

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 37 of 2011

Date of Decision: 22.8.2026

Hans Raj

.....Appellant

Versus

State of Himachal Pradesh

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the appellant: Ms. Sheetal Vyas and Ms. Tejasvi Thakur,
Advocates.

For the respondents: Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocates General and Mr. Ravi
Chauhan, Deputy Advocate General.

Sandeep Sharma, J. *(Oral)*

Instant criminal appeal, lays challenge to judgment dated 19.11.2010 passed by learned Sessions Judge Hamirpur, H.P. in Criminal Appeal No. 42 of 2010, modifying judgment of conviction/order and sentence dated 29/31.05.2010 passed by learned Judicial Magistrate First Class, Court No. 4, Hamirpur, District Hamirpur, H.P. in Criminal Case No. 18-I-2008/54-II-08, titled "State of H.P. versus Hans Raj", whereby learned trial Court while holding the appellant-accused (hereinafter, "accused") guilty of having committed the offences under Sections 279, 337 and 338 of IPC and Section 181 of Motor Vehicles Act, convicted and sentenced him to undergo sentence as under:

Section / Offence	Substantive Sentence	Fine Amount	Sentence in Default of Fine
Section 279 IPC	Till the rising of the Court	Rs. 500/-	Simple imprisonment for 15 days
Section 337 IPC	Till the rising of the Court	Rs. 500/-	Simple imprisonment for 10 days
Section 338 IPC	Till the rising of the Court	Rs. 500/-	Simple imprisonment for 15 days
Section 181 Motor Vehicles Act	Nil	Rs. 500/-	Simple imprisonment for 10 days

2. In nutshell, case of the prosecution, as emerges from the record made available to this Court, reveals that on 09.07.2007 at 7:15 AM, PW-1 Karam Singh (complainant) telephonically informed Police Station Sadar, Hamirpur that his car was hit by truck bearing No. HP-38-5953 near Bhota. Police after having entered the Rapat in Daily Diary Register (Ext.PW-6/A) reached on the spot of accident and recorded the statement of complainant Karam Singh (Ext.PW-1/A), wherein he stated that on 07.07.2007, he along with family of Manohar Lal (PW-5) had gone to Rampur to attend marriage in Maruti car bearing No. HP-40-9389. He alleged that they started return journey on 08.07.2007 at 6:00 PM from Rampur and on 09.07.2007 at 7:00 AM when their car reached near Bhota, a truck bearing No. HP-

38-5955 came from Hamirpur side in a rash and negligent manner and hit their car, as a result whereof, its occupants namely Manohar Lal, his wife Sandhya Devi, Kikar Singh, Savita, Saurabh, Rohit, Satpal and car driver Ravi sustained injuries, however he did not suffer any injury. Complainant alleged that accident had taken place due to rash and negligent driving of the driver of the truck, who fled away from the spot. He further stated that he had shifted injured persons to Government Hospital, Bhota and appropriate action in accordance with law be taken against the driver of the truck. On the basis of aforesaid statement of PW Karam Singh, FIR (Ext.PW-9/B) came to be lodged. Police after having completed necessary codal formalities, presented challan in the learned trial Court under Sections 279, 337 and 338 IPC and Section 181 of the Motor Vehicles Act. Learned trial Court, being prima facie convinced that case under aforesaid provisions of law is made out against the accused, framed notice of accusation on 30.04.2008 against accused to which he pleaded not guilty and claimed trial.

3. Prosecution with a view to prove its case examined 13 witnesses, whereas accused in statement recorded under Section 313 CrPC denied the allegations made against him, however he admitted factum with regard to his driving of truck at the relevant time. He also denied that he was driving the vehicle in high speed. Though time was granted to accused to lead evidence in defence, but he failed to lead

the same as such his defence was closed vide order dated 30.10.2009 by learned trial Court. Learned trial Court on the basis of evidence held the accused guilty of having committed offences punishable under Sections 279, 337 and 338 IPC and sentenced him as per description given above. The learned trial Court also refused to grant the benefit of the Probation of Offenders Act to the accused.

4. Being aggrieved and dissatisfied with quantum of sentence awarded by learned trial Court while holding accused guilty, respondent-State filed appeal in the court of learned Sessions Judge, Hamirpur. Learned Sessions Judge, Hamirpur, taking note of evidence adduced on record by prosecution enhanced the sentence awarded by learned trial Court under Sections 279 and 337 IPC to simple imprisonment for a period of two months on each count and simple imprisonment for three months under Section 338 IPC, however fine awarded by learned trial Court was not interfered with. In the afore background, appellant-accused has approached this Court in the instant appeal praying therein for his acquittal after setting aside judgment of conviction and sentence recorded by courts below.

5. I have heard the learned counsel for the parties and gone through the record of the case.

6. Precisely, the grouse of the accused as has been highlighted in grounds of appeal and further canvassed by Ms. Sheetal Vyas and Ms. Tejasvi Thakur, Advocates is that the learned courts

below while holding accused guilty of having committed offences punishable under Sections 279, 337 and 338 IPC have failed to appreciate evidence in right perspective, as a result thereof, findings to the detriment of accused have come to the fore. Ms. Vyas, while making this Court peruse evidence adduced on record by the prosecution attempted to argue that none of the prosecution witnesses has specifically stated anything specific with regard to rash and negligent driving, if any, by the accused and as such, there was no occasion, if any, for both the courts below to hold the accused guilty of having committed offences punishable under Sections 279, 337 and 338 IPC. Ms. Vyas further argued that none of the prosecution witnesses was able to state anything specific with regard to identity of the driver of offending vehicle and as such, accused otherwise could not have been convicted, rather should have been extended the benefit of doubt. Lastly, Ms. Vyas submitted that though evidence adduced on record by the prosecution is not sufficient to conclude guilt of the accused, but yet in case, this Court intends to concur with the findings returned by both the learned courts below, it may proceed to extend benefit of Section 4 of Probation of Offenders Act in favour of accused for the reason that he has already suffered for more than 19 years. She stated that accident had occurred in the year 2007 and since then, accused is suffering continuously on account of pendency of criminal proceedings against him. She stated that at the time of

accident, accused was 43 years old, but now he has attained the age of 62 years coupled with the fact that he has a large family to support.

7. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while supporting the impugned judgment of conviction recorded by both the courts below, vehemently argued that there is overwhelming evidence adduced on record by the prosecution to prove rash and negligent driving of the accused. He submitted that all the material prosecution witnesses have categorically stated that at the time of accident, offending vehicle was being driven rashly and negligently. While making this Court peruse photographs, Ext.P-1 to Ext.P-6, Mr. Kahol submitted that bare perusal of the same clearly reveals that offending vehicle being driven by accused had gone to extreme right side of the road. While making this Court peruse cross-examination conducted upon PW-12 Kikkar Singh, Mr. Kahol submitted that defence itself put a suggestion that accident occurred due to driver's having taken the vehicle to wrong side on account of sleepiness, which itself shows that accident occurred on account of rash and negligent driving of driver of offending vehicle. Lastly Mr. Kahol, placed reliance upon judgment passed by the Hon'ble Apex Court in ***State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182*** to state that reckless drivers do not deserve leniency rather they need to be dealt with severely and as such prayer made on behalf of

accused for extension of benefit of Probation of Offenders Act may not be granted.

8. Having heard learned counsel representing parties and perused material available on record vis-a-vis reasoning assigned in the impugned judgment passed by learned Sessions Judge, Hamirpur, this Court is not persuaded to agree with Ms. Vyas, learned counsel representing accused that courts below have failed to appreciate evidence in right perspective, rather this Court finds that both the courts below have appreciated evidence in right perspective and there is no scope of interference.

9. Though prosecution with a view to prove its case examined 13 witnesses, but to ascertain the correctness of judgment in instant proceedings, statements made by PW-1 Karam Singh, PW-2 Pawan Kumar, PW-3 Sandhya Devi, PW-5 Manohar Lal and PW-12 Kikkar Singh would be relevant.

10. PW-1 Karam Singh deposed that on 09.07.2007, they were coming from Shimla and he was in another vehicle. He deposed that truck bearing registration No. HP-38-5955 came in high speed and hit the vehicle bearing registration No. HP-40-9389 with great force, as a result thereof, occupants of the car suffered injuries. He deposed that truck driver fled away from the spot and he took the injured to the hospital. He categorically deposed that accident took place due to fault of truck driver.

11. In his cross-examination he admitted that he was travelling in a taxi, but he does not remember its registration number. He also admitted that all members of family were sitting with him. While stating that he does not know the name of driver of the accidental vehicle, he stated that its owner is Baldev. He deposed that accident took place on uphill side, but road was quite wide there. He also deposed that there was 20-25 yards distance between his vehicle and accidental vehicle. He stated that they had seen truck coming at a distance of 100 meters and they parked their vehicle behind the truck after crossing it. He feigned ignorance to a suggestion put to him that driver of vehicle No. HP-40-9389 dozed off, due to which vehicle went towards wrong side. Cross-examination conducted upon afore witness itself establishes the case of prosecution that accident was caused due to rash and negligent act of driver of offending vehicle, who had turned his vehicle to extreme right on account of his having fallen asleep.

12. PW-3 Sandhya Devi, one of the occupants of accidental car deposed that they started their journey from Rampur on 08.07.2007 at 4-5:00 PM and accident took place on 09.07.2007 near Bhota. Afore witness was declared hostile. In her cross-examination by learned APP, she deposed that she does not know if accident has taken place due to rash and negligent driving of driver of the truck.

13. PW-4 Sunil Kumar, owner of truck No. HP-38-5955 proved on record certificate Ext.PW-4/A according to which he had engaged

accused as a driver on his truck. In his cross-examination he admitted that his vehicle plies on long routes and he had engaged two drivers namely Hans Raj and Vikram.

14. PW-5 Manohar Lal, another occupant of the accidental car deposed that on 09.07.2007 while their vehicle bearing No. HP-40-9389 reached near Bhot, a truck came in rash and negligent manner and hit their vehicle, as a result of which, he, his wife and two children along with other occupants suffered injuries. He specifically stated that accident occurred on account of rash and negligent driving of driver of offending vehicle. In his cross-examination he stated that he is unable to tell as to whether Karam Singh (PW-1) had reached on spot after five minutes, ten minutes or half an hour, but there were four vehicles in the Barat. He admitted that place of accident is on uphill side. He admitted that most of the occupants of the car were sleeping, however he denied that he was also sleeping. He also denied suggestion put to him that driver of their vehicle was asleep at the time of accident.

15. PW-11 HC Shiv Prakash, Investigating Officer deposed that on 09.07.2007 at 7:50 AM, he after having received telephonic information regarding the accident in question entered Rapat Ext.PW-6/A and thereafter, he along with Constable Rakesh Kumar reached the spot and recorded the statement of Karam Singh under Section 154 CrPC (Ext.PW-1/A). He also deposed that he moved an application

Ext.PW-11/A to the Medical Officer, PHC Bhota and obtained MLCs Ext.PW-8/A and Ext.PW-8/H of the injured persons. He also stated that he got clicked the photographs of the spot Ext.P-1 to Ext.P-6, negatives of which are Ext.P-7 to Ext.P-12. He deposed that he prepared spot map Ext.PW-11/B. In his cross-examination, he stated that statement of Karam Chand (PW-1) was got recorded through Constable Rakesh Kumar under his supervision. While stating that traffic was not blocked at the spot, he denied that photographs were clicked by him after changing the position of vehicle. He admitted that there is no shop on the spot, but stated that he prepared site plan on the instructions of Karam Chand.

16. PW-12 Kikkar Singh deposed that on 09.07.2007, accident of their car bearing registration No. HP-40-9389 had taken place with afore truck, which was coming from Hamirpur side in high speed. He deposed that truck in question hit their car and they sustained injuries in the accident. While stating that accident had taken place due to rash and negligent driving of truck driver, he deposed that truck driver fled away from the spot after the accident. In his cross-examination he not only admitted that his statement was not recorded by police. He denied that truck was going upwards and their car was coming downwards, rather added that there was a plain road. While admitting that he does not know driving, he submitted that he cannot say what was the speed of the truck. While admitting that road was

quite wide on spot, he denied that they had not taken any tea. He also denied that they had slept at the time of accident.

17. If the evidence of all the material prosecution witnesses as has been discussed hereinabove is read in conjunction, this Court is not persuaded to agree with Ms. Sheetal Vyas, learned counsel representing the accused that none of prosecution witnesses stated anything specific with regard to rash and negligent driving by the accused. All the material prosecution witnesses specifically stated that accident occurred on account of rash and negligent driving of the accused. Even pattern of suggestion put to the material prosecution witnesses itself suggests that on account of his having fallen asleep driver of the offending vehicle took his vehicle to extreme right, as a result whereof car which was coming on its side was hit.

18. Photographs adduced on record (Ext.P-1 to Ext.P-6) clearly reveal that driver of the offending vehicle had taken his truck to extreme right and as such it cannot be said that accident occurred on account of fault, if any, of driver of the car. Photographs further reveal that road, at the place of accident, was wide and plain, but yet driver of offending vehicle, took his vehicle to extreme right and hit the car, which at the relevant time, was going towards Hamirpur.

19. At the cost of repetition, it is noticed that to majority of prosecution witnesses, a suggestion came to be put by the defence counsel that accident occurred for the reason that driver of the

offending vehicle had fallen asleep, which itself suggests that accident occurred on account of negligence of driver of offending vehicle.

20. Since there is overwhelming evidence adduced on record by the prosecution to prove guilt of the accused, especially with regard to rash and negligent driving, there appears to be no justification to interfere with the well reasoned judgment recorded by both the courts below with regard to rash and negligent driving of the accused. Since rash and negligent driving of the accused stood proved beyond reasonable doubt, learned Sessions Judge committed no illegality while enhancing the sentence imposed by trial Court.

21. Though this Court sees no reason to interfere with judgment of conviction and order of sentence recorded by learned Sessions Judge, but having taken note of the fact that accident had taken place approximately 19 years back and during the afore period accused suffered trauma of facing trial and conviction, this Court deems it fit to consider prayer made on behalf of petitioner for extension of benefit of Section 4 of Probation of Offenders Act.

22. The mitigating circumstance in this case is that approximately, more than nineteen years have lapsed after the incident and fifteen years have been lapsed after passing of the judgment of conviction dated 29.5.2010 and the accused has already suffered much agony during the pendency of the appeal in the court of learned Sessions Judge as well as this Court and having suffered so

much, which entitles the accused to the benefit of Probation of Offenders Act.

23. Reliance in this regard is placed upon the judgment passed by this Hon'ble Court in ***Yudhbir Singh versus State of Himachal Pradesh 1998(1)S.L.J. 58***, wherein it has been held as under:

“9. The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs. 3,000/- each to PWs Baldev Singh and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the trial Court on or before 31.8.1997, who will thereafter pay the same to said persons.”

24. In this regard, reliance is also placed upon Hon'ble Apex Court judgment ***Ramesh Kumar @ Babla versus State of Punjab 2016 AIR (SC) 2858***, wherein it has been held as under:

“7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances, it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1 (one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour.”

25. The reliance is also placed upon the Hon'ble Apex Court judgment ***Hari Kishan and State of Haryana versus Sukhbir Singh 1988 AIR (SC) 2127***, wherein it has been held as under:

“8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not showing to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to the first offenders cannot be said to be inappropriate.

9. This takes us to, the third questions which we have formulated earlier in this judgments. The High Court has directed each of the respondents to pay Rs.2500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to section 357 Criminal Procedure Code Section 357, leaving aside the unnecessary, provides:-

“357. Order to pay compensation:

(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

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(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation. Such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default.”

26. Though Hon'ble Apex Court in Saurabh Bakshi (supra) has observed that reckless drivers do not deserve any leniency, but in the case at hand, neither the accused was under the influence of liquor nor there is any evidence that he was driving the vehicle in high speed or rashly or negligently and it seems that accused dozed off, due to which the truck swayed to wrong side, as such, it would be too harsh for the accused if he is made to undergo imprisonment after a long period, especially when he has suffered ordeal of trial for quite long.

27. Consequently, in view of the detailed discussion made herein above, this Court finds no merit in the present petition and the same is dismissed, as a result of which, judgment dated 19.11.2010 passed by learned Sessions Judge Hamirpur, H.P. in Criminal Appeal No. 42 of 2010, modifying judgment of conviction/order and sentence dated 29/31.05.2010 passed by learned Judicial Magistrate First Class, Court No. 4, Hamirpur, District Hamirpur, H.P. in Criminal Case No. 18-I-2008/54-II-08, is upheld. However, in view of the aforesaid law as well as submissions having been made by the learned counsel appearing for the accused and after taking into consideration the facts and circumstances of the present case, I am of the considered opinion that the accused can be granted benefit of Section 4 of the Probation of Offenders Act, 1958, subject to payment of

adequate compensation, which would be determined after the receipt of the report of Probation Officer.

28. Accordingly, Registry is directed to call for the report of the Probation Officer, Hamirpur, District Hamirpur, H.P., within six weeks and list this matter on **4.11.2026**.

August 22, 2026

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**(Sandeep Sharma),
Judge**