IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 11 of 2013
Reserved on: 28.10.2026
Date of Decision: 17.11.2026.

Dinesh Kumar ...Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Petitioner : Mr Karan Singh Kanwar, Senior Advocate, with Mr Manish Kumar, Advocate.

For the Respondent : Mr Pawan Kumar Nadda, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 15.12.2012 passed by the learned Sessions Judge, Sirmaur, District at Nahan (learned Appellate Court) vide which the judgment of convictiond dated 24.01.2011 and order of sentence dated 01.02.2011 passed by learned Judicial Magistrate First Class, Court No. 1, Paonta Sahib (learned Trial Court) were upheld. *(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 and 304A of the Indian Penal Code (IPC). It was asserted that Tek Chand (since deceased) was working as a labourer in Lime Chemical Factory, Gondpur. He was taking some articles from the store to the plant on 01.08.2004. When he reached near Labruti, at about 04:00 p.m., a truck bearing registration No. HP-17A-5450 hit him on the wrong side at high speed. The informant sustained injuries. The accident occurred because of the negligence of the truck driver. The injured was taken to the hospital. An intimation was given to the police, and entry (Ext.PW7/E) was recorded at the police station. ASI Balak Ram (PW7) went to the hospital for verification. He recorded the informant's statement (Ext.PW7/A) and sent it to the police station, where FIR (Ext.PW7/C) was registered. ASI Balak Ram (PW7) filed an application (Ext.PW7/D) for conducting the medical examination of the injured. Dr Sanjeev (PW5) examined the injured and found that he had

sustained multiple injuries. He issued the MLC (Ext.PW5/A) and referred the injured to PGI Chandigarh for further treatment. ASI Balak Ram (PW7) went to the spot and prepared the site plan (Ext.PW7/F). He seized the truck along with the documents, vide memo (Ext.PW2/A). Subhash Chand (PW4) conducted the mechanical examination of the truck and found that it had no mechanical defect that could have led to the accident. He issued the report (Ext.PW4/A). Injured Tek Chand subsequently succumbed to his injuries. ASI Balak Ram (PW7) conducted the inquest on the dead body and prepared the report (Ext.PW7/E). Dr Shri Niwas (PW6) conducted the postmortem examination of Tek Chand and found that he had died because of septicemia, consequent to the ante mortem injuries that could have been caused in a Motor Vehicle accident. He issued the report (Ext.PW6/A). The photographs of the spot (Ext.P1 to Ext.P4), whose negatives are Ext.P5 to Ext.P8, and photographs of the dead body (Ext.P9 and Ext.P10), whose negatives are Ext.P11 and Ext.P12, were taken. The statements of witnesses were recorded as per their versions, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. 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 304A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Rattan Chand (PW1) and Madan Kumar (PW2) are the eyewitnesses. Parvinder Pal Singh (PW3) witnessed the recovery. HHC Subhash Chand (PW4) conducted the mechanical examination of the truck. Sanjeev Saigal (PW5) conducted the MLC of the injured. Dr Shri Niwas (PW6) conducted the postmortem examination of the deceased. SI Balak Ram (PW7) investigated the matter. Hukmi Ram (PW8) did not support the prosecution case. Swami Narayan (PW9) was called to produce the record but could not trace it.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution's case in its entirety. He stated that he was not driving the truck at the time of the accident and a false case was

registered against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the testimonies of the prosecution witnesses proved that the accused was driving the truck bearing registration No. HP-17A-5450 at the time of the accident. Tek Chand was holding an empty drum on his head. The truck hit Tek Chand, who died in the accident. The evidence proved that Tek Chand was walking towards his own side, and hitting a pedestrian who was walking on his own side, amounted to negligence. The identification of the accused was duly proved. Therefore, the learned Trial Court convicted and sentenced the accused as under :

Sections	Sentence
Section 279 of IPC	To undergo rigorous imprisonment for three months, pay a fine of ₹1000/- and in default of payment of fine, to undergo further simple imprisonment for two months.
Section 304A of IPC	To undergo rigorous imprisonment for one year, pay a fine of ₹2000/- and in default of payment of fine, to undergo further simple imprisonment for two months.

It was ordered that the substantive sentences of imprisonment shall run concurrently.

7. Being aggrieved by the judgment and order passed by the learned Trial Court. The accused filed an appeal which was decided by the learned Sessions Judge, Sirmaur, District at Nahan (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. It was duly proved on record that the accused was driving the truck at the time of the accident. Witnesses had consistently stated that the accident occurred because of the negligence of the accused. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that there was no evidence that the accused was driving the truck or that the truck was being driven rashly or negligently. The truck was being driven inside the factory premises, and there could not have been any negligence. The

learned Courts below failed to appreciate this aspect. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Karan Singh Kanwar, learned Senior Advocate, assisted by Mr Manish Kumar, learned counsel for the petitioner/accused and Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State.

10. Mr Karan Singh Kanwar, learned Senior Advocate for the petitioner, submitted that the prosecution has failed to prove that the accused was driving the truck at the time of the accident. The truck was inside the factory premises, and there could not have been any negligence on the part of the truck driver. The learned Courts below failed to appreciate this aspect. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State, submitted that both the Courts have consistently held the accused to be negligent. The prosecution witnesses have consistently stated that the accused

was driving the truck rashly and negligently. This Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate 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:
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> > "**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 ***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 re-appreciate 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 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 the 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.
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> 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."
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> **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 to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

15. Rattan Chand (PW1) stated that he could not identify the driver and he did not know the name of the driver. He was permitted to be cross-examined. He stated that he could not say that the accused was driving the truck bearing registration No. HP-17-5450. He admitted that the accused present in the Court was driving the truck at the time of the accident. He stated in his

cross-examination in defence that he had not seen the accused before the accident.

16. Madan Kumar (PW2) stated that the accident had occurred because of the negligence of the driver of the truck. The accused was driving the truck at the time of the accident. He stated in his cross-examination that the name of the accused was revealed by the gatekeeper. He admitted that he had not seen the accused driving the truck.

17. The statements of these two witnesses do not establish that the accused was driving the truck at the time of the accident. Rattan Chand (PW1) specifically stated that he could not identify the accused as the driver of the truck. He was permitted to be cross-examined and stated that he could not say that the accused was driving the truck at the time of the accident. Then he admitted that the accused was driving the truck. Thus, he has made inconsistent statements regarding the accused being the driver of the truck during his examination, which makes his testimony highly doubtful.

18. Madan Kumar (PW2) stated that he had disclosed the name of the accused as the driver of the truck based on the

statement made by the gatekeeper. He categorically stated that he did not personally know that the accused was driving the truck at the time of the accident. Thus, his testimony regarding the identification of the accused as the driver of the truck is based upon the statement made by the gatekeeper to him. The gatekeeper was not examined, and the statement of Madan Kumar (PW2) to prove what was told by the gatekeeper to him is hearsay in evidence and inadmissible. It was laid down by the Hon'ble Supreme Court in ***J.D. Jain v. State Bank of India, (1982) 1 SCC 143***, that the statement of a witness made by a person who is not called as a witness is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It was observed: -

> "20. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal?
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> 21. The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on the information given by someone else. (See Stephen on Law of Evidence).
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> 22. The Privy Council in the case of ***Subramaniam v. Public Prosecutor, (1956) 1 WLR 965*** observed:
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> > "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay

> and is admissible when it is proposed to establish, by the evidence, not the truth of the statement, but the fact that it was made. The fact that it was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

19. It was held in ***Kalyan Kumar Gogoi v. Ashutosh Agnihotri*, *(2011) 2 SCC 532: 2011 SCC OnLine SC 200*** that hearsay evidence is inadmissible. It was observed at page 545:

> **37.** Here comes the rule of appreciation of hearsay evidence. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person whose statement is relied upon into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under Indian law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than by a witness in giving evidence and a statement contained or recorded in any book, document or record whatsoever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetence to satisfy

> the mind of a judge about the existence of a fact, and the fraud which may be practised with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.
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> **38.** The reasons why hearsay evidence is not received as relevant evidence are:
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> (*a*) The person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e. every witness must give his testimony under such circumstances as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying, "I do not know, but so and so told me"
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> (*b*) Truth is diluted and diminished with each repetition, and
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> (*c*) If permitted, it gives ample scope for playing fraud by saying "someone told me that...". It would be attaching importance to false rumour flying from one foul lip to another. Thus, statements of witnesses based on information received from others are inadmissible."

20. Thus, no reliance can be placed upon the testimony of Madan Kumar (PW2) to conclude that the accused was driving the truck at the time of the accident.

21. Parvinder Pal Singh (PW3) stated that the accused, Dinesh Kumar, was the driver of the truck bearing registration No. HP-17A-5450. He stated in his cross-examination that his family owns 6 trucks, which are being looked after by his brother Narender Pal Singh. He could not say who was driving the truck

at the time of the accident. The employment of the accused as a driver would not prove the identity of the accused because his family owned six trucks, and it was essential to prove that the accused was entrusted with the truck on the date of the accident.

22. The testimony of this witness shows that his brother Narender Pal Singh, and not he, is managing the trucks. His testimony that he could not say who was driving the truck at the time of the accident would make it difficult to conclude that the accused was driving the truck at the time of the accident.

23. It was submitted that there is a presumption of the continuity of the things and once it was deposed by the owner that he had employed the accused as the driver, the burden would shift upon the accused to establish who was driving the truck on the date of the accident. This submission would have been acceptable had the owner got one truck and had employed only one driver. However, in the present case, the owner had 6 trucks and the mere fact that he had employed the accused as the driver is not sufficient to conclude that the accused was driving the truck on the date of the accident. Further, his admission that his brother was managing the truck shows that only his brother

could tell who was driving the truck on the date of the accident. Hence, no reliance can be placed upon the presumption of continuity of things.

24. Hukmi Ram (PW8) stated that he had not made any entry regarding the arrival of the truck bearing registration number HP-17-5450. He was permitted to be cross-examined, and he denied that he used to make the entries regarding the departure of the truck from the factory gate in his register. He admitted that an entry was made in the register inside the red circle in his hand. He stated in his cross-examination by learned counsel for the defence that he had no duty to enter the registration number of the vehicles going inside the factory and coming out of it. He admitted that he had not brought the original register and that it is kept in the factory. He admitted that HP-17-5450 was not written by him in his own hand.

25. The testimony of this witness is also not satisfactory because he had made inconsistent versions regarding the recording of the entry. He initially stated that he had made the entry in the register. However, he clarified in the cross-examination by learned counsel for the defence that he had not

made the entries. In any case, the entry does not mention the name of the accused as the driver of the vehicle, and it also does not bear any signatures of the driver. Therefore, not much advantage can be derived from the entry.

26. Learned Courts below were swayed by the fact that the witnesses had identified the accused before the Court. However, the witnesses had no prior acquaintance with the accused and the identification made for the first time in the dock is valueless. Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

> "It might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.

> People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

27. It has been stated in ***Halsbury's Laws of England 4th Edition Volume 2*** that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

> "A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

28. It was laid down by the Hon'ble Supreme Court in ***P. Sasikumar v. State of T.N., (2024) 8 SCC 600: (2024) 3 SCC (Cri) 791: 2024 SCC OnLine SC 1652*** that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed on page 605:

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP") was not conducted. All the prosecution witnesses who identified the accused in Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the

appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!

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21. It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP, to admit the identification by PW 1 made for the first time in the court was not proper.

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23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see: ***Kunjumon v. State of Kerala***, ***(2012) 13 SCC 750: (2012) 4 SCC (Cri) 406***).

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27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the recent two cases of ***Jayanv. State of Kerala, (2021) 20 SCC 38*** and ***Amrik Singh v. State of Punjab, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404***.

28. In ***Jayan v. State of Kerala, (2021) 20 SCC 38***, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the

aspect of TIP in the following words: (***Jayan v. State of Kerala, (2021) 20 SCC 38***, SCC p. 44, para 18)

"*18*. It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

29. Therefore, the identification of the accused by the witnesses for the first time in the Court without any corroboration from previous Test Identification Parade is meaningless, and cannot be relied upon to record the conviction.

30. Learned Courts below failed to notice the inconsistencies in the statements of the witnesses. They also held that the owner of the truck had stated that the accused was employed as the driver of the vehicle and concluded that the burden would shift upon the accused to prove who was driving the truck at the time of the accident. However, they failed to appreciate that the owner of the truck had specifically stated in his cross-examination that his brother was managing the trucks and he was not sure who was driving the truck at the time of the

accident. Therefore, not much advantage could have been derived from the testimony of the owner.

31. Thus, the learned Courts below had erred in holding that the accused was driving the truck at the time of the accident. There is a reasonable doubt regarding the identity of the accused as the driver of the truck, and the benefit of the same has to be extended to the accused.

32. In view of the above, the judgments and order passed by the learned Courts below cannot be sustained. Hence, the present revision is allowed, and the judgment of conviction dated 24.01.2011 and order of sentence dated 01.02.2011 passed by the learned Judicial Magistrate First Class, Court No. 1, Paonta Sahib, as affirmed by the judgment dated 15.12.2012 passed by the learned Sessions Judge, Sirmaur, District at Nahan, are ordered to be set aside, and the accused is acquitted of the charged offences. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

33. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/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 petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

17th November, 2026
(Nikita)