

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4092 of 2013

Reserved on: 11.11.2025

Date of Decision: 28.11.2025.

State of H.P.

...Appellant

Versus

Saroj Sharma

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

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

For the Respondent : Ms Divyani Sharma, Senior
Advocate with Mr Anirudh Sharma,
Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.03.2013 passed by learned Judicial Magistrate First Class, Court No.1, 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 Indian Penal Code (hereinafter referred to as IPC) (*Parties shall hereinafter be*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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, 337 and 338 of the IPC. It was asserted that the informant, Sanjogata Chaudhary (PW1), was standing outside her home with her nephew Ajay Kumar (PW2). A car bearing registration No. PB-35J-1344 came from Kandwal towards Bhadroa at about 3:15 pm at a high speed and hit Ajay Kumar (PW2). The car dragged Ajay Kumar (PW2) for some distance. The accused, Saroj Sharma, was driving the car. Jyoti (PW7) was sitting in the front seat of the car. Ajay Kumar (PW2) sustained injuries, and he was taken in the same car to Pathankot. The accident occurred due to the negligence of the accused and the high speed of the car. HC Kulwinder Singh (PW10) and Constable Ajay Kumar were going towards Bhadroa for traffic checking. They found that many people had gathered on the spot. Sanjogata Chaudhary (PW1) made a statement (Ext.PW1/A) which was sent to the Police Station where FIR (Ext.PW8/A) was registered. HC Kulwinder Singh (PW10)

investigated the matter. Rajinder Sohga (PW3) took the photographs (Ext.P1 to P5) whose negatives are Ext.P6 to Ext. P10. HC Kulwinder (PW10) prepared the site plan (Ext.PW10/A). He seized the vehicle bearing registration No. PB-35J-1344, along with documents vide memo (Ext.PW4/A). The accused produced her driving license (Ext.A1), which was seized vide memo (Ext.PW9/A). The mechanical examination of the vehicle was conducted, and a report (Ext.PA) was issued mentioning that there was no defect in the vehicle that could have led to the accident. Treatment summary of Ajay Kumar, MRI scan, follow-up treatment, and scanning report were taken into possession. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to put the notice of accusation to the accused for the commission of offences punishable under Sections 279, 337 and 338 of the IPC, to which she pleaded not guilty and claimed to be tried.

4. The prosecution examined 10 witnesses to prove its case. Sanjogata (PW1) is the informant/eye witness. Ajay Kumar

(PW2) is the victim. Rajinder Sohga (PW3) took the photographs. Sanjay Kumar (PW4), Satpal (PW5), Darbara Singh (PW6) and Jyoti (PW7) are the eyewitnesses, but they did not support the prosecution's case. HC Bir Singh (PW8) signed the FIR. HC Ram Krishan (PW9) is the witness to the recovery of a driving license. HC Kulwinder (PW10) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that the police had seized the car bearing registration No. PB-35J-1344 and her driving license. She denied the rest of the prosecution's case. She stated that the witnesses deposed falsely to extract money from her. She got Ajay Kumar (PW2) treated. She was driving the car at 40 km per hour. The boy came running across the road from the right side and hit the car. She did not produce any evidence in defence.

6. Learned Trial Court held that the defence version that the injured Ajay Kumar (PW2) suddenly ran towards the car was supported by the statement of Jyoti (PW7), the occupant of the vehicle. Ajay Kumar (PW2) also did not deny the suggestion of learned defence counsel that he had run across the road chasing a

ball. This lack of denial made the defence version probable. Hence, 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 erred in acquitting the accused. The site plan and the photographs showed the spot position. Sanjogata (PW1), Ajay Kumar (PW2) and Sanjay Kumar (PW4) proved the prosecution version, and there was no reason to disbelieve their testimonies. Learned Trial Court relied upon the statement of Jyoti (PW7), who was an employee of the accused and would have supported her. 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 Kumar Sharma, learned Additional Advocate General for the appellant/State and Ms Divyani Sharma, learned Senior Advocate, assisted by Mr Anirudh Sharma, learned counsel for the respondent/accused.

9. Mr Jitender Kumar Sharma, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. The defence

version that Ajay Kumar (PW2) ran across the road chasing a ball was not probable. Learned Trial Court erred in relying upon the testimony of Jyoti (PW7) to this effect. She was an employee of the accused and was declared hostile by the prosecution. Statements of Sanjogta (PW1), Ajay Kumar (PW2) and Sanjay Kumar (PW4) were ignored 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. Ms Divyani Sharma, learned Senior Advocate for the respondent/accused, submitted that the testimony of the witness cannot be discarded merely because he has been declared hostile. Jyoti Sharma (PW7) was the best person to depose about the accident. Even if two versions are appearing on record, the version in favour of the accused has to be preferred to the version in favour of the prosecution. The learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court. Hence, she prayed that the present petition 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 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

“23. Recently, in the case of *Babu Sahebagouda Rudragoudar v. State of Karnataka* 2024 SCC OnLine SC 4035, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.

39. This Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (*Chandrappa case*

[Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973, puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having

secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in *H.D. Sundara v. State of Karnataka* [*H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748], this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence.

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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.

8.4. 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

8.5. 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.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in

favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity.

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. 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.”

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

14. Ajay Kumar (PW2) stated that he was standing outside his home when a car came at a high speed and hit him. He fell at some distance and became unconscious. The accident occurred due to the negligence of the accused because she was driving the car at a high speed. He stated in his cross-examination by the learned counsel for the defence that he was standing on the pulli at a distance of 1½ feet from the metalled portion of the road. He could not say whether he had hit the driver’s side or the other

side. He could not tell the speed of the vehicle. He volunteered to say that the speed of the vehicle was normal. He admitted that the car was being driven towards the left side. He did not remember that he was playing cricket outside the house of Parkash. He volunteered to say that some other boys were playing cricket, and he was watching the cricket. He did not remember that he had run across the road to catch the ball. He did not remember that he could not look for the car and hit the car. He denied that his negligence led to the accident.

15. The statement of this witness is highly contradictory. He stated that he was standing outside his home in his examination-in-chief and stated in his cross-examination that he was watching the cricket being played outside the house of Parkash. The site plan (Ext.PW10/A) shows the house of the victim towards the southern side of the road and the house of Parkash towards the northern side across the road. Therefore, he could not have been present outside his house and watching cricket outside the house of Parkash Singh. Learned Trial Court had rightly noticed that he had not denied the fact that he was playing cricket and ran across the road to catch the ball, which would adversely affect his credibility. He stated that he was

standing on the pulli. However, no pulli was shown in the site plan (Ext.PW10/A). He stated that he was standing 1½ feet away from the metalled portion of the road. The site plan (Ext.PW10/A) shows the place of the accident on the metalled portion of the road. All these circumstances make it difficult to rely upon his testimony regarding the accident.

16. Sanjogata Chaudhary (PW1) stated that she was standing with Ajay Kumar on the pulli when a vehicle came at high speed and hit Ajay Kumar (PW2). He became unconscious. The accident occurred due to the negligence of Saroj Sharma, the accused. She stated in her cross-examination that pulli and road are on the same level at a distance of about 2 meters from the metalled portion of the road. Ajay Kumar (PW2) had hit the left side of the car on the unmetalled portion of the road. She denied that Ajay Kumar (PW2) was playing cricket with other boys outside the house of Prakash, or Ajay ran across the road and hit the car.

17. The statement of this witness also shows that the accident occurred on the unmetalled portion of the road, which is contrary to the site plan. He claimed that Ajay Kumar (PW2) was

standing with her on the pulli, whereas Ajay Kumar (PW2) stated in his cross-examination that he was watching cricket being played outside the house of Parkash. Therefore, her testimony also does not explain the manner of the accident.

18. Sanjay Kumar (PW4) stated that he was present in his shop in the year 2007, when a car hit Ajay Kumar (PW2) at a high speed. The accused was driving the car at the time of the accident. He was permitted to be cross-examined. He admitted in cross-examination by learned APP that Sanjogta (PW1) was standing with Ajay Kumar (PW2) when a car bearing registration No. PB-35J-1344 hit Ajay Kumar (PW2) at a high speed and dragged him for some distance. He stated in his cross-examination that three persons were sitting in the car at the time of the accident. The place of the accident was located at a distance of 100 meters from his shop. Sanjogata (PW1) and Ajay Kumar (PW2) were standing on an unmetalled portion of the road. The left side of the car hit the boy, and the car stopped after 30-40 feet. 20-25 people had reached before his arrival, but he could not mention their names.

19. The testimony of this witness is also not satisfactory. He claimed that his shop is located at a distance of 100 meters, which means that there was sufficient distance between his shop and the place of the accident. He also stated that 20-25 people had reached before him on the spot, which means that it took him some time to reach the spot. Had he been an eyewitness, he would have reached the spot immediately after the accident. He also stated that the accident occurred on the unmetalled portion of the road, which is contrary to the site plan, wherein the place of the accident is shown on the metalled portion of the road.

20. Satpal (PW5) did not support the prosecution's case. He was permitted to be cross-examined. He denied that Sanjogata (PW1) and Ajay Kumar (PW2) were standing on the roadside, and a car hit Ajay Kumar (PW2). He denied the previous statement recorded by the police. He denied that he was making a false statement because he knew the accused. It is apparent that this witness has not supported the prosecution's case, and no advantage can be derived from his testimony.

21. Darbara Singh (PW6) also did not support the prosecution's case. He stated that nothing had happened in his

presence, and he reached the spot after an hour. He was also permitted to be cross-examined. He denied that he was working in the field when he saw that a car had hit Ajay Kumar. He denied the previous statement recorded by the police. Thus, prosecution cannot derive any advantage from his testimony.

22. Jyoti (PW7) stated that she was travelling with Saroj Sharma in a car. When they reached at Lodhwan, a boy ran after the ball. She and the accused shouted for the boy to stop. The accused also applied the brakes; however, the boy hit the car. She was permitted to be cross-examined. She denied that Saroj Sharma had received a call regarding an emergency, and she was driving the car at a high speed. She denied that the car had hit the boy standing on the roadside and dragged him for some distance. She denied the previous statement recorded by the police. She stated in her cross-examination that Dayal and Rajinder were also sitting with her. The accused was driving the car at a normal speed. The accident occurred because the boy suddenly crossed the road.

23. The testimony of this witness also does not support the prosecution's case that the accused was negligently driving the vehicle and her negligence led to the accident.

24. Further, the witnesses have not proved the manner of the accident. They claimed that the car had hit the boy on the unmetalled portion of the road, but it is not correct because the site plan shows that the car had hit the boy on the metalled portion of the road. The photographs also show the skid marks on the metalled portion of the road, clearly suggesting that the accident had occurred on the metalled portion of the road and not on the unmetalled portion of the road. They claimed that the accused was driving the car at a high speed, but did not mention the approximate speed of the vehicle. 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 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, the 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.”

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

26. 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.”

27. 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.”

28. Therefore, the statements of the witnesses that the car was being driven at a high speed are not sufficient to infer the negligence of the accused.

29. The witnesses also made a generalised statement that the accident occurred due to the negligence of the accused. They had not mentioned the fact that could lead to an inference of negligence. 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 at 595 that a witness cannot depose about negligence. It was observed:

“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.”

30. Similar is the judgment in *State of H.P. vs. Niti Raj* 2009 Cr.L.J. 1922 (HP), wherein it was held:

“It is not necessary for a witness to say that the driver of an offending vehicle was driving the vehicle rashly. The issue whether the vehicle was being driven in a rash and negligent manner is a conclusion to be drawn on the basis of evidence led before the Court.”

31. Therefore, the learned Trial Court had taken a reasonable view which could have been taken based on the evidence led before the learned Trial Court. This Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

32. Thus, there is no reason to interfere with the judgment of the learned Trial Court. Hence, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand(s) disposed of.

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

(Rakesh Kainthla)
Judge

28th November, 2025
(Nikita)