

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 41 of 2024

Reserved on: 10.09.2026

Date of Decision: 17.09.2026

Uploaded on: 17.09.2026

Pradeep Kumar

...Appellant

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting?¹

For the Appellant : Ms. Madhurika Sekkhon Verma,
Advocate.

For the Respondent : Mr. Rajpal Thakur, Additional
Advocate General.

Chirag Bhanu Singh, Judge

The appellant/accused assails the judgment of conviction and order of sentence imposed upon him by the learned Additional Sessions Judge, Kinnaur at Rampur Bushahr, District Shimla, Himachal Pradesh, in Case No. CIS Regd. No. 29/2019, titled *State of H.P. Vs. Pradeep Kumar*, whereby the appellant/accused was convicted for the commission of offences punishable under Sections 279, 337, 338 & 304AA of the

Indian Penal Code (in short, "IPC") and Sections 185 & 187 of the Motor Vehicles Act (in short, "MV Act"). He was sentenced as under:-

Sr. No.	The offence for which convicted	Substantive Sentence imposed	Fine imposed	In default of payment of fine, Simple imprisonment imposed
1.	Section 279 of IPC	Simple Imprisonment for one month	NIL	NIL
2.	Section 337 of IPC	Simple Imprisonment for one month	NIL	NIL
3.	Section 338 of IPC	Simple Imprisonment for six months	NIL	NIL
4.	Section 304AA of IPC	Rigorous Imprisonment for seven years	Rs.10,000/-	Simple Imprisonment for one month
5.	Section 185 of M.V. Act	Simple Imprisonment for one month	NIL	NIL
6.	Section 187 of M.V. Act	Simple Imprisonment for one month	NIL	NIL
All the sentences were ordered to run concurrently				

2. The case set up by the prosecution in brief was that on the fateful day, i.e. on 06.10.2018 at about 1 a.m. (midnight), the complainant Yusuf (PW1) and his younger brother Suleman (victim/deceased), along with their buffaloes, were proceeding from Ropru to Nogli. They were accompanying the herd of buffaloes. When they had crossed Wazir Bowli near Kishti Point, one pickup came at a high speed and hit the victim, Suleman,

due to which he fell on the road. The offending vehicle had also hit two buffaloes, who were killed on the spot.

3. After the arrival of the police at the spot, injured Suleman was taken in the police vehicle to MGMSC Khaneri for medical treatment. Seeing to the nature of the injury, which was grievous in nature, he was referred to IGMC, Shimla. He, however, succumbed to his injuries on the way.

4. On the basis of the statement of the complainant, Yusuf (PW1), vide Ex. P1/PW1, FIR Ex. P1/PW15 came to be recorded at Police Station Rampur Bushahr. Investigation ensued.

5. On completion of the investigations, the challan was presented before the Court of competent jurisdiction.

6. The prosecution examined as many as 15 witnesses to prove the charges against the accused.

7. After due deliberation, the learned Trial Court came to the conclusion that the case stood proved against the accused beyond reasonable doubt and convicted and sentenced the accused for the commission of different offences reproduced hereinabove (supra).

8. I have heard Ms. Madhurika Sekhon Verma, learned counsel for the appellant, Mr. Rajpal Thakur, learned Additional Advocate General, for the respondent-State and have gone through the records carefully.

9. Learned counsel for the appellant-accused would contend with all vehemence that there is a discrepancy even vis-à-vis the time of the accident. As per the complainant, the accident had taken place around 10:30-10:45 p.m., whereas there is no corresponding evidence on record. Imran (PW2) and the Investigating Officer, SI Amar Singh (PW13) have a different version qua time too. The accused had been identified in the dock for the first time. No test identification parade (TIP) had been conducted. Dock identification is not identification in the eyes of law. The plastic parts recovered from the spot have also not been got matched with the offending vehicle and, as such, there is no evidence on record to connect the accused with the complicity of the crime. The versions of the witnesses are discrepant and full of contradictions, embellishment and exaggerations. Their versions are not cogent, convincing and reliable enough to hold that the prosecution has been able to prove the case beyond reasonable doubt.

10. The perusal of the evidence laid before the learned Trial Court, does shows that the complainant Yusuf (PW1) was the only eye-witness of the occurrence. As per him, the accident had taken place at 10:30-10:45 p.m. The offending vehicle had come at a very high speed from the Rampur side and struck against his brother Suleman. The pick-up had also struck 2-3 buffaloes, which had died at the spot. Yusuf (PW1) had identified the accused, but the same was done in the Court only. Perusal of his cross-examination further shows that he neither knew the number of the vehicle nor had he noticed the same. He had not seen the driver of the pick-up, who had fled away from the spot immediately. He had telephonically informed Imran and Asmail, who were a little ahead of them.

11. From the perusal of the statement of Imran (PW2), who also happens to be the nephew of the deceased, Suleman, and the complainant Yusuf (PW1), though he was also not present at the spot. He has gone to depose that the number of the offending vehicle was HP06A-8873 and the name of the driver was Jitender. He has also identified the accused only in the dock for the first time. Over and apart, the plastic pieces of

the pick-up lying on the spot were taken into possession by the police vide memo Ex. P1/PW2.

12. It further emerges from his deposition, more particularly, his cross-examination, that the accident took place between 1:00-2:00 a.m. (midnight). He informed about the accident to his father (PW1) and reached the spot after 20 minutes. The vehicle of the accused was intercepted by the police near Police Station Rampur.

13. The Investigating Officer, Amar Singh (Retd.), has been cross-examined in the present case as PW13. As per him, he had reached the spot and found the injured along with his brother present there. The injured had been immediately shifted to the hospital at MGMSC Khaneri. Next morning, the accused was apprehended from Dakolar along with his vehicle bearing registration No. HP06A-8873. The Investigating Officer had investigated the spot and picked up the pieces of plastic. The same were taken into possession after following the codal formalities and even the vehicle was got mechanically examined.

14. In his cross-examination, the Investigating Officer had admitted that Yusuf (PW1) had neither disclosed the number of the vehicle nor the name of the driver to him. As per the Investigating Officer, the accused was coming from Wazir Bawdi side at about 03:30-04:00 a.m. on 06.10.2018. He admitted that no identification parade was got conducted by him.

15. It is relevant to advert to the mechanical report placed on record by the prosecution vide Ex. P1/PW3, which shows that, apart from the headlights of the vehicle having been broken, nothing had been reported by Gian Dev, HRTC Mechanic, Rampur Depot, District Shimla, H.P. (PW3). However, in the last column, he had recorded that the left side of the headlight, bumper and bonnet were found broken but mechanical defect was noticed. The record further shows that no endeavour had been made by the prosecution to get the plastic parts and other material collected from the spot matched with the offending vehicle.

16. The ocular evidence adduced on record by the prosecution, clearly and categorically shows that none of the witnesses, including the complainant Yusuf (PW1), who

incidentally was also the eye-witness, had either seen the number of the vehicle or noticed the driver. As per the Investigating Officer, Yusuf (PW1) had neither disclosed the number of the vehicle nor the name of the driver. PW-2, Imran has stated that the number of the offending pick-up was HP06A-8873 (Mahindra Pickup) and the name of the driver was Jitender. Admittedly, he was not at the spot at the relevant time. He had purportedly been informed about the accident by his father. There is nothing on record to remotely show from whom and how Imran (PW2) had come to know about the number and name of the vehicle and its driver.

17. Since the accused-appellant was neither a person known to any one of them nor had he been seen by the complainant or any other witness present at the spot, the number of the vehicle was also unknown to anyone of them. The accused was also not named in the FIR. It would have been appropriate to have subjected the accused to a test identification parade. Since the accused was not previously known to the witnesses or the informant and he was not apprehended at the spot, the investigating agency should have got conducted an identification parade for the purposes of enabling the witnesses

to identify the person alleged to have committed the offence. The evidence of identifying the accused person at the trial for the first time is, indeed, from its very nature, inherently of a weak character. The evidence cannot carry conviction and the prosecution on the contrary should ordinarily clarify as to how and under what circumstances the complainant or the witnesses came to pick out the particular accused person in this behalf. Reliance can be placed in this behalf on the judgment of the Hon'ble Supreme Court, titled as *Budhsen & Anr. v. State of U.P.*, (1970) 2 SCC 128.

18. In the case in hand, as has been discussed hereinabove (supra), there is nothing on record to remotely show as to how and under what circumstances the number and name of the accused had surfaced. There is not even any explanation from the Investigating Officer, who has appeared as PW13.

19. In such a case, the test identification parade would become all the more important, as it would have acted as sufficient corroboration for the sole testimony of the witness, more particularly Yusuf (PW1) in this case. Even otherwise, in

such cases, test identification parade is considered a safe rule of prudence, generally looking for corroboration of the sole testimony of witnesses, enabling the Court to identify the accused, who are strangers to the witnesses. It gains much more importance in the present case, as apart from the complainant, there are no eye-witnesses to the occurrence. Even otherwise, identification of the accused for the first time in the Court is in itself a weak piece of evidence, as has been held conclusively by the Hon'ble Supreme Court in a catena of decisions, including *State of H.P. v. Lekh Raj & Ors.*, (2000) 1 SCC 247.

20. Having reconsidered the ocular version of the witnesses, discussed hereinabove (supra), and the conspectus of law discussed hereinabove, it can safely be inferred that the prosecution has failed to bring on record convincing, clinching and reliable evidence to prove the complicity of the accused in the occurrence. It got confounded because the accused had come to be identified for the first time by the complainant himself in the Court. The circumstances leading to the accused being named also have not been explained by the prosecution in any manner. How and under what circumstances the accused came to be picked up by the complainant could not be inferred from

the evidence on record, coupled with the fact that admittedly the complainant himself had neither seen the number of the vehicle nor had he been able to see the accused. The prosecution also failed to match the parts of the vehicle which had been found at the spot with the offending vehicle. The prosecution thus failed to connect the accused with the commission of the offence. The findings to the contrary arrived at by the learned Trial Court thus cannot be countenanced. The benefit of doubt had to augur to the benefit of the accused. The question of the accused having been found under the influence of liquor also loses its relevance, as his presence at the spot and complicity in the crime itself is shrouded in doubt, as has been discussed in detail hereinabove (supra).

21. The testimony of the other eye-witnesses hardly needs to be discussed in detail, as it is besides the point and do not pertain to the facts in issue.

22. Thus, keeping in view the entirety of the facts and circumstances discussed hereinabove, this Court is of the considered view that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. The findings to

the contrary by the learned Trial Court are, therefore, not sustainable. The conviction and sentence imposed by the learned Trial Court is thus set aside and quashed. The appeal stands allowed, accordingly. The judgment of conviction and order of sentence imposed upon the accused by the learned Additional Sessions Judge, Kinnaur at Rampur Bushahr, District Shimla, Himachal Pradesh, in Case No. CIS Regd. No. 29/2019, titled as *State of H.P. Vs. Pradeep Kumar*, are quashed and set aside. The appeal is disposed of accordingly.

23. The records of the leaned Trial Court be sent back forthwith.

24. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Chirag Bhanu Singh)
Judge

17th September, 2026
(Shamsh Tabrez)