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CNR No.: HPHA06-000562-2022, CIS Case Type : Police Challan, CIS Case
Year : 2022, CIS Registration No.25 of 2022.

**IN THE COURT OF ANUJ BAHAL, ADDITIONAL CHIEF
JUDICIAL MAGISTRATE, NADAUN, DISTRICT HAMIRPUR, H.P.**

FORM-A

Date of the Judgment	01.07.2026.
CNR No.	HPHA06-000562-2022.
Police Challan No.	91-I/2022.
Registration No.	25 of 2022.
Details of FIR and Police Station	FIR No.163/21, dated 10.12.2021, under Sections 279, 337 of IPC, Police Station Nadaun, District Hamirpur, H.P.
Complainant	State of Himachal Pradesh.
Represented by	Sh. Ashish Sharma, Ld. APP.
Accused	Sandeep Kumar son of Sh. Rajender Singh, resident of Village Kandrola, P.O Putrial, Tehsil Nadaun, District Hamirpur, H.P.
Presented by	Sh. Virender Sharma, Advocate.

FORM-B

Date of offence	10.12.2021.
Date of FIR	10.12.2021.
Date of Chargesheet	23.03.2022.
Date of of framing of charge	08.01.2025.
Date of commencement of evidence	20.03.2025.
Date on which judgment is reserved	30.05.2026.
Date of judgment	01.07.2026.
Date of the sentencing order, if any.	NIL.

Accused Details:-

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during the trial for purpose of section 428 of Cr.P.C
1.	Sandeep Kumar	26.12.2021	26.12.2021	279, 337 of IPC	Acquitted	-	-

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J U D G M E N T

This challan has been presented by police of Police Station, Nadaun, District Hamirpur, H.P. against accused Kalyan Singh for the commission of offences punishable under Sections 279 & 337 of the Indian Penal Code, 1860 (**hereinafter referred to as I.P.C**) in case FIR No.163/21, dated 10.12.2021 registered at Police Station, Nadaun, District Hamirpur, H.P.

FACTUAL MATRIX OF THE CASE

2. Shorn off unnecessary details, the case of the prosecution as narrated in the police challan is as follows:--

3. It is the case of prosecution that on 10.12.2021, at about 05:15 p.m., at place Maseh Khad near Ishant Hotel, accused was driving the vehicle/car bearing registration No.HP-57A-0657 on the public road in a rash and negligent manner and while driving the aforesaid vehicle in aforesaid manner, accused hit it against one child namely Utkarsh, who crossed the road and caused simple injuries to him. A telephonic information has been received from MO, CHC Nadaun that an injured in road side accident was brought to Hospital for treatment, on which, rapat (Ext.P2/PW6) was entered and police officials, who were already on patrolling vide rapat (Ext.P1/PW6), were sent to CHC Nadaun, where, complainant Sukh Dev gave his statement under Section 154 Cr.P.C (Ext.P1/PW1) to the police. On the basis of aforesaid statement, FIR (Ext.P5/PW6) was registered and endorsement (Ext.P6/PW6) qua registration of FIR was made. During investigation, police moved an application (Ext.P3/PW6) to MO, CHC Nadaun for medical examination of injured Utkarsh and MLC (Ext.P4/PW6) was procured. Police also moved an

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application (Ext.P17/PW6) to Medical Superintendent, Dr. RPGMC Tanda for procuring treatment summary of injured Utkarsh and discharge card (Ext.P18/PW6) and case summary (Ext.P1/PW8) were procured. Spot map (Ext.P3/PW1) was prepared and photographs (Ext.P2/PW1, Ext.P8/PW6 & Ext.P9/PW6) were clicked. During investigation, one Raman Kumar owner of the accidental vehicle, produced the accidental vehicle alongwith its keys and documents i.e. RC (Ext.MO1) and insurance (Ext.MO2) to the police, which were taken into possession vide memo (Ext.P1/PW3) in presence of witnesses. Accused also produced his driving licence (Ext.MO3) to the police, which was taken into possession vide memo (Ext.P2/PW3) in presence of witnesses. Mechanical examination of the accidental vehicle was conducted and report (Ext.P1/PW2) was procured. The case property i.e. accidental vehicle was deposited in the malkhana and abstract of malkhana register was procured. During investigation, owner of the accidental car bearing registration No.HP-57A-0657 gave his certificate (Ext.P3/PW3) to the effect that accused was deployed as driver on the offending vehicle by him and on the date of occurrence, accused was driving the offending vehicle. Statements of witnesses were recorded according to their versions and final Challan was filed under Section 173(2) of the Cr.P.C.

4. On receipt of the challan, the accused person was summoned and on his appearance before the Court, the copy of challan and other documents were supplied to him, as per mandate of Section 207 Cr.P.C.

5. On finding a prima facie case against the accused person, notice of accusation was put to accused person for the

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commission of offence punishable under Sections 279 & 337 of IPC, to which he pleaded not guilty rather claimed trial.

6. In support of the accusation against the accused person, the prosecution has examined as many as nine (9) witnesses. After the prosecution evidence was over, the statement of accused person under Section 351 of BNSS (313 Cr.P.C old) was recorded wherein he has refuted the case of the State and pleaded his innocence.

7. On the basis of record, I am of the view that following points arise for determination in the present case:-

1. Whether the prosecution has succeeded in proving beyond reasonable doubt that on 10.12.2021, at about 05:15 p.m., at place Maseh Khad near Ishant Hotel, accused was driving the vehicle/car bearing registration No.HP-57A-0657 on a public road in a manner so rash and negligent as to endanger human life and personal safety of others and thereby committed an offence punishable **under Section 279 of Indian Penal Code**, as alleged?
2. Whether the prosecution has succeeded in proving beyond reasonable doubt that on the aforesaid date, time and place, accused while driving the aforesaid vehicle in the aforesaid manner, hit it against one child Utkarsh, who crossed the road, and caused simple injuries to him and thereby committed an offence punishable **under Section 337 of Indian Penal Code**, as alleged?

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3. Final Order.

8. I have heard learned A.P.P. for the State and learned defence counsel for the accused person. Learned APP argues that there is sufficient evidence on record to bring home the guilt of the accused person. *Per contra*, learned defense counsel argues that prosecution has failed to connect the present accused person with the commission of offence remotely. He submits that accused person has been falsely implicated on the basis of suspicion. There is no evidence worth noticing against him and as such he deserves to be acquitted.

9. I have gone through the case file very carefully in the light of rival contentions of both the sides. My findings on the aforesaid points are as under:

Point No.1	:	No.
Point No.2	:	No.
Final Order	:	Accused is acquitted for the commission of offences punishable under Sections 279 & 337 of IPC as per operative part of the judgment.

REASONS FOR FINDINGS

POINTS NO.1 & 2.

10. Both these points are interlinked and interconnected and taken up together for adjudication.

11. In the present case, the accused has been booked for the offences under Section 279 & 337 of IPC. In order to prove its case, prosecution has examined as many as nine (9) witnesses.

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12. PW-1 is the complainant Sukh Dev. He in his testimony stated that on 10.12.2021, he was present at Ishant Restaurant to receive his grandson Prince, who was coming from Hamirpur in bus. He further stated that one child Utkarsh was also standing with him near the road side, who got frightened on coming the vehicles and due to unbalanced, he fell in the drainage and he suffered injuries. He further stated that at that time, he stopped the accused who was going towards Amb in vehicle/car bearing registration No.HP-57A-0657 and requested him to take the child Utkarsh to the hospital for treatment. He further stated that on his request, he took him to hospital in his car. He further stated that no vehicle had hit the child Utkarsh, rather, he himself fell in the drainage and suffered injuries. He was declared hostile and learned APP seeks permission to cross-examine the witness and the same was accorded. In the cross-examination by learned APP, he denied the suggestion that on 10.12.2021, at around 05:00 p.m., the accused was driving the car baring No.HP-57A-0657 and he hit the child Utkarsh due to which the child suffered injuries.

13. In the cross-examination by learned counsel for the accused, he admitted that the police has taken his statement on their own instance and put his signature under pressure.

14. PW-2 is Purshotam Lal. He conducted the mechanical examination of the accidental car bearing No.HP-57A-0657 and issued report Ext.P1/PW2.

15. PW-3 is Raman Kumar. He is the owner of the accidental car bearing No.HP-57A-0657. He stated that on 17.12.2021, he produced key and documents i.e. RC Ext.MO1 and insurance Ext.MO2 of his car to the police, which were

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taken into possession vide memo Ext.P1/PW3. He further stated that the memo bears his signatures in red circle A. He further stated that on 19.12.2021, accused Sandeep Kumar produced his driving licence Ext.MO3 to the police, which was taken into possession vide memo Ext.P2/PW3 and the memo bears his signatures in red circle A. He further stated that he also issued certificate Ext.P3/PW3.

16. PW-4 is Ravinder Kumar. He stated that no one has presented any documents or vehicle in his presence. He was declared hostile and cross-examined by learned APP, but nothing fruitful came out to the prosecution case.

17. PW-5 is Mukesh. He stated that he does not know anything about the present case and he also does not know the accused. He was declared hostile.

18. PW-6 is HC Sanjeev Kumar. He is related to investigation and needs no elaborate discussion.

19. PW-7 is Kamlesh Kumari. She stated that on 10.12.2021, her nephew Utkarsh has met with an accident and at that time, she was present on the spot. She further stated that her nephew had crossed the road and one car came from Rakkar side and the same hit her nephew. She further stated that thereafter, the driver took her nephew in his car to the hospital for treatment. She further stated that she does not remember the registration number of the accidental car nor the driver of the accidental car. She was declared hostile and in the cross-examination by learned APP, she denied the suggestion that the accused was driving the accidental car bearing No.HP-57A-0657 at the time of accident. She admitted that the accident occurred due to the high speed of the driver of the

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vehicle.

20. PW-8 is Dr. Nishchint Sharma. He stated that on 10.12.2021, he received an application Ext.P3/PW6 for medical examination of Utkarsh, who was brought with the alleged history of road side accident. He further stated that on the same date, he examined the injured Utkarsh and issued MLC Ext.P4/PW6 which bears his signatures in red circle B. He further stated that on 21.02.2022 on the basis of discharge card Ext.P1/PW6 and treatment summary Ext.P1/PW8, he gave his final opinion that the injuries were simple in nature.

21. PW-9 is ASI Manoj Kumar. He is also related to investigation and needs not elaborate discussion.

APPRECIATION OF EVIDENCE AND LAW ON THE POINT

22. To secure the conviction in a vehicular accident case, the prosecution has to prove all the following ingredients beyond reasonable doubt:-

- (A) *That an accident was caused with a particular vehicle.*
- (B) *That accused was driving that particular vehicle which caused the accident.*
- (C) *That accident had taken place due to rash or negligent driving of accused facing trial in the Court.*
- (D) *The injury/death suffered by an injured/deceased was the direct result and consequence of that accident.*

23. In **Syed Akbar v. State of Karnataka, (1980) 1 SCC 30**, it was held that "where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

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24. In **Rathnashalvan v. State of Karnataka, (2007) 3 Supreme Court Cases 474 and Prabhakaran v. State of Kerala, AIR 2007 Supreme Court 2376**, the Hon'ble Supreme Court has considered what rashness and negligence would mean in the context of criminal culpability:-

"5.....A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not..."

"6....."Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused."

"7. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and

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culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

25. In **State of H.P. v. Piar Chand, 2003(2) Sim.LC 341 (Cr.Appeal No. 109 of 2003, decided on 2.6.2003)**, the Hon'ble High Court of Himachal Pradesh, while dealing with the meaning of the expression "rashness" and "negligence" held as follows:-

"18. Criminal rashness is, doing a dangerous or wanton act with the knowledge that it is so and may cause injury but without intention to cause injury and without knowledge that injury would probably be caused. Therefore, to incur criminal liability, the act must be done with rashness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise reasonable care and proper precaution imperative to be adopted by a person to avoid causing of injury to the public or a person or an individual."

26. It is the case of the prosecution that on 10.12.2021, at about 05:15 p.m., at place Maseh Khad near Ishant Hotel, accused was driving car bearing No.HP-57A-0657 on public highway in a rash and negligent manner so as to endanger human life and personal safety of others and while driving the aforesaid vehicle in the aforesaid manner, hit it against one child namely Utkarsh, who crossed the road, and caused simple injuries to him.

27. In the present lis, in order to prove the guilt of the accused for Section 279 & 337 of IPC, firstly, the prosecution has to prove the identity of the accused as driver of the accidental vehicle beyond reasonable doubt. In the present case, the material witness i.e. complainant Sukh Dev (PW-1) in

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his testimony stated that the injured child Utkarsh had gotten frightened after seeing the vehicles on the road and he himself fell in the drainage and suffered injuries. He further stated that thereafter, he stopped the accused, who was driving the vehicle bearing registration No.HP-57A-0657 and the accused took the injured child Utkarsh to the hospital for treatment. Similarly, PW-7 Kamlesh Kumari in her testimony has failed to identify the accused as driver of the accidental car which hit her nephew Utkarsh. Hence, the prosecution has failed to prove the identity of accused as driver of the accidental car. In ***State v. S. Manoharan 2014 (Supl.) CCC 042 Hon'ble Karnataka High Court*** has observed that when doubt with regard to the identity of the accused occurred to the mind of the Court, that benefit should always be given in favour of the accused. Similarly in ***Rakesh v. State of H.P. 2013 (4) CCC 069 H.P., the Hon'ble High Court of H.P.*** also held that in case the prosecution fails to establish the identity of the accused, then benefit should be given to accused.

28. For the sake of arguments, it is presumed that accused was driving the accidental vehicle at the time of accident, then also in order to prove guilt for Sections 279 & 337 of IPC, it is also incumbent upon the prosecution to prove that there is “rashness” or “negligence” as discussed above on the part of the accused while driving the vehicle on public road and the death/injury of the deceased/injured is the direct result of rash and negligent driving of accused. In the present case, PW-1 in testimony stated that on 10.12.2021, when he was present near Ishant Restaurant, the child Utkarsh gotten frightened after seeing the vehicles and he himself fell into the drainage and suffered injuries. Though, PW-7 in her cross-

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examination by learned APP admitted that the accident occurred due to the high speed of the vehicle, but she in her testimony nowhere stated what was the speed of the vehicle. Thus, in substance, prayer has been made by the prosecution to convict the accused merely on the allegation that the accused was driving the offending vehicle at a high speed. **In State of Karnataka v. Satish, 1998 8 SCC 493**, Hon'ble Supreme Court had observed as under:

"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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29. 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 was 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 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 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."

30. Hon'ble High Court of Himachal Pradesh 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."

31. Similarly, it was laid down by Hon'ble High of H.P 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"

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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 rash and negligent act as its ingredients, to which the prosecution has failed to prove in the instant case."

32. This position was again reiterated by Hon'ble High of H.P in **State of H.P. vs. Lek Raj 2024:HHC:710** wherein it was held:-

"23. In the present case, there is no evidence of the approximate speed of the truck; therefore, the mere use of the term 'high speed' is not sufficient to infer the rashness or negligence of the accused."

33. The aforesaid observations of the Hon'ble Apex Court and Hon'ble High Court make it more than clear that a mere allegation of high speed/fast speed would not tantamount to rashness or negligence. In the present case, PW-7 in her testimony has not stated anything about the speed of the vehicle. It is not clear from their testimony that whether accused was driving at wrong side of road or not. After close scrutiny of testimony of PW-1 & PW-7, there is nothing to indicate that the accused acted in a manner which could be regarded as rash or negligent. In any event there is no description or approximation of what was the speed at which the offending vehicle was being driven. Therefore, in the absence of material facts it cannot be said, merely because there is an allegation that the accused was driving the offending vehicle at a fast/high speed, that the accused is guilty of a rash or negligent act. Thus, the accused cannot be convicted on the testimonies of prosecution evidence on record which lacks material particulars relating to the manner in which the offending vehicle was being driven by the accused.

34. In **State of Himachal Pradesh v. Dharmender 2019**

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(2) Shim. LC 862, the Hon'ble Himachal Pradesh High Court

held 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 absence of any material on record, no presumption of rashness or negligence can be drawn by invoking maxim *res ipsa loquitur*. Merely an accident occurred doesn't bespeak of "rashness" or "negligence" on part of accused.

35. This position was reiterated by **Hon'ble High Court of Himachal Pradesh in Ashwani Kumar v State of H.P 2024:HHC:4660** and held that principle of *res ipsa loquitur* can be applied in a criminal case only when the facts are so startling that they speak for themselves and lead to no other inference than the negligence of the accused. The maxim cannot be applied to relieve the prosecution of its burden to prove its case beyond reasonable doubt. Also in **State of Himachal Pradesh v. Tarsem Chand Latest HLJ 2021 HP(2) 1415** it was held that injuries suffered by the injured in the alleged incident is not sufficient to conclude the guilt of accused. Hence, on the basis of discussion above, the prosecution has failed to prove one of the *sine qua non* condition for guilt under Sections 279 and 337 of IPC, i.e. rashness or negligence on the part of the accused.

36. It is established canon of criminal law that in order to pass a conviction in a criminal case, the accused "must be" guilty and not merely "may be" guilty. The mental distance between "may be" guilty to "must be" guilty is a long one and must be travel not on surmises and conjectures, but by cogent evidence. In unmistakable terms, it is the mandate of law that

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the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt, which the prosecution has miserably failed in the present case. **In Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637**, it was held by the Hon'ble Apex Court that in criminal cases mere suspicion, however, strong, cannot take the place of proof. The Court must also take into consideration that an accused is presumed to be innocent till charges against him are proved beyond reasonable doubt. It was held:-

"Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true', there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted."

37. Therefore, on the basis of the evidence of the prosecution, prosecution has failed to prove its case beyond all the shadows of doubt. Hence, points No.1 & 2 are decided in negative.

FINAL ORDER

38. In view of my finding on the points No.1 & 2 above, since the prosecution could not prove the notice of accusation framed against the accused person, beyond all shadow of reasonable doubts, **the accused Sandeep Kumar is acquitted for the commission of offence punishable under Sections 279 & 337 of IPC**. His personal and surety bonds are canceled and discharged. Case property, if any, after the expiry of period available for appeal shall be disposed of in accordance with law and in case of appeal be disposed of as per the direction of learned Appellate Court. The file, after its due completion, be consigned to the Record Room.

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Announced in the open Court on 1st day of July,
2026 in the presence of the accused person and Ld. APP for
the State.

(Anuj Bahal)
Additional Chief Judicial Magistrate,
Nadaun, District Hamirpur, H.P.

*pr/-