.P., 2025 SCC OnLine SC 2291***, wherein it was observed:

> "12. To summarise, an Appellate Court undoubtedly has full power to review and reappreciate evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or 'double' presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible based on the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, *inter alia*, ***Mallappa* v. *State of Karnataka 2024 INSC 104*, *Ballu @ Balram @***

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> ***Balmukund v. The State of Madhya Pradesh 2024 INSC 258***, ***Babu Sahebagouda Rudragoudar*** **v.** ***State of Karnataka 2024 INSC 320***, and ***Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114***."

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

15. Gopal Dass (PW14) stated that he and the accused were riding the scooter bearing registration No. PB-02H-7393. The accused was driving the scooter. The scooter met with an accident near Bharmoli. The scooter hit the rear side of the bus. He sustained injuries in the accident. The speed of the scooter was normal at the time of the accident. He stated in his cross-examination by learned counsel for the defence that the driver of the bus had suddenly applied the brake, which led to the accident. He admitted that the driver of the scooter had applied the brakes and the scooter had hit the rear side of the bus.

16. The statement of this witness shows that the accused has not cross-examined him about the fact that he was driving the scooter. The accused has also not disputed in the written statement filed under Section 313 (5) of the Cr.P.C that he was driving the scooter. The accused stated that the bus driver suddenly stopped the bus, even though there was no stop. He

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had tried his best to stop the scooter, but the accident occurred. Thus, the fact that the accused was driving the scooter and the scooter had hit the rear side of the bus is not in dispute.

17. Rule 23 of the Rules of the Road Regulations, 1989 reads that the driver of the motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision, if the vehicle in front should suddenly slow down or stop; therefore, the driver of the vehicle following another is under an obligation to maintain sufficient distance to avoid the collision.

18. In the present case, the accused had failed to maintain a sufficient distance from the bus to avoid the collision in case of sudden application of the brake by the driver of the bus, which was the proximate cause of the accident. It was laid down by the Hon'ble Supreme Court in ***Nishan Singh v. Oriental Insurance Co. Ltd., (2018) 6 SCC 765: 2018 SCC OnLine SC 463*** that where the driver of the vehicle following another had failed to maintain sufficient distance, he was negligent. It was observed at page 770:

> "**12.** The finding so recorded by the Tribunal has been affirmed by the High Court, by observing that the evi-

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dence was clearly indicative of the fact that the Maruti car was being driven in a rash and negligent manner, which was the cause of the accident of this nature and resulting in the death of one of the passengers in the Maruti car. The Maruti car was driven by none other than PW 2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the Maruti car for quite some time, about one kilometre and at the time of the accident, the distance between the truck and the Maruti car was only 10-15 ft. He has also admitted that the law mandates maintaining a sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which the two vehicles were moving was only about 14 feet wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the Maruti car, which was following the truck, was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

> "**23.** ***Distance from vehicles in front.*** —The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

The expression "sufficient distance" has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 ft between the truck and the Maruti car was certainly not a safe distance, for which the driver of the Maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants."

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19. This position was reiterated in ***S. Mohammed Hakkim v. National Insurance Co. Ltd., (2025) 10 SCC 263***, wherein it was observed: -

> **8.** The car insurer has taken the stand that the appellant had hit the moving car from behind and thus, the car driver is not liable. On the other hand, the car driver has admitted in his evidence that he had suddenly applied the brakes as his wife was pregnant and she had a vomiting sensation. In our view, the concurrent finding that the appellant was definitely negligent in not maintaining a sufficient distance from the vehicle moving ahead and driving the motorcycle without a valid licence is correct...."

20. Therefore, it was duly proved that the accused had breached Rule 23 of the Rule of the Road Regulation, which led to the accident, and the accused was clearly negligent.

21. The attention of the learned Trial Court was not brought to Rule 23 of the Rule of the Road Regulation. The learned Trial Court proceeded on the basis that since the high speed of the scooter was not established and the driver of the bus could not exactly see how the accident had occurred, therefore, the prosecution's case was not proved. These were irrelevant considerations. The accused was driving the scooter, and he had failed to maintain sufficient distance from the bus to avoid the collision were the only relevant consideration which

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were ignored by the learned Trial Court because its attention was not drawn towards Rule 23 of the Rules of the Road Regulations. The learned Trial Court took a view that could have been taken by any reasonable person had his attention been drawn towards the relevant law, and the judgment of the learned Trial Court is liable to be interfered with.

22. Therefore, it was duly proved on record that the accused was negligently driving the scooter. Hence, the prosecution has succeeded in proving its case beyond a reasonable doubt for the commission of an offence punishable under Section 279 of the IPC.

23. Gopal Dass (PW14) stated that he had sustained injuries in the accident. His testimony was corroborated by the statement of Dr Vivek Sood (PW1), who found simple and grievous injuries on the person of Gopal Dass (PW14). Dr Rajeev (PW2) treated the injured Gopal Dass and found simple and grievous injuries that could have been caused in a Motor Vehicle accident. Both these witnesses stated that the possibility of injuries being sustained by a fall on a hard surface cannot be ruled out, but it is an alternative hypothesis and will not make

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the prosecution's case suspect. It was laid down by the Hon'ble Supreme Court in ***Ramakant Rai v. Madan Rai*, *(2003) 12 SCC 395: 2003 SCC OnLine SC 1086,*** that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative possibilities is not sufficient to discard the prosecution's case. It was observed at page 404:

> "**22.** It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the "credit" of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

24. The prosecution has filed the chargesheet for the commission of offences punishable under Sections 337 and 338 of the IPC for causing simple and grievous hurt to Gopal Dass (PW14). Section 338 of the IPC deals with negligently causing grievous hurt to a person, whereas Section 337 of the IPC deals

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with negligently causing simple hurt to a person. Thus, Section 338 of the IPC is an aggravated form of Section 337 of the IPC. In the present case, the simple and grievous hurt was caused to Gopal Dass. Section 71 of the Indian Penal Code prohibits the punishment of a person for the commission of a minor offence when he has been punished for committing a major offence in the course of the same transaction. It was laid down in ***Rajesh v. State of M.P., 2010 SCC OnLine MP 178: (2010) 3 MP LJ 706*** that a person sentenced for the commission of an offence punishable under Section 304A of the IPC cannot be sentenced for committing an offence punishable under Section 337 of the IPC as the former is a major offence in relation to the latter. It was observed at page 707:

> "**9.** In the facts of the present case and after going through the entire evidence available on record, I am of the opinion that the applicant is entitled to the benefit of such judgment. As per the evidence, a higher degree of negligence has not been fully established; therefore, the judgment passed by the two Courts below convicting the applicant for the offence under sections 304-A and 337 of the Penal Code, 1860 is hereby set aside. It is to be observed here that section 71 of the Penal Code, 1860 specifies that if the accused/applicant has been punished for the higher offence, for the same offence, a conviction is not required to be passed...."

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25. Therefore, the accused can only be convicted of the commission of an offence punishable under Section 338 of the IPC.

26. In view of the above, the present appeal is partly allowed, and the accused is convicted of the commission of offences punishable under Sections 279 and 338 of the IPC. Let he be produced for hearing on quantum of sentence on **28.05.2026**.

(Rakesh Kainthla)
Judge

15th May, 2026
(Nikita)