

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

Cr. Appeal No. 144 of 2014
Reserved on: 28.5.2026
Date of Decision: 22.6.2026

State of H.P.

...Appellant

Versus

Kushal Singh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant: Mr Jitender K. Sharma,
Additional Advocate General.

For the Respondent: Mr Rajesh Verma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 09.12.2013, passed by the learned Judicial Magistrate, First Class, Court No. II, Nurpur, District Kangra, H.P. (learned trial Court) vide which the respondent (accused before learned Trial Court) was acquitted of the commission of offences punishable under Sections 279, 337 and 338 of the Indian Penal Code (IPC). (*The 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 against the accused before the learned Trial Court for the commission of offences punishable under Section 279, 337 and 338 of the IPC. It was asserted that Yuvraj called the Police Station on 10.07.2004 at about 6:15 p.m. and informed that a motorcycle and a Tata Sumo had met with an accident. The road was blocked, and the injured were shifted to the hospital. An entry (Ext.PW-7/A) was recorded in the Police Station. HC Harjit Singh (PW-7), HHC Dev Raj and Constable Desraj were sent to the spot for verification. HC Harjit Singh made a preliminary inquiry and found that the motorcycle bearing registration No. HP-39A-4176 was going towards Kangra from Nurpur, and a Tata Sumo bearing registration No. HP-38A-1794 was going from Bhadwar to Nurpur. The road was 27 feet wide. The motorcycle was being driven towards its own side. The Tata Sumo hit the motorcycle at a high speed and dragged the motorcycle for a distance of 23 feet. Motorcycle driver Ripan Singh (PW-1) and pillion rider Abhishek Minhas (PW-6) had sustained injuries, and they were shifted to Pathankot Hospital. Accused Vishal was

driving a Sumo bearing registration No. No. HP-38A-1794. The accident occurred because of the negligence of the accused and the high speed of the Tata Sumo. HC Harjit Singh prepared Rukka (Ext.PW-7/B) and sent it to the Police Station, where F.I.R. (Ext.PW-4/A) was registered. HC Harjit Singh (PW-7) investigated the matter. He prepared a site plan (Ext.PW-7/C) and seized the Tata Sumo and Motorcycle vide memo (Ext.PW-3/A). He filed an application (Ext.PA) for obtaining a treatment summary and obtained a treatment summary (Ext. PB). Ravinder Minhas (PW-5) mechanically examined the Tata Sumo and motorcycle. He did not find any defect in them that could have led to the accident. He issued the reports (Ext.PW-5/A and Ext.PW-5/B). He recorded the statements of the witnesses as per their version. After completion of the investigation, a challan was prepared and presented before the 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 Section 279, 337 and 338 of the IPC, to which he pleaded not guilty and claimed to be tried.



4. The prosecution examined seven witnesses to prove its case. Ripan Singh (PW-1) and Abhishek Minhas (PW-6) are the injured/victims. Mangal Singh was travelling in the Tata Sumo but did not support the prosecution's case. Rajinder Soga (PW-3) took the photographs. Kamaljeet Singh (PW-4) signed the F.I.R. Ravinder Singh (PW-5) mechanically examined the vehicles. ASI Harjit Singh (PW-7) investigated the matter.

5. The accused, in his written statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), stated that he was not driving the Tata Sumo bearing registration No. HP-38A-1794 in a rash and negligent manner. The accident occurred because of the negligence of Ripan Singh, who could not control the motorcycle while overtaking the truck. He did not produce any evidence in his defence.

6. The learned trial Court held that Mangal Singh (PW-2) and Abhishek Minhas (PW-6) had turned hostile and did not support the prosecution's case. This makes the prosecution's case doubtful. There may be some incriminating material against the accused, but the same

was not sufficient to prove the prosecution's case. Hence, the learned Trial Court acquitted the accused.

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 had failed to appreciate the evidence in its proper perspective. The statements of prosecution witnesses were discarded without any cogent reasons. Ripan Singh (PW-1) and Abhishek Minhas (PW-6) specifically stated that the accident had occurred because of the negligence of the accused. The site plan also depicted the marks of the motorcycle's dragging. The motorcycle was being driven on its left side, and the Tata Sumo had hit it on the right side of the road. This showed the negligence of 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 Jitender K Sharma, learned Additional Advocate General for the appellant State and Mr Rajesh Verma, learned counsel for the respondent/accused.

9. Mr Jitender K. Sharma, learned Additional Advocate General for the Appellant/State, submitted that the

learned Trial Court erred in acquitting the accused on the ground that two witnesses had turned hostile. Abhishek Minhas has supported the prosecution's case regarding the manner of the accident and could not say whose negligence had led to the accident. The site plan and the photographs show that the Tata Sumo was taken towards the right side of the road and hit the motorcycle being driven on its left side. This violated the Rules of the Road Regulations, which were not even noticed by the learned Trial Court; therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Rajesh Verma, learned counsel for the respondent/accused, submitted that the learned Trial Court had rightly acquitted the accused. Abhishek Minhas (PW-6) and Mangal Singh were declared hostile, and their testimonies were sufficient to cast a doubt on the prosecution's version. Learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with a reasonable view of the learned Trial Court; hence, he prayed that the present appeal be dismissed.

11 I have given a 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 on 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 Rudragoudar v. 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. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

- (a) whether the judgment of acquittal suffers from patent perversity;
- (b) whether the judgment is based on misreading/omission to consider the material evidence on record;
- (c) an order of acquittal is to be interfered with only when there are “compelling and

substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

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

16. The judgment passed by the learned Trial Court proceeded on the basis that the testimonies of Mangal Singh (PW-2) and Abhishek Minhas (PW-6) made the prosecution’s version suspect because they were declared hostile. Learned Trial Court did not examine the testimonies to determine their impact on the prosecution’s case. This was not permissible. It was laid down by the Hon’ble Supreme Court in *Dadu v. State of M.P.*, 2025 SCC OnLine SC

2733 that the statement of a witness cannot be rejected

because he was declared hostile. It was observed:

19.....The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court in *State of U.P. v. Ramesh Prasad Misra* (1996) 10 SCC 360 : 1996 SCC (Cri) 1278 wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW-4 in the manner aforesaid is contrary to the law laid down by this Court.

17. It was laid down by the Hon'ble Supreme Court in *Selvamani v. State*, 2024 SCC OnLine SC 837, that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

“9. A 3-Judge Bench of this Court in the case of *Khujji @ Surendra Tiwari v. State of Madhya Pradesh* (1991) 3 SCC 627: 1991 INSC 153, relying on the judgments of this Court in the cases of *Bhagwan Singh v. State of Haryana* (1976) 1 SCC 389: 1975 INSC 306, *Sri Rabindra Kuamr Dey v. State of Orissa* (1976) 4 SCC 233: 1976 INSC 204, *Syad Akbar v. State of Karnataka* (1980) 1 SCC



30: 1979 INSC 126, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.

10. This Court, in the case of *C. Muniappan v. State of Tamil Nadu* (2010) 9 SCC 567: 2010 INSC 553, has observed thus:

“81. It is a settled legal proposition that (*Khujji case*, SCC p. 635, para 6)

‘6..... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.’

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360, this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543, *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516, *Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450, *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence.”

18. Thus, the learned Trial Court was required to analyse the statement of the witnesses and not to record the acquittal merely because the witnesses had turned hostile.

19. Abhishek Minhas (PW-6) stated that Ripan Singh was driving the motorcycle, and he was sitting as a pillion rider on 10.07.2004. They reached near Baagni at about 5:30/6:00 p.m. A Tata Sumo bearing registration No. HP-38A-1794 came from the opposite side and hit the motorcycle, which was being driven towards its left side. He could not say whose negligence had led to the accident. The accused took them to the hospital in his vehicle. He was permitted to be cross-examined. He admitted that the place of the accident was wide and it was a national highway. He admitted that he had developed sympathy for the accused because he/accused had carried the injured to the hospital. He stated in cross-examination by learned counsel for the defence that he came to know of the accident after the Tata

Sumo had hit the motorcycle. The police had not taken him to the spot while preparing the site plan; about 6 feet of space was available towards the left side of the motorcycle, which included the metalled and unmetalled portions of the road. He could not tell the width of the road. He admitted that one portion of the road was damaged, and the Tata Sumo was being driven towards the damaged portion of the road. He admitted that there was a slight curve, and a truck was moving ahead of the motorcycle; therefore, the oncoming vehicle was not visible.

20. The statement of this witness shows that he was declared hostile because he had not supported the prosecution's case that the accident occurred because of the negligence of the accused. He could not have been declared hostile because he had not mentioned the negligence. Negligence is an inference from the fact. A witness can only depose about the fact which had occurred in his presence, and he is not permitted to draw inferences from the facts. The inferences have to be drawn by the Jury or the Judge when he is sitting without a Jury. It was laid down by Goddard LJ in *Hollington v. Hawthorn* 1943 KB 507 that a

witness cannot depose about negligence. It was observed at

595:

“It frequently happens that a bystander has a full and complete view of an accident. It is beyond question that while he may inform the court of everything he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide, but in truth, it is because his opinion is not relevant. Any fact that he can prove is relevant, but his opinion is not.”

21. It was laid down by the Hon’ble Supreme Court in *Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233 : 1976 SCC (Cri) 566 : 1976 SCC OnLine SC 290 that the permission to cross-examine a witness should only be granted when the witness has exhibited some hostility or he resiles on a material aspect of the prosecution’s case. It was observed at page 241:

10. Before proceeding further we might like to state the law on the subject at this stage. Section 154 of the Evidence Act is the only provision under which a party calling its own witnesses may claim permission of the court to cross-examine them. The section runs thus:

“The Court may, in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.”

The section confers a judicial discretion on the court to permit cross-examination and does not contain



any conditions or principles which may govern the exercise of such discretion. It is, however, well-settled that the discretion must be judiciously and properly exercised in the interests of justice. The law on the subject is well-settled that a party will not normally be allowed to cross-examine its own witness and declare the same hostile, unless the court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or where the court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth. One of the glaring instances, in which this Court sustained the order of the court in allowing cross-examination was where the witness resiles from a very material statement regarding the manner in which the accused committed the offence. In *Dahyabhai Chhaganbhai Thakker v. State of Gujarat* [AIR 1964 SC 1563 : (1964) 7 SCR 361, 368, 369, 370 : (1964) 2 Cri LJ 472] this Court made the following observations:

“Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing Court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put



questions to him which might be put in cross-examination by the adverse party.

Broadly stated, the position in the present case is that the witnesses in their statements before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane and, therefore, he committed the murder.”

A perusal of the above observations will clearly indicate that the permission to cross-examine was upheld by this Court because the witnesses had categorically stated before the police that the accused had committed the murder but resiled from that statement and made out a new case in evidence before the court that the accused was insane. Thus it is clear that before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine its own witnesses cannot be allowed. In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth. In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities. The court must,

however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.

22. It was laid down by the Hon'ble Supreme Court in *Shivkumar v. State of Chhattisgarh*, 2025 SCC OnLine SC 2223, that a witness should not be indiscriminately declared hostile. It was observed:

“9. We are at a loss to understand why the witness was treated as hostile in the first place. We are frequently coming across cases where the prosecutor, for no ostensible reason, wants to treat the witnesses as hostile, and the Court indiscriminately grants permission. It is well settled, by judgments of this Court, that before a witness can be declared hostile and the party examining the witnesses is allowed to cross-examine, there must be some material to show that the witnesses are not speaking the truth or have exhibited an element of hostility to the party for whom they is deposing. No doubt, the circumstances under which the Court will exercise the discretion under Section 154 of the Evidence Act, 1872 (Section 157 of the Bharatiya Sakshya Adhiniyam (BSA), 2023) and permit the party calling the witness to put any question which might be put in cross-examination by the adverse party will depend on the facts and circumstances of each case. However, this Court has held that the contingency of cross-examining the witness by the party calling is an extraordinary phenomenon and permission should be given only in special cases. Small or insignificant omissions cannot be the basis for treating the witnesses as hostile, and the Court, before exercising its discretion, must scan and weigh the circumstances properly and ought not to exercise its discretion in a casual or routine manner.”

23. Therefore, Abhishek Minhas (PW-6) could not have been declared and his testimony could not have been doubted because he was declared hostile.

24. Abhishek Minhas (PW-6) specifically stated that the road was wide at the place of the accident. He stated that the road was damaged on one side of the road. The photograph (Ext. PD) shows that half of the road was mettled and the other half was unmettled. The motorcycle was moving on the mettled portion of the road, and the Tata Sumo was supposed to move on the unmettled portion of the road. However, the Tata Sumo is shown to have hit the motorcycle on the metalled portion of the road, and the marks of skidding are clearly visible. The site plan (Ext.PW-7/C) shows that the width of the road was 27 feet. The motorcycle was being driven towards the left side of the vehicle, coming from Kangra to Pathankot, and the Tata Sumo was towards the right side. The site plan mentions that the marks of dragging were visible for 23 feet.

25. The site plan and the photographs corroborate the testimony of Abhishek Minhas (PW-6) that the Tata Sumo came towards the wrong side of the road and hit the

motorcycle, which was moving on the left side. Therefore, the testimony of Abhishek Minhas (PW-6) did not make the prosecution's case doubtful, and the learned Trial Court erred in holding so.

26. Mangal Singh (PW-2) stated that he was travelling in the Tata Sumo, which was being driven by the accused. An accident occurred between a Tata Sumo and a motorcycle. There was negligence on the part of the motorcyclist. He was permitted to be cross-examined. He admitted that the Tata Sumo was bearing registration number HP-38A-1794, and the road was quite wide. He denied that the accused was driving the motorcycle at a high speed. He stated in his cross-examination that the motorcycle was being driven towards its right side, and the accident occurred because of the negligence of the motorcyclist. This statement is contrary to the photographs and the site plan, in which the motorcycle is shown towards the left side of the road and the Tata Sumo is shown towards the right side of the road. Further, the witness is the father of the accused and has an interest in saving his son. He has denied his previous statement recorded by the Police.

27. ASI Harjit Singh (PW-7) specifically stated that he had recorded the statement of Mangal Singh (Ext.PW-7/E) as per his version, which was read over and explained to him. It was not even suggested to be incorrect in the cross-examination, which means that this part of his testimony was not disputed by the accused. Hence, Mangal Singh (PW-2) is shown to have made two inconsistent statements: one before the police that the accident had occurred because the Tata Sumo was driven towards its right side at a high speed and another before the Court that the accident had occurred because the motorcyclist had driven it towards the right side. Thus, his credit has been impeached under Section 155 (3) of the Indian Evidence Act. It was laid down by the Hon'ble Supreme Court in *Sat Paul v. Delhi Admn.*, (1976) 1 SCC 727 that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:



“52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”

28. This Court also took a similar view in *Ian Stilman versus. State 2002(2) ShimLC 16* wherein it was observed:

“12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In *Jagir Singh v. The State (Delhi Administration)*, AIR 1975 Supreme Court 1400, the Apex Court observed:

"It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether

and not merely to get rid of a part of his testimony.

29. Therefore, the testimony of Mangal Singh (PW-2) will not make the prosecution's case doubtful.

30. Ripan Singh (PW-1) stated that he was driving the motorcycle bearing registration No. HP-39A-4176. Abhishek was riding the motorcycle as a pillion rider. When they reached near Vrindavan at about 6:00 p.m., a Tata Sumo came from the opposite side and hit the motorcycle. He was driving the motorcycle towards the left side of the road. The accident occurred because of the high speed of the Tata Sumo and the negligence of the accused. He stated in his cross-examination that there was a curve at the place of the incident. He admitted that the truck was being driven ahead of the motorcycle. There were potholes on the road, and the Tata Sumo moved towards its right side. He denied that the accident occurred because of his negligence in overtaking the truck on a curve.

31. The testimony of this witness that there were potholes towards the side of the Tata Sumo is duly corroborated by the photographs in which the left side of the

Tata Sumo is shown unmettled and right side is shown mettled.

32. ASI Harjit Singh (PW-7) stated in his cross-examination that there was sufficient space towards the left side of both vehicles. He volunteered to say that the direction of the motorcycle was changed after the accident. A 13 1/2 feet space was available towards the left side of the Tata Sumo. He admitted that the road was being tarred on the spot, which was visible in the photographs. The Tata Sumo was parked on its correct side after the accident. He had prepared the site plan as per his understanding and had not associated with any person.

33. The statements of this witness also support the informant's statement that the accused was driving the Tata Sumo towards the right side of the road.

34. The Central Government has framed the Rules of the Road Regulations, 1989, to regulate the movement of traffic. Rule 2 provides that the driver of a vehicle shall drive the vehicle as close to the left side of the road as may be expedient and shall allow all the traffic which is proceeding in the opposite direction to pass on his right side. It was laid

down in *Fagu Moharana vs. State*, AIR 1961 Orissa 71, that driving the vehicle on the right side of the road amounts to negligence. It was observed:

“The car was on the left side of the road, leaving a space of nearly 10 feet on its right side. The bus, however, was on the right side of the road, leaving a gap of nearly 10 feet on its left side. There is thus no doubt that the car was coming on the proper side, whereas the bus was coming from the opposite direction on the wrong side. The width of the bus is only 7 feet 6 inches, and as there was a space of more than 10 feet on the left side, the bus could easily have avoided the accident if it had travelled on the left side of the road.”

35. Similarly, it was held in *State of H.P. Vs. Dinesh Kumar* 2008 H.L.J. 399, where the vehicle was taken towards the right side of the road, the driver was negligent. It was observed:

“The spot map Ext. P.W. 10/A would show that at point 'A' on the right side of the road, there were blood stain marks and a V-shape slipper of deceased Anu. Point 'E' is the place where P.W. 1 Chuni Lal was standing at the time of the accident, and point 'G' is the place where P.W. 3 Anil Kumar was standing. The jeep was going from Hamirpur to Nadaun. The point 'A' in the spot map Ext. P.W. 10/A is almost on the extreme right side of the road.

36. This position was reiterated in *State of H.P. vs. Niti Raj* 2009 Cr.L.J. 1922, and it was held:



“16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches. On the left side, while going from Dangri to Kangoo, there was a 7 ft. kacha portion, and on the other side, there was an 11 ft. kacha portion. The total width of the road was about 28 ft. The injured person was coming from the Dangri side and was walking on the left side of the road. This has been stated both by the injured and by PW-6. This fact is also apparent from the fact that after he was hit, the injured person fell into the drain. A drain is always on the edge of the road. The learned Sessions Judge held, and it has also been argued before me, that nobody has stated that the motorcycle was on the wrong side. This fact is apparent from the statement of the witnesses, who state that they were on the extreme left side, and the motorcycle, which was coming from the opposite side, hit them. It does not need a genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side.”

37. In *Shakila Khader v. Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: 1975 SCC OnLine SC 103, the car went to the right side of the road, hit the parapet and turned turtle. It was held by the Hon’ble Supreme Court that the driver was negligent. It was observed at page 126:

“6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving that led to the accident was rash and negligent is not only the speed but also the width of the road, the density of the traffic, and the attempt, as in this case, to overtake the other vehicles, resulting in going to the wrong side of the



road and being responsible for the accident. Even if the accident took place in the twinkling of an eye, it is not difficult for the eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. The criterion adopted by the learned Judge for assessing the evidence of PWs 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is difficult to be clear or specific in giving details as to the cause of the accident, but this is not one such case. The reference by the learned Judge about the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct, as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turned turtle showed that the car must have been travelling at an extremely high speed but there is a little blue paint on the pole and a faint gray stain on the parapet wall is self-contradictory unless we are to infer that the learned Judge implied that the one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and the parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of the road, hit an electric post and parapet wall, and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did, it would have stopped at one of those points. We should remember that the collision with the scooter and pushing it back would have considerably reduced the speed of the car. Even so, it travelled farther. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for this case. The car would probably not have stopped but for turning turtle, and

it should have been travelling quite fast before it could overturn, as the learned Judge himself realises. There is only one conclusion possible on the facts of this case, and that is that the accused came over to the wrong side of the road and was responsible for the accident, and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.”

38. The accused had breached the Rules of the Road Regulations, 1989, which was the proximate cause of the accident. Hence, the prosecution's version that the accident occurred because of the negligence of the accused has to be accepted as correct.

39. It was submitted that the victim, Ripan Singh (PW-1), was not wearing any helmet at the time of the accident and he was negligent. This submission will not help the accused. The fact that Ripan Singh (PW-1) was not wearing a helmet did not contribute to the accident, and the accident was caused by the negligence of the accused in taking the vehicle towards the right side of the road.

40. The accused admitted the certificates (Ext. PB and Ext.PC). Certificate (Ext.PB) shows that Abhishek Minhas (PW-6) had sustained grievous injury and Ripan Singh (PW-1) had sustained grievous and simple injuries. Ripan Singh (PW-1) and Abhishek Minhas (PW-6) stated

that injuries were caused in the accident, which had taken place due to the negligence of the accused; therefore, the prosecution had succeeded in proving its case beyond a reasonable doubt for the commission of offences punishable under Section 279 and 338 of the IPC.

41. The learned Trial Court failed to consider the Rules of the Road Regulations, and acquitted the accused because two witnesses had turned hostile. The learned Trial Court had not analysed the evidence and failed to consider the relevant provisions of law; therefore, the judgment of the learned Trial Court is liable to be interfered with.

42. No other point was urged.

43. In view of the above, the present appeal is allowed, and the judgment passed by the learned Trial Court is set aside. The accused is convicted of the commission of offences punishable under Sections 279 and 338 of the IPC.

44. Let the accused be produced on 07.07.2026 for hearing him on the quantum of sentence.

(Rakesh Kainthla)
Judge

22nd June, 2026
(ravinder)