

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 4055 of 2013****Reserved on: 11.9.2026****Date of Decision: 23.9.2026.**

State of H.P.

...Appellant

Versus

Surender Kumar

...Respondent

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.****Whether approved for reporting?¹ No.*

For the Appellant : Mr Tarun Pathak, Deputy Advocate General.

For the Respondents : Mr Malay Kaushal, Advocate, Legal Aid Counsel.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 24.4.2013, passed by learned Chief Judicial Magistrate, Bilaspur, H.P., vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Sections 279 and 304-A of the Indian Penal Code (IPC). *(The parties shall hereinafter be referred to in the same*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 279 and 304-A of the IPC. It was asserted that the informant, Ravinder Kumar (PW-4), was taking tea on 7.4.2006 at about 4:30 PM near PWD Rest House. Rohit (since deceased) came to the shop to call the informant at about 4:45 PM. One Bulker truck bearing registration No. HP-24-5642 came at high speed from Bilaspur and hit Rohit on the wrong side of the road. Rakesh Kumar (PW-1) had also signalled the driver to stop the Bulker truck, but the driver drove it at high speed and in a negligent manner and crushed Rohit. Rohit succumbed to the injuries. The driver identified himself as Surender Kumar. The matter was reported to the police, and an entry No. 16 was recorded in the Police Station. Head Constable Keshav Chand (PW-7) visited the spot for verification.

3. He recorded the informant's statement (Ext.PW-4/A), which was sent to the Police Station where FIR (Ext.PW-7/A) was

registered. HC Keshav Chand took the photographs (Ext.P-1 and Ext.P-2), whose negatives are Ext.P-3 and Ext.P-4. He prepared the site plan (Ext.PW-7/B). He seized the Bulker truck bearing registration No. HP-24-5642 along with the documents vide memo (Ext.PW-7/C).

4. HC Dev Raj (PW-6) conducted the mechanical examination of the vehicle and found that it had no defect that could have led to the accident. He issued the report (Ext.PW-6/A). The post-mortem examination of Rohit was conducted by Dr S.P. Bhangal (PW-7), who issued the report (Ext.PW-7/A) stating that the cause of death was crush injury to the skull. Kimti Lal (PW-5) issued a certificate (Ext.PW-5/A) stating that the accused was employed as the driver of the vehicle. The statements of witnesses were recorded as per their narration, and after the completion of investigation, the challan was prepared and presented before the learned Trial Court.

5. The 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 and 304-A of the IPC, to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined 11 witnesses to prove its case. Rakesh Kumar (PW-1), Lekh Ram (PW-2), and Jyoti Parkash (PW-3) are the eyewitnesses. Ravinder Kumar (PW-4) is the informant. Kimti Lal (PW-5) is the owner of the Bulker truck. HHC Dev Raj (PW-6) conducted the mechanical examination of the Bulker truck. Dr S.P. Bhangal (PW-7) conducted the post-mortem examination of Rohit. HC Keshav Chand (PW-8) wrongly investigated the matter. Kewal Singh (PW-9) (wrongly numbered as PW-8) and Rakesh Kumar (PW-10) (wrongly numbered as PW-8) witnessed the recovery. Satveer Singh (PW-11) (wrongly numbered as PW-9) did not support the prosecution case.

7. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution's case in its entirety. He did not produce any evidence in his defence.

8. The learned Trial Court held that the prosecution had failed to prove that the Bulker truck being driven by the accused had caused the accident. The informant's house and the shop

where he was taking tea were located on the same side of the road, and Rohit did not need to cross the road to call the informant. The testimonies of prosecution witnesses were not satisfactory. Hence, the learned Trial Court acquitted the accused.

9. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court erred in appreciating the material on record. The statements of prosecution witnesses corroborated each other. It was duly proved that the Bulker truck was being driven at a high speed and had hit Rohit. The accused had not applied the brakes to save the child. The medical evidence proved that the cause of death was a crush injury to the skull, which proved that the child was crushed under the vehicle. The learned Trial Court had taken an unreasonable view that could not have been taken by any person. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. I have heard Mr Tarun Pathak, learned Deputy Advocate General for the appellant-State, and Mr Malay Kaushal, learned Legal Aid Counsel for the respondent-accused.

11. Mr Tarun Pathak, learned Deputy Advocate General for the appellant-State, submitted that the statements of prosecution witnesses corroborated each other that the accused was negligently driving the Bulker truck at a high speed. He had failed to apply the brakes despite being warned by Rakesh Kumar about the presence of the child. The learned Trial Court ignored such evidence. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

12. Mr Malay Kaushal, learned Legal Aid Counsel for the respondent-accused, submitted that mere use of the term 'high speed' is not sufficient to infer negligence. The statement in the FIR that the vehicle was being driven towards the wrong side of the road is not supported by the site plan, wherein the Bulker truck was shown towards the left side of the road. The child had crossed the road suddenly, and it was not possible for the driver of the Bulker truck to avoid the accident. The learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

14. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Sanjay Kumar v. State of Bihar*, 2026 SCC OnLine SC 1373, that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal.

It was observed:

Scope of interference with an acquittal:

26. At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In *Kali Ram v. State of Himachal Pradesh* (1973) 2 SCC 808: 1973 SCC (Cri) 1048, this Court explained the golden thread running through criminal jurisprudence in the following words:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence

adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

28. The decision in *Kali Ram* (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not technical; it is a substantive safeguard flowing from the presumption of innocence.

29. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60, this Court reiterated the limited scope of interference with acquittals. This Court observed:

“75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable.”

30. The decision in *Ghurey Lal* (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in *Mrinal Das v. State of Tripura* (2011) 9 SCC 479, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

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

16. Lekh Ram (PW-2) admitted in his cross-examination that the Bulker truck was being driven towards its left side at a normal speed. This is also corroborated by the site plan (Ext.PW-7/B), in which the place of accident is shown to be towards the left side of the road for a vehicle coming from Bilaspur. Thus, the statement in the FIR that the vehicle was being driven towards the wrong side of the road is not proved on record.

17. Lekh Ram (PW-2) admitted in his cross-examination that the child was lying in the middle of the road. Jyoti Parkash (PW-3) stated that the child was crossing the road. These statements show that the child was in the middle of the road and was in the process of crossing the road. 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 him 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 eliminate 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. It 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 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. A similar view was taken 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 at least the approaching vehicle had 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 principle would apply to the present case, and the accused cannot be held liable for negligence.

21. Rakesh Kumar (PW-1) and Jyoti Prakash (PW-3) stated that the truck was being driven at a high speed, which led to the accident. These statements are contradicted by Lekh Ram,

who stated that the vehicle was at a normal speed. No witness has specified the approximate speed of the Bulker truck. 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.”

22. 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."

23. This Court also held in *State of H.P. Vs. Madan Lal, 2003 Latest H.L.J. (2) 925* that speed alone is not a criterion for judging rashness or negligence. It was observed: -

"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."

24. 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, which the prosecution has failed to prove in the instant case."

25. Thus, the accused cannot be held liable because witnesses stated that he was driving the vehicle at high speed without any further evidence that the accused was in breach of his duty to take care.

26. It was submitted that witnesses have deposed about the negligence of the accused and the learned trial Court erred in ignoring the statements of the prosecution witnesses. This submission will not help the prosecution. A witness can only depose about the facts that had occurred in his presence, and he is not permitted to draw inferences from the facts. The inferences have to be drawn by the Jury or the Judge when he is sitting without a Jury. It was laid down by Goddard LJ in *Hollington v. Hawthorn* 1943 KB 507 that a witness cannot depose about negligence. It was observed at 595:

“It frequently happens that a bystander has a full and complete view of an accident. It is beyond question that while he may inform the court of everything he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide, but in truth, it is because his opinion is not relevant. Any fact that he can prove is relevant, but his opinion is not.”

27. 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 based on evidence led before the Court.”

28. Therefore, no advantage can be derived from the statements that the accident had occurred because of the negligence of the accused.

29. Rakesh Kumar (PW-1) stated that the Bulker truck had sped away from the spot. He admitted that he was not aware of the registration number of the truck or the name of the owner. He admitted that the truck had not stopped on the spot. Lekh Ram (PW-2) admitted in his cross-examination that many Bulker trucks crossed the road and no Bulker truck had stopped at the place of the accident. Jyoti Parkash (PW-3) stated in his examination-in-chief that they signalled the driver of the Bulker truck to stop it; however, the Bulker truck sped away from the spot. Thus, it was duly proved that the Bulker truck causing the accident had not stopped after the accident.

30. Ravinder Kumar (PW-4) stated that the driver of the Bulker truck was stopped after one and a half kilometres from the place of the accident. He admitted that the accident had not occurred in his presence and many vehicles had crossed the road.

He has not explained how he could have identified that the Bulker truck stopped by him was the same Bulker truck which had caused the accident, when he had not seen the accident. Therefore, the learned Trial Court had rightly held that the identity of the Bulker truck being driven by the accused as the one that had caused the accident was not proved.

31. Thus, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court even if another view is possible while deciding an appeal against acquittal.

32. No other point was urged.

33. In view of the above, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

34. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four

weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

35. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

23rd September, 2026
(Chander)