



**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr. Appeal No.221 of 2017**

**Date of Decision: 24<sup>th</sup> July, 2017**

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**State of Himachal Pradesh**

**..... Petitioner.**

**Versus**

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**Raj Kumar**

**.... Respondent.**

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**Coram:**

**The Hon'ble Mr. Justice Sandeep Sharma, Judge.**

*Whether approved for reporting? Yes.*

For the Appellant : Mr. M.L. Chauhan, Additional Advocate General.

For the Respondent : Mr. Dushyant Dadwal, Advocate, with Ms. Chetna Thaur, Advocate.

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**Sandeep Sharma, Judge (oral)**

Instant Criminal appeal filed under Section 378 of the Code of Criminal Procedure, is directed against the judgment of acquittal dated 4.2.2017, passed by learned Judicial Magistrate, 1<sup>st</sup> class, Palampur, District Kangra, H.P., in Criminal case No.14-II/2002, whereby respondent (**hereinafter referred to as the accused**) has been acquitted of the notice of accusation put to him under Sections 279 and 337 of Indian Penal Code.

2. Briefly stated facts as emerge from the record are that complainant, Lokinder Singh got recorded his statement under Section 154 Cr.P.C (Ex.PW5/A), on the basis of which,

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Whether reporters of the local papers may be allowed to see the judgment?

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FIR Ex.PW10/A came to be registered at police Station, Bhawarna, alleging therein that on 3.5.2011, at about 7:45 PM, accused was driving motorcycle bearing registration No. HP-37B-1453 on the public way in rash and negligent manner so as to endanger human life and public safety of others and dashed his motorcycle against scooter No. HP-55-4481 being driven by him, as a result of which, Sh. Sanjay Kumar, pillion rider sustained injuries. Police after completion of the investigation, presented the challan in the competent court of law.

3. The learned trial Court being satisfied that a prima-facie case exist against the accused, put notice of accusation to the accused under Sections 279 and 337 of IPC, to which he pleaded not guilty and claimed trial.

4. Subsequently, learned trial court vide judgment dated 4.2.2017, acquitted the respondent-accused of aforesaid notice of accusation put to him under Sections 279 and 337 of IPC. In the aforesaid background, appellant-State has approached this court by way of instant proceedings, seeking therein conviction of the respondent-accused after setting aside the impugned judgment of acquittal recorded by the learned trial Court.

5. Mr. M.L. Chauhan, learned Additional Advocate General, while inviting attention of this court to the impugned judgment of acquittal passed by the learned trial court,

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vehemently contended that same is not sustainable in the eye of law as the same is not based upon the correct appreciation of the evidence and as such, same deserves to be quashed and set-aside. Mr. Chauhan, further contended that bare perusal of the impugned judgment, suggest that learned court below while acquitting the respondent-accused has not dealt with the evidence adduced on record by the prosecution in its right perspective, as a result of which, erroneous findings have come on record and the respondent-accused has been let off on very flimsy grounds.

6. With a view to substantiate his aforesaid arguments, Mr. Chauhan, made this Court to travel through the statements of PW-4, Sh. Rajinder Kumar and PW-5, Sh. Lokinder Singh to demonstrate that the prosecution proved its case beyond reasonable doubt that on 3.5.2011 accused while driving his motorcycle in rash and negligent manner caused injury to Sanjay Kumar, who was pillion rider on the scooter being driven by the complainant. Mr. Chauhan, further made reference to statement of PW-7, Dr. Anjali, to state that injury caused in the accident was also proved in accordance with law and as such, there was no occasion for the learned court below to acquit the respondent-accused of notice of accusation put to him under Sections 279 and 337 of IPC. While concluding his arguments, Mr. Chauhan, contended that learned court below failed to take note of cogent,

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convincing and overwhelming evidence adduced on record by the prosecution suggestive of the fact that motorcycle at that relevant time was being driven in rash and negligent manner and as such, there was no occasion for the learned trial court to conclude that the prosecution was not able to prove its case beyond reasonable doubt that accused was driving the motorcycle in most rash and negligent manner so as to endanger human life and personal safety of others.

7. Mr. Dushyant Dadwal, Advocate duly assisted by Ms. Chetna Thakur, Advocate, representing the respondent-accused, while refuting the aforesaid submissions having been made by Mr. M.L.Chauhan, learned Additional Advocate General, contended that there is no illegality and infirmity in the impugned judgment passed by the learned trial Court and as such, same deserve to be upheld. While inviting attention of this Court to the evidence led on record by the prosecution, Mr. Dadwal, contended that bare perusal of the same suggest that no reliance, if any, could be placed upon the version of these prosecution witnesses because of material contradictions in their statements. Mr. Dadwal, further contended that PW-4, Rajinder Kumar, who happened to be sole eye witness of the occurrence was declared hostile by the prosecution as he was unable to support the story of the prosecution. Mr. Dadwal, further invited attention of this Court to statement of PW-9, Sanjay Kumar, who

allegedly received injuries in the accident, to demonstrate that he was not even able to recognize the accused in the court as well as vehicle allegedly involved in the accident. While concluding his arguments, Mr.Dadwal, contended that there is nothing in the statements having been made by these prosecution witnesses, from where it could be inferred that at that time vehicle in question was being driven rashly and negligently and as such, no fault can be found with the impugned judgment passed by the learned Trial Court and as such same needs to be upheld.

8. I have heard learned counsel representing the parties and have carefully gone through the record made available.

9. During the proceedings of the case, this Court had an occasion to go through the impugned judgment of acquittal recorded by the learned trial Court viz-a-viz evidence adduced on record by the prosecution, perusal whereof, certainly not suggest that learned trial court below while acquitting the respondent-accused misread, misinterpreted and misconstrued the evidence adduced on record by the prosecution, rather this Court after having carefully perused the evidence led on record by the prosecution has no hesitation to conclude that the prosecution was not able to prove its case beyond reasonable doubt that at that relevant time, accused was driving his motorcycle rashly and

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negligently and as such, this court sees no illegality and infirmity in the findings recorded by the learned trial Court.

10. Though, in the instant case prosecution with a view to prove its case examined as many as 11 witnesses, but Statements having been made by PW-4, Rajinder Kumar, PW-5, Lokinder Singh (complainant) and PW-9, Sanjay Kumar, who allegedly received injuries in the accident, may be relevant for adjudication of the present case.

11. Before advertng to the statements having been made by aforesaid witnesses, it may be noticed that this is none of the case of the prosecution that at the time of alleged accident, three persons were sitting on the scooter allegedly dashed by the motorcycle being driven by the respondent-accused, whereas, statements having been made by these witnesses, especially PW-4 and PW-5 suggest that three persons were travelling on the scooter at the time of alleged accident. PW-4, Rajinder Kumar while deposing before the Court feigned his ignorance with regard to the alleged date of occurrence of offence. He simply stated that in the year, 2011, he witnessed the accident, wherein rider i.e. respondent-accused motorcycle was driving the motorcycle in a rash and negligent manner. It has also come in his statement that scooter rider was riding the scooter in his side. He further stated that accident occurred in his presence and photographs of the place i.e. Ex.PW1/A to Ex.PW1/E were taken by the

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photographer and immediately after the accident injured were taken to the Bhawarna Hospital. This witness categorically stated in his statement that one other man was sitting with him on the scooter. Similarly, in his cross-examination, he admitted the suggestion put to him that on the date of alleged accident complainant was sitting on the scooter with one Sh. Sanjay Kumar. Though, in his cross-examination he identified the accused present in court, but categorically denied that nothing had happened in his presence. Most importantly, it has come in his cross-examination that there were 10-12 persons present on the spot and also admitted that the scooter rider i.e. complainant is his neighbour. He also admitted that accused is not known to him.

12. PW-5, Lokinder Singh (complainant) reiterated the version put forth by PW-4 that when he was riding his scooter from Palampur, he met with an accident at about 7:30 to 7:40 PM near Shamshan Ghat, Bhawarna. He also stated that at that relevant time he was riding scooter in slow speed, whereas accused was driving motorcycle in high speed. It also come in his statement that motorcycle being driven by the accused dashed with the scooter, as a result of which, person namely Sanjay Kumar, pillion rider got severally injured and he was taken to the hospital. In his cross-examination, he admitted that at the time of the accident his driver Rajinder Kumar was also sitting behind

him. He further stated before the court below that just after the accident he called his brother Vikas, who thereafter called up the police. It has also come in his cross-examination that at the time of the accident two other persons were sitting with him. Most interestingly, this witness admitted in his cross-examination that just after the accident they shifted the motorcycle on the other side of the road and the scooter was at his side. He also stated that photographs of the vehicle involved in the accident were taken thereafter. Similarly, he admitted the suggestion put to him that his statement was recorded in the police station.

13. PW-9, Sanjay Kumar, who allegedly received injuries in the accident, also feigned ignorance with regard to the exact date and time of accident allegedly took place on 3.5.2011. However, he stated that at about 6-6:30 Pm at Shamshan Ghat, Bhawarna, he was sitting on the scooter and they met with an accident. He also like PW-4 and PW-5 reiterated that motorcycle being driven in rash and negligent manner by the respondent-accused dashed against the scooter being driven by the complainant, as a result of which, he sustained injuries. But interestingly, this witness was unable to identify the accused in the court as well as vehicle involved in the accident, accordingly, he was declared hostile. In his cross-examination by defence counsel, he denied that at that relevant time PW-4, Rajinder Singh was also sitting alongwith him and the complainant. If the

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statement having been made by these three prosecution witnesses, who are alleged eye witnesses to the accident are read in its entirety juxtaposing each other, it can be safely concluded that all these three witnesses gave altogether different version with regard to sequence of event allegedly occurred at the time of the accident and as such, no reliance, if any, could be placed upon their version while examining the correctness of story put forth by the prosecution. As has been taken note above, there is no mention with regard to three persons travelling on the scooter involved in the accident at the time of the accident, but interestingly PW-4 and PW-5 specifically stated before the court below that at the time of the accident three persons namely Lokinder Singh, Rajinder Kumar and Sanjay Kumar were riding the scooter, which was allegedly struck/ dashed by the motorcycle being driven by the respondent accused.

14. PW-9, Sanjay Kumar, who received injuries in this accident categorically denied the suggestion put to him that at that time Rajinder Kumar was also sitting with him and as such, version put forth by these material witnesses does not appears to be trustworthy and was rightly not lent any credence by the court below while acquitting the respondent-accused from the charges framed against him.

15. PW-5, Lokinder Singh, complainant specifically admitted in his cross-examination that just after the accident

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they had shifted the motorcycle on the other side of the road and photographs were taken by the photographer lateron. PW-1, Surjeet Singh, photographer while deposing before the court below categorically stated that he visited the place of occurrence and had taken photographs Ex.PW1/A to Ex.PW1/E. In his cross-examination, he admitted that the movement he clicked the photographs of the vehicles, the rider of the said vehicles were not present there. PW-8, S.I. Mehar Deen in his cross-examination admitted that he reached at the spot at around 8:05 PM. He also admitted the suggestion put to him that when he reached the spot, he found that alleged motorcycle and the scooter were shifted at the side of the road in order to clear the traffic. It has also come in his cross-examination that PW-4, Rajinder Kumar works as a cleaner in the police station. It clearly emerge from the statements of PW-5 and PW-8 that immediately after the accident vehicles involved in the accident were removed from the site of the accident and as such, there is no relevance, if any, of the photographs allegedly clicked by PW-1 on the spot because definitely these photos do not relate to the actual site of the accident. This Court, after carefully perused the statements given by PW-4, PW-5 and PW-9, sees no reasons to differ with the findings returned by the learned trial court. No reliance, if any, can be placed upon the version put forth by these prosecution witnesses.

16. Leaving everything aside, this Court was unable to lay its hand to any portion of the statements having been made by these witnesses suggestive of the fact that at the relevant time motorcycle in question was being driven rashly and negligently. Merely bald statement to the effect that vehicle was being driven rashly and negligently may not be sufficient to conclude that at the relevant time motorcycle was being driven rashly and negligently, rather it was incumbent upon the prosecution to bring on record specific evidence, if any, with regard to the alleged rash and negligent driving of the motorcycle by the respondent-accused. None of the witnesses have stated something specific with regard to the speed of the motorcycle being driven by the respondent-accused at the time of accident, which could be one of the guiding factors while ascertaining the rashness and negligence, if any, on the part of the respondent-accused.

17. Reliance is placed on judgment rendered by the Hon'ble Apex Court in **Braham Dass v. State of Himachal Pradesh, (2009) 3 SCC (Cri) 406**, which reads as under:-

***“6. In support of the appeal, learned counsel for the appellant submitted that there was no evidence on record to show any negligence. It has not been brought on record as to how the accused- appellant was negligent in any way. On the contrary what has been stated is that one person had gone to the roof top and driver started the vehicle while he was there. There was no evidence to show that the driver had knowledge that any passenger was on the roof top of the bus. Learned counsel for the***

respondent on the other hand submitted that PW1 had stated that the conductor had told the driver that one passenger was still on the roof of the bus and the driver started the bus.

8. [Section 279](#) deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under [Section 279](#) IPC is not negligence. Similarly in Section 304 A the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either [Section 279](#) or 304 A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved.”

18. The Hon'ble Apex Court in case titled "**State of Karnataka v. Satish**," 1998 (8) SCC 493, has also observed as under:-

"1. Truck No. MYE-3236 being driven by the respondent turned turtle while crossing a "nalla" on 25-11-1982 at about 8.30 a.m. The accident resulted in the death of 15 persons and receipt of injuries by about 18 persons, who were travelling in the fully loaded truck. The respondent was charge-sheeted and tried. The learned trial court held that the respondent drove the vehicle at a high speed and it was on that account that the accident took place. The respondent was convicted for offences under [Sections 279, 337, 338](#) and [304A](#) IPC and sentenced to various terms of imprisonment. The respondent challenged his conviction and sentence before the Second Additional Sessions Judge, Belgaum. While the conviction and sentence imposed upon the respondent for the offence under [Section 279](#) IPC was set aside, the appellate court confirmed the conviction and sentenced the respondent for offences under [Sections 304A, 337](#) and [338](#) IPC. On a criminal revision petition being filed by the respondent before the High Court of Karnataka, the conviction and sentence of the respondent for all the offences were set aside and the respondent

was acquitted. This appeal by special leave is directed against the said judgment of acquittal passed by the High Court of Karnataka.

2. We have examined the record and heard learned counsel for the parties.

3. Both the trial court and the appellate court held the respondent guilty for offences under [Sections 337, 338](#) and [304A](#) IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the trial court or by the first appellate court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the courts pressed into aid the doctrine of *res ipsa loquitur* to hold the respondent guilty.

4. 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*". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

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**5. There being no evidence on the record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged. Appeal dismissed."**

19. Careful perusal of aforesaid judgment clearly suggests that there cannot be any presumption of rashness or negligence, rather, onus is always upon the prosecution to prove beyond reasonable doubt that vehicle in question was being driven rashly and negligently. In the aforesaid judgment, it has been specifically held that in the absence of any material on record, no presumption of rashness or negligence can be drawn by invoking *maxim res ipsa loquitur*.

20. By now it is well settled that in a criminal trial evidence of the eye witness requires a careful assessment and needs to be evaluated for its creditability. Hon'ble Apex Court has repeatedly held that since the fundamental aspect of criminal jurisprudence rests upon the well established principle that "no man is guilty until proved so", utmost caution is required to be exercised in dealing with the situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. Most importantly, Hon'ble Apex Court has held

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that there must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. In nutshell, it can be said that evidence in criminal cases needs to be evaluated on touchstone of consistency. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in **C. Magesh and others versus State of Karnataka** (2010) 5 Supreme Court Cases 645, wherein it has been held as under:-

***“45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:- ( SCC p.704, para 14)***

***“ 14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”***

***46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that “ no man is guilty until proven so,” hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and***

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**thereby satisfying the test of consistence in evidence amongst all the witnesses.**

21. After perusing the statements of the prosecution witnesses as well exhibits placed on record, two views are possible in the present case and as such, the petitioner-accused is entitled to the benefit of doubt. The learned counsel for the petitioner-accused has placed reliance on the judgment passed by Hon'ble Apex Court reported in **State of UP versus Ghambhir Singh & others**, AIR 2005 (92) Supreme Court 2439, wherein the 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 he evidence clearly shows that he had an animus against the appellants. Moreover, his 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.”***

22. Reliance is also placed on judgment rendered by the Hon'ble Apex Court in **“Harbeer Singh v. Sheeshpal and Ors.**, (2016) 16 SCC 418, relevant para whereof is being reproduced herein below:-

***“11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808; State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors. vs. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan Vs. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain & Ors. Vs. State of Assam and Anr., (2015) 11 SCC 242].”***

23. 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.***

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**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.**

24. Consequently, in view of the aforesaid discussion made hereinabove as well as law laid down by the Hon' Apex Court, this court sees no illegality and infirmity in the impugned judgment passed by the learned trial Court, which appears to be based upon the correct appreciation of the evidence adduced on record and as such, same deserve to be upheld.

Accordingly, the present appeal is dismissed alongwith pending application(s), if any.

**24<sup>th</sup> July , 2017**  
(shankar)

**(Sandeep Sharma)**  
**Judge**