

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

Criminal Revision No.96 of 2016

Date of Decision : 23.04.2026

Vinod Kumar

....Petitioner

Versus

State of Himachal Pradesh

...Respondent.

Coram:

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

Whether approved for reporting?¹

For the Petitioner : Mr. Ashwani Pathak, Senior Advocate with
Mr. Ramesh Kaushal, Advocate.

For the Respondent : Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocate Generals with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, Judge (Oral)

Instant Criminal Revision Petition filed under Section 397/
401 of the Code of Criminal Procedure, lays challenge to judgment
dated 01.03.2016 passed by learned Sessions Judge, Solan District
Solan, Himachal Pradesh, in Criminal Appeal No.12-S/10 of 2013,
affirming the judgment of conviction and order of sentence dated
03.06.2013, passed by learned Chief Judicial Magistrate, Solan,
District Solan, Himachal Pradesh, in criminal case No.190/2 of 2007,
whereby learned trial Court, while holding petitioner-accused guilty of
having committed the offences punishable under Sections 279, 304-A

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

of IPC and Section 187 of the Motor Vehicles Act, convicted and sentenced him as under:-

Sr.	Offence	Sentence	Fine amount()
1.	279 IPC	Rigorous imprisonment for a period of six months and in default of payment of fine, to undergo simple imprisonment for a period of one month	10000/-
2.	304-A IPC	Rigorous imprisonment for a period of one year and default of payment of fine to further undergo simple imprisonment for two months	2000/-
3.	187 of MV Act	In default of payment of fine to undergo simple imprisonment for one month.	1000/-

2. In nutshell, the case of the prosecution, as emerge from the record made available to this Court, reveals that complainant, namely Dharmender Kanwar(PW-1), got his statement recorded under Section 154 Cr.P.C., on the basis of which, FIR No.236 of 2007, dated 14.09.2007, under Sections 279, 337, 304-A of IPC and Section 187 of the Motor Vehicles Act, came to be recorded (Ex.PW9/A), alleging therein that on 14.09.2007, while his brother, namely Jitender Kumar, was returning to his house from Shivalik factory, Chambaghat, driving his motorcycle bearing registration No. HP-14-A-3064, and had reached near Ambika Hotel, Chambaghat, at about 10.00 AM, accused, while driving truck bearing registration No.HP-13-2568, came in high speed and hit the motorcycle being driven by his brother, as a result of which, deceased fell down on the

road and suffered head injuries. Complainant reported to the police that occurrence was witnessed by him as well as independent witness, namely Sh. Surender Singh (PW-2). Though, deceased was taken to hospital at Solan in the vehicle by one Dr. Raj Kumar, who had also come on the spot, but he was declared brought dead by the Medical Officer at the hospital at Solan. Since complainant, named hereinabove, alleged that accident occurred on account of rash and negligent driving of the petitioner-accused, FIR, as detailed hereinabove, came to be lodged against him. After completion of the investigation, police presented the challan in the competent court of law, which being satisfied that prima-facie case exists against the accused, framed notice of accusation under Sections 279, 337 and 304-A of IPC and 187 of Motor Vehicles Act against him, to which he pleaded not guilty and claimed trial.

3. Prosecution with a view to prove its case examined as many as 10 witnesses, whereas accused in his statement recorded under Section 313 Cr.P.C, nowhere denied factum with regard to the accident or involvement of the vehicle being driven by him, but he set up a case that accident occurred on account of rash and negligent driving of the deceased.

4. Learned trial Court on the basis of the evidence made available on record by the prosecution, found accused guilty of having committed the offence punishable under Sections 279, 304-A of IPC and Section 187 of Motor Vehicles Act and accordingly, convicted and sentenced him, as per the description given hereinabove.

5. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused filed an appeal under Section 374(3) of the Code of Criminal Procedure before the learned Sessions Judge, Solan, District Solan, Himachal Pradesh, which came to be registered as Criminal Appeal No. 12-S/10 of 2013, but same was also dismissed vide judgment dated 01.03.2016. In the aforesaid background, present petitioner approached this Court by way of instant criminal revision petition, praying therein for his acquittal after quashing and setting-aside the impugned judgments passed by the learned courts below.

6. Mr. Ashwani Pathak, learned Senior Advocate, duly assisted by Mr. Ramesh Kaushal, Advocate, representing the petitioner, vehemently argued that judgments passed by learned Courts below are not sustainable, as the same are not based upon proper appreciation of evidence. He submitted that on account of wrong appreciation of evidence, findings to the detriment of the accused, who has been falsely implicated in the case, have come to the fore. While making this Court peruse statements made by the material prosecution witnesses i.e. PW-1, PW-2 and PW-10, learned Senior counsel representing the petitioner attempted to persuade this Court to accept his submission that none of the prosecution witnesses have stated anything specific with regard to rash and negligent driving, if any, by the accused as such, there was no occasion for the Courts below to hold him guilty of having committed the offences

punishable under Sections 279, 304-A IPC and section 187 of the Motor Vehicles Act. He further argued that bare statements of PW-1 and PW-2 itself suggest that they had no occasion to witness the accident with their eyes and as such, there was no occasion for the Courts below to record conviction of the accused on the strength of their statements. While referring to the statement of PW-10, ASI, Amar Singh, Investigating Officer, Mr. Pathak, submitted that PW-2, the so called independent witness, was not present on the spot, rather he was contacted by the Investigating Officer after obtaining his telephone number from the Pradhan of the Gram Panchayat concerned. He further submitted that to invoke Section 279 of IPC, it is incumbent upon the prosecution to prove that vehicle was being driven rashly and negligently, but in the case at hand, none of the prosecution witnesses have stated something specific with regard to rash and negligent driving, rather they have merely stated that the vehicle was being driven in high speed, which is not sufficient to hold accused guilty of his having committed the offence punishable under Section 279 of IPC. Lastly, he submitted that though one person lost his life in the accident, but such fact may not be sufficient to conclude the guilt of the petitioner-accused, who was not at fault, rather accident occurred on account of rash and negligent of deceased, who at the relevant time, was himself driving the motorcycle rashly and negligently.

7. To the contrary, Mr. Vishal Panwar, learned Additional Advocate General, while supporting the impugned judgments passed

by learned Courts below, submitted that there is proper appreciation of evidence adduced on record by the prosecution suggestive of the fact that at the relevant time offending vehicle was being driven rashly and negligently by the accused and as such, there is no scope for interference. He further submitted that this Court, while exercising revisional jurisdiction under Section 397 Cr.P.C., has very limited jurisdiction to re-appreciate the evidence. He submitted that since judgments passed by both the courts below are based on proper appreciation of evidence and there is no perversity, this Court ought not to interfere with the same. While referring to the statements made by PW-1 and PW-2 and more particularly PW-2, learned Additional Advocate General submitted that both the witnesses have categorically stated that accident occurred on account of rash and negligent driving of the accused. He submitted that though PW-10, in his cross-examination, deposed that he had contacted PW-2 telephonically, but such fact may not be relevant for the reason that PW-2 ultimately deposed before the Court below specifically stating therein that accident occurred on account of rash and negligent driving of the offending vehicle. He also invited the attention of this Court to the judgment passed by the Hon'ble Apex Court in ***State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182***; wherein Hon'ble Apex Court has held that courts below while dealing with the accident cases should exercise great constraint, while taking lenient view against reckless drivers, who drive rashly and negligently. Learned Additional Advocate General, has placed reliance upon the judgment

passed by Hon'ble Apex Court in case **State of Kerala versus Puttumana Illath Jathavedan Namboodiri** (1999)² Supreme Court Cases 452, wherein it has been held as under:-

“ In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

8. In the aforesaid background, he prayed that the present petition deserves to be dismissed being devoid of any merit.

9. I have heard learned counsel representing the parties and gone through the record carefully.

10. True, it is that while exercising the power under Section 397 of Criminal Procedure Code, this Court has very limited power to re-appreciate the evidence available on record. But in the present case, where accused has been convicted and sentenced under Sections 279, 304-A of the Indian Penal Code and Section 187 of the Motor Vehicles Act, this Court solely with a view to ascertain that the judgments passed by both the Courts below are not perverse and same are based upon correct appreciation of evidence available on

record, undertook an exercise to meticulously examine the evidence available on record to reach a fair and just decision in the case.

11. As far as scope of power of this Court, while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241***; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. The relevant para of the judgment is reproduced as under:-

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

12. In the instant case, this Court solely with a view to ascertain the genuineness and correctness of the submissions having been made by the learned senior counsel representing the petitioner as well as to find out “whether there is any illegality or infirmity in the impugned judgments passed by the Court below, undertook an exercise to peruse the evidence led on record by the prosecution, perusal whereof, certainly persuades this Court to agree with the submissions having been made by the learned counsel for the petitioner/ accused that learned courts below have not appreciated the evidence in its right perspective, as a result of which, erroneous findings to the detriment of the petitioner-accused have come on record.

13. Though, in the case at hand, prosecution examined 10 witnesses, but to ascertain the correctness of submissions made in the instant revision petition at the behest of the petitioner, statements made by three prosecution witnesses i.e. PW-1, PW-2 and PW-10 are material. As per the prosecution, PW-1 and PW-2 had occasion to witness the accident with their eyes. However, having perused the statement made by PW-1, this Court is persuaded to agree with learned senior counsel for the petitioner that this witness was not present on the spot, rather on the date of occurrence, he was on leave and as per his own version, he was 20 meters away from the sight of the accident. Otherwise also, version put forth by this witness nowhere suggests that he had an occasion to witness the accident with his eyes. Though, this witness stated that the accident occurred

due to high speed of the vehicle being driven by the accused, but once it stands established that he was not present on the spot and had no occasion to see whether motorcycle being driven by his deceased brother was hit by the vehicle being driven by the accused, no much reliance could have been otherwise placed upon his testimony by both the courts below, while ascertaining guilt, if any, of the accused under Section 279 of IPC.

14. Similarly, this Court finds that PW-2, Surender Singh, though claimed himself to be an eye witness, but he was also not present on the spot of occurrence, rather as per version put forth by him, he was coming behind offending vehicle. Since this witness was driving behind offending vehicle, he otherwise had no occasion to see the accident. Interestingly, this witness also nowhere specifically stated that offending vehicle was being driven rashly and negligently, he simply stated that vehicle was being driven in high speed. He further deposed that 2 Km prior to the place of occurrence, offending vehicle had overtaken his motorcycle in high speed, but such fact, if any, may not be sufficient to conclude rash and negligent driving.

15. At this stage, it is apt to take note of the statement made by PW-10, Investigating Officer, perusal whereof clearly reveals that PW-2 was not present on the spot at the time of the accident. His statement under Section 161 Cr.P.C. was never recorded by the Investigating Officer after having reached the spot of occurrence, rather he was subsequently contacted by PW-10 after having obtained his telephone number from the Pradhan, Gram Panchayat

concerned. PW-2, who is a resident of Subathu from where he was allegedly called for the purpose of recording statement under Section 161 Cr.P.C. Interestingly, PW-10, in his cross-examination, admitted that the spot map was prepared on the instructions of some employee of Ambika Hotel, whose name never came to be disclosed in the charge-sheet.

16. Though, it has been projected by the prosecution that accused had fled from the spot after the accident, but PW-10, in his cross-examination, has admitted that accused had reached the police station. True it is that though immediately after the alleged accident, which is otherwise admitted by the accused, he ought to have remained present at the place of occurrence and taken the deceased to the hospital, but since there was imminent threat to him from the furious mob, he instead of staying at the spot, went to the police station, as has been fairly stated by PW-10 in his cross-examination.

17. In nutshell, case of the petitioner-accused is that no evidence, worth credence, ever came to be led on record to prove rash and negligent driving, if any, at the behest of the accused and if it is so, learned Court below could not have sentenced him under Section 279,304-A of IPC and Section 187 of the Motor Vehicles Act. At this stage, it would be profitable to reproduce Section 279 of IPC herein below:-

“Rash driving or riding on a public way:- whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of

either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.”

18. Careful perusal of aforesaid provision of law reveals that to invoke Section 279 IPC, prosecution is under obligation to prove that offending vehicle was being driven by the accused in rash and negligent manner and due to his negligent act, injury was caused to the deceased. Since factum with regard to injuries suffered by the deceased is not in dispute, this Court needs not to go into aforesaid aspect of the matter. Similarly, death of rider of the motorcycle is also not in dispute. However, having taken note of statements made by material prosecution witnesses, as discussed hereinabove, this Court is unable to agree with learned Additional Advocate General that at the time of the accident, offending vehicle was being driven rashly and negligently by the accused.

19. As per Section 279 of IPC, whoever drives any vehicle on a public way in rash and negligent manner so as to endanger human life shall be liable to be punished with imprisonment of either description for terms which may extend to six months, or with fine. ‘Negligence’ is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

20. ‘Speed’ is not the criteria to ascertain the rash and negligent driving, rather it is the manner, in which offending vehicle was driven, which determines rashness and negligence. At this stage,

learned Senior counsel for the petitioner placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in case ***State of H.P and ors versus Parmjit Singh***, latest HLJ 2012(HP) 297 to substantiate his plea that speed is not the only criteria to prove the rash and negligent driving. The relevant para Nos.14 and 15 of the judgment is reproduced as under:-

“14. It is a settled law that the speed is not a criterion to prove the rash or negligent act of driving. The prosecution, as already stated above is obliged to prove the necessary ingredients of the offence by direct or circumstantial evidence. To fasten the criminal liability for the offences charged, there should be consistent, convincing and reliable evidence. Even in the exceptional cases, where the rule of *res ipsa laquitar* applies, it cannot be taken for guaranteed that the driver of the vehicle involved in the accident is guilty of offence. In the same situation, there could be civil liability as well, in addition to the criminal liability, but so far as the criminal liability, it has to be proved beyond reasonable doubt and civil liability can be proved by preponderance of probabilities.

15. On the strength of the aforesaid evidence, it is very difficult to conclude that the accused was driving the vehicle rashly or negligently, more specifically when it has also come in the evidence that the deceased came in contact with the offending vehicle while crossing the road. Therefore, in my considered opinion, the offences punishable under Sections 279 and 304-A of the Indian Penal Code against the accused are not made out.”

21. No doubt, in the case at hand, there is medical evidence adduced on record by the prosecution to prove that deceased died on account of the injuries suffered by him in the accident, but same may not be sufficient to constitute offence, if any, under Section 279 of IPC, as far as petitioner-accused is concerned, especially when there

is no evidence, worth credence, suggestive of the fact that accident occurred on account of rash and negligent driving of the petitioner-accused.

22. Though, in the case at hand, very presence of PW-1 and PW-2 on the spot of occurrence is doubtful, but even otherwise, no conviction under Sections 279 and 304-A IPC and Section 187 of the Motor Vehicles Act could have been recorded by Courts below merely on the basis of bald statements of afore witnesses that vehicle in question was being driven in a high speed.

23. It is well settled that a person cannot be held criminally accountable for his rashness and negligence merely because evil consequences flow from his act, rather rashness must be such as to endanger human life or personal safety of others. Similarly, for criminal liability, the rashness or negligence must show a disregard for human life or personal safety of others. Question whether an act is criminally rash or negligent is a question of fact depending upon the circumstances of particular case and as such, needs to be elucidated minutely and with certain degree of precision. But in the instant case, prosecution was unable to prove beyond reasonable doubt negligence, if any, on the part of the petitioner-accused. In this regard, reliance is placed upon the judgment passed by the Hon'ble Apex Court in ***Braham Dass versus State of H.P.*** (2009) 7 Supreme Court Cases 353. The relevant para No. 6 and 8 are reproduced herein below:-

“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 appellant-accused was negligent in any way. On the contrary what has been stated is that one person had gone to the rooftop and the 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 rooftop of the bus. Learned counsel for the respondent on the other hand submitted that PW-1 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 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 (sic) negligence. Similarly, in Section 304-A the stress is on causing death by negligence or rashness. Therefore, for bringing on application of either Section 270 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.”

24. The Hon'ble Apex Court in case titled **“State of Karnataka v. Satish,”**1998 (8) SCC 493. The relevant paras of which are being reproduced herein below:-

“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.*

25. At this stage, this Court also cannot lose sight of the stern observations made by the Hon'ble Apex Court in ***State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182***, wherein it has been observed as follows:-

25. *Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a*

nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the law-makers should scrutinize, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."

26. There cannot be any quarrel, whatsoever, with regard to the observations made by the Hon'ble Apex Court with regard to the careless/reckless driving of the drivers and the fact that drivers driving under the influence of alcohol deserve to be punished but in the present case careful perusal of evidence adduced on record by the prosecution, nowhere suggest that the prosecution was able to prove beyond reasonable doubt that vehicle was being driven by the petitioner-accused in rash and negligent manner and he was under the influence of liquor.

27. After having carefully perused the record and the statements of the witnesses and applying ratio of law laid down by the Hon'ble Apex Court in the judgment, noted hereinabove, this court is of the view that the judgments passed by the courts below are not based upon correct appreciation of the evidence adduced on record and as such, same deserve to be quashed and set-aside.

28. Consequently, in view of the detailed discussion made herein above, the present petition is allowed and the judgments passed by the courts below are quashed and set-aside. Accordingly,

petitioner-accused is acquitted of the charges framed against him under Sections 279, 304-A IPC and Section 187 of Motor Vehicles Act. His bail bonds/personal bonds are ordered to be discharged and interim order, if any, is vacated. All applications, if any, also stand disposed of.

April 23, 2026
(shankar)

(Sandeep Sharma)
Judge