IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.212 of 2015
Reserved on: 16.12.2025
Decided on: 01.01.2026

State of Himachal Pradesh

..... Appellant

Versus

Harbhajan Singh .... Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

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

For the Respondent : **Mr. Ajay Chandel, Advocate.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 06.09.2014, passed by earned Sessions Judge, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court), vide which judgment of conviction and order of sentence dated 14.10.2008 passed by the learned Judicial Magistrate First Class (II), Dharamshala, District Kangra, H.P. (learned Trial Court) were set aside and the accused was acquitted of the charged offences. *(Parties shall hereinafter be referred to in the same*

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?Yes.*

manner as 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 challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 279 and 304A of the Indian Penal Code (IPC). It was asserted that the informant, Subhash Chand (PW-1), was sitting in his Dhaba on 26.05.2006. A vehicle bearing registration No. DL-3CAM-1475 came from Gaggal at a high speed and hit a boy who was crossing the road. The boy sustained injuries, and he was taken to the hospital. The driver revealed his name as Harbhajan Singh (the accused) after inquiry. The accident occurred due to the high speed and negligence of the accused. An intimation was given to the police, and the police recorded an entry (Ext. PW12/A) in the Police Station. ASI Shiv Kanya (PW-12) went to the hospital for verification. He recorded the informant's statement (Ext. PW1/A) and sent it to the Police Station, where FIR (Ext. PW12/C) was registered. Satish Singh (PW-5) took the photographs of the spot (Ext. PW5/A to Ext.PW5/D), whose negatives are Ext.PW5/E1 to Ext.PW5/E4. ASI Shiv Kanya (PW-12) prepared the site plan (Ext.PW12/E). The child

subsequently succumbed to his injuries. The inquest on the dead body was conducted. Vishal (PW11) took the photographs of the dead body (Ext.PW11/A and Ext.PW11/B), whose negatives are Ext.PW11/C and Ext.PW11/D). An application (Ext.PW-6/A) was filed for conducting the post-mortem examination of the deceased. Dr Chanderdeep (PW-6) conducted the post-mortem examination and found the cause of death to be a combined effect of neurogenic shock, hemorrhagic shock, and asphyxia (due to aspiration of blood) caused by the ante mortem injuries sustained in a roadside accident. He issued a report (Ext.PW-6/C). The vehicle bearing registration DL-3CAM-1475 was seized alongwith its documents vide memo (Ext.PW-2/A). HHC Inderjeet (PW-9) mechanically examined the vehicle, and he did not find any defect in the vehicle, which could have led to the accident. He issued a report (Ext.PW-9/A). The statements of prosecution witnesses were recorded as per their version, and after 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 and 304-A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined thirteen witnesses to prove its case. Informant Subhash Chand (PW-1) did not support the prosecution's case. HHC Hari Singh (PW-2) intercepted the vehicle at the nakka. Hari Krishan (PW-3), Kali Dass (PW-4), and Kanta Devi (PW-7) are the eyewitnesses. Satish Singh (PW-5) took the photographs of the spot. Dr Chanderdeep (PW-6) conducted the post-mortem examination of the deceased. MHC Parvesh Kumar (PW-8) was working as an MHC with whom the case property was deposited. HHC Inderjeet (PW-9) examined the vehicle. Inspector Pritam Singh (PW-10) prepared the challan. Vishal (PW-11) took the photographs of the dead body of the child. ASI Shiv Kanya (PW-12) investigated the matter. Lakhwinder Singh (PW-13) is the owner of the vehicle.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he was driving the vehicle, which was seized by the police. He claimed that he was driving the vehicle carefully. He did not produce any evidence in defence.

6. Learned Trial Court held that the accused was driving the vehicle at the time of the accident. Hari Singh (PW-3) and Kali Dass (PW-4) stated that the vehicle was being driven at a high speed, which led to the accident. There was no reason to doubt their testimonies. The negligence of the accused led to the death of the child. Hence, the learned Trial Court convicted the accused for the commission of offences punishable under Sections 279 and 304-A of the IPC and sentenced him as follows:

Sections	Sentences
279 of IPC	The accused was sentenced to undergo rigorous imprisonment for six months.
304-A of IPC	The accused was sentenced to undergo rigorous imprisonment for two years, and pay fine of ₹1000/-.

It was ordered that both the substantive sentences of imprisonment shall 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 Sessions Judge Kangra at Dharamshala, H.P. (learned Appellate Court). Learned Appellate Court held that the registration number was not mentioned in the report lodged with the police. The vehicle fled away, and the

informant could not have noticed its registration number. The informant had not supported the prosecution's case. Kali Dass (PW-4) stated that the child had almost crossed the road. Hari Krishan (PW-3), on the other hand, stated that the child was on the side of the road. The site plan is not as per the photographs placed on record. The possibility of the child suddenly crossing the road leading to the accident could not be ruled out. These aspects were not considered by the learned Trial Court. Hence, the learned Appellate Court allowed the appeal and set aside the judgment and order of the learned Trial Court.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Trial Court erred in appreciating the evidence on record. Hari Krishan (PW-3) categorically stated that the boy had crossed the road and the vehicle hit him in the wrong direction. The vehicle sped away from the spot. Kali Dass (PW-4) stated that the child had almost crossed the road when he was hit by the vehicle. Kanta Devi (PW-7) supported the prosecution's version. The accused was bound to take care of the children walking on the road. 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 Ajit Sharma, learned Deputy Advocate General, for the appellant/State and Mr Ajay Chandel, learned counsel for the respondent/accused.

10. Mr Ajit Sharma, learned Deputy Advocate General, submitted that the learned Appellate Court erred in setting aside a well-reasoned judgment of the learned Trial Court. The accused never disputed his identity as the driver of the vehicle. Lakhwinder Singh (PW-13), the owner of the vehicle, also stated that he had employed the accused as the driver of the vehicle. This was not challenged in the cross-examination. The learned Appellate Court erred in holding that the accused was not driving the vehicle at the time of the accident. The prosecution witnesses consistently stated that the accused was driving the vehicle at a high speed and his negligence led to the accident. The accident occurred on the roadside, which falsifies the conclusion drawn by the learned Appellate Court that the child had suddenly crossed the road leading to the accident; therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Mr Ajay Chandel, learned Counsel for the respondent/accused, submitted that the prosecution witnesses

admitted in their cross-examination that the child had suddenly crossed the road, which was the proximate cause of the accident. The accused could not have avoided the accident in such a situation. The learned Appellate Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Appellate Court. Therefore, he prayed that the present appeal be dismissed.

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

13. 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 reached at a conclusion which no reasonable person could have reached. It was observed at 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."

14. 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 on the basis of 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 @ 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***."

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

16. Informant Subhash Chand (PW-1) stated that he heard a noise and saw that a boy was lying on the road. The driver sped away from the spot. He was permitted to be cross-examined. He admitted that he had telephoned the police. He

denied that the accused was driving the vehicle at a high speed and hit the child. He denied his previous statement recorded by the police. It is apparent from his testimony that he has not supported the prosecution's version, and the prosecution cannot derive any advantage from his testimony.

17. Hari Krishan (PW-3) stated that he and four or five boys were waiting for the school bus. One child crossing the road was hit by an Innova at a high speed. The child sustained injuries. The driver slowed down the vehicle and thereafter sped away from the spot.

18. Kali Dass (PW-4) stated that he and some children were waiting for the school bus. A van hit the child at high speed, who had crossed the road. The child died in the accident.

19. Kanta Devi (PW-7) stated that she heard the notice and saw that a vehicle was speeding away from the spot at a high speed. A boy was lying on the road. It is apparent from her statement that she had not seen the accident, and her testimony does not establish the manner of the accident.

20. Hari Kishan (PW-3) stated that the child was crossing the road, whereas Kali Dass (PW-4) stated that the child had crossed the road. The photograph (Ext.PW-5/A)

shows the skid marks and some substance on the central line, suggesting that the accident occurred in the middle of the road. Hence, the testimony of Kali Dass (PW-4) that the child had crossed the road is not supported by the photograph, and the learned Appellate Court had rightly held that the accident occurred when the child was crossing the road.

21. It was laid down by the Hon'ble Supreme Court in ***Mahadeo Hari Lokre v. State of Maharashtra, (1972) 4 SCC 758,*** that if a person suddenly crosses the road, the driver may not be able to avoid the accident, and he cannot be held liable for negligence. It was observed at page 759: -

> "4... But the case assumes a different complexion if we agree with the sole eyewitness in the case, Dayanand PW 1, that at the time of the impact, Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking note of the approaching bus, there was every possibility of his dashing against the bus without the driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road, the bus driver, even if he is driving slowly, may not be in a position to avoid the accident. Therefore, it will not be possible to hold that the bus driver was negligent."

22. This Court also took a similar view in ***Gurcharan Singh v. State of Himachal Pradesh, 1989 SCC OnLine HP 18: 1990 ACJ 598*** and observed at page 600: -

"**14.** Coming to the statements of witnesses on this aspect, it has been stated that the truck was moving at high speed, but it has not been said what that speed actually was. To say that a vehicle was moving at a high speed is neither proper nor legal evidence of high speed, nor does it in any way indicate rashness on the part of the driver. The prosecution should have been exact on this aspect as the speed of the vehicle is an essential point to be seen and proved in a case under section 304-A of the *Penal Code, 1860*. Further, there are no skid marks, which eliminates the evidence of the 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 the accident. This appears to be exaggerated. However, it is not a long distance looking at 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 the place of the 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, PW 7, Chander Kanta, PW 8, 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 that joined the main road in question. Children of this age, usually crafty by temperament, move faster than their parents and are in advance of them while walking. This appears to have happened in the present case. A 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 the child got frightened by the blowing of the 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 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 actually took place has not been clearly and comprehensively stated by any of the witnesses. They appear to have been prejudiced by the act of driver's act. Their versions are, therefore, coloured by the ultimate act of the petitioner and the fact that the child had been finished." (Emphasis supplied)

23. A similar view was taken in ***State of H.P. vs. Manpreet Singh, Latest HLJ 2008(1) 538***, wherein it was observed as under:

> "**7**...The respondent, in his statement under Section 313 of the Code of Criminal Procedure, has explained that on seeing the deceased, he had blown the horn, and the deceased stopped on the road. As soon as he reached near him, he immediately tried to cross the road and got hit. His version has been duly corroborated by Hardeep Singh (DW1), who was a pillion rider with him. Ajay Kumar (PW1) has admitted that this version is that the respondent had blown the horn, and Daya Ram, on hearing it, had stopped for a while. In these circumstances, *if a person suddenly crosses the road, without taking note of the approaching vehicle and its Driver may not be in a position to save the accident, it will not be*

> *possible to hold the Driver guilty of the offence*. In the instant case, the deceased, knowing fully well at least the approaching vehicle stopped on hearing the horn while crossing the road, but when the motorcycle reached near him, he darted before it, and the accident took place. Thus, in my opinion, the prosecution could not prove the offence charged against the respondent beyond a reasonable doubt that the respondent was driving rashly or negligently. Therefore, in these circumstances, the learned trial Court had rightly acquitted the respondent of the charges framed against him..." (Emphasis supplied)

24. Thus, the conclusion drawn by the learned Appellate Court that the prosecution had failed to prove the negligence of the accused cannot be faulted.

25. It was submitted that the prosecution witnesses have specifically stated that the vehicle was being driven at a high speed. This submission will not help the prosecution's case. 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."

26. This position was reiterated in ***State of Karnataka vs. Satish 1998 (8) SCC 493,*** *wherein* it was held:

> "Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution, and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject, of course, to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur."

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

28. This position was reiterated in ***State of H.P. Vs. Parmodh Singh 2008 Latest HLJ (2) 1360*** wherein it was held:

> "Thus, negligent or rash driving of the vehicle has to be proved by the prosecution during the trial, which cannot be automatically presumed even on the basis of the doctrine of res ipsa loquitur. Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, speed is no criterion to establish the fact of rash and negligent driving of a vehicle. It is only a rash and negligent act as its ingredients, to which the prosecution has failed to prove in the instant case."

29. Thus, the accused cannot be held liable simply because the witnesses claimed that the accused was driving the vehicle at a high speed.

30. It was submitted that the witnesses deposed that the accident occurred due to the negligence of the accused. This submission will not help the prosecution. Negligence is an inference drawn from the facts. 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 at 595 that a witness cannot depose about negligence. It was observed:

> "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."

31. 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 on the basis of evidence led before the Court."

32. Thus, no advantage can be derived from the statements of witnesses that the vehicle was being driven at a high speed.

33. 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 even if another view is possible.

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

35. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned 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 respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

01st January, 2026
(ravinder)