

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 178 of 2015

Reserved on: 28.02.2026

Date of Decision: 25.03.2026

State of H.P. ...Appellant

Versus

Ashok Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Appellant : Mr Prashant Sen, Deputy Advocate General.

For the Respondent : Mr Nimish Gupta, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 30.07.2014, passed by learned Judicial Magistrate First Class-I, Dharamshala, District Kangra, H.P. (learned Trial Court) vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Sections 279 and 304-A of the Indian Penal Code (IPC). *(Parties shall hereinafter be referred to in the same 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 before the learned Trial Court against the accused for the commission of offences punishable under Sections 279 and 304-A of the IPC. It was asserted that the informant Liyakat Ali (PW-1) was present in his home. He heard some noise on 11.11.2006, at about 9:30 pm. He saw Sunil Kumar and Suresh Kumar, etc., abusing each other. Many people had gathered on the spot. They boarded a van bearing registration No. HP-01D-2959 and went towards Yol. The informant went to his home. The vehicle went towards Sidhbari. It returned after some time and hit Naresh Kumar at a high speed. The driver sped away towards Yol. The accused was driving the van at the time of the accident, and his negligence led to the accident. The matter was reported to the police, and an entry (Ext. PW3/A) was recorded in the police station. ASI Geeta Prakash (PW-21) and HC Madan Lal went to the spot for verification. Geeta Prakash recorded the informant's statement (Ext. PW1/A) and sent it to the police station, where FIR (Ext. PW21/A) was registered. Geeta Prakash (PW-21) filed an application (Ext. PW9/A) for the medical examination of Naresh Kumar. Dr Naresh Gupta (PW-9) examined the injured and found that he had suffered multiple

injuries, which could have been caused within one hour in a roadside accident. He issued the MLC (Ext. PW9/A). He referred the injured to PGI, Chandigarh. Naresh Kumar succumbed to his injuries. Dr O.P. Swami (PW-10) conducted the post-mortem examination of Naresh Kumar and found that the cause of death was asphyxia due to neurogenic shock as a result of antemortem head injury under the influence of alcoholic intoxication. He issued the report (Ext. PW10/C). The accused surrendered at Police Post Yol and disclosed that he had caused an accident and sped away from the spot because of the fear of the public. The windshield of the van was damaged. The police arrested the accused and made an entry No. 23 (Ext. PW3/B). The van was seized vide memo (Ext. PW3/C). Geeta Prakash went to the spot and prepared the site plan (Ext. PW21/B). The photographs of the van (Ext. PW14/A and Ext. PW14/B) and the spot (Ext. PW14/C to Ext. PW14/L) were taken. The broken pieces of the indicator and wind glass, a *chappal* and a *boot* were found on the spot, which were put in separate parcels. The parcels were sealed with seal 'R', and were seized vide memo (Ext. PW5/A). The inquest on the dead body was conducted, and a report (Ext. PW10/B) was prepared. The dead body was handed over to the relatives of the deceased. Dr

Ajay Sehgal (PW-6) visited the scene of the crime and inspected the spot. He found small pieces of glass and dry paint flakes on the spot, which were handed over to the investigating officer. He also found brownish stains on the dry leaves, twigs and white plastic strips, which were also lifted from the spot. He found that wind screen of the van was completely broken and pieces of glass were inside the van. The covering of the left headlight was found slightly pressed from the left side. Small brownish stains were observed on the front left-side door towards the roof, and a dent was observed on the outer side of the left door of the van. As per his opinion, the vehicle might have come into forcible contact with a person. He issued the report (Ext. PW6/A). The case property was sent to SFSL Junga, and 269.2 mg per cent alcohol was found in the blood of the deceased. The control sample of the soil matched the soil lifted from the spot. The red indicator glass matched the red indicator glass of the van, and the pieces matched each other. The white paint also matched the white paint of the van. Human blood of group 'O' was found on the leaves, pieces of wood, plastic strips, shirt, T-shirt, and jacket of Naresh Kumar. The blood-stained samples lifted from the van and the underwear of Naresh Kumar contained blood stains, but these were

insufficient for further examination. The hair was found to be human hair. The pieces of skin lifted from the van were found to be human skin. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was presented before the learned Trial Court.

3. The 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 twenty-one witnesses to prove its case. Liyakat Ali (PW-1) is the informant. Avinash Kumar (PW2), Ashwani Kumar (PW8), Rajeev Kumar (PW-11), and Anil Kumar (PW-12) are the eyewitnesses. Ashok Kumar (PW-3) proved the entry in the daily dairy. Dr Rajesh Kumar (PW-4) and Arun Sharma (PW-7) examined the case property and issued the reports. Surjit Dutta (PW-5), Ashok Chaudhary (PW-13), Om Prakash (PW-18) and Sarbjeet Singh (PW-20) witnessed the recovery. Ajay Sehgal (PW-6), a forensic expert, visited the spot and examined the van. Dr Naresh Gupta (PW-9) examined the injured. Dr O.P. Swami (PW-10) conducted the post-mortem

examination of the deceased. Raj Kumar (PW-14) took the photographs. Ram Sharma (PW-15) and Suresh Kumar (PW-16) did not support the prosecution's case. HHC Subhash Chand (PW-17) carried the case property to SFSL, Junga. Chhering Dawa (PW-19) is the owner of the truck that was parked on the spot. ASI Geeta Prakash (PW-21) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He claimed that the FIR was lodged against Liyakat Ali, Avinash Kumar and Hazrat Ali, and he was falsely implicated to save them. However, he did not produce any evidence in his defence.

6. Learned Trial Court held that the blood and urine samples of the accused were not taken to establish that he was intoxicated. The informant and other persons were suspected of murdering Naresh. Thus, the prosecution has presented a contradictory version, which was not acceptable. Therefore, the accused was acquitted.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court failed to properly appreciate the material on record. The testimonies of the witnesses corroborated each

other. The medical evidence also corroborated the statements of the witnesses. The relatives of Naresh Kumar had made a complaint against Liyakat Ali, Avinash and Hazrat Ali, and the case was converted into Section 302 of the Indian Penal Code. However, no case was made out against them after the investigation. The accused had himself gone to the police station and disclosed that his vehicle had met with an accident. This admission was not considered by the learned Trial Court. The minor contradictions were bound to come with time and were not sufficient to acquit the accused. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Prashant Sen, learned Deputy Advocate General for the appellant/State and Mr Nimish Gupta, learned counsel for the respondent/accused.

9. Mr Prashant Sen, learned Deputy Advocate General for the appellant/State, submitted that the prosecution had proved its case beyond a reasonable doubt and the learned Trial Court erred in acquitting the accused. The minor contradictions were blown out of proportion to record the acquittal. The statements of the prosecution witnesses corroborated each other, and they were

corroborated by the medical evidence. The case was investigated regarding the murder of Naresh Kumar on the complaint of his relatives, but this complaint was not found to be correct. The admission made by the accused was ignored. The charge sheet was filed before the Court for the commission of the offences punishable under Sections 279 and 304-A of the Indian Penal Code. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Nimish Gupta, learned counsel for the respondent/accused, submitted that the prosecution's case was full of contradictions. The informant and Avinash remained in judicial custody for the murder of Naresh Kumar. The police cannot project two different versions regarding one incident. The statement made by the accused to the police was inadmissible, and no reliance could have been placed upon it. Hence, he prayed that the present appeal be dismissed.

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

12. 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) 5 SCC 433: 2025 SCC

OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

“24. 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.”

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC *OnLine SC 1743*, wherein it was observed:

“21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudarv. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581, and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.”

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

15. The record of the learned Trial Court contains an application dated 28.11.2006 filed before the learned Chief Judicial Magistrate, Dharamshala, H.P., for recording the statements of Rajiv Kumar, Ashwani Kumar, Bablu and Anil Kumar in the FIR registered for the commission of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The application seeking the police remand of Liyakat Ali, Hazrat Ali, and Avinash, dated 13.11.2006, mentioned that these persons had murdered the deceased Naresh Kumar. It was submitted in the memorandum of appeal that the police had investigated the involvement of these persons at the instance of relatives of Naresh Kumar, but no case of murder was found. However, there is nothing in support of this submission. Geeta Prakash (PW21) denied that he had found during the investigation that the case fell within the purview of Section 302 of the Indian Penal Code. He denied that Liyakat Ali, Avinash and Hazrat Ali were arrested for the murder of Naresh Kumar, and they remained in prison for 52 days. However, Liyakat Ali (PW1) admitted in his cross-examination that he, Avinash and Hazrat Ali remained in prison

for about 54 days. Avinash (PW-2) admitted in his cross-examination that a case was registered against him, and he was kept in prison for 56 days. Ashwani Kumar (PW-8) admitted in his cross-examination that Hazrat, Avinash and Liyakat remained in police custody for 2 1/2 months.

16. Therefore, the prosecution had projected two different versions: first, that the accused had caused the death of Naresh Kumar by his negligent driving and second, that Liyakat Ali, Avinash and Hazrat Ali had murdered Naresh Kumar. The circumstances leading to the exoneration of Liyakat Ali, etc., were not explained, and the learned Trial Court was justified in doubting the prosecution's case.

17. The testimonies of Liyakat Ali and Avinash Sood cannot be relied upon because they have an interest in saving themselves and shifting the liability to other persons. Thus, the learned Trial Court was justified in doubting their testimonies.

18. Liyakat Ali (PW-1) stated that a van came at a high speed and hit the deceased Naresh Kumar. Avinash (PW-2) stated in his examination-in-chief that van had hit Naresh Kumar at a high speed, and he fell on the spot. Ashwani Kumar (PW-8) admitted in his cross-examination that the accused drove the van

at a high speed and hit the deceased. Rajiv Kumar (PW-11) stated that the accused had hit Naresh Kumar at a high speed, who sustained injury. Anil Kumar (PW-12) stated that the accused drove the van at a high speed, hit Naresh Kumar, and sped away from the spot.

19. The witnesses did not state the precise negligence of the accused. They claimed that the accident occurred because of the high speed; however, that is not sufficient. 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 amount 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 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.”

20. This position was reiterated in *State of Karnataka vs. Satish* 1998 (8) SCC 493, and 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.”

21. 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.”

22. 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.”

23. Thus, the accused cannot be held liable based on high speed alone without any further evidence that the accused was in breach of his duty to take care.

24. The informant claimed that he went to his home after the quarrel. Therefore, it was highly improbable for him to witness what had transpired after he had gone to his house. Ashwani Kumar (PW-8) stated in his cross-examination that everyone was heavily intoxicated, and he did not know that Naresh Kumar had fallen in a state of intoxication. Anil Kumar (PW-12) admitted in his cross-examination that he had gone to his home after the quarrel. Since the accident had occurred after the quarrel, he could not have witnessed the incident.

25. Therefore, the statements of the witnesses were not sufficient to infer that the van being driven by the accused had hit the deceased.

26. Heavy reliance has been placed on the fact that the accused had visited the police post at Yol and confessed to the

accident. However, the confession made to the police is inadmissible and cannot be used as a piece of evidence in view of Section 25 of the Indian Evidence Act. It was laid down in *Aghnoo Nagesia vs. State of Bihar* (04.05.1965 - SC): MANU/SC/0079/1965: AIR 1966 SC 119, that an FIR registered by the accused confessing to the commission of a crime is inadmissible and cannot be used against him. It was observed:

19. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by s. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of s. 25 is lifted by s. 27.

27. This position was reiterated in *Narayan Yadav vs. State of Chhattisgarh* (05.08.2025 - SC): MANU/SC/1018/2025, wherein it was observed:

“23. The legal position, therefore, is this - a statement contained in the FIR furnished by one of the Accused in the case cannot, in any manner, be used against another accused. Even as against the Accused who made it, the statement cannot be used if it is inculpatory in nature, nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is, as an admission under Section 21 of the Act of 1872, against its maker alone, and only if the admission does not amount to a confession.

24. To put the aforesaid in simpler terms, an FIR of a confessional nature made by an Accused person is

inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct Under Section 8 of the Act of 1872. Additionally, any information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Act of 1872. However, a non-confessional FIR is admissible against the Accused as an admission under Section 21 of the Act of 1872 and is relevant.

25. Thus, the first error that the High Court committed was to read the contents of the FIR lodged by the Appellant into evidence. As observed earlier, the FIR lodged by the Appellant amounts to a confession, and any confession made by an Accused before the police is hit by Section 25 of the Act of 1872. There was no question at all for the High Court to seek corroboration of the medical evidence on record with the confessional part of the FIR lodged by the Appellant.”

28. Thus, no advantage can be derived from the statement made by the accused.

29. Therefore, the learned Trial Court had taken a reasonable view that could have been taken based on the material placed before the learned Trial Court. This Court will not interfere with a reasonable view of the learned Trial Court, even if another view is possible, while deciding the appeal against acquittal.

30. In view of the above, the present appeal fails, and it is dismissed, and so are the pending miscellaneous applications, if any.

31. 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 bond in the sum of ₹25,000/-with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

32. A copy of the judgment, along with records of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

25th March, 2026
(sushma)