IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 349 of 2011
Date of Decision: 31.10.2026

State of Himachal Pradesh ...Appellant

Versus

Habib Khan ...Respondent

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting?[1]

For the Appellant/State: Mr. Rajpal Thakur, Additional Advocate General.

For the Respondent : M/s. Aruna Chauhan & Vaibhav Chauhan, Advocates.

Chirag Bhanu Singh, Judge (Oral)

The appellant/State has preferred the present appeal, assailing the judgment dated 21.05.2011, passed by the learned Judicial Magistrate 1st Class, Jubbal, District Shimla, H.P., whereby the respondent stands acquitted of the charges framed under Sections 279 and 304-A of the Indian Penal Code, 1860 (in

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

short, "IPC") and Sections 187 and 177 of the Motor Vehicles Act, 1988 (in short, "MV Act").

2. The genesis giving rise to the prosecution case may be succinctly summarized thus; on 27.03.2009, Kapil Rawat (PW-3) telephonically informed Police Post, Sawra that some truck driver had hit a boy near Chanderpur. A police team headed by SI Pritam Singh (PW-20) reached the spot, however, by that time, the child had already succumbed to his injuries. SI Pritam Singh (PW-20) recorded the statement of Kapil Rawat (PW-3) under Section 154 Cr.P.C. Kapil Rawat (PW-3) stated that at about 3:30 P.M., while he was returning home from Chanderpur in his car, he had noticed the accused, Habib Khan, driving a truck bearing registration No. HP-14-5941 coming from Kathasu. When Kapil Rawat (PW-3) reached near the house of one Huma Nand at Chanderpur at about 3:40 P.M., he discovered a child, namely Ishwar (deceased), lying critically injured, who had unfortunately died immediately thereafter. Persons assembled at the spot allegedly stated that the incident was caused by the rash and negligent driving of the accused.

3. The accused having been acquitted, the appellant/ State has assailed the judgment of acquittal.

4. It is the contentions of the appellant/State that the judgment of the learned trial Court is erroneous on facts as well as law. It is urged that the trial Court failed to appreciate the prosecution evidence in its correct perspective and omitted to properly evaluate the direct, cogent and reliable evidence brought on record. The reasoning adopted by the learned trial Court is manifestly unreasonable and unsustainable, warranting interference by this Court. It is further submitted that the testimonies of the prosecution eye-witnesses were discarded for untenable reasons despite their being overwhelming ocular and medical evidence on record. It is thus, prayed that the appeal be allowed and the judgment of acquittal passed by the learned trial Court be quashed and set aside.

5. Having heard the learned counsel for the parties and having reappreciated the entire evidence on record, it clearly emerges that the only children present at the spot at the relevant time, were Deepa (PW-6), Ram (PW-9), Lakshman (PW-13) and Dikshit (PW-17). Durgi (PW-8) i.e. the sister of the

deceased apparently had not witnessed the accident. Her presence at the spot has not been corroborated by any of the spot witnesses i.e. PW-6, PW-9, PW-13 and PW-17.

6. A perusal of the testimonies of these four spot witnesses further establishes that the deceased, Ishwar, died on account of some impact with the truck. However, a closer reappraisal of their depositions reveal that the deceased had attempted to climb onto the moving truck from behind (from the *dala*) and in the process he slipped and fell onto the road and sustained fatal injuries.

7. While Deepa (PW-6), Ram (PW-9) and Lakshman (PW-13) deposed in their examination-in-chief that the truck hit the deceased from the left side. All of them, however, unequivocally conceded during cross-examination that the deceased was, in fact, attempting to climb the rear of the truck (*dala*) when he fell.

8. Dikshit (PW-17) initially narrated a contradictory story, stating that the deceased was struck from the front while the truck was carrying from the opposite side. However, during his cross-examination, he candidly clarified the sequence of

events, admitting that the deceased, after taking off his sweater and school bag, attempted to climb into the running truck and fell onto the stones lying on the road. Deepa (PW-6) and Ram (PW-9) also has corroborated this account. Lakshman (PW-13) testified that he was walking ahead of the deceased and consequently did not witness the precise moment when the deceased fell.

9. The reappraisal of the evidence further goes to show that Susheel Saini (PW-12), a school teacher who had arrived at the scene immediately after the occurrence, was informed by two girls present at the spot that the boy had run after the truck attempting to board it from the rear and in the process fell down. Although this testimony is in the nature of hearsay, but it substantially corroborates the admissions elicited during the cross-examinations of the eye-witnesses (PW-6, PW-9, PW-13 and PW-17).

10. The prosecution also examined Kumari Durgi (PW-8), sister of the deceased, to substantiate the charge of rash and negligent driving. However, the testimony of the spot witnesses confirms that she was not present at the spot at the

time of the incident, as none of the spot witnesses noted her presence at the relevant time. Consequently, no credence can be attached to her testimony.

11. A holistic reading of the evidence demonstrates that the accident did not occur on account of the rash and negligent act on the part of the accused driver, but rather due to the negligence of the deceased child attempting to mount a moving vehicle.

12. The prosecution thus has, therefore, failed to establish the foundational ingredients of Sections 279 and 304A IPC beyond any reasonable doubt. The spot witnesses, being young school children studying in the 1st and 2nd standards, have testified candidly. While they initially deposed in favour of the prosecution, however, in their cross-examinations they brought forth the true manner of occurrence. The findings recorded by the learned Trial Court, thus, cannot be faulted in any way. The prosecution has indeed failed to prove its case against the accused beyond reasonable doubt. The benefit of the same, in any case thus had to accrue to the accused, i.e. the respondent.

13. Even otherwise, by now, it is fairly well settled that while hearing an appeal against acquittal, if, on the same set of evidence, two views are reasonably possible and the learned Trial Court has adopted one plausible view, the Appellate Court should not interfere merely because another conclusion was also possible. Interference is warranted only where the findings of the learned Trial Court are perverse, such that no reasonable person could have arrived at such a conclusion, or where such findings are not based on any material on record.

14. After having reappreciated the evidence and considered the law governing the field, it can well be said that the judgment of the learned Trial Court is based on the proper appreciation of evidence and that the view taken by the learned Trial Court is not only reasonable and plausible, but strictly in consonance with the evidence on record. No fault thus, can be attributed to the findings returned by the learned Trial Court. In this regard, support can also be drawn from the judgment passed by the Hon'ble Supreme Court in ***Kallu alias Masih and Others v. State of Madhya Pradesh [AIR 2006 SC 831].***

15. For the reasons detailed hereinabove, this Court is of the considered opinion that no interference is warranted with the judgment of the learned Trial Court.

16. The judgment of acquittal dated 21.05.2011, passed by the learned Judicial Magistrate 1st Class, Jubbal, District Shimla, H.P. is thus upheld. The appeal is accordingly dismissed, being devoid of any merit.

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

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

(Chirag Bhanu Singh)
Judge

31st October, 2026
(Shamsh Tabrez)