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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 146 of 2015
Reserved on: 19.03.2026
Date of Decision: 06.05.2026

Vinod Kumar ...Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No

For the Petitioner	:	Mr R.K. Bawa, Senior Advocate, with Mr Ajay Kumar Sharma, Advocate.
For the respondent/ State	:	Mr Parshant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 19th May, 2015, passed by learned Sessions Judge Kinnaur, Sessions Division at Rampur Bushahr, District Shimla (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 11th August, 2008, passed by learned Chief Judicial Magistrate, District Kinnaur Camp at Rampur Bushahr, District Shimla (learned Trial Court) were upheld. (*The parties shall hereinafter be referred to in the same*

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manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision 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 304-A of the Indian Penal Code (IPC). It was asserted that Rumal Singh (PW-2), Yash Pal (PW8A), Ramesh Chand, Bahadur Singh, Shyam Lal and Puran Chand were travelling in the vehicle bearing registration No. HP-01A-3643 on 17th/18th December, 2005. The accused Vinod Kumar was driving the vehicle. The vehicle reached Shaloon Kainchi at 12:00 midnight. The accused could not control his vehicle. The vehicle fell off the road into a gorge. The informant, Rumal Singh, reached Neri after the accident and informed Tikkam Bushahri (PW-3), Panchayat Pradhan, about the accident. The villagers took the informant to the hospital for treatment. Ramesh, Bahadur Singh and Shyam Lal died, and Puran Chand, Yash Pal and the informant sustained injuries in the accident. The accident occurred due to the accused's negligence. Intimation was given to the Police, and ASI Hari Bhagat (PW-10) recorded the informant’s statement (Ex. PW2/A) and sent it to the police station, where FIR (Ex.PW-10/A) was

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registered. ASI Hari Bhagat prepared the site plan (Ex.PW-10/C) depicting the spot position. He seized the vehicle bearing registration No. HP-01A-3643 vide memo (Ex.PW-1/A). Raj Kumar produced the documents of the vehicle, which were seized vide memo (Ex.PW-10/D). Hari Bhagat filed an application (Ex.PW-10/E) for the medical examination of the injured. Dr Rajan Uppal (PW-5) examined Rumal Singh, Puran Chand and Vinod Kumar and found that they had sustained injuries that were possible in a roadside accident. He issued the MLCs (Ex.PW-5/A to Ex. PW-5/C). ASI Hari Bhagat conducted the inquest on the dead bodies and prepared the reports (Ex.PA-4 to Ex.PA-6). He obtained the autopsy reports (Ex.PA-7 to Ex. PA-9). HC Gian Chand (PW-6) mechanically examined the vehicle and found that there was no defect in the vehicle that could have led to the accident. He issued the report (Ex.PW-6/A). ASI Hari Bhagat recorded the statements of the witnesses as per their version. The challan was prepared and presented before the Court after the completion of the investigation.

3. Learned trial Court found sufficient reasons to summon the accused. When the accused appeared before the Court, a notice of accusation was put to him for the commission

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of offences punishable under Sections 279, 337 and 304-A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Kundan Lal (PW-1), Tikkam Bushahri (PW-3), Rajinder Singh (PW-4), and Geeta Ram (PW-8) were told about the accident. Rumal Singh (PW-2), Prem Singh (PW-7), Yash Pal (PW-8A), and Puran Dass (PW-9) were travelling in the vehicle. Dr Rajan Uppal (PW-5) medically examined the injured. HC Gian Chand (PW-6) examined the vehicle. ASI Hari Bhagat (PW-10) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the CrPC, denied the prosecution's case in its entirety. He stated that he was falsely implicated, and the witnesses deposed falsely against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the statements of the prosecution witnesses proved that the accused was driving the vehicle on the date of the accident. The vehicle left the road and fell into the gorge. The accused suggested to the witnesses that the accident had occurred due to damage to the tie rod. This defence was not probable because HC Gian Chand specifically stated that the defect had occurred after the

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accident, and there was no mechanical defect in the vehicle that could have led to the accident. The place of the accident had a wide road, everything was visible, yet the vehicle left the road. This would not have been possible had the accused been driving the vehicle carefully. Rumal Singh, Yash Pal and Vinod Kumar had sustained the injuries in the accident, and Ramesh Kumar, Bahadur Singh and Shyam Lal had died in the accident. Therefore, learned Trial Court convicted the accused of the commission of offences punishable under Sections 279, 337 and 304-A of the IPC and sentenced the accused to undergo rigourous imprisonment for six months, pay a fine of rupees one thousand and in default of payment of fine to undergo simple imprisonment for one month for the commission of an offence punishable under Section 279 of the IPC, to undergo rigourous imprisonment for six months, pay a fine of ₹500/- and in case of default of payment of fine to undergo further simple imprisonment for one month for the commission of an offence punishable under Section 337 of IPC and to undergo rigourous imprisonment for two years, pay a fine of ₹2,000/- and in case of default of payment of fine to undergo simple imprisonment for three months for the commission of an offence punishable under Section 304-A of the IPC.

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7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, District Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the vehicle bearing registration No. HP-01A-3643 on the intervening night of 17th/18th December, 2005, at about 12:00 AM, which had met with the accident. The plea taken by the accused that the accident occurred because of a mechanical defect in the vehicle was not proved on record. The mere fact that Rumal Singh had not supported the prosecution's case was not sufficient to discard the prosecution’s version. HC Gian Chand specifically denied that the accident had occurred because of the mechanical defect. The accused was negligently driving the vehicle at high speed, which led to the accident. Learned Trial Court had rightly convicted and sentenced the accused, and no interference was required with the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present

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revision asserting that the learned Courts below failed to properly appreciate the material on record. Rumal Singh (PW-2) specifically stated that the accident had occurred because of the mechanical defect. HC Gian Chand (PW-6) also admitted that the vehicle being driven by the accused had a common complaint of sudden damage to the tie rod end, which leads to a malfunction of the steering wheel. This evidence was not considered by the learned Courts below. The statements of witnesses contradicted each other on material aspects. The injured had filed the claim petitions before the Motor Accident Claims Tribunal and were interested in the conviction of the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Court below be set aside.

9. I have heard Mr R.K. Bawa, learned Senior Advocate, assisted by Mr Ajay Kumar Sharma, learned counsel for the petitioner/accused and Mr Prashant Sen, learned Deputy Advocate General, for the respondent/State.

10. Mr R.K. Bawa, learned Senior Advocate for the petitioner/accused, submitted that the learned Courts below failed to properly appreciate the material on record. The prosecution had failed to prove any rashness or negligence on

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the part of the accused. The defence taken by the accused that the accident had occurred because of a mechanical defect was highly probable, and the learned Courts below erred in discarding it. When two versions appear on record, the version in favour of the accused has to be preferred to the version in favour of the prosecution. Learned Courts below did not appreciate this aspect of the matter; hence, he prayed that the present revision be allowed and the judgment and order passed by the learned Courts below be set aside. He relied upon the following judgments in support of his submissions:

1. Aher Raja Khima Vs. State of Saurashtra, (1955) 2 Supreme Court Cases 749.

2. Sanjiv Kumar Vs. State of Punjab, (2009) 16 Supreme Court Cases 487.

3. Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 Supreme Court Cases 450.

4. Dhanapal Vs. State by Public Prosecutor, Madras, (2009) 10 Supreme Court Cases 401.

5. C. Magesh & Ors. Vs. State of Karnataka, (2010) 5 Supreme Court Cases 645.

6. Paramjeet Singh Alias Pamma Vs. State of Uttarakhand, (2010) Supreme Court Cases 439.

7. Surendran Vs. Sub-Inspector of Police, (2021) Supreme Court Cases 799.

11. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that both the learned

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Courts below have concurrently held that the accused was negligently driving the vehicle. This is a pure finding of the fact recorded by the competent Courts. There is no jurisdictional error in this finding, and this Court should not interfere with the concurrent finding of facts recorded by two Courts while deciding the revision petition. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207-

> **"10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of

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> any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **"14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
>
> > "*12*. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial

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> discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
>
> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

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

16. The report of the mechanical expert (Ex.PW-6/A) reads that the steering system, the body of the vehicle, the bonnet, bumper, radiator, brake pipe, glasses, and right flexible pipe of the brake were damaged, the tie rod end was displaced, the brake system was not functioning, and the front tyre was separated from the vehicle, along with the hub.

17. This report shows that the vehicle had suffered damage. According to the expert, this damage was caused by the accident.

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18. HC Gian Chand (PW-6) stated that he had examined the vehicle bearing registration No. HP-01A-3643 and issued his report. He did not notice any defect in the vehicle that could have led to the accident. However, the vehicle had suffered damage because of the accident. He stated in his cross-examination that he had not checked the vehicle before the accident. He admitted that the vehicle was a single-bearing vehicle. He admitted that these kinds of vehicles had complaints of damage to the tie rod end. The steering becomes free due to damage to the tie rod end, and the vehicle turns towards one side. He could not say that the tie rod end was suddenly damaged before the accident

19. The admission made by this witness that the vehicle, like the one involved in the accident, had a general complaint of damage to the tie rod end makes it probable that it was damaged before the accident. He also stated in his cross-examination that he was not sure whether the tie rod end was damaged before the accident. Therefore, his testimony does not rule out the damage to the tie rod end before the accident. It was rightly submitted on behalf of the accused that when two versions appear on record, the version in favour of the accused has to be preferred to the version in favour of the prosecution. It

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was laid down by the Hon'ble Supreme Court in ***Raghunath v. State of Haryana, (2003) 1 SCC 398: 2003 SCC (Cri) 326: 2002 SCC OnLine SC 1061*** that when two versions appear on the record, the version in favour of the accused has to be preferred. It was observed at page 413:

> **"33.** In the facts and circumstances recited above, we are clearly of the view that the prosecution has not come up with the true story. It has suppressed the facts. If that were the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond a reasonable doubt. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted."

20. In the present case, the statement of the mechanical expert and the report issued by him make it probable that the tie rod end might have been damaged before the accident.

21. Rumal Singh (PW-2) stated in his examination-in-chief that the accident had occurred because of a mechanical defect. He was permitted to be cross-examined and denied that the accident occurred due to the accused's negligence. His testimony supports the inference that the accident had occurred due to a mechanical defect.

22. Learned Trial Court held that the place of accident was a straight road, and the fact that the vehicle had left the road showed the negligence of the accused. This finding is not

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sustainable. Kundan Lal (PW-1), Tikkam Bushahri (PW3) and ASI Hari Bhagat (PW9) admitted in their cross-examination that there was a curve at the place of the accident. Hence, the conclusion that the place of the accident was a wide road is not supported by the evidence on record.

23. Learned Appellate Court held that the accused was driving the vehicle at high speed without taking care and caution. This conclusion is also not sustainable. Tikkam Bushahri (PW-3), Rajender Singh (PW4), Yash Pal (PW8A), Puran Dass (PW9) and ASI Hari Bhagat (PW10) admitted their cross-examination that the place of the accident was unmetalled and had pot holes. This admission makes it doubtful that the vehicle could have been driven at a high speed.

24. The learned Appellate Court has not recorded the finding regarding the 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,

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> 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 the ***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: -

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> "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 the ***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 accused could not have been held liable without specifying the speed of the vehicle.

29. The witnesses had also deposed about the negligence of the accused. They had not given any particulars of 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

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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."

30. Similar is the judgment in ***State of H.P. vs. Niti Raj 2009 Cr.L.J. 1922 (HP)***, where 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. Thus, no advantage can be derived from the statement made by the witnesses that the accident occurred due to the negligence of the accused.

332. Therefore, the accused could not have been held liable simply based on the statements made by the witnesses that the accused was negligent.

33. The precise negligence of the accused was not mentioned by the learned Trial Court or the Appellate Court. They proceeded on the basis that the accused was negligent because an accident had occurred and the vehicle had left the

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road. They failed to notice that the accused had established a probable defence, which made the prosecution's case doubtful.

34. Therefore, the judgments and order passed by learned Courts below cannot be sustained; hence, the present revision is allowed and the judgment and order dated 11th August, 2008 passed by learned Trial Court as affirmed by learned Appellate Court vide its judgment and order dated 19th May, 2015 are ordered to be set aside and the accused is acquitted of the commission of offences punishable under section 279, 337 and 304-A of the IPC.

35. The fine amount be refunded to the accused after the period of appeal in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court.

36. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/ learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the

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respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court

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

(Rakesh Kainthla)
Judge

6th May, 2026
(Kiran)