

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 205 of 2015

Reserved on: 31.8.2026

Date of Decision: 10.9.2026.

Suresh 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 R.K. Bawa, Senior Advocate,
(through video-conferencing)
with Mr. Abhinav Thakur,
Advocate present in the
Court).

For the Respondent/State : Mr Ajit Sharma, Deputy
Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 03.06.2015 passed by the learned Additional Sessions Judge (1), Mandi, District Mandi, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 16.11.2011 passed by the learned Judicial Magistrate First Class, Court No. 2, Mandi (learned Trial Court), were affirmed. (*The*

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

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 revision 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 338 of the Indian Penal Code (IPC) and Section 185 of the Motor Vehicles Act (MV Act). It was asserted that the informant, Hem Singh (PW-1), was taking water from the hand pump on 13.02.2005 at about 04:30 PM. Balkrishan was walking on the left side of the road towards his house, carrying a newspaper. A truck bearing registration No. HP-24-2608 came from Pandoh at high speed and hit Balkrishan. The truck stopped after some distance. The driver identified himself as Suresh Kumar. Many people gathered on the spot and carried the injured to the hospital. Information was given to the police. The police recorded an entry (Ext. PW-15/A) in the daily diary and sent ASI Ram Lal (since deceased) 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-13/A) was registered.

3. ASI Ram Lal investigated the matter. He prepared the site plan (Ext. PW-17/A). He filed an application (Ext. PW-4/A) for obtaining the medical examination of the injured. Dr Anuradha Sharma (PW-10) examined Balkrishan and found that he had sustained multiple injuries. She advised an X-ray. It was found after the X-ray that one of the injuries was grievous. She issued the report (Ext. PW-10/A). She also examined the accused, Suresh Kumar, and found that his breath smelled of alcohol. He had sustained simple injuries. In her opinion, the accused had consumed alcohol and was intoxicated at the time of examination. She collected blood and urine samples and the torn T-shirt. She issued the MLC (Ext. PW-10/B).

4. Devki Nandan (PW-8) mechanically examined the truck and found that there was no mechanical defect in it that could have led to the accident. He issued the report (Ext. PW-8/A). Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

5. The learned Trial Court charged the accused with the commission of offences punishable under Sections 279, 337, and 338 of the IPC, to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined 17 witnesses to prove its case. Hem Singh (PW-1) and Pawan Sharma (PW-12) are eyewitnesses. Balkrishan (PW-2) is the victim/injured. Prem Lal (PW-3), Shanta Devi (PW-5), and Rajni Devi (PW-7) reached the spot after hearing the noise. Prakash Chand (PW-4) and Yug Bhushan (PW-9) witnessed the recovery. Ashok Kumar (PW-6) is the owner of the vehicle. Devki Nandan (PW-8) mechanically examined the vehicle. Dr Anuradha Sharma (PW-10) examined the victim and the accused. Rakesh Kumar (PW-11) is the Radiologist. Bhagat Singh (PW-13) signed the FIR. Constable Paramdev (PW-14) was working as MHC, with whom the case property was deposited. Roshan Lal (PW-16) carried the blood and urine samples to FSL Junga. Ranjiv Kumar (PW-15) proved the entry in the daily diary. N.K. Sharma (PW-17) prepared the challan and proved the investigation conducted by ASI Ram Lal.

7. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied that he was driving the vehicle or that his negligence had led to the accident. He admitted that he was medically examined. He claimed that witnesses deposed falsely against him. He did not produce any evidence in his defence.

8. The learned Trial Court held that the statements of the witnesses corroborated each other. It was duly proved that the accused was driving the vehicle at the time of the accident and that Balkrishan had sustained grievous injuries. The blood and urine samples were sent to the FSL, and the accused was found to be intoxicated. The plea taken by the accused that some other person was driving the vehicle was falsified by the logbook and the presence of the accused on the spot. The victim was walking towards the left side of the road, and the accused should have been careful while driving the truck; his negligence led to the accident. Hence, the learned Trial Court convicted and sentenced the accused as under:

Conviction	Sentence
Section 279 of IPC	To undergo simple imprisonment for one month, pay a fine of

	₹1000/- and, in default of payment of the fine, to undergo simple imprisonment for seven days.
Section 337 of IPC	To undergo simple imprisonment for three months, pay a fine of ₹500/- and, in default of payment of the fine, to undergo simple imprisonment for one month.
Section 338 of IPC	To undergo simple imprisonment for six months, pay a fine of ₹1000/- and, in default of payment of the fine, to undergo simple imprisonment for two months.
Section 185 of MV Act	To undergo simple imprisonment for three months, pay a fine of ₹2000/- and, in default of payment of the fine, to undergo simple imprisonment for ten days.

9. 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 (1), Mandi, District Mandi (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the vehicle at the time of the accident. He was alone in the truck, and the plea taken by him that some other person was driving the truck was not established. The victim was walking on the extreme left side of

the road, and the accused had no occasion to drive the truck towards the *kaccha* portion of the road. The victim had sustained grievous injuries, and the accused was intoxicated at the time of the accident. There was no infirmity in the judgment and order passed by the learned Trial Court; hence the appeal was dismissed.

10. 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 failed to appreciate the material on record. The injured nowhere stated that the accused was driving the truck at the time of the accident; rather, he stated that he came to know of the fact that the accused was driving the vehicle in the hospital. The informant is an interested witness because he was an immediate neighbour of the injured and had cordial relationships with him. No witness proved that the truck was being driven at a high speed or that any negligence of the accused had led to the accident. There were major contradictions in the statements of the prosecution witnesses. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. I have heard Mr R.K. Bawa, learned Senior Advocate, assisted by Mr Abhinav Thakur, learned counsel for the petitioner/accused, and Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent-State.

12. Mr R.K. Bawa, learned Senior Advocate, took this Court through the evidence and submitted that there are various contradictions in the statements of the witnesses. The identity of the accused as the driver of the vehicle was not proved. Mere use of the term "high speed" is not sufficient to infer negligence. The learned Courts below had not properly appreciated the evidence on record. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon the following judgments in support of his submissions: -

- (i) *Mohanta Lal Saha Vs. State of West Bengal and another* 1968 SCC OnLine SC 396;
- (ii) *State of Karnataka Vs. Satish* (1998) 8 SCC 493;
- (iii) *State of H.P. Vs. Madan Lal*, Latest HLJ 2003 (HP) 925;
- (iv) *State of H.P. Vs. Manpreet Singh*, Latest HLJ 2008 (HP) 538;
- (v) *Santosh Kumari Vs. State of HP*, Latest HLJ 2008 (HP) 540;

- (vi) *State of H.P. Vs. Pramodh Singh, Latest HLJ 2008 (HP) 1360;*
- (vii) *Kushal Singh Vs. State of H.P. Cr. Revision No. 13 of 2002, decided on 26.3.2009; and*
- (ix) *Rai Sandeep alias Deepu Vs. State of NCT AIR 2012 SC 3157.*

13. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent-State, submitted that the prosecution witnesses have consistently stated that the accused was found in the truck and that he was alone. Therefore, the inference drawn by the learned Courts below that the accused was driving the truck cannot be faulted. The victim was walking on the *kaccha* portion of the road, and the accused had no occasion to hit the victim. The learned Courts below had rightly appreciated the evidence, and this Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

15. 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 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.

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

17. The informant, Hem Singh (PW-1), stated that he was drawing water from the hand pump near his house. He saw the victim Balkrishan walking towards the left side of the road. A truck bearing registration No. HP-24-2608 came at a high speed and hit Balkrishan. Balkrishan fell towards the left side of the road. The truck was trapped in a drain towards the left side of the road. The accused, Suresh Kumar, was driving the truck and was alone in it. The villagers gathered after the accident and carried the injured to the hospital. The accused was smelling of alcohol. He stated in his cross-examination that Balkrishan is his neighbour and he is on talking terms with the victim. He was facing Pandoh. Balkrishan was coming from Pandoh towards Mandi. He volunteered to say that the victim was walking towards the left side of the road. He admitted that vehicles

frequently move on the National Highway. The speed of the truck was about 60–70 kms per hour, though he could not state the exact speed. Balkrishan was taken to Zonal Hospital in a vehicle owned by the son of Natha Singh. His statement was recorded on the same day. Statements of Roshni and Shanta Devi were taken in his presence, but he could not say what was stated by them because he was at some distance. He returned from the hospital at about 10:00–11:00 PM. He came to know the name of the accused in the hospital. He denied that he had not seen the accident and that there was no negligence on the part of the driver. He denied that the victim was reading the newspaper and crossing the road. He denied that the driver had sounded the horn. He denied that Balkrishan had hit the rear side of the truck and fell into the drain.

18. It was submitted that he is the neighbour of the victim and an interested witness. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in *Sadayappan v. State*, (2019) 9 SCC 257: (2019) 3 SCC (Cri) 843: 2019 SCC OnLine SC 610 that a related witness is not interested and the interested witness is the one who wants to secure the conviction of the accused. It was observed at page 260:

“13. Criminal law jurisprudence makes a clear distinction between a related and interested witness. A witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. The witness may be called “interested” only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. [See: *Sudhakar v. State* [*Sudhakar v. State*, (2018) 5 SCC 435: (2018) 2 SCC (Cri) 777].]”

19. In the present case, there is nothing in the cross-examination of the witness to show that he had any motive or interest to see that the accused is convicted, and he cannot be held to be an interested witness.

20. It was further submitted that he came to know of the name of the accused in the hospital and his identification is not proper. This submission is also stated to be rejected. He specifically stated that the truck was trapped in the drain, the accused was in the vehicle, and he was alone. Therefore, the only inference that can be drawn is that the accused was driving the vehicle. The fact that he was not aware of the name of the accused on the spot would not make any difference because he had ample opportunity to see the accused on the spot and identify him in Court. Hence, his testimony cannot be discarded on the ground that he came to know of the name of the accused in the hospital.

21. Balkrishan (PW-2) stated that he was walking towards the left side on the *kaccha* portion of the road. A truck bearing registration No. HP-24-2608 hit him. He fell into the drain and sustained injuries. He came to know the name of the driver and the registration number of the truck in the hospital. He stated in his cross-examination that he had visited the field to look after the crop. The informant's house is located at a distance of 300 to 400 yards from his house. He admitted that he had cordial relationships with the informant. He was taken to the hospital by Rajni Devi, Shanta Devi, and Hem Singh in a car of Laxmi Singh. He regained consciousness at about 08:00–09:00 PM. He could not tell the speed of the vehicle; however, it was probably 70–80 km/h. He could not tell the name of the accused or the number of persons travelling in the vehicle. He denied that he was walking on the road while reading the newspaper and sustained injuries by falling.

22. The testimony of this witness proves that he was hit by the truck while he was walking on the *kaccha* portion of the road. The photographs of the spot show that the truck had fallen into the drain located on the extreme left side of the road. The learned Courts below have rightly held that the accused had no

reason to drive the vehicle towards the left side of the road on the *kaccha* portion, and this proved the negligence of the accused.

23. Prem Lal (PW-3) stated that he heard the noise and saw that Hem Singh was running towards the vehicle. He ran after Hem Singh. Shanta Devi and Rajni Devi also reached the spot. Balkrishan and the truck had fallen into the drain. The injured person was taken to the hospital. The truck had one person in it who identified himself as Suresh Kumar, who was present in Court. He was smelling of alcohol. He stated in his cross-examination that Balkrishan was taken to the hospital in the vehicle of Natha Singh. He had not accompanied the injured to the hospital. The police reached the spot after 20–25 minutes. He checked the truck and found that the accused was alone in it. He could not say that Balkrishan had sustained injuries from the rear side of the truck. He denied that two persons were travelling in the truck. He stated that the accused was attempting to take the truck out of the drain.

24. The testimony of this witness also corroborates the informant's statement that the accused was alone in the vehicle.

25. The informant stated that the injured was taken in the vehicle owned by the son of Natha Singh; the injured stated that he was taken in the car of Laxmi Singh; and Prem Lal stated that the injured was taken in the vehicle of Natha Singh. It was submitted that the discrepancies in the statements of the witnesses will make the prosecution's case doubtful. This submission cannot be accepted. The discrepancy regarding the vehicle in which the informant was taken to the hospital relates to what happened after the accident and does not affect the core of the prosecution case regarding the accident. Further, the injured had regained consciousness in the hospital, and he would have no knowledge of the vehicle in which he was transported. The statements of the informant and Prem Lal show that the vehicle of Natha Singh was used, and it is immaterial whether the vehicle was owned by Natha Singh or his son.

26. Shanta Devi (PW-5) also corroborated the prosecution version. She stated that she came to know of the accident and went to the spot. The vehicle bearing registration No. HP-24-2608 was trapped in the drain. Hem Singh and Prem Lal also reached the spot. The injured was taken to the hospital. The vehicle and the injured were on their own side. The driver

was inside the truck, but she could not say that the accused was driving the truck. She stated in her cross-examination that the accident had not occurred in her presence and she could not say that the accident occurred because of the negligence of the injured.

27. It was submitted that the testimony of this witness cannot be relied upon because she was declared hostile by the prosecution. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in *Dadu v. State of M.P.*, 2025 SCC OnLine SC 2733 that the statement of a witness cannot be rejected because he was declared hostile. It was observed:

19.....The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court in *State of U.P. v. Ramesh Prasad Misra* (1996) 10 SCC 360: 1996 SCC (Cri) 1278 wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny, and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW-4 in the manner aforesaid is contrary to the law laid down by this Court.

28. It was laid down by the Hon'ble Supreme Court in *Selvamani v. State*, 2024 SCC OnLine SC 837, that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

“9. A 3-Judge Bench of this Court in the case of *Khujji @ Surendra Tiwari v. State of Madhya Pradesh* (1991) 3 SCC 627: 1991 INSC 153, relying on the judgments of this Court in the cases of *Bhagwan Singh v. State of Haryana* (1976) 1 SCC 389: 1975 INSC 306, *Sri Rabindra Kuamr Dey v. State of Orissa* (1976) 4 SCC 233: 1976 INSC 204, *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30: 1979 INSC 126, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.

10. This Court, in the case of *C. Muniappan v. State of Tamil Nadu* (2010) 9 SCC 567: 2010 INSC 553, has observed thus:

“81. It is a settled legal proposition that (*Khujji case*, SCC p. 635, para 6)

‘6. The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same

can be accepted to the extent their version is found to be dependable on a scrutiny thereof.'

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360, this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543, *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516, *Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450, *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence."

29. It is an admitted version that this witness had reached the spot after the accident; therefore, she could not have deposed anything about the negligence of any person, and her statement that she could not say anything about the negligence will not make any difference.

30. Rajni Devi (PW-7) stated that a truck bearing registration No. HP-24-2608 hit Balkishan, who fell. The accused was driving the truck. She went to the spot after the

accident. The accused was smelling of alcohol. She stated in her cross-examination that she was sitting on her verandah. The informant's house is located adjacent to her house. She could not say that any other person was driving the vehicle. She denied that Prakash Chand was driving the vehicle. She volunteered to say that she had seen the accused getting out of the vehicle. She denied that the injured was crossing the road or that the accident occurred due to his negligence.

31. The testimony of this witness also corroborates the statements of other witnesses. She categorically stated that she had seen the accused coming out of the truck, which supports the statements of the witnesses that the accused was in the truck.

32. Pawan Sharma (PW12) admitted in his cross-examination that the accident had not occurred in his presence and he cannot be called to be an eyewitness. Hence, this testimony does not prove the accident.

33. The witnesses consistently stated that the accused was smelling of alcohol. Dr. Anuradha Sharma (PW-10) examined the accused and found that he was smelling of alcohol and was intoxicated. This part of the statement is corroborated by the

report of FSL (Ext. P-A), in which 181.5 and 258.8 mg% alcohol were found in the blood and urine of the accused.

34. Ashok Kumar (PW-6) stated that he had employed Prakash and Suresh as drivers and had sent both of them to transport cement from Pandoh. He was not aware of who was driving the truck at the time of the accident. He admitted in his cross-examination that the name of the accused was mentioned in the logbook, which falsifies his version that he had employed Prakash Chand as a driver. His testimony proves that the accused was employed by him as a driver. The eyewitnesses consistently stated that the accused was alone, and the presence of Prakash Chand is not established.

35. Ashok Kumar (PW-6) stated that he came to know on an inquiry that the victim was reading the newspaper. This statement is hearsay and inadmissible in evidence, and no advantage can be derived from it.

36. Therefore, the learned Courts below have rightly held that the accused was driving the truck at the time of the accident, and there is no infirmity in this finding recorded by the learned Courts below.

37. The accident had occurred on the *kaccha* portion of the road. The accused has not explained any reason for driving the truck towards the *kaccha* portion of the road. Thus, the learned Courts below have rightly held that he was negligent.

38. It was submitted that the witnesses stated that the accused was driving the vehicle at a high speed, which does not constitute negligence in the absence of evidence regarding the approximate speed of the vehicle. This submission will not help the accused because the negligence against him is that he had taken the vehicle towards the extreme left side of the road where the injured was walking, and not merely that he was driving at a high speed. Thus, the failure to mention the exact speed will not make any difference. In any case, the witnesses consistently stated that the approximate speed of the vehicle was about 70–80 km/h. Therefore, the cited judgments do not apply to the present case.

39. Dr Anuradha proved that Balkrishan had sustained injuries. She advised an X-ray, and Dr Rakesh Kumar (PW-11) went through the X-ray and found a fracture. Thus, it was proved that the victim had sustained simple and grievous injuries.

40. The report of analysis proved that the accused had 181.5 mg % alcohol in his blood, which is in excess of 30 mg % prescribed in Section 185 of the MV Act.

41. Therefore, the learned Trial Court had rightly held the accused guilty of the commission of offences punishable under Sections 279, 337, and 338 of the IPC and Section 185 of the MV Act.

42. It was submitted that the benefit of the Probation of Offenders Act was not granted to the accused and such a benefit should have been extended to him. This submission is only stated to be rejected. 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 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:

7. "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 locomotion. 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.”

43. 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].

44. 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:

8. “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.”

45. The learned Trial Court had imposed:
- A sentence of simple imprisonment for one month and a fine of ₹1,000/- with default clause for the offence punishable under Section 279 of the IPC;
 - Simple imprisonment for three months and a fine of ₹500/- with default clause for the offence punishable under Section 337 of the IPC;
 - Simple imprisonment for six months and a fine of ₹1,000/- with default clause for the offence punishable under Section 338 of the IPC; and
 - Simple imprisonment for three months and a fine of ₹2,000/- with default clause for the offence punishable under Section 185 of the Motor Vehicles Act.
46. These sentences are not excessive considering the manner of the accident and the injuries sustained by the injured.
47. No other point was urged.
48. In view of the above, the present revision fails and is dismissed.

49. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

10th September, 2026
(Chander)