



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 181 of 2011.
Date of Decision: 23.12.2016.**

Ajay Kumar

.....Petitioner.

Versus

State of H.P.

.....Respondent.

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹? Yes

For the petitioner: Mr. Anup Chitkara, Advocate.

For the respondent: Mr. P.M. Negi, Additional Advocate General
with Mr. Ramesh Thakur, Deputy Advocate
General.

Sandeep Sharma, J. (Oral)

Instant criminal revision petition filed under Sections 397 and 401 of the Cr.PC, is directed against the judgment dated 23.7.2011, passed by the learned Additional Sessions Judge, Mandi, HP, in Criminal Appeal No. 43 of 2010, affirming the judgment and order of conviction dated 30.4.2010, passed by the learned Judicial Magistrate 1st Class, Court No.3, Mandi, District Mandi, HP, in Police Challan No. 66-II of 2005, whereby the accused-petitioner has been sentenced as per description given herein below:-

"Section 279 of IPC

To undergo simple imprisonment for four months and to pay fine of Rs. 1000/-. In default, to further undergo simple imprisonment for one month.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

Section 337 of IPC

To undergo simple imprisonment for four months and to pay a fine of Rs. 500/- and in default, to further undergo simple imprisonment for one month.

Section 338 of IPC

To undergo simple imprisonment for one month and to pay a fine of Rs. 1000/- and in default, to further undergo simple imprisonment for two months."

2. Briefly stated facts as emerge from the record are that on 14.9.2005, police after having received telephonic message regarding vehicular accident near Patrol Pump, Sauli Khud, District Mandi, recorded statement of complainant Paramjeet Singh under Section 154 Cr.PC, wherein he stated that he is working at Steel Fabrication Unit at Sauli Khud. Aforesaid complainant further reported to the police that on the ill-fated day, he was riding on scooter (applied for) from Sauli Khud to Bindravani along with Mohan Singh (pillion rider). As per the complainant, when at 7:20 pm, he reached near petrol pump, a Maruti Car bearing No. HP-33-A-5111 came from Bindravani side in high speed and struck his scooter on the wrong side of the road, as a result of which, he along with pillion rider fell over the road and pillion rider sustained injury on his person. He further reported that accident occurred due to rash and negligent driving of the car driver. He also reported to the police that petitioner-accused Ajay Kumar took injured to the hospital for treatment. On the basis of aforesaid complaint, police registered formal FIR Ext.PW9/A under Sections 279 and 338 of

the IPC. Police also got aforesaid injured medically examined at Zonal Hospital Mandi by Dr. S.R Kapoor, wherein he opined that both the injured sustained simple as well as grievous injuries. I.O. also prepared the spot map Ext.PW10/C and after recording the statements of witnesses under Section 161 Cr.PC presented the challan under Sections 279, 337 and 338 of the IPC against the accused person in the competent court of law.

3. Learned Judicial Magistrate 1st Class, Court No.3, Mandi, District Mandi, (HP), after satisfying itself that prima facie case exists against the accused put a notice of accusation, to which he pleaded not guilty and claimed trial. Learned trial Court on the basis of evidence adduced on record by the prosecution, found the accused guilty of having committed offence under the aforesaid Sections and accordingly, convicted and sentenced him as per description already given above.

4. The present petitioner-accused being aggrieved with the judgment of conviction passed by the learned trial Court, filed an appeal under Section 374 of Cr.PC before the Court of learned Additional Sessions Judge, Mandi, HP, who vide judgment dated 23.7.2011, dismissed the appeal. Hence, this criminal revision petition before this Court.

5. Mr. Anup Chitkara, Advocate, representing the petitioner vehemently argued that the impugned judgments of conviction and sentence recorded by the Courts below are not sustainable as the same are not based upon the correct appreciation of evidence available on record, as such, same cannot be allowed to sustain. Mr. Chitkara, while referring to the judgments passed by the courts below contended that bare perusal of the impugned judgments clearly suggest that same are based upon conjectures and surmises and as such, same deserve to be quashed and set-aside. While referring to the judgments passed by the courts below, Mr. Chitkara strenuously argued that evidence adduced on record has not been appreciated in its right perspective as a result of which, great prejudice has been caused to the petitioner, who is admittedly an innocent person. With a view to substantiate his aforesaid argument, Mr. Chitkara made this Court to travel through the statements having been made by the prosecution witnesses especially PW1 and PW2 to demonstrate that the version put forth by them is not trustworthy and same could not be taken into consideration while recording conviction of the present petitioner-accused. Mr. Chitkara, further contended that both the aforesaid witnesses, who happened to be present at the time of the accident contradicted each other, specifically with regard to the driving of the car by the accused in rash and negligent manner. Mr.

Chitkara further contended that both the aforesaid PWs categorically admitted in their cross-examination that at that relevant time, car in question was being driven on the left side by the petitioner accused and as such, version put forth on behalf of the prosecution that vehicle in question was being driven in wrong side, is totally contrary to the facts and as have been wrongly relied upon by the courts below while holding the petitioner accused guilty of having committed offences. Apart from above, Mr. Chitkara also made this Court to peruse the statements having been made by PW3 and PW6 to demonstrate that so called independent witnesses adduced on record by the prosecution also not supported the prosecution case. PW3 denied the case of the prosecution in toto and as such, he was declared hostile, whereas PW6 in his cross examination categorically admitted that there was no negligence on the part of the driver of the car. Counsel representing the petitioner accused further contended that none of the eye witnesses adduced on record by the prosecution stated anything with regard to the over speeding of the vehicle in question by the petitioner accused and there is no iota of evidence to suggest that the driver-accused was at fault. As per Mr. Chitkara, to prove negligence under criminal law, onus is high upon the prosecution to prove the degree of negligence and for that purpose, degree of negligence needs to be ascertained and a very high degree of

negligence is required to be proved before felony is established. Mr. Chitkara further contended that negligence must be "gross" and which should be something more than a mere omission or neglect of duty. He also stated that none of the PWs stated that at that relevant time, petitioner accused was driving the vehicle in question carelessly and with fault, as a result of which, victim suffered injuries. Similarly, Mr. Chitkara, also invited attention of this Court to the site plan/spot map Ext.PW10/C to suggest that spot of accident was shown at Point-A but appreciation of evidence nowhere suggests that they stated anything with certainty that spot-A was in fact the spot of accident. While concluding his arguments, Mr. Chitkara, strenuously argued that learned trial Court while recording the conviction of the petitioner accused placed heavy reliance upon the photographs Ext.P1 to Ex.P5, to conclude that dent on the car also indicates towards factum of accident allegedly caused by the petitioner accused. As per Mr. Chitkara, factum, if any, with regard to dent on the car could be ascertained by mechanic PW4, who would have actually examined the car but interestingly, aforesaid photographs were never shown to this witness to corroborate the dents and as such, learned courts below erred in concluding that photographs placed on record clearly suggest that there was dent on the car, which establishes the factum of the accident caused by the petitioner-accused. Counsel for the petitioner

contended that both the courts below failed to appreciate that at that relevant time scooter in question was being driven by the victim without having valid license and as such, court ought to have drawn adverse inference against the victim, who at that relevant time was definitely not competent to drive the scooter and PW1 in his cross examination has also admitted that there was no endorsement on his licence to drive the scooter. As per Mr. Chitkara perusal of sentence imposed by the Court clearly suggests that same is on the higher side, especially in view of the alleged injuries suffered by the victim in the instant case, which were admittedly simple in nature and as such, courts below faulted in not granting the benefit of probation under Section 4 of the Probation of Offenders Act. In the aforesaid background, Mr. Chitkara prayed that the instant petition be allowed and petitioner may be acquitted after setting aside the judgments of conviction passed by the courts below.

6. Per contra, Mr. P.M. Negi, learned Additional Advocate General, duly assisted by Mr. Ramesh Thakur, learned Deputy Advocate General, representing the respondent-State supported the impugned judgments passed by the courts below. He vehemently argued that bare perusal of the impugned judgments suggests that same are based upon the correct appreciation of the evidence available on record and prosecution has been able to prove its case

beyond reasonable doubt and courts below have very meticulously dealt with each and every aspect of the matter. He further contended that in the given facts and circumstances of the case, no interference, whatsoever, of this Court, is warranted, especially, in view of the concurrent findings of facts as well as law, recorded by the courts below. Mr. Negi also invited attention of this Court to the judgment passed by the Hon'ble Apex Court in case titled **State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182**, wherein serious view has been taken on the accidental cases. Mr. Negi, also reminded this Court of its limited powers while exercising its revisionary powers under Section 397 of the Cr.PC, to re-appreciate the evidence, especially, when it stands duly proved on record that the courts below have dealt with each and every aspect of the matter very meticulously. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case "**State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri**" (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

"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 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

7. I have heard learned counsel for the parties as well carefully gone through the record

8. True, it is that this Court has very limited powers under Section 397 Cr.PC while exercising its revisionary jurisdiction but in the instant case, where accused has been convicted and sentenced, it would be apt and in the interest of justice to critically examine the statements of the prosecution witnesses solely with a view to ascertain that the judgments passed by learned courts below are not perverse and same are based on correct appreciation of the evidence on record.

9. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241***; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. The relevant para of the judgment is reproduced as under:-

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction

so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

10. Perusal of evidence available on record clearly suggests that on 14.9.2005, accident occurred near Petrol Pump, Sauli Khud at about 7:25pm, as a result of which driver of the scooter and pillion rider suffered injuries on their person. Petitioner while getting his statement recorded under Section 313 Cr.PC denied all the allegations leveled against him, however, fact remains that he did not lead any evidence in his defence. Evidence available on record clearly suggests that at that relevant time, vehicle in question was being driven by the petitioner accused. Similarly, there seems to be no dispute, if any, with regard to the alleged accident, in which victim PW1 and PW2 suffered injuries.

11. Now, question which remains to be examined by this Court is that whether at that relevant time vehicle/car was being driven rashly and negligently at high speed by the petitioner or not? In the instant case, prosecution with a view to prove its case examined 13 witnesses

in all, but for the proper adjudication of the case, depositions having been made by PWs 1, 2, 3 and 6 are material.

12. PW1 injured Mohan Singh in his statement stated before the Court that on the day of occurrence, he was travelling on the scooter of Sardar Paramjeet Singh from Suali Khud to Bindravani. He further stated that when scooter reached near petrol pump, a Maruti car came from Bindravani side and hit scooter on the road. This witness also stated that he and PW2 Sardar Paramjeet Singh sustained injuries on their persons due to accident, which was caused due to rash and negligent driving of the car driver (petitioner). In his cross examination he stated that car was coming back after fueling it. He also specifically denied the suggestion put to him that accident happened due to rash and negligent driving of the accused.

13. Similarly, PW2 Paramjeet Singh corroborated the version put forth by PW1 Mohan Singh by stating that he is working in steel Fabrication Unit at Sauli Khad. He further stated that on the date of occurrence, he was riding on his scooter along with Mohan Singh and when scooter reached near petrol mump, a Maruti car came from Pandoh side and hit his scooter. He stated that accident occurred due to rash and negligent driving of the accused, wherein he as well as Mohan Singh sustained injuries on their person. He also admitted that accused took them to the hospital for treatment. In his cross

examination, he admitted that at the place of occurrence, there are 10-12 shops and about 20-30 persons had gathered there at that time. PW2 in his statement specifically denied the suggestion put to him that accused had given signal to turn his vehicle to the petrol pump. But he categorically admitted that car was being driven on his left side. He also stated that he was driving the scooter at the speed of 40-50 kmph, whereas accused person was driving in the speed of 70-80 kmph.

14. Conjoint reading of depositions having been made by the PWs 1 and 2, who happened to be the occupant of the scooter, which was allegedly hit by Maruti car, clearly suggests that they contradicted each other. PW1 in his statement stated that accident took place due to high speed and carelessness of driver of the car, whereas PW2 stated that car driver was at the speed of 70-80 km. Similarly, PW2 denied the suggestion put to him that driver was driving the car at slow speed, whereas he himself further stated in his statement that while coming from Kullu side, driver of the car had given signal towards the petrol pump, whereas PW1 in his cross examination denied the suggestion that accident happened due to rash and negligent driving of the accused. Similarly, PW2 in his cross examination admitted the suggestion put to him that while coming from Kullu side, driver of the car had given signal towards petrol pump side.

15. After carefully examining the statement of PWs, it clearly emerge that car in question was being driven on its left side and driver gave signal towards the petrol pump side, meaning thereby, version put forth by PW2 that at that relevant time, speed of the car was 70-80 km, cannot be accepted at all, because if the driver of the car had to take turn towards petrol pump, which was admittedly on the right side of the road, by no imagination, it can be accepted that while taking turn towards right, speed of the car was 70-80 kmph as stated by PW2 Paramjeet, who was driving the scooter at that relevant time. PW1 in his cross examination also admitted that accused was coming after refueling but then he stated that he came from ahead, whereas in his examination in chief, PW1 stated that he did not say that car took a turn towards the petrol pump. If aforesaid statement having been given by PW1 is examined in light of statement having been made by PW2 Paramjeet Singh, who categorically admitted in his cross examination that vehicle was coming from Kullu side and it was on left side, version put forth by PW1 cannot be accepted, rather, conjoint reading of statement of PWs clearly establishes on record that at that relevant time car was being plied on the left side and it had taken turn towards petrol pump after giving proper signal. PW2 also stated before the court below that car had stopped but then he stated that car driver was at the speed of 70-80 kmph, aforesaid version put forth by

PW2 is totally contradictory, because if version put forth by PW2 is accepted that car had stopped, it is not understood that how PW2 further stated that car was at speed of 70-80 km.

16. It is undisputed that accident occurred at 7:30 pm on ill fated date but none of the PWs stated anything with regard to the switching on, of the headlights or parking lights. This Court after minute scrutiny of version put forth by aforesaid PWs No. 1 and 2 ,who were riding the motorcycle/scooter at that relevant time, has no hesitation to conclude that their versions were not trustworthy and at least, could not be made basis by the courts below while recording conviction of the petitioner.

17. PW3 Pawan Kumar i.e. eye witness of the scene of occurrence also not supported the prosecution case, rather, he stated that no accident took place in his presence and as such, he was declared hostile by the prosecution but even in cross examination conducted on this PW by learned PPP, prosecution was unable to extract anything contrary to what he stated in examination in chief.

18. PW6 Ram Lal, another eye witnesses of the scene of occurrence deposed before the Court that on the date of occurrence, he witnessed that Sardar Paramjeet Singh along with pillion rider was riding on the scooter towards Bindravani, in the meantime, Maruti car came from opposite side/direction and suddenly took right turn

towards petrol pump and hit scooter of Sardar Paramjeet, as a result of which both the victims fell on the road and sustained injuries. He also admitted that car driver took them to the hospital. He also stated that accident occurred due to negligence of the driver of the car, as he was in high speed. In his cross examination, he admitted that PW1 Sardar Paramjeet Singh is his neighbor. He also admitted that on the date of occurrence, he came to Sauli Khud in order to fill the fuel in his car. He also admitted that at the time of accident 15-20 persons were there. Most importantly, in his cross examination, he categorically admitted that accused was driving his car on his left side and he cannot say anything about the speed of the Car. Aforesaid, PW6 in his cross examination specifically admitted that there was no negligence on the part of the driver of the Maruti Car.

19. Perusal of aforesaid statements clearly suggests that courts below failed to appreciate the statement made by PW6 in right perspective and wrongly came to conclusion that PW6 also supported the case of the prosecution. Perusal of impugned judgment passed by the courts below clearly suggests that they failed to take note of the candid admission having been made by PW6 that driver of the vehicle was not at all in fault. If the aforesaid admission is read in conjunction with the statement having been made by PW2, wherein he stated that it is correct that while coming from Kullu, car was on the left side of the

road, it can be safely concluded that courts below fell in error in holding that driver of car was on wrong side. PW6 in his cross examination admitted the suggestion put to him that car was on left side and cannot say anything with regard to speed of the car. He stated that on 14.9.2005, he was standing in front of the RTO office after fueling his car, when suddenly a car from opposite side came and suddenly left its side and turned toward the petrol pump and hit the scooter, which was on its side. This statement having been made by PW6 clearly proves on record that at that relevant time car was being driven on the left side and it took turn towards the petrol pump. If the aforesaid version put forth by this witness is seen in light of statement made by PW2, wherein PW2 stated that car had stopped, it can be presumed that before taking turn to right for entering in petrol pump, petitioner accused had given the signal. PW6 further stated in his statement that he did not notice that whether the car was stopped by the driver before turning it towards the petrol pump since it had struck at that relevant time. He also admitted suggestion that it is no possible to recognize the persons at a distance of 10-15 meters. In view of the aforesaid statement having been made by PW6, by no stretch of imagination, findings returned by the courts below can be accepted that PW6 supported the case of the prosecution, rather statement of PW6, if read in its entirety, can be termed to be contradictory to the

statements of PW1 and 2, who were allegedly hit in the accident. PW6 in his statement also admitted that at that relevant time, none of the prosecution witnesses including PW6 stated anything with regard to switching of/on of the lights of the vehicles involved in the accident. At the risk of repetition, it may be again pointed out that PW2 in his statement stated that car driver had stopped but then car was at speed of 70-80 kmph. If version put forth by PW1 is taken to be correct that car was coming from Kullu side on its left side, aforesaid version with regard to speed put forth by PW2 cannot be accepted at all, especially, in view of the specific statement of PW2 that car had stopped. It is well settled that burden is always on the prosecution and it never shifts save in a very exceptional class of a case. In the instant case as has been discussed, the perusal of the statements adduced on record by the prosecution, clearly suggests that prosecution was not able to discharge burden of proving that at that relevant time, vehicle in question was being driven rashly and negligently by the petitioner accused.

20. In the regard aforesaid, reliance is placed upon the judgment rendered by the Hon'ble Apex Court in case title **Amba Lal v. Union of India, AIR 1961 SC 264**, the relevant paras of which are being reproduced herein below:-

“(2) The facts giving rise to this appeal may be briefly stated. The appellant is at present a resident of Barmer in the State of Rajasthan. But before 1947 he was living in a place which is now in Pakistan. On June 22, 1951, the Deputy Superintendent, Land Customs Station, Barmer, conducted a search of the appellant's house and recovered therefrom the following ten articles :

(5) This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned; see ss. 168 and 171A of the Sea Customs Act and ss. 5 and 7 of the Land Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence.

(8) We cannot also accept the contention that by reason of the provisions of s. 106 of the Evidence Act the onus lies on the appellant to prove that he brought the said items of goods into India in 1947. Section 106 of the Evidence Act in terms does not apply to a proceeding under the said Acts. But it may be assumed that the principle underlying the said section is of universal application. Under that section, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Court in *Shambu Nath Mehra v. The State of Ajmer* (1), after considering the earlier Privy Council decisions on the interpretation of s. 106 of the Evidence Act, observed at p. 204 (of SCR) : (at p.406 of AIR) thus:

“The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.”

If s. 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the customs authorities and they failed to discharge that burden in respect of items 1 to 5. The order of confiscation relating to items 1 to 5 is set aside.”

21. Apart from above, I.O. in his statement stated that he had prepared the spot map on the basis of statement of the complainant and the witnesses. He also stated that he does not remember the names of the witnesses but later on self stated that name of the complainant was Paramjeet and name of the witness was Pawan Kumar. But if his statement is read in its entirety, he nowhere stated that he prepared the sketch map after visiting the spot.

22. Section 162 Cr.PC provides that:-

162. Statements to police not to be signed: Use of statements in evidence.

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to 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 (1 of 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 clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

23. In the instant case, PW10 categorically admitted that he prepared the spot map on the basis of the statement of the

complainant and the witnesses, meaning thereby, he did not visit the spot himself and merely prepared sketch map based on the statement made by the witnesses. In this regard reliance is placed on judgment rendered in **Tori Singh v. State of UP, AIR 1962 SC 399**, reads as under:-

“(7) We are of opinion that neither of these arguments has any force. Let us first take the contention that it was most unlikely that the deceased would be hit on that part of the body where the injury was actually received by him, if he was at the spot marked in Ex. Ka-9. The validity of this argument depends mainly on the spot which has been marked on the sketch-map Ex. Ka-9 as the place where the deceased received his injuries. In the first place, the map itself is not to scale but is merely a rough sketch and therefore one cannot postulate that the spot marked on the map is in exact relation to the platform. In the second place, the mark on the sketch-map was put by the Sub-inspector who was obviously not an eyewitness to the incident. He could only have put it there after taking the statements of the eye witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of Section 162 of the Code of Criminal Procedure., for it is in effect nothing more, than the statement of the Subinspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-inspector saw himself at the spot; but any mark put on the sketch.. map based on the statements made by the witnesses to the Sub-inspector would be inadmissible. in view of the clear provisions of s. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. We may in this connection refer to Bhagirathi Chowdhury v. King Emperor,(1), where it was observed that placing of maps before the jury. containing statements of witnesses or of information received by the investigating officer preparing the map from 'Other persons was improper, and that the (1) A. I. R. 1926 Cal. 550, where it was observed that placing of maps before the jury containing statements of witnesses or of information received by the investigating officer who made a map in a criminal case ought not to put anything more than what he had seen himself. The same view was expressed by the 'Calcutta High Court again in, Ibra Akanda v. Emperor (1), where it was held that any information derived from witnesses during police investigation, and recorded in the index to a map must be proved by the witnesses concerned and not by

the investigating officer, and that if such information is sought to be proved by the evidence of the investigating officer, it would manifestly offend against s. 162 of the Code of Criminal Procedure.

8. This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the places in the map, in [Santa Singh v. The State of Punjab](#) (2). It was held that such a plan drawn to scale was admissible if the witness corroborated the statement of the draftsman that they showed him the places and would not be hit by s. 162 of the Code of Criminal Procedure. In that case there was another sketch prepared by the Sub-inspector which was ruled out as inadmissible under s. 162. The sketch-map in the present case has been prepared by the Sub-inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were, obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-inspector are inadmissible under s. 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map. "

24. Hence, in view of the law referred herein above, this Court sees substantial force in the argument having been made by the counsel representing the petitioner that no reliance, if any, can be placed on the statement of the witnesses in the instant case because it emerged from the record that PW10 i.e. I.O. never prepared the spot map after visiting the site, rather he himself admitted in his cross-examination that he prepared the map on the basis of statement of the witnesses and as such, both the courts below fell in grave error while placing reliance upon the same to hold the petitioner guilty for having committed offences under Sections 279, 337 and 338 of the IPC.

25. Similarly, this Court finds that learned court below overlooked the material fact that the complainant was not having valid licence because he specifically admitted before the Court below that there is no endorsement to drive motorcycle and scooter on his driving licence. Since complainant/victim had no valid licence authorizing him to drive two wheeler, presumption could be drawn by the courts below that he did not know how to drive the two wheeler. Moreover, there is nothing led on record by PW2 Paramjeet Singh, to rebut aforesaid presumption by testifying his knowledge and experience in driving two wheeler.

26. Apart from above, none of the PWs has specifically stated with regard to speed of the vehicle and as such, no finding could be returned by the court below on mere statement of complainant that at that relevant time vehicle was being driven rashly and negligently. Had any prosecution witness stated something with regard to specific speed, it could be the best piece of evidence for the Court to ascertain the genuineness and correctness of the claim of the complainant with regard to rash and negligent driving of the petitioner-accused. At this stage, learned counsel for the petitioner-accused placed reliance upon judgment of this Court reported in **Gurcharan Singh versus State of Himachal Pradesh 1990 (2) ACJ 598**, the relevant paragraphs of which are reproduced here-in-below:-

"14. Adverting to the facts of this case, it is in evidence that the truck in question was loaded with fertilizer weighing 90 quintals. Obviously, it cannot be said that the speed of the vehicle was very fast. Secondly, it is a State Highway and not a National Highway. Therefore, the speed on this account as well cannot be considered to be high.

15. Coming to the statements of witnesses on this aspect, it has been stated that the truck was moving in high speed but it has not been said as to what that speed actually was. To say that a vehicle was moving in a high speed is neither a proper and legal evidence on high speed nor in any way indicates thereby the rashness on the part of the driver. The prosecution should have been exact on this aspect as speed of the vehicle is an essential point to be seen and proved in a case under Section 304-A of the Indian Penal Code. Further, there are no skid marks which eliminate the evidence of high speed of the vehicle. In addition to this, it has been stated by the witnesses that the vehicle stopped at a distance of 50 feet from the place of accident. This appears to be exaggerated. However, it is not a long distance looking to the two points; viz, the first impact of the accident and the last tyres of the vehicle and the total length of the body of the truck in question. If seen from these angles, the distance stated by the witnesses cannot be considered to be very long and thus an indication of high speed. The version of the petitioner that he blew the horn near about the place of curve which frightened the child, cannot be considered to be without substance. This can otherwise be reasonably inferred that the petitioner would have blown the horn on seeing the child on the road as it is in evidence that the child had come on the pucca portion of the road while there is no evidence as to whether the witnesses, more particularly, Ghanshyam, PW7, Chander Kanta, PW8, mother, and a few other witnesses were there at that particular time. Rather the depositions of these witnesses indicate that they were coming from some village lane which was joining the main road in question. Children of this age, usually crafty by temperament, move faster than the parents and are in advance of them while walking. This appears to have happened in the present case. Minute examination of the circumstances of this case and the evidence brought on the record, discloses that the deceased had reached the pucca portion of the road much before the arrival of his parents and the witnesses. That is why in their deposition they have said that the child had been run over by the truck. On the other hand, the petitioner has stated that horn by him and started crossing the road which could not be seen by him and the result was the accident and the death of the child. In case some pedestrians suddenly cross a road, the driver of the vehicle cannot save the pedestrian, however slow he may be driving the vehicle. In such a situation he cannot be held negligent; rather it appears that the parents of the child were negligent in not taking proper care of the child and allowed him to come alone to the road while they were somewhere behind and they could have rushed to pull back the child before the

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approaching vehicle came in contact with him as it is in their depositions that the truck driver was at a distance coming at a high speed and in case the child wanted to cross the road, it could do so within the time it reached at the place of the accident. How the accident has actually taken place, has not been clearly and comprehensively stated by any of the witnesses. They appear to have been prejudiced by the act of the driver. Their versions are, therefore, coloured by the ultimate act of the petitioner and the fact that the child had been finished.

22. True, it is that the Hon'ble High Court while passing aforesaid judgment has observed that "prosecution should have been exact on this aspect as speed of the vehicle is an essential point to be seen. Definitely, there cannot be any quarrel with regard to the aforesaid observations made by the Court but now question arises as to what can be the method/mode for measuring the exact speed of the offending vehicle at the time of accident. Undisputedly, the vehicle after accident at some distance stops and automatically speedometer springs back to "Zero" and as such, no help at all can be taken from speedometer to ascertain the exact speed of the vehicle at the relevant time. To my mind, the eye witnesses of the accident can be the best persons to depose whether offending vehicle was in high speed or not. Apart from above, aspect of high speed can be gauged from the side/direction of the offending vehicle being driven on the wrong side and certainly an inference of its being driven rashly and negligently on high speed can be drawn by perusing spot map, photographs and mechanical reports, which may point towards the

force/impact, as supporting evidence. But obviously, in the absence of some specific mode to gauge the speed, only eye witnesses to the accident can be the best persons to depose the high speed/actual speed of the vehicle.

27. After considering entire evidence led on record by the prosecution, this Court is of the view that prosecution was unable to place on record cogent and convincing evidence suggestive of the fact that car in question was being driven rashly and negligently by the petitioner accused, rather evidence adduced on record clearly suggests that there are major contradictions in the depositions having been made by PWs and as such, it can't be made basis for the conviction of the petitioner. True, it is that minor contradictions, if any are required to be overlooked by the courts while ascertaining the genuineness of the claim put forth by the prosecution but in the instant case, as has been discussed in detail, none for the prosecution witnesses including the complainant himself has come with true facts. Rather statement having been made by PWs are inconsistent, unreliable, untrustworthy and not worth lending credence/reliance. Hence, this Court sees substantial force in the contentions having been raised by the counsel for the petitioner that no conviction could be recorded on the basis of the statements having been made by

prosecution witnesses, which in no terms can be stated to be sufficient for holding the petitioner accused guilty for having committed offence.

28. At this stage, this Court also cannot lose sight of the stern observations made by the Hon'ble Apex Court in **State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182**, wherein it has been observed as follows:-

25. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the law-makers should scrutinize, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."

29. There cannot be any quarrel, whatsoever, with regard to the stern observations made by the Hon'ble Apex Court with regard to the careless/reckless driving of the drivers and drivers driving under the influence of alcohol deserves to be punished but in the present case, as has been discussed in detail above, prosecution has been not able to prove that accused persons were driving rashly and negligently at the time of unfortunate incident and as such, conviction recorded by the court below deserves to be quashed and set-aside.

30. Consequently, in view of the detailed discussion as well as law referred herein above, present petition is allowed. Accordingly,

judgments passed by the Courts below are quashed and set-aside. Petitioner accused is acquitted of the charges so framed against him. Bail bonds discharged. Interim order, if any, vacated. All applications, if any, also stand disposed of.

23rd December, 2016

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**(Sandeep Sharma),
Judge.**

High Court of H.P.