

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 25 of 2015

Reserved on: 20.08.2026

Date of Decision: 26.08.2028

Amar Nath

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the petitioner : Ms Sheetal Vyas, Advocate.

For the Respondent/ : Mr Lokender Kutlehria,
State Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 02.01.2015, passed by learned Additional Sessions Judge (I), Una, District Una, H.P., vide which the judgment of conviction dated 11.10.2012 and order of sentence dated 12.10.2012, passed by learned Judicial Magistrate First Class Court No. 1, Una, District Una, H.P. (learned trial Court)

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

were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petition 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 the informant, Sarafdin (PW-1), was sitting in the courtyard of his house on 19.12.2004 at about 03.30 p.m. Sadiq Mohammad (since deceased) was crossing the road. A scooter came from Bangana at a high speed and hit Sadiq Mohammad. Sadiq Mohammad fell on the road and sustained injuries. He was taken to the hospital. An intimation was given to the police, and an entry (Ext. PW-8/A) was recorded in the Police Station. ASI Ramesh Chand (PW-9) went to the hospital for verification. He recorded the informant's statement (Ext. PW-1/A) and sent it to the Police Station, where FIR (Ext. PW-4/B) was registered. He filed an application (Ext. PW-9/D) for medical examination of the injured. Dr S.K. Bansal (PW-5) examined Sadiq Mohammad and found that Sadiq

Mohammad was unconscious, disoriented regarding time, place and person. He was bleeding from the nose and ears. He referred the injured to PGI Chandigarh for further treatment. The nature of injury was stated to be grievous, which could have been caused in a roadside accident. He issued the MLC (Ext.PW-5/A). Ramesh Chand visited the spot and prepared the site plan (Ext.PW-9/F). He seized the scooter vide memo (Ext.PW-4/A) along with the documents. The photographs of the spot (Ext.P1 to Ext.P4) were taken. HHC Swarup Lal (PW-3) mechanically examined the scooter, and he did not find any defect in it that could have led to the accident. He issued the report (Ext.PW-3/A). Sadiq Mohammad succumbed to his injuries. An inquest (Ext.P-7) was conducted on the dead body. An application (Ext.P-8) was filed for post-mortem examination of Sadiq Mohammad, and the report (Ext.P-9) was obtained, in which it was mentioned that the cause of death was cranio-cerebral damage consequent to blunt force trauma to the head. The statements of witnesses were recorded as per their version, and after the completion of investigation, the 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 Section 279 and Section 304-A of the Indian Penal Code (IPC), to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Sarafdin (PW-1) is the informant. Rakesh Kumar (PW-2) and Ashwani Kumar (PW-7) did not support the prosecution case. HHC Swarup Lal (PW-3) mechanically examined the scooter. Krishan Chand (PW-4) witnessed the recovery. Dr S.K. Bansal (PW-5) conducted the medical examination of the injured. Naresh Kumar (PW-6) is an eyewitness. HC Vinod Kumar (PW-8) proved the entry in the daily diary. SI Ramesh Chand (PW-9) investigated the matter. Suresh Kumar (PW-10) took the photographs. Bachittar Singh (PW-11) signed the F.I.R. and prepared the challan.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He claimed that he was innocent and had not committed any offence. The witnesses

deposed against him because they were official and biased. He did not produce any evidence in his defence.

6. Learned trial Court held that the prosecution witnesses corroborated each other on material particulars. The minor contradictions in the statements were not sufficient to discard the prosecution version. The informant stated that the accident was caused because of the negligence of the accused. Rakesh Kumar (PW-2) did not support the prosecution case, but stated that the accused was apprehended on the spot by some women. The plea of *alibi* taken by the accused was not proved. The negligence of the accused led to the death of Sadiq Mohammad. Hence, the learned trial Court convicted and sentenced the accused as under:

Under Sections	Sentence imposed
279 IPC	The accused was sentenced to undergo simple imprisonment for one month, pay a fine of ₹1,000/- and, in default of payment of fine, to further undergo simple imprisonment at the discretion of the Court.
304 of IPC	The accused was sentenced to undergo simple imprisonment for three months, pay a fine of ₹10,000/- and, in default of payment of fine, to undergo simple

	imprisonment for one month.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

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 Additional Sessions Judge (I), Una, District Una, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned trial Court that the accused was driving the scooter at the time of the accident. His negligence led to the death of Sadiq Mohammad. The learned trial Court had rightly convicted the accused. The sentence imposed by the learned trial Court was adequate, and no interference was required with it. Hence, the appeal filed by the accused 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 erred in appreciating the evidence on record. Sarafdin (PW-1) was not in a position to witness the accident. No damage was caused to the scooter, which falsified the prosecution case. Dr S. K. Bansal (PW-5) admitted that the injury could have been caused by way of a fall on a hard surface and the injuries are

not possible with a direct hit of the scooter. His testimony falsified the prosecution version. Mere high speed is not sufficient to infer rashness or negligence. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Ms Sheetal Vyas, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

10. Ms Sheetal Vyas, learned counsel for the petitioner, submitted that the initial prosecution version that the deceased was crossing the road was ignored by the learned Courts below. A driver, howsoever careful he may be, cannot avoid the accident if a person suddenly crosses the road. The statement of the Investigating Officer showed that it was not possible to witness the incident from the informant's courtyard. Learned Courts below erred in relying upon the statements of the witnesses. Therefore, she prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. She relied upon judgments of this Court in *Kaushlinder Singh alias Bablu*

vs. State of H.P. 2016:HHC4726 and *Bir Singh vs. State of H.P. 2016: HHC:5022* in support of his submission.

11. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State submitted that the learned Courts below had rightly appreciated the evidence on record and this Court should not re-appreciate the evidence while exercising the revisional jurisdiction. The site plan showed that it was possible for the witnesses to see the accident. There was nothing in the cross-examination of the witnesses to show that they were making false statements. Therefore, he prayed that the present revision 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 *Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485* that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed: -

“7. Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

“438. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying 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, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659: 2004 SCC (Cri) 2003, observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting

as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In *State of Kerala v. Puttumana Illath 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:

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 own 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 to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

- i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

- ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.
- iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in *Sanjabij Tari v. Kishore S. Borcar*, 2025 INSC 1158, in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. 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.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.”

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the

High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The present revision has to be decided as per the judgment.

15. It was specifically stated in the statement (Ext.PW-9/A) that deceased Sadiq Mohammad was crossing the road when he was hit by the scooter. The informant tried to change this version in the Court by deposing in his examination-in-chief that Sadiq Mohammad was walking on the road when he was hit by the scooter, but he admitted in his cross-examination that Sadiq Mohamad was running across the road to call him. Rakesh Kumar (PW-2) also admitted in his cross-examination that Sadiq Mohammad was running across the road. He returned after seeing the scooter. Another scooter came from the other side, and Sadiq Mohammad fell on the road. Thus, the testimonies of these witnesses prove that Sadiq Mohammad was crossing the road at the time of the accident.

17. It was laid down by the Hon'ble Supreme Court in *Mahadeo Hari Lokre v. State of Maharashtra, (1972) 4 SCC 758*, that if a person suddenly crosses the road, the driver may not be able to avoid the accident, and he cannot be held liable for negligence. It was observed at page 759: -

“4... But the case assumes a different complexion if we agree with the sole eyewitness in the case, Dayanand PW 1, that at the time of the impact, Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking note of the approaching bus, there was every possibility of his dashing against the bus without the driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road, the bus driver, even if he is driving slowly, may not be in a position to avoid the accident. Therefore, it will not be possible to hold that the bus driver was negligent.”

18. This Court also took a similar view in *Gurcharan Singh v. State of Himachal Pradesh, 1989 SCC OnLine HP 18: 1990 ACJ 598* and observed at page 600: -

“14. Coming to the statements of witnesses on this aspect, it has been stated that the truck was moving at high speed, but it has not been said what that speed actually was. To say that a vehicle was moving at a high speed is neither proper nor legal evidence of high speed, nor does it in any way indicate rashness on the part of the driver. The prosecution should have been exact on this aspect, as the speed of the vehicle is an essential point to be seen and proved in a case under section 304-A of the *Penal Code, 1860*. Further, there are no skid marks, which eliminates the evidence of

the high speed of the vehicle. In addition to this, it has been stated by the witnesses that the vehicle stopped at a distance of 50 feet from the place of the accident. This appears to be exaggerated. However, it is not a long distance looking at the two points, viz., the first impact of the accident and the last tyres of the vehicle and the total length of the body of the truck in question. If seen from these angles, the distance stated by the witnesses cannot be considered to be very long and thus an indication of high speed. The version of the petitioner that he blew the horn near the place of the curve, which frightened the child, cannot be considered to be without substance. This can otherwise be reasonably inferred that the petitioner would have blown the horn on seeing the child on the road as it is in evidence that the child had come on the *pucca* portion of the road while there is no evidence as to whether the witnesses, more particularly, Ghanshyam, PW 7, Chander Kanta, PW 8, mother, and a few other witnesses were there at that particular time. Rather, the depositions of these witnesses indicate that they were coming from some village lane that joined the main road in question. Children of this age, usually crafty by temperament, move faster than their parents and are in advance of them while walking. This appears to have happened in the present case. A minute examination of the circumstances of this case and the evidence brought on the record discloses that the deceased had reached the *pucca* portion of the road much before the arrival of his parents and the witnesses. That is why, in their deposition, they have said that the child had been run over by the truck. On the other hand, the petitioner has stated that the child got frightened by the blowing of the horn by him and started crossing the road, which could not be seen by him, and the result was the accident and the death of the child. *In case some pedestrians suddenly cross a road, the driver of the vehicle cannot save the pedestrian, however slowly he may be driving the vehicle. In such a situation he cannot be held negligent; rather it appears*

that the parents of the child were negligent in not taking proper care of the child and allowed him to come alone to the road while they were somewhere behind and they could have rushed to pull back the child before the approaching vehicle came in contact with him as it is in their depositions that the truck driver was at a distance coming at a high speed and in case the child wanted to cross the road, it could do so within the time it reached at the place of the accident. How the accident actually took place has not been clearly and comprehensively stated by any of the witnesses. They appear to have been prejudiced by the act of driver's act. Their versions are, therefore, coloured by the ultimate act of the petitioner and the fact that the child had been finished." (Emphasis supplied)

19. This position was reiterated in *State of H.P. vs. Manpreet Singh, Latest HLJ 2008(1) 538*, wherein it was observed as under:

"7...The respondent, in his statement under Section 313 of the Code of Criminal Procedure, has explained that on seeing the deceased, he had blown the horn, and the deceased stopped on the road. As soon as he reached near him, he immediately tried to cross the road and got hit. His version has been duly corroborated by Hardeep Singh (DW1), who was a pillion rider with him. Ajay Kumar (PW1) has admitted that this version is that the respondent had blown the horn, and Daya Ram, on hearing it, had stopped for a while. In these circumstances, *if a person suddenly crosses the road, without taking note of the approaching vehicle, and its Driver may not be in a position to save the accident, it will not be possible to hold the Driver guilty of the offence.* In the instant case, the deceased, knowing fully well that the approaching vehicle stopped on hearing the horn while crossing the road, but when the

motorcycle reached near him, he darted before it, and the accident took place. Thus, in my opinion, the prosecution could not prove the offence charged against the respondent beyond a reasonable doubt that the respondent was driving rashly or negligently. Therefore, in these circumstances, the learned trial Court had rightly acquitted the respondent of the charges framed against him..." (Emphasis supplied)

20 A similar view was taken in *Bir Singh (supra)* and *Kaushlinder Singh alias (Bablu) (supra)*.

21. Both the learned Courts below have not recorded any finding about the precise negligence of the accused. They proceeded on the premise that the negligence of the accused was writ large because an accident had occurred. However, this premise is not correct because it is for the prosecution to prove its case beyond reasonable doubt that the accused had committed a breach of duty cast upon him, and no such evidence was produced in the present case.

22. SI Ramesh Chand (PW-9) investigated the matter. He admitted in his cross-examination that the backyard of the houses shown in the site plan was towards the road and the courtyard was towards the other side. He also admitted that the road was not visible from the courtyard. Rakesh Kumar (PW-2) also stated that the place of the accident is not visible from the courtyard of Sarafdin (PW-1). This falsifies

the prosecution version that Sarafdin (PW-1) had witnessed the accident from the Courtyard of his house. Therefore, there is a reasonable doubt whether the witnesses had seen the incident or not, and the accused is entitled to the benefit of the same.

23. Dr S.K. Bansal (PW-5) stated in his cross-examination that injury was possible by fall on a hard surface. He admitted that such injuries are not possible with a direct hit of the scooter. The testimony of this witness that injuries are not possible by a direct hit of the scooter makes the prosecution case doubtful that the injuries were caused by the scooter hitting Sadiq Mohammad.

24. Therefore, learned Courts below erred in holding that the prosecution had succeeded in proving its case beyond reasonable doubt against the accused; and the judgment and order passed by learned Courts below cannot be sustained.

25. In view of the above, the present revision petition is allowed, and the judgments and order passed by the learned Courts below are set aside. The accused is acquitted of the commission of an offence punishable under Sections 279 and 304-A of the IPC. The fine amount be refunded to him after

the expiry of limitation for filing an appeal, if no appeal is filed, and in case of appeal the same be dealt with as per the judgment of the Hon'ble Supreme Court.

26. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish personal bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the 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 petitioner on receipt of notice thereof shall appear before the Hon'ble Supreme Court

27. The present revision stands disposed of, so also the pending miscellaneous application(s), if any

28. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

26th August, 2026.
(Ravinder)