



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Appeal No. 485 of 2016
Date of Decision: 19.5.2017**

State of Himachal Pradesh

.....Petitioner.

Versus

Praveen Kumar

.....Respondent.

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹? Yes.

For the appellant

Mr. P.M. Negi, and Mr. M.L. Chauhan, Ld. Deputy
Advocate Generals

For the respondent:

Mr. Vivek Singh Thakur, Advocate.

Sandeep Sharma, J. (Oral)

Instant criminal appeal filed under Section 378 of the Code of Criminal Procedure is directed against the judgment dated 19.5.2016 passed by Chief Judicial Magistrate, Kangra at Dharamshala, District Kangra, H.P. in Criminal Case No. 155-II/2013, whereby, respondent (hereinafter accused) has been acquitted of the charges framed against him under Section 279, 337 and 338 of Indian Penal Code .

2. Briefly stated facts as emerge from the record are that police on the basis of statement having been made by PW-2 namely Dinesh Kumar under Section 154 Cr.P.C, registered a case against the accused. Aforesaid complainant disclosed that he is having a shop in the name and style of Shimla Auto Workshop in Shahpur Bazaar, near UCO Bank. As per complainant, on 24.5.2012 when he was at his shop, his landlord namely Subhash Nag came to the shop at about 3:40 p.m. He further reported that

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

when his landlord started going back, he also came out of shop. He also stated that when Subhash Nag was standing at a distance of 15 meters from his shop, a motorcycle came from Dramman side in high speed and struck against Subhash Nag, as a result of which, he suffered injuries. Complainant further stated that he lifted Subhash Nag from the spot and then his son Narender Nag also came on the spot and took him to C.H.C. Shahpur for treatment. Complainant reported that the registration number of the motorcycle was HP-54A-0625, whereas name of motorcycle rider was Praveen Kumar. Complainant categorically reported to the police that accident took place due to rash and negligent driving of the accused namely Praveen Kumar. Police after completion of investigation presented the challan in the competent Court of law.

3. Learned Chief Judicial Magistrate, Kangra at Dharamshala, District Kangra, HP, after satisfying itself that prima facie case exists against the accused put a notice of accusation to him for having committed offences punishable under Sections 279, 337 and 338 of I.P.C and section 181 of Motor Vehicle Act, to which he pleaded not guilty and claimed trial.

4. Subsequently, learned trial Court vide judgment dated 19.5.2016 acquitted the accused of charges framed against him under Sections 279, 337 and 338 of I.P.C, however accused was held guilty of having committed offence punishable under Section 181 of Motor Vehicle Act and accordingly he was sentenced to pay fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for seven days.

5. Being aggrieved and dissatisfied with the aforesaid judgment of acquittal under Section 279, 337 and 338 of I.P.C, the appellant-State preferred instant criminal appeal in this Court praying for conviction of accused after setting-aside judgment of acquittal recorded by Court below.

6. Mr. M.L. Chauhan, learned Additional Advocate General, while inviting attention of this Court to the impugned judgment of acquittal passed by the Court below, vehemently argued that the same is not sustainable in the eyes of law as the same is not based upon the correct appreciation of evidence adduced on record by the prosecution. Mr. M.L. Chauhan, learned Additional Advocate General further contended that bare perusal of impugned judgment passed by learned trial Court suggests that evidence collected on record by the prosecution has not been appreciated in its right perspective as a result of which, erroneous findings have come on record. To substantiate his aforesaid arguments, Mr. Chauhan, made this Court to travel through the evidence led on record by the prosecution to demonstrate that the prosecution successfully proved on record that victim namely Subhash Nag suffered injuries after being hit by motorcycle driven by accused Praveen Kumar in a rash and negligent manner and as such, there was no occasion for Court below to acquit accused of charges under Sections 279, 337 and 338 of I.P.C. Mr. Chauhan further contended that if statements having been made by the prosecution witnesses are read in conjunction with each other, by no stretch of imagination, it can be concluded that there are material contradictions with regard to alleged incident. With the aforesaid submissions, Mr. Chauhan prayed that accused may be convicted of

offences punishable under Section 279, 337 and 338 of I.P.C after setting aside judgment of acquittal recorded by the Court below.

7. Mr. Vivek Singh Thakur, learned counsel representing the respondent-accused supported the impugned judgment of acquittal. Mr. Thakur, while refuting aforesaid submissions/contentions having been made by Mr. M.L. Chauhan learned Deputy Advocate General invited attention of this Court to the impugned judgment passed by the learned Court below to demonstrate that there is no illegality and infirmity, rather same is based upon correct appreciation of evidence adduced on record by the prosecution. Mr. Thakur further contended that bare reading of the impugned judgment, wherein entire evidence has been discussed clearly suggest that no conviction, if any, could be recorded on the basis of the evidence having been adduced on record by the prosecution. Mr. Thakur further contended that all the material prosecution witnesses have turned hostile and none of them have specifically stated something specific with regard to rashness and negligence, if any, committed by accused while driving the motor cycle. In the aforesaid background, Mr. Thakur, further contended that there is no scope of interference, especially in view of finding of facts recorded by the Court below and, as such, present appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and gone through the record.

9. During proceedings of the case, this Court had an occasion to peruse the impugned judgment of acquittal passed by Court below as well as evidence led on record by prosecution, perusal whereof certainly suggests

that Court below while acquitting respondent-accused of charges framed under Section 279 ,337 and 338 of I.P.C have carefully dealt with each and every aspect of the matter and as such this Court does not see any force in arguments of Mr. Chauhan, learned Additional Advocate General that there is total misappreciation, misreading and misconstruction of evidence, as a result of which erroneous findings have come on record . To the contrary, this Court after having carefully perused the entire evidence made available on record by the prosecution, has no hesitation to conclude that prosecution has failed to prove its case beyond reasonable doubt.

10. Apart from above, this Court was unable to lay its hand to any specific evidence led on record by prosecution suggestive of the fact that at the time of alleged accident motorcycle in question was being driven rashly and negligently. Though prosecution witnesses while deposing before the Court stated that accident occurred due to rash and negligent driving of accused but definitely there is nothing in their statement, from where definite opinion, if any, could be formed by the Court below with regard to rash and negligent driving by the respondent-accused.

11. In the instant case, prosecution with a view to prove its case examined as many as ten prosecution witnesses, whereas respondent-accused in his statement recorded under Section 313 Cr.P.C denied the case of the prosecution in toto, however, accused admitted that on 24.5.2012 at about 3.40 P.M at Shahpur, he was driving motorcycle bearing No. HP54A-0625. But he specifically denied the allegations of rash and negligent driving. In his aforesaid statement, accused submitted that truck was parked on the

spot, victim at once came on the road from front of the truck. He also stated that he was driving in normal speed and he tried to stop but failed to avoid accident. However, fact remains that accused failed to produce any evidence in his defence. Since, respondent-accused has admitted accident as well as factum of ill-fated vehicle being driven by him, there cannot be any dispute with regard to involvement of alleged motorcycle as well as identity of accused in the ill-fated accident. Otherwise after having carefully perused material available on record, this Court has serious doubt with regard to the identity of the accused having been proved by the prosecution. But, since that question is not involved here, this Court need not to state anything with regard to that.

12. PW-1 Subhash Chand, injured stated that on 24.5.2012 at about 3.30 p.m. , he visited the shop of Dinesh Kumar PW2. He also stated that after talking to Dinesh Kumar, he came out and proceeded to his house along and on the side of the road. As per his statement he had covered only 50 feet distance from the shop and suddenly motorcycle came in high speed from Dramman. It has come in the statement that on seeing the motorcycle, he had come more on the side of the road but motorcyclist struck the motorcycle against him, as a result of which he fell down. He also stated that he sustained injuries on the knee of right leg causing fracture in knee. It has also come in the statement that he remained under treatment till 26.5.2012. In his cross examination he admitted that his statement was recorded at Tanda after two days of incident. He failed to state that whether his signatures were obtained or not. He also feigned ignorance whether he had disclosed the

number of motor cycle, however, in cross examination, he admitted that he had become unconscious after collision and could not read the number of motorcycle. He also stated that he could not identify the accused. He also denied that the distance of shop of Dinesh Kumar and the shop of his nephew Anup Nag is 30 meter but later on self stated that distance is more. Most importantly, in his cross examination he admitted that distance of a place of accident shown at point-"A" in the spot map is more than 30 meters from the shop of Anup Nag. Similarly, he denied that near the shop of Dinesh Kumar in the name of Sharma Autowork, vehicles remains parked, however, he admitted that there are many shops including whole sale shop on the other side. Aforesaid prosecution witness also admitted in his cross examination that motorcycle rider was on his own side. In his cross examination, he denied suggestion put to him that accident took place due to his own negligence as he attempted to cross the road without taking any precaution and he suddenly came before motorcycle. Apart from above, PW1 also admitted in his cross examination that police never took him to the spot nor he identified the spot. Though in his cross-examination he denied that motorcycle was not in high speed and was going slowly but if his statement is read in its entirety, he has no where stated that motorcycle came in high speed, rather he admitted that motorcycle was on his side.

13. PW-2 Dinesh Kumar is the complainant, who also corroborated the version put forth by the complainant PW-1 as far as narration of sequence of event as given by PW1. But It has come in the statement of Dinesh Kumar that injured was going on the side of the road at a distance of 15 meters, a

motorcycle came from Dramman side in high speed and struck against Subhash Chand, as a result of which he fell down. It has also come in his statement that many persons gathered on the spot and son of Subhash Chand came after being called by him. In his cross examination, he admitted that injured Subhash Chand is his landlord and he is having cordial relations with him. He further admitted that shop of Ajay Kumar is just adjoining to his shop. It has also come in his cross examination that distance between his shop and shop of Ajay Kumar is not of one feet. He also stated before the Court below that accident took place in front of ready-made-garments shop in the name of "Dress Zone", which is at a distance of 15-20 meters from his shop. He also admitted that shop was open at the time of accident. PW-2 Dinesh Kumar also admitted that shop of Anup Nag is at a distance of 40 meters from his shop and all the shops are in one line. In the cross examination, aforesaid witness admitted that there are 15 shops in between his shop and shop of Anup is last shop in the line towards Rehlu and Shahpur Chowk. Though he claimed to have disclosed to the police that the accident took place near the ready-made-garments in the name " Dress Zone" but perusal of police record nowhere suggest the same. In his cross examination he denied the suggestion put to him that accident took place due to mistake of injured Subhash Chand but admitted that at the time of accident he was in his shop. PW-3 Ravi Kumar, PW-9 HHC Dinesh Kumar are formal witnesses and as such, their statements may not be of much relevance for adjudication of present case. PW-4 Joginder Singh, who happened to be a mechanic, examined the motorcycle on 25.5.2012 and submitted his report

EX.PW4/A. He admitted that if a vehicle comes in high speed and falls down, more damage is caused, but he was unable to state about the speed of the vehicle at the time of the accident. In his cross examination, he admitted that if the vehicle falls in low speed, even then, damage as described in EX.PW4/A can be caused.

14. PW-5, Sumit Awasthy stated that on the day of accident, he was going near UCO Bank at Shahpur and motorcycle came in a high speed and struck against a person going on the side of the road. It has also come in the statement that as a result of collision, motorcycle rider also fell on the road but he was unable to state something with regard to number of motorcycle or the name of the driver. In his cross examination, he admitted that he is having personal acquaintance with injured and also he is in visiting terms with him. In his cross examination, he admitted that he did not disclose the number of motorcycle as well as name of driver to the police. Similarly, he admitted that UCO bank is near the Police Station and there are 15 to 20 shops towards Shahpur. Interestingly, aforesaid witness admitted in his cross examination that on the side of those shops vehicles remains parked but showed ignorance, whether a truck was parked on the side on that day or not. Like other prosecution witnesses, this witness also admitted that motorcycle rider was driving on left side. He feigned ignorance whether Subhash Chand came out of the shop which he has given on rent and suddenly came from front of the truck, which was parked there. He also stated that he cannot say the exact speed of the motorcycle. In his cross examination he stated that he cannot state that motorcycle was in a high speed.

15. PW-10 Anoop Nag, who runs hardware shop in Shahpur Bazaar turned hostile and stated that nothing happened in his presence. However, he was cross examined at length by learned APP, wherein he admitted that on 25.5.2012, he was in his shop and his shop in the name of "Sharma Uttam Chand Anup Nag Hardware Store". He also admitted that shop of Sharma Auto works is at a distance of 10-12 shops from his shop. He specifically denied that his shop is adjoining to Sharma Autoworks shop. He further denied that on 24.5.2012, at about 3.45 p.m. when he was at his shop, a motorcycle came from Dramman and struck against a person, who was walking on the side of the road, in front of his shop. Though he claimed to know Subhash Chand Nag but feigned ignorance about the name of the person, who had struck with motorcycle. It has also come in his cross examination by learned defence counsel that no accident took place in his presence and he does not know the accused.

16. PW-8 H.C. Jagroop Singh i.e. Investigating Officer, also narrated sequence of events occurred after the alleged accident and there is nothing much in his statement, from where something can be inferred with regard to the reasons of alleged accident. However, in his cross examination he admitted that place of accident is near the Police Station. He also admitted that there are shops opposite to the place of accident but he volunteered that the shops were closed. He specifically denied that at the place of accident, trucks, jeeps and buses remain parked. However, he volunteered that at the place of accident, shops were closed. However, aforesaid witness admitted that on the one side of the place of accident, there are shops and

UCO Bank. Self stated before the Court below that he recorded the statements of the shopkeepers, whose shops were open. It has also come in his statement that shop of Anup Nag is at a distance of 40 to 50 meters from the spot. This witness in his cross-examination stated that Anup Nag had left injured in the Hospital, which was disclosed by Anup Nag in his statement. However, he has denied that Anup Nag is a relative of injured that is why he was cited as a witness. He admitted that at a place of accident many people had gathered. In his cross examination, he admitted that he had not inquired from any person except the shopkeepers. Most importantly, it has come in his statement that at the relevant time accused was driving on his left side.

17. Conjoint reading of aforesaid statements having been made by prosecution witnesses, nowhere suggest that prosecution was able to prove beyond reasonable doubt that at that relevant time motorcycle was being driven rashly and negligently by the respondent-accused. At the cost of repetition, it may be stated that though there is no dispute if any with regard to the identity of vehicle as well as driver but if statements having been made by the prosecution witnesses are read juxtaposing with each other, it certainly creates doubt with regard to involvement of the vehicle in question as well as respondent-accused. Because admittedly, all the prosecution witnesses including victim have not stated something specific with regard to high speed of motorcycle at that relevant time, rather all the material prosecution witnesses have admitted that at the relevant time motorcycle was on his side. PW-2 Dinesh Kumar, complainant, on whose statement much reliance has been placed by Mr. M.L. Chauhan, learned Additional Advocate General,

clearly suggests that he was of acquaintance of victim because both of these prosecution witnesses PW-1 and PW-2 have admitted in their cross examination that they are having relationship of landlord and tenant. Another witness PW-5 Sumit Awasthy was unable to state something specific with regard to the cause of accident and as such same could not made basis to hold accused guilty of having committed offences with which he was charged. Similarly, statement of PW-4 Joginder Singh, mechanic, no where suggests that vehicle in question was being driven rashly and negligently because he categorically admitted that if vehicle comes in a high speed and falls down, much damage would be caused but in the instant case, damage as has been reported in EX.PW4/A certainly nowhere compels this Court to draw opinion that vehicle in question was being driven rashly and negligently that too in high speed.

18. Most importantly, PW-10 Anup Nag, who happened to be nephew of injured, categorically denied the case of prosecution. He in his cross examination specifically admitted that no accident occurred in his presence, rather if his statement is read in its entirety, it totally belies the case of prosecution, wherein attempt was made by the prosecution to prove the accident on the basis of statement of PW-10 ,Anup Nag, who allegedly immediately after accident reached on the spot and took Subhash Chand, PW-1(injured) to the hospital, whereas aforesaid witness specifically denied factum of accident as well as taking of injured to the hospital by him. PW2 complainant Dinesh Kumar specifically stated in his cross-examination that the accident occurred in front of "Dress Zone" which is at distance of 15-20 meters

from his shop. He also admitted that shop was open at the time of accident and name of shopkeeper is "Bobby", who was not cited as a witness.

19. After having carefully perused the entire evidence led on record, this Court has no hesitation to conclude that prosecution was not able to prove beyond reasonable doubt that accident occurred due to rash and negligent driving of the respondent-accused. True, it is that prosecution with the help of medical evidence led on record in the shape of statement PW-6 Dr. Bhanu Awasthi and PW-7 Dr. Shailender Manhas made an attempt to prove that in the alleged accident injury was caused to the injured PW-1 but since prosecution was not able to connect the respondent-accused with the alleged accident, medical evidence if any, adduced on record by prosecution is /was of no help.

20. Hence, this Court, after examining the statements of prosecution witnesses, sees considerable force in the contentions having been put forth by the counsel representing the respondent that since identity of the accused was not established, no conviction, if any, could be recorded by the courts below. Evidence discussed herein above is sufficient to hold that in given facts and circumstances, two views are possible in the present case and as such present, accused is entitled to the benefit of doubt. In the present case, prosecution story does not appear to be plausible/ trustworthy and as such same cannot be relied upon. In this regard, I may refer to the judgment passed by the Hon'ble Apex Court reported in **State of UP versus Ghambir Singh**, AIR 2005 (92) SCC 2440, where Hon'ble Apex Court has held that if on the same evidence, two views are reasonably possible, the one in favour of

the accused must be preferred. The relevant paragraph is reproduced as under:-

“6. So far as Hori Lal, PW-1 is concerned, he had been sent to fetch a basket from the village and it was only a matter of coincidence that while he was returning he witnessed the entire incident. The High Court did not consider it safe to rely on his testimony because the evidence clearly shows that he had an animus against the appellants. Moreover, the evidence was not corroborated by objective circumstances. Though it was his categorical case that all of them fired, no injury caused by rifle was found, and, only two wounds were found on the person of the deceased. Apart from this PW-3 did not mention the presence of either PW-1 or PW-2 at the time of occurrence. All these circumstances do create doubt about the truthfulness of the prosecution case. The presence of these three witnesses becomes doubtful if their evidence is critically scrutinized. May be it is also possible to take a view in favour of the prosecution, but since the High Court, on an appreciation of the evidence on record, has recorded a finding in favour of the accused, we do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.”

21. The Hon'ble Division Bench of this Court vide judgment reported in **Pawan Kumar and Kamal Bhardwaj versus State of H.P., latest HLJ 2008 (HP)**

1150 has also concluded here-in-below:-

“25. Moreover, when the occurrence is admitted but there are two different versions of the incident, one put forth by the prosecution and the other by the defence and one of the two version is proved to be false, the second can safely be believed, unless the same is unnatural or inherently untrue.

26. In the present case, as noticed hereinabove, the manner of occurrence, as pleaded by the defence, is not true. The manner of the occurrence testified by PW-11 Sandeep Rana is not unnatural nor is it intrinsically untrue, therefore, it has to be believed.

27. Sandeep Rana could not be said to have been established, even if the prosecution version were taken on its face value. It was pleaded that no serious injury had been caused to PW-11 Sandeep Rana and that all the injuries, according to the testimony of PW-21 Dr. Raj Kumar, which he noticed on the person of Sandeep Rana, at the time of his medical examination, were simple in nature.”

22. Consequently, in view of the detailed discussion made herein above, this Court sees no illegality and infirmity in the impugned judgment passed by the Court below and the same is up-held . Accordingly, present appeal is dismissed being devoid of merits. Pending application(s), if any, also stand disposed of.

19th May, 2017

(veena)

**(Sandeep Sharma),
Judge**

High Court of HP