

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 169 of 2015

Reserved on: 21.9.2026

Date of Decision: 30.9.2026.

Mohinder Kumar

...Petitioner

Versus

State of HP

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr Peeyush Verma, Senior Advocate, with M/s Anuj Bali and Ajay Sharma, Advocate.

For the Respondent/State : Mr P.K. Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 29.05.2015 passed by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P., Camp at Bilaspur (learned Appellate Court), vide which the judgment of conviction dated 10.09.2014 and order of sentence dated 22.09.2014, passed by the learned Chief Judicial Magistrate, Bilaspur, District Bilaspur (learned Trial Court) were upheld. (*The parties shall*

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

hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the informant, Kashmir Singh (PW-5), was driving an HRTC bus bearing registration No. HP-24A-3502 from Bilaspur to Chandigarh on 15.06.2006. A truck bearing registration No. HP-11B-0262 came from the opposite side at high speed towards the wrong side of the road at Chharol at about 7:40 pm. The informant took the bus towards the *kaccha* portion of the road. However, the truck hit the rear side of the bus. One passenger had taken his head out of the bus, and his head was injured. The window of the driver's side of the bus was also dented. The accident occurred because of the negligence of the driver of the truck.

3. The matter was reported to the police. ASI Rattan Lal (PW-9) went to the spot for verification. He recorded the informant's statement (Ext.PW-5/A) and sent it to the Police Station, where FIR (Ext.PW-8/A) was registered. ASI Rattan Lal investigated the matter. He prepared the site plan (Ext.PW-9/A) and took photographs (Ext. P-1 to Ext. P-10), whose negatives

are Ext. P-11 to Ext. P-20. He seized the bus bearing registration No. HP-24A-3502 and a truck bearing registration No. HP-11B-0262 along with the keys *vide* memos (Ext.PW-4/A and Ex.PW4/B). He seized the documents of the vehicles *vide* memos (Ext.PW-6/B and Ext.PW-9/B). He searched the dead body and seized the tickets (Ext.PW-9/C-1 to Ext.PW-9/C-4). He conducted an inquest on the dead body and issued the report (Ext. PW-9/D).

4. Dr S.K. Patial (PW-11) conducted the postmortem examination of the deceased and issued the report (Ext. PW-11/A) stating that the deceased died of a severe head injury.

5. Bhagat Ram (PW-2) conducted the mechanical examination of the vehicles and found that they had no defect that could have led to the accident. He issued reports (Ext.PW-2/A and Ext. PW-2/B).

6. Dharam Chand (PW-6) issued a certificate (Ext.PW-6/A) stating that he had employed the accused as a driver of the truck.

7. Statements of witnesses were recorded as per their version, and the challan was prepared and presented before the learned Trial Court after the completion of the investigation.

8. 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.

9. The prosecution examined 12 witnesses to prove its case. Mohammad Amin (PW-1) and Baldev Singh (PW-3) were travelling in the bus. Bhagat Ram (PW-2) conducted the mechanical examination of the vehicles. Raj Kumar (PW-4) was the conductor of the bus. Informant Kashmir Singh (PW-5) was driving the bus. Dharam Chand (PW-6), the owner of the truck, proved that he had employed the accused as a driver. Devi Ram (PW-7) and Hari Ram (PW-12) witnessed the recovery. Inspector Mool Raj (PW-8) signed the FIR. Rattan Lal (PW-9) investigated the matter. Bhuri Singh (PW-10) produced the documents. Dr S.K. Patial (PW-11) conducted the post-mortem examination of the deceased.

10. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution case in its entirety. He claimed that he was innocent and was falsely implicated. He examined Rattan Lal (DW-1) in his defence.

11. The learned Trial Court held that the testimonies of the prosecution witnesses corroborated each other. The truck was being driven towards the wrong side of the road. The informant had taken the bus towards the extreme left side of the road, but the truck had hit the bus and caused the death of the passenger travelling in the bus. The statement of Rattan Lal (DW-1) that the bus was being driven on the wrong side of the road was not acceptable. The accident would not have taken place but for driving it towards the wrong side of the road. Hence, the learned Trial Court convicted and sentenced the accused as under: -

Sections	Sentence
Section 279 of IPC	To undergo rigorous imprisonment for six months, pay a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for one month.

Section 304-A of IPC	To undergo rigorous imprisonment for two years, pay a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for three months.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

12. 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, Ghumarwin, District Bilaspur, H.P., Camp at Bilaspur (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statements of prosecution witnesses corroborated each other. No reason was elicited in their cross-examination as to why they should depose falsely against the accused. Dharam Chand, owner of the truck, proved that he had employed the accused as a driver. Rattan Lal (DW-1) stated that the bus was being driven towards the wrong side of the road, but his testimony was not believable. The accident had taken place on the right side of the road, and the accused was negligent in driving the truck towards the right side of the road. The medical evidence proved that the head of the

deceased was crushed in the accident. The learned Trial Court had rightly convicted and sentenced the accused. Hence, the appeal was dismissed.

13. 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 material on record. Mohammad Amin (PW-1) and Baldev Singh (PW-3) stated that the truck was being driven at a normal speed and the deceased had taken his head out of the window. Raj Kumar (PW-4) did not support the prosecution case. Kashmir Singh was an interested witness. However, he admitted that he had warned the passenger not to take his head out of the body of the bus. Rattan Lal (PW-9) also stated that the passenger was warned twice not to take his head out of the bus. Therefore, the proximate cause of the accident was taking the head out of the bus by the passenger. There was no negligence on the part of the accused. The statement of Baldev Singh was recorded 5–6 days after the accident, and no plausible explanation was provided for it. The testimony of Rattan Lal (DW1) was wrongly rejected. When two versions appear on record, the version in favour of the accused should have been accepted. There was no

proof that the accused was driving the truck at the time of the accident. Bhagat Ram (PW-2) stated that he had not examined the vehicles on the spot, clearly showing that the vehicles were moved from their original positions. The learned Trial Court erred in not extending the benefit of the Probation of Offenders Act to the accused. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

14. I have heard Mr Peeyush Verma, learned Senior Advocate, assisted by M/s Anuj Bali and Mr Ajay Sharma, learned counsel for the petitioner/accused, and Mr P.K. Nadda, learned Additional Advocate General for the respondent/State.

15. Mr Peeyush Verma, learned Senior Advocate for the petitioner/accused, submitted that the prosecution version is inherently improbable. The damage was caused to the driver's side of the truck and the rear side of the bus, which suggested that the driver of the bus was negligent in driving it. It is an admitted case of the prosecution that the deceased had taken his head out of the bus, and the accident would not have occurred but for taking the head out of the bus. No person deposed about the

negligence of the accused. The testimony of Rattan Lal (DW-1) was wrongly ignored. It was proved by his testimony that the bus was being driven towards the wrong side of the road. When two versions are appearing, the version in favour of the accused has to be preferred. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

16. Mr P.K. Nadda, learned Additional Advocate General for the respondent/State, submitted that contributory negligence is no defence under criminal law. The photographs show that the bus was taken towards the extreme left side of the road and the truck had crossed the central line. Driving the truck towards the wrong side was the proximate cause of the accident. The learned Courts below have rightly appreciated the evidence on record and this Court should not re-appreciate the evidence while deciding a revision petition. Hence, he prayed that the present revision be dismissed.

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

18. 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 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 sub-section (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 reappraise 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 in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappraising 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.

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

20. Dharam Chand (PW-6) stated that he had employed the accused as a driver and issued a certificate (Ext. PW-6/A). He stated in his cross-examination that he was not present at the time of the accident. His statement that he had employed the accused as a driver of the truck was not challenged in the cross-examination, and is deemed to be accepted.

21. Rattan Lal (DW-1) stated in his cross-examination that he knew the accused and he was driving the truck. He was produced as a witness of truth by the accused. Thus, the testimonies of this witness and the owner of the truck clearly

proved that the accused was driving the truck on the date of the accident.

22. Informant Kashmir Singh (PW-5) stated that he was driving the bus from Bilaspur to Chandigarh on 15.06.2006. A truck bearing registration No. HP-11B-0262 came from the opposite side near Chharol and hit the rear side of the bus. He had taken the bus towards the unpaved road, but the driver of the truck was driving it at such a high speed that he could not control it and hit the rear side of the bus. The truck stopped after some distance. The passenger occupying Seat No. 43 suffered an injury to his head. The pieces of his head were scattered on the spot. The accused was driving the truck.

23. The statement of this witness that he had taken the bus towards the unpaved road is duly corroborated by the photograph (Ext. P-10), in which the bus is shown towards the extreme left side of the road; its left tyre is on the unpaved road, the right tyre is touching the paved road, and the traffic is moving towards the right side of the bus.

24. Rattan Lal (PW-9) investigated the matter. He visited the spot and found that the pieces of the head were lying

scattered for a distance of about 60 ft., and the truck was parked at a distance of about 100 ft. He has shown the spot position in the site plan (Ext.PW-9/A). The pieces of scattered head have been shown at point 'B', which is towards the right side of the divider. The width of the road is shown to be 27 ft. 10 inches. The width of the unpaved road is shown to be 5 ft. and 10 ft. The photographs (Ext.P-1 and Ext.P-3) also show the pieces scattered towards the right side of the divider.

25. The mechanical report (Ext.PW-2/B) mentions that the window pane of seat No. 43 and the body of the bus near seat No. 43 were damaged. The report (Ext.PW-2/A) mentions that the driver's side glass of the truck, the side mirror of the truck, and two hooks of the body of the truck were damaged; the driver's side cabin of the truck had a dent. These reports show that the driver's side of the truck had come in contact with the rear side of the bus near Seat No.43, which corroborates the prosecution version that the driver's side of the truck had hit the portion of the bus where the passenger was sitting in the bus.

26. Mohammad Amin (PW-1) stated that he was travelling in the bus bearing registration No. HP-24A-3502. A

truck came from the opposite side at Chharol. One passenger had taken out his head. The truck hit the head of the passenger, who died on the spot.

27. Baldev Singh (PW-3) stated that he was travelling in the bus. A truck came from the opposite side at Chharol. One passenger occupying seat No. 43 had taken out his head of the bus. The truck hit the passenger's head. The accident occurred because the truck was taken towards the wrong side.

28. It was submitted that the statement of Baldev Singh (PW-3) was recorded 5-6 days after the accident and his testimony is not reliable. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Krishna Pal (Dr) v. State of U.P.*, (1996) 7 SCC 194: 1996 SCC (Cri) 249 that the prosecution case cannot be rejected due to the late examination of eyewitnesses. It was observed:

“In the instant case, no explanation has been given by the prosecution as to why eyewitnesses had not been examined shortly after the incident and from the materials on record it appears that there had been inordinate delay in examining the eyewitnesses. But simply on that account, the convincing and reliable evidence adduced in this case should not be discarded. The Investigating Officer in his deposition has also admitted that through mistake he omitted to mention the crime number in the inquest report. It appears

to us that the Investigating Officer had not been diligent enough, but for that reason, we do not feel that the reliable and clinching evidence adduced in this case by the eyewitnesses, particularly by Dr Rajveer Singh, should be discarded. In this connection, we may refer to a recent decision of this Court in *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518: 1995 SCC (Cri) 977: JT (1995) 6 SC 437] In the said decision, it has been indicated by this Court that in a case of defective investigation, it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of an erring Investigating Officer. As we do not find any reason to disbelieve the testimonies given by eyewitnesses of this case, we do not find any reason to take a contrary view and to interfere with the impugned judgment. These appeals, therefore, are dismissed.”

29. This position was reiterated in *State of U.P. v. Sikandar Ali*, (1998) 4 SCC 298: 1998 SCC (Cri) 926 wherein it was observed:

“11. Failure of the police officer to examine PW 2 Harnam Singh for twenty-four days should not have been used to drop his evidence out. The Investigating Officer said that he was unable to question PW 2 earlier as he was very much involved in other duties relating to the upkeep of law and order. This Court has repeatedly cautioned that lapse of the investigation should not prevent the Court from accepting the eyewitnesses' evidence if it is otherwise truthful.

12. It has been observed in *Ranbir v. State of Punjab* [(1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409] that: (SCC p. 447, para 7)

“The question of delay in examining a witness during the investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a

got-up witness to falsely support the prosecution case.”

In *Ganesh Bhavan Patel v. State of Maharashtra* [(1978) 4 SCC 371: 1979 SCC (Cri) 1: AIR 1979 SC 135], a three-judge Bench of this Court observed that delay in questioning a witness by itself cannot amount to any serious infirmity in the prosecution case: (SCC p. 376, para 15)

“But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to deciding about the shape to be given to the case and the eyewitness to be introduced.”

30. It was held in *State of U.P. v. Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: 2005 SCC OnLine SC 251 that delay in the examination of the witnesses does not make the prosecution case suspect and the defence cannot take advantage of the delayed examination of the witnesses unless it asks the Investigating Officer categorically as to why there was a delay. It was observed:

“18. As regards the delayed examination of certain witnesses, this Court in several decisions has held that unless the investigating officer is categorically asked as to why there was a delay in the examination of the witnesses, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in the examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. (See *Ranbir v. State of Punjab* [(1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409], *Bodhraj v. State of J&K* [(2002) 8 SCC 45: 2003 SCC

(Cri) 201] and *Banti v. State of M.P.* [(2004) 1 SCC 414: 2004 SCC (Cri) 294])

19. The High Court has placed reliance on a decision of this Court in *Ganesh Bhavan Patel v. State of Maharashtra* [(1978) 4 SCC 371: 1979 SCC (Cri) 1]. A bare reading of the fact situation of that case shows that the delayed examination by IO was not the only factor which was considered to be determinative. On the contrary, it was held that there was a catena of factors which, when taken together with the delayed examination, provided a basis for acquittal.

20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible, then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect the credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses.”

31. A similar view was taken in *Banti v. State of M.P.*, (2004) 1 SCC 414: 2004 SCC (Cri) 294; 2003 SCC OnLine SC 1206, wherein it was observed:

“17. As regards the delayed examination of certain witnesses, this Court in several decisions has held that unless the investigating officer is categorically asked as to why there was a delay in the examination of the witnesses, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in the examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and

acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion (See *Ranbir v. State of Punjab* [(1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409] and *Bodhraj v. State of J&K* [(2002) 8 SCC 45: 2003 SCC (Cri) 201]). Consequently, we find no justifying reason or ground substantiated on behalf of the appellants to interfere with the concurrent findings recorded by both the courts based on relevant, cogent and trustworthy evidence adduced by the prosecution to prove the guilt of the appellants beyond reasonable doubt.”

32. In the present case, Rattan Lal was not asked any question regarding the delay in recording the statement of Baldev, and Baldev’s testimony cannot be rejected because of the delay.

33. It was submitted that the passenger had taken his head out of the bus, and the proximate cause of the accident was taking the head out of the bus. This submission cannot be accepted. It was laid down by the Andhra Pradesh High Court in *Islavath Taru Naik v. State of A.P.*, 2025 SCC OnLine AP 3243, that contributory negligence is no defence in criminal law. It was observed:

20. In *Ponnuswami, In re* 1949 Supreme (Mad) 338, the High Court of Madras held that: Contributory negligence, in the strict sense of the term, has no place in criminal law. If the petitioner was not guilty of negligence, he would certainly not be liable under section 304-A, Penal Code, 1860. The fact that the victim also contributed a little by his negligence is absolutely immaterial when there is ample

proof that the petitioner had brought about the accident by his own negligence and rash driving, and attempted to overtake at that point. He could and should have avoided the accident by his care and caution.

The main thing for consideration in a criminal case, under section 304-A, Penal Code, 1860, is whether the accused in the case has caused the death of any person by doing any rash or negligent act not amounting to culpable homicide. Once that is proved, the little contributory negligence on the part of the victim and the accused's good military record are irrelevant except for the purpose of sentencing.

21. This Court is of the view that the doctrine of contributory negligence does not apply to criminal actions. Contributory negligence of the victim is no defence against a charge under 304A of the IPC. The accused will be liable even though there has been a degree of negligence on the part of the victim. A driver must anticipate reasonably foreseeable negligent acts of road users.

34. Therefore, the plea that the passenger had taken his head out of the bus will not help the petitioner/accused.

35. Raj Kumar (PW-4) did not support the prosecution case. It was submitted that his testimony makes the prosecution case doubtful. This submission also cannot be accepted. He admitted in his cross-examination that he was busy issuing tickets to the passengers and had not seen the accident. This explanation appears to be plausible. He was a conductor in the bus, and was entrusted with the duty of issuing the tickets to the passengers. Hence, it was possible for him not to notice the truck

before the accident, and his testimony cannot be used to discard the prosecution version.

36. It was submitted that Kashmir Singh had swerved the bus and therefore its rear side was exposed to the oncoming traffic; the accident would not have occurred but for swerving the bus. This submission also cannot be accepted. No person deposed that the rear side of the bus was exposed to oncoming traffic. The front portion of the truck would have hit the middle portion of the bus had its rear been exposed to the traffic.

37. It was submitted that Kashmir Singh was driving the bus and has an interest to save himself. This submission will also not help the petitioner. The informant's testimony is corroborated by the photographs, site plan, the pieces of head scattered on the road, and the testimonies of the passengers travelling in the bus. So, even if his testimony is seen with due care and caution, it cannot be rejected.

38. It was submitted that no person has deposed about the negligence of the accused. Rattan Lal admitted in his cross-examination that the deceased had died due to his negligence. Therefore, the prosecution case is not proved against the

accused. This submission is only stated to be rejected. Negligence is an inference from the facts, and a witness can only depose to the facts and not the 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.”

39. 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.”

40. Thus, no advantage can be derived from the fact that no witness has deposed that the accused was negligent, or that the Investigating Officer had stated that the negligence of the deceased was the cause of the accident.

41. Rattan Lal (DW-1) stated that the driver of the bus had taken it towards the wrong side. This is not correct and is not supported by the photographs, site plan, and the portion of the brain scattered on the road indicating the place of impact. It is trite to say that men may lie, but circumstances do not. Therefore, the learned Courts below were justified in not relying upon his testimony.

42. The statements of the witnesses, the site plan, and the photographs clearly prove that the truck was being driven towards the right side of the road after crossing the central line. Thus, there is no infirmity in the findings recorded by the learned Courts below that the truck was being driven towards the right side of the road.

43. The Central Government has framed the Rules of the Road Regulations, 1989, to regulate the movement of traffic. Rule 2 provides that the driver of a vehicle shall drive the vehicle as close to the left side of the road as may be expedient and shall allow all the traffic which is proceeding in the opposite direction to pass on his right side. It was laid down in *Fagu Moharana vs.*

State, AIR 1961 Orissa 71, that driving the vehicle on the right side of the road amounts to negligence. It was observed:

“The car was on the left side of the road, leaving a space of nearly 10 feet on its right side. The bus, however, was on the right side of the road, leaving a gap of nearly 10 feet on its left side. There is thus no doubt that the car was coming on the proper side, whereas the bus was coming from the opposite direction on the wrong side. The width of the bus is only 7 feet 6 inches, and as there was a space of more than 10 feet on the left side, the bus could easily have avoided the accident if it had travelled on the left side of the road.”

44. Similarly, it was held in *State of H.P. Vs. Dinesh Kumar* 2008 H.L.J. 399, where the vehicle was taken towards the right side of the road, the driver was negligent. It was observed:

“The spot map Ext. P.W. 10/A would show that at point 'A' on the right side of the road, there were bloodstain marks and a V-shaped slipper of the deceased Anu. Point 'E' is the place where P.W. 1 Chuni Lal was standing at the time of the accident, and point 'G' is the place where P.W. 3 Anil Kumar was standing. The jeep was going from Hamirpur to Nadaun. The point 'A' in the spot map Ext. P.W. 10/A is almost on the extreme right side of the road.

45. This position was reiterated in *State of H.P. vs. Niti Raj* 2009 Cr.L.J. 1922, and it was held:

“16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches. On the left side, while going from Dangri to Kangoo, there was a 7 ft. kacha portion, and on the other side, there was an 11 ft.

kacha portion. The total width of the road was about 28 ft. The injured person was coming from the Dangri side and was walking on the left side of the road. This has been stated both by the injured and by PW-6. This fact is also apparent from the fact that after he was hit, the injured person fell into the drain. A drain is always on the edge of the road. The learned Sessions Judge held, and it has also been argued before me, that nobody has stated that the motorcycle was on the wrong side. This fact is apparent from the statement of the witnesses, who state that they were on the extreme left side, and the motorcycle, which was coming from the opposite side, hit them. It does not need a genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side.”

46. In *Shakila Khader v. Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: 1975 SCC OnLine SC 103, the car went to the right side of the road, hit the parapet and turned turtle. It was held by the Hon’ble Supreme Court that the driver was negligent. It was observed at page 126:

“6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving that led to the accident was rash and negligent is not only the speed but also the width of the road, the density of the traffic, and the attempt, as in this case, to overtake the other vehicles, resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye, it is not difficult for the eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. The criterion adopted by the learned Judge for assessing the evidence of PWs 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is

difficult to be clear or specific in giving details as to the cause of the accident, but this is not one such case. The reference by the learned Judge about the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct, as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turned turtle showed that the car must have been travelling at an extremely high speed, but there is a little blue paint on the pole, and a faint grey stain on the parapet wall, is self-contradictory unless we are to infer that the learned Judge implied that one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and the parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of the road, hit an electric post and parapet wall, and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did, it would have stopped at one of those points. We should remember that the collision with the scooter and pushing it back would have considerably reduced the speed of the car. Even so, it travelled farther. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for this case. The car would probably not have stopped but for turning turtle, and it should have been travelling quite fast before it could overturn, as the learned Judge himself realises. There is only one conclusion possible on the facts of this case, and that is that the accused came over to the wrong side of the road and was responsible for the accident, and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.”

47. Baldev Singh (PW-3) and Mohammad Amin (PW-1) stated that the truck was being driven at a normal speed. It was submitted that the statements of these witnesses show that the accused was not driving the truck at a high speed and he cannot be held to be negligent. This submission is only stated to be rejected. The precise negligence against the accused is not the high speed, which, otherwise, is also a relative concept, but the violation of the rules of road regulation by driving the truck towards the right side of the road. Hence, the statements made by the witnesses that the truck was being driven at a normal speed will not disprove the negligence of the accused.

48. Dr S.K. Patial (PW-11) proved that the deceased had died because of the head injury. He was not cross-examined at all, which means that his testimony was accepted as correct. Therefore, the learned Courts below have rightly held that the negligence of the accused had led to the death of the deceased, and there is no infirmity in convicting the accused for the commission of offences punishable under Sections 279 and 304-A of the IPC.

49. It was submitted that the learned Courts below erred in not granting the benefit of the Probation of Offenders Act to the accused. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *Dalbir Singh Versus State of Haryana (2000) 5 SCC 82* that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of rash or negligent driving, and a deterrent sentence is to be awarded to him. It was observed:

"11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent, and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so that the Indian highways are among the top killers of the country, the saturation of accidents was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision, thus :

"Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."

12. In *State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538*, this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304-A, I.P.C., to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the

offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences for the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in motion. He cannot and should not take a chance thinking that rash driving need not necessarily cause an accident, or even if any accident occurs, it need not necessarily result in the death of any human being, or even if such death ensues, he might not be convicted of the offence, and lastly, that even if he is convicted, he would be dealt with leniently by the Court. He must always keep in mind the fear psyche that if he is convicted of the offence of causing the death of a human being due to his callous driving of a vehicle, he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to the callous driving of automobiles.”

50. A similar view was taken in *State of Punjab v. Balwinder Singh*, (2012) 2 SCC 182, wherein it was held: -

“13. It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, they must have better training in traffic laws and moral responsibility, with special reference to the potential

injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh [(2000) 5 SCC 82: 2004 SCC (Cri) 1208]*.

51. Similar is the judgment in *State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182: (2015) 2 SCC (Cri) 751: 2015 SCC OnLine SC 278*, wherein it was observed at page 196:

“25. Before parting with the case, we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving, where other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty, and the civilised persons drive in constant fear, but are still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish.”

52. Therefore, it was impermissible to grant the benefit of the Probation of Offenders Act to the accused.

53. The learned Trial Court had imposed a sentence of two years for the commission of an offence punishable under Section 304-A of the IPC and six months for the commission of

an offence punishable under Section 279 of the IPC. These are the maximum sentences. The learned Trial Court has not provided any reason for imposing the maximum sentence. Keeping in view the fact that the accused has undergone the agony of trial, appeal, and revision, the award of the maximum sentence cannot be upheld.

54. In view of the above, the present revision is partly allowed and the sentence of six months imposed by the learned Trial Court is ordered to be reduced to three months for the commission of an offence punishable under Section 279 of the IPC, and the sentence of two years imposed for the commission of an offence punishable under Section 304-A of the IPC is ordered to be reduced to one year. Subject to this modification, the rest of the judgments and order are upheld.

55. Modified jail warrants be prepared accordingly.

56. A copy of this judgment, along with records of the learned Courts below, be transmitted forthwith.

(Rakesh Kainthla)
Judge

30th September, 2026
(Chander)