

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No.193 of 2015****Reserved on: 03.09.2025****Date of Decision:14.10.2025****Ramesh Chand****....Petitioner****Versus****State of Himachal Pradesh****....Respondent****Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Petitioner : Mr. Suneel Awasthi, Advocate.****For the Respondent/ : Mr. Tarun Pathak, Deputy Advocate
State General.****Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 02.06.2015 passed by learned Additional Sessions Judge-II, Shimla, District Shimla, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 23.12.2010, passed by learned Judicial Magistrate First Class, Jubbal, District Shimla, H.P. (learned Trial Court) were upheld. (*Parties shall*

¹. Whether reporters of the local papers may be allowed to see the judgment? Yes

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 revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 279, 337 and 304-A of the Indian Penal Code (IPC) and Section 187 of the Motor Vehicles Act, 1988 (M.V. Act). It was asserted that Arun Kumar (since deceased) was riding a motorcycle bearing registration No. HP-10A-0606 on 10.06.2009, and the informant Satish Kumar (PW-1) was sitting as a pillion rider. A truck bearing registration No. HP11B-4617 came from the opposite side at a high speed and hit the motorcycle at Bohli Kainchi at about 5:30 p.m.. The truck sped away towards Hatkoti. Arun Kumar and Satish Kumar fell and sustained multiple injuries. The accident occurred due to the negligence of the truck driver. An intimation was given to the police. The police recorded an entry (Ext.PW-11/A) in the Daily Diary. HC Amrit Singh (PW-15), Constable Shishi Ram (PW-12) and Constable Sunil Kumar went to the spot to verify the correctness of the information. HC Amrit Singh (PW-15) recorded the statement (Ext.PW-1/A) of Satish Kumar (PW-1), which was sent to the Police Station, where F.I.R.

(Ext.PW-13/B) was registered. The injured and deceased were taken to the hospital. An application (Ext.PW-10/E) was filed for conducting the medical examination of the injured. Dr Sanjeev Gupta (PW-10) conducted the medical examination of the injured and found that he had suffered simple injuries. He issued MLC (Ext.PW10/C). The inquest on the dead body was conducted, and a report (Ext.PW-10/B) was issued. An application was filed for conducting the post-mortem examination of the deceased. Dr Sanjeev Gupta (PW-10) conducted the post-mortem of the deceased and found that the death was caused by comma and haemorrhagic shock due to excessive bleeding. He issued the report(Ext.PW-10/A). HC Amrit Singh (PW-15) went to the spot and prepared the site plan (Ext.PW-15/A). He found 12-foot marks of dragging the motorcycle by the truck. The truck was parked at Bohli Nala. The driver was missing. The Registration Certificate (Ext. PW-2/C), insurance certificate (Ext. PW-2/D) and logbook (Ext. PW-2/E) of the truck were taken into possession vide memo (Ext.PW-2/B. The Registration Certificate Ext.PW-9/B), and insurance certificate (Ext.PW-9/C) were taken into possession vide memo (Ext.PW-9/A) of the motorcycle. Photographs (Ext.PW-15/B1 to Ext.PW-15/B20) whose negatives are

Ext.PW-15/C1 to Ext.PW-15/C20 were taken.HC Sanjeev Kumar (PW-8) conducted the mechanical examination of the truck and motorcycle and found that there were no mechanical defects in the vehicles, which could have led to the accident. He found fresh scratch marks on the truck. He issued a report (Ext.PW-8/A). The motorcycle was handed over to Yashpal Tanta vide memo (Ext.PW-9/D). Ramesh Chand (PW-7), son of Sant Ram, was found to be the owner of the truck, who disclosed that the accused Ramesh Chand was driving the vehicle at the time of the accident. He issued a certificate (Ext.PW-15/D). The accused also produced his driving license (Ext.PW7/A). The statements of witnesses were recorded as per their version, and after completion of the investigation, challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279,337 and 304-A of the IPC and Section 187 of the M.V. Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined fifteen witnesses to prove its case. Satish Kumar (PW-1) was the pillion rider of the motorcycle. Pratap Singh (PW-2) and Yash Pal (PW-3) are the witnesses to the recovery of the motorcycle. Devender Singh(PW-4) is the eyewitness. Chaman Tanta (PW-5) informed the police about the accident. Yashodhar (PW-6) is the witness to the inquest report. Ramesh Kumar (PW-7) is the owner of the truck. HC Sanjeev Kumar (PW-8) conducted the mechanical examination of the truck and the motorcycle. Suresh Kumar (PW-9) and Constable Shishi Ram (PW-12) witnessed various recoveries. Dr Sanjeev Gupta (PW-10) conducted the medical examination of the injured and post post-mortem of the deceased. Constable Kishore Dass (PW-11) proved the entry in the daily diary. HC Vinod Kumar (PW-13) signed the F.I.R. ASI Taranjeet (PW-14) conducted the inquest and filed an application for post-mortem examination of the deceased. HC Amrit Singh (PW-15) conducted the investigation.

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

6. Learned Trial Court held that the identity of the accused was duly proved by the statement of Ramesh Kumar (PW-7), owner of the truck. The accused did not dispute during the cross-examination of the prosecution witnesses that he was not driving the vehicle at the time of the accident. The truck was going from Jubbal, and the motorcycle was going from Hatkoti. The Investigating Officer found fresh marks on the truck showing that the truck was involved in the accident. The motorcycle was being driven on its extreme left side and was hit by the truck. The accident occurred due to the negligence of the accused, who was driving the vehicle towards the right-hand side. The accident caused injuries to Satish Kumar and Arun Kumar, leading to the death of Arun Kumar. The informant specifically stated that the truck was being driven at a high speed. The accused failed to carry the injured to the hospital. Hence, he was convicted of the commission of offences punishable under Sections 279, 337 & 304-A of the IPC and Section 187 of the M.V. Act and sentenced as under:

Sections

Sentences

279 of IPC

The accused was sentenced to undergo simple imprisonment for six months, pay a fine of ₹500/-

and, in default of payment of the fine, to undergo further simple imprisonment for one month.

337 of IPC The accused was sentenced to undergo simple imprisonment for six months, pay a fine of ₹200/- and in default of payment of the fine, to undergo further simple imprisonment for one month.

304-A of IPC The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹2000/-, and in default of payment of the fine, to undergo further simple imprisonment for three months.

187 of the M.V. Act The accused was sentenced to undergo simple imprisonment for 15 days.

It was ordered that all the substantive sentences of imprisonment shall run concurrently.

7. Being aggrieved by the judgment of conviction and order of sentence passed by the learned Trial Court, the accused filed an appeal. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the truck at a high speed and the truck hit the motorcycle, resulting in the death of Arun Kumar and injuries to the informant. The accused sped away from the spot. He was rightly convicted and sentenced by the learned Trial Court. 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

revision, asserting that the learned Courts below misinterpreted the witnesses' statements. The identity of the accused was not established beyond a reasonable doubt. The possibility of the motorcycle driver being rash and negligent could not be ruled out. The benefit of the Probation of Offenders Act was not granted to the accused. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Suneel Awasthi, learned counsel for the petitioner/accused, and Mr Tarun Pathak, learned Deputy Advocate General, for the respondent/State.

10. Mr Suneel Awasthi, learned counsel for the petitioner/accused, submitted that the prosecution has failed to prove that the accused was driving the truck at the relevant time. Learned Trial Court erred in holding that the accused was driving the truck towards the right side of the road and the motorcyclist was driving the motorcycle towards the left side of the road. The site plan (Ext.PW15/A) shows that the motorcycle was being driven towards the right side and the truck was being driven on its left side. Therefore, the motorcyclist breached the Rules of Road

Regulations 1989 and learned Courts below failed to consider these Rules in their proper perspective. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Tarun Pathak, learned Deputy Advocate General, for the respondent/State, submitted that the prosecution witnesses categorically stated that the accused was driving the vehicle at a high speed towards the wrong side of the road. The learned Trial Court had also found that the accused was driving the truck towards the right side of the road, which led to the accident. The accused failed to stop his truck and take the injured to the hospital. He was rightly convicted and sentenced by the learned Courts below. This Court should not interfere with the concurrent findings of fact recorded by the learned Courts below; hence, he prayed that the present petition be dismissed.

12. I have given 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 is not

an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207:-

“10.Before advertng 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 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 which 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. DilipsinhKishorsinh 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.

15.It would be apposite to refer to the judgment of this Court in *Amit Kapoor v.Ramesh Chander[Amit*

Kapoorv.RameshChander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where the 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 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 aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumanallath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275], while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 a 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 reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its

jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

16. This position was reiterated in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC

(Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

“16.It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17.As held by this Court in *Southern Sales & Servicesv.Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

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

18. Ramesh Kumar(PW-7), owner of the truck bearing registration No. HP-11B-4617 stated he was told about the accident telephonically. He got the vehicle released. The accused produced a driving license, and he signed the memo. He was permitted to be cross-examined. He admitted that Ramesh Chand used to drive the vehicle bearing registration No.HP-11B-4617 . He admitted that he had engaged the accused as a driver on 05.06.2009. He admitted that the accused had brought the truck from the Ambuja factory to

Dhanwari on 09.06.2009. He admitted that there was no conductor on that day. He admitted that somebody informed him about the accident, and he got the vehicle released. He stated in his cross-examination by the defence that he was not aware of the accident.

19. This witness has categorically stated that he had engaged the accused as a driver. The defence did not dispute this fact in his cross-examination, and this part of his testimony is to be accepted as correct.

20. It was laid down by the Hon'ble Supreme Court in *State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561* that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in *Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4*, and it was held at page 34:

“58.A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A

witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ext. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, such the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as *Brown v. Dunn*, (1893) 6 R 67 (HL), considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

“Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest

that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.”

60. Lord Halsbury, in a separate but concurring opinion, held as under:

“My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine

witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.”

61. This Court in a judgment reported as *State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850, quoted from *Brown v. Dunn*, (1893) 6 R 67 (HL) to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (*State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850), SCC pp. 566-67, para 13)

“13. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,
- (2) to discover who he is and what his position in life is, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or

might expose or tend directly or indirectly to expose him to a penalty or forfeiture.”

62. This Court, in a judgment reported as *Muddasani Venkata Narsaiah v. Muddasani Sarojana*, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268, laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under : (SCC pp. 294-95, paras 15-16)

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat*, AIR 1963 SC 1906. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*, 1957 SCC OnLine P&H 177: AIR 1958 P&H 440.

16. In *Maroti Bansi Teliv. Radhabai*, 1943 SCC OnLine MP 128: AIR 1945 Nag 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian*, 1960 SCC OnLine Cal 44: AIR

1961 Cal 359 has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court in **Kuwarlal Amritlal v. Rekhlal Koduram**, 1949 SCC OnLine MP 35; AIR 1950 Nag 83 has laid down that when attestation is not specifically challenged and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in **Karnidan Sardav. Sailaja Kanta Mitra**, 1940 SCC OnLine Pat 288; AIR 1940 Pat 683 has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

21. It was submitted that this witness has been declared hostile and was cross-examined by the prosecution, which means that the prosecution does not consider him worthy of credence, and no reliance should be placed upon his testimony. This submission is not acceptable. 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 careful 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 careful 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 close 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 Kanoji 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.”

22. In the present case, the credibility of this witness regarding the name of the driver was not shaken by contradicting him with reference to his previous testimony; therefore, this part of his testimony cannot be discarded altogether.

23. Thus, the learned Courts below had rightly held that the accused was driving the vehicle at the time of the accident.

24. It is an admitted case that the motorcycle was going from Hatkoti towards Jubbal, whereas, truck was going from Jubbal towards Hatkoti. The site plan (Ext.PW-15/A)

shows the dead body of Arun Kumar at point 'A' and the motorcycle bearing registration No. HP10A-0606 at point 'C'. Both of them are towards the right side of the road for a vehicle coming from Hatkoti and going towards Jubbal. The width of the road is shown as seventeen feet, out of which ten feet were unmettled towards the right side and three feet unmettled towards the left side. Thus, there was sufficient space for the driver of the motorcycle to drive it towards the left side.

25. Learned Trial Court held that the truck was being driven towards the right side of the road as per the site plan (Ext.PW-15/A). This is not correct because the site plan shows that the road goes from Jubbal towards Hatkoti, and for a vehicle coming from Jubbal, the place of the accident would be the left side and not the right side.

26. It is true that the site plan does not give sufficient detail and does not show Hatkoti or Jubbal, but the use of the words 'the road going from Jubbal to Hatkoti' suggests that Jubbal is towards the west side of the site plan, whereas Hatkoti is towards the eastern side. Moreover, the benefit of

any ambiguity has to be given to the accused and not to the prosecution, and once Hatkoti is shown towards the eastern side, it has to be taken that Hatkoti was towards the eastern side, whereas Jubbal was towards the western side. Once such a position is fixed on the site plan, the conclusion of the learned Trial Court that the truck was towards the right side of the road is incorrect.

27. Satish Kumar (PW-1) stated that he was sitting as a pillion rider on the motorcycle bearing registration No.HP-10A-0606, which was being driven by Arun Kumar. A truck bearing registration No. HP11B-4617 came from the Jubbal side and hit the motorcycle. It sped away towards Jubbal. The accident occurred due to the high speed of the truck driver. He has nowhere stated in his examination-in-chief that the truck was being driven towards the right side of the road. He only claimed that the accident occurred due to the high speed of the truck driver. Therefore, the conclusion that the truck was being driven towards its right side could not have been drawn from the statement of this witness.

28. Partap Singh (PW-2), Yash Pal (P-3) and Chaman Lal (PW-5) reached the spot after the accident. None of these witnesses stated that the accident occurred towards the right side of the road for a vehicle coming from Jubbal. Therefore, their testimonies do not show that the truck was being driven towards the right side of the road.

29. Devender Singh (PW-4) stated that he was working on the Dochi to Mihana road on 10.06.2009. He was going to his home at 5:00 p.m. He heard the notice. He saw that a truck going towards Hatkoti had hit the motorcycle. The motorcycle fell, and he shouted for the driver to stop the truck, but the driver did not stop the truck. He ran after the truck but could not catch it. The accident occurred due to the negligence of the truck driver. He has also not stated anything about the truck being driven towards the right side of the road; therefore, the conclusion drawn by the learned Trial Court that the truck was being driven towards the right side of the road is not supported by the material on record.

30. It was duly proved on record that the truck was being driven towards its left side and the motorcycle was being driven towards the right side.

31. 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. Therefore, the motorcycle was being driven towards the right side of the road in violation of Rule 2, and the truck was being driven towards its left side of the road as per Rule 2. It was laid down in *Fagu Moharana vs. State, AIR 1961 Orissa 71*, that driving the vehicle on the wrong 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.”

32. Similarly, it was held in *State of H.P. Vs. Dinesh Kumar 2008 H.L.J. 399*, that 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.”

33. 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 as well as 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.”

34. Hence, the motorcyclist was negligent, and the conclusion of the learned Trial Court that the accident occurred due to the negligence of the accused cannot be accepted.

35. It was submitted that the prosecution witnesses deposed that the accused was driving the truck at a high speed, which shows the negligence of the accused. This submission will not help the prosecution. It was rightly submitted on behalf of the petitioner/accused that the use of high speed is not sufficient to infer negligence. 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."

36. 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."

37. This Court also held in *State of H.P. Vs. Madan Lal 2005 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.”

38. 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.”

39. No advantage can be derived from the use of the term ‘high speed’ by the prosecution witnesses.

40. It was submitted that the witnesses have deposed that the accident occurred due to the negligence of the accused, which is sufficient to prove the prosecution’s case. This submission is not acceptable. 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.”

41. 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.”

42. Therefore, the statements of witnesses that the accident occurred due to the negligence of the truck driver are not admissible in evidence and cannot be used to hold the accused guilty.

43. It was submitted that the Investigating Officer had found dragging marks to the extent of 12 feet, which shows that the accused was negligent. It is an admitted case of the prosecution that the truck had not stopped after the accident. Thus, the marks of dragging for 12 feet could have been caused after the accident, and do not show the high speed of the vehicle.

44. There is no other evidence of the negligence or rashness of the accused, and the learned Trial Court erred in holding that the accused was driving the vehicle negligently and his negligence led to the accident.

45. Section 134 of the M.V. Act provides that when any person is injured as a result of an accident involving a motor vehicle, the driver of the motor vehicle shall take reasonable steps to secure medical attention for him. In the present case, the witnesses consistently stated that the accused sped away from the spot. The accused also did not claim that he had stopped the truck on the spot and carried the injured to the hospital; therefore, he violated Section 134 of the M.V. Act, which is punishable under Section 187 of the Motor Vehicles

Act, and the learned Trial Court had rightly convicted him of the commission of an offence punishable under Section 187 of the M.V.Act.

46. Learned Trial Court sentenced the accused to undergo simple imprisonment of 15 days for the commission of an offence punishable under Section 187 of the M.V.Act. This is grossly inadequate because timely help could have saved the precious life of the deceased, but no appeal has been preferred against the inadequacy of the sentence, and no interference is required with the sentence imposed by the learned Trial Court.

47. In view of the above, the prosecution had failed to prove that the accused was driving the vehicle in a rash and negligent manner, which led to the accident causing injury to the informant and the death of Arun Kumar. Hence, the accused is acquitted of the commission of offences punishable under Sections 279, 337 and 304-A of the IPC. However, it is duly proved on record that the accused had failed to carry the injured to the hospital, and he was rightly convicted for the commission of an offence punishable under Section 187 of the

M.V.Act and sentenced to undergo simple imprisonment for 15 days.

48. In view of the above, the appeal is partly allowed and the accused is acquitted for the commission of offences punishable under Sections 279, 337 and 304-A of IPC; however, his conviction and sentence for the commission of an offence punishable under Section 187 of M.V. are upheld.

49. The fine amount, if deposited be refunded to him after the expiry of the statutory period of limitation in case of no further appeal and in case of appeal, the same will be dealt with as per the orders of the Hon'ble Apex Court.

50. The present petition is disposed of in the aforesaid terms, so also the pending applications, if any.

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

(Rakesh Kainthla)
Judge

14th October 2025.
(ravinder)