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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 227 of 2014
Reserved on: 17.03.2026
Date of Decision: 27.4.2026.

State of H.P. ...Appellant

Versus

Atul Sharma ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Appellant : Mr Ajit Sharma, Deputy Advocate General.

For the respondent : Mr Ajay Chandel, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 01.04.2014 passed by the learned Judicial Magistrate Second Class, Dharamshala, District Kangra, H.P. (learned Trial Court) vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Section 279 of the Indian Penal Code (IPC) and Section 185 of the Motor Vehicle Act (MV Act). *(Parties shall*

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

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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 appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Section 279 of the IPC and 185 of the MV Act. It was asserted that the informant, Desh Raj (PW1), parked the vehicle bearing registration No. HP-01D-0963 on 21.03.2010 at about 9 PM and started making a call to his parents-in-law. A vehicle bearing registration No. HP-39B-9898 came at a high speed and hit the informant's vehicle. The driver sped away towards Dharmshala. The informant telephoned Tsering (PW6), who came to the spot with Prithvi Raj (PW4), and other persons. One person told the informant that a vehicle with punctured tyres was parked at some distance. Des Raj, Prithvi Raj and Tsering (PW6) apprehended two persons at a distance of a hundred meters from the place of the accident. The driver identified himself as Atul Sharma, and the person sitting beside him identified himself as Vivek. Both of them were intoxicated. The matter was reported to the police, and an entry was recorded in the police station. ASI Nirmal Dass (PW9) went to the spot and

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recorded the informant's statement (Ext.PW9/A) and sent it to the Police Station, where FIR (Ext.PW9/B) was registered. He filed applications (Ext.PW9/C and Ext.PW9/D) for conducting the medical examination of Atul and Vivek. Dr S. Chakarvarthy (PW7) examined Atul Sharma and Vivek and found that they had consumed Alcohol. He collected their blood and urine samples and handed them to the police official accompanying Atul Sharma and Vivek. He issued MLCs (Ext.PW7/A and Ext.PW7/B). ASI Nirmal Dass (PW9) visited the spot and prepared a site plan (Ext.PW11/F). The photographs of the spot (Mark P1 to Mark P10) were taken. ASI Nirmal Dass (PW9) seized the vehicles bearing registration Nos. HP-01D-0963 and HP-39B-9898 vide memo (Ext.PW2/A). Shiv Charan (PW8) mechanically examined the vehicles and found that there was no defect in them that could have led to the accident. He issued the reports (Ext.PW8/A and Ext.PW8/B). The blood and urine samples were sent to the SFSL, and the result of analysis (Ext.PW-9/A) was issued, in which it was mentioned that the blood and urine samples of Atul Sharma contained 175.22 mg % and 201.25 mg % proof alcohol, respectively, and the blood and urine samples of Vivek Kumar contained 210.76 mg% and 253.00 mg % alcohol, respectively.

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The 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.

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 Section 279 of the IPC and 185 of the MV Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Desh Raj (PW1) is the informant. Pardeep Kumar (PW2), Prithvi Raj (PW4) and Tsering (PW6) did not support the prosecution's case. Anil Kumar (PW3) is an eyewitness. Rajesh Kumar (PW5) is the driver of the vehicle bearing registration No. HP-01D-1586. Dr S. Chakarvarthy (PW7) medically examined the accused. Shiv Charan (PW8) examined the vehicle. ASI Nirmal Dass (PW9) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He claimed that the tyre of his vehicle had burst and hit another

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vehicle. He was innocent. He did not produce any evidence in defence.

6. The learned Trial Court held that the informant had not identified the accused as a driver, and it could not be said that he was driving the vehicle at the time of the accident. The statement of ASI Nirmal Dass (PW9) showed that two tyres of the vehicle were found to be burst, which supported the defence version that the accident occurred due to a mechanical defect. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court failed to appreciate the prosecution's evidence in its proper perspective. Learned Trial Court discarded the testimonies of prosecution witnesses without any cogent reasons. Dr S. Chakarvarthy specifically stated that Atul Sharma and his friend Vivek were under the influence of liquor. This was duly corroborated by the report of the SFSL, in which alcohol was found in the blood and urine of the accused. Anil Kumar (PW1) specifically stated that the accused was the driver of the jeep at the time of the accident. ASI

Nirmal Dass (PW9) also identified the accused. The accused also admitted in his statement recorded under Section 313 of Cr.P.C. that he was driving the vehicle. The learned Trial Court erred in ignoring this material and relying upon the defence of the accused that the accident had occurred due to the bursting of the tyre. The vehicle was found at a considerable distance from the place of the accident, and the bursting of the tyre would have forced the vehicle to stop near the informant's vehicle. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State and Mr Ajay Chandel, learned counsel for the respondent/accused.

9. Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State, submitted that the learned Trial Court failed to properly appreciate the material on record. The accused has not disputed the fact that he was driving the vehicle at the time of the accident, and learned Trial Court erred in holding that there was no evidence that the accused was the driver of the vehicle. The statement of the Medical Officer and the report of

the forensic analysis proved that the accused had alcohol in his blood exceeding the prescribed limit. This evidence was ignored by the learned Trial Court. Learned Trial Court had taken an unreasonable view which could not have been taken by any person. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Ajay Chandel, learned counsel for the respondent/accused, submitted that the informant had turned hostile. No person had identified the accused as the driver of the vehicle, and the conclusion drawn by the learned Trial Court that the prosecution had failed to prove that the accused was the driver of the vehicle was based on the evidence. This court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in

Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433: 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

> "24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. This position was reiterated in ***State of M.P. v. Ramveer Singh, 2025 SCC OnLine SC 1743,*** wherein it was observed:

> 21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the

cases of ***Babu Sahebagouda Rudragoudar*** **v.** ***State of Karnataka (2024) 8 SCC 149***; ***H.D. Sundara*** **v.** ***State of Karnataka (2023) 9 SCC 581*** and ***Rajesh Prasad*** **v.** ***State of Bihar (2022) 3 SCC 471***.

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

15. The informant, Desh Raj (PW1), stated that a vehicle had hit his vehicle from the rear. The driver of the vehicle said that his tyre had burst. He did not know the name of the driver, nor could he identify him. He was permitted to be cross-examined. He denied that he had made a statement to the police that the driver had sped away from the spot. He denied that someone told him that the vehicle was parked at some distance. He denied that he, Pradhan and Tsering (PW6) apprehended two persons at some distance, and the driver identified himself as Atul Sharma.

16. It is apparent from the informant's statement that he has not identified the driver. He specifically stated that he did not know the name of the driver, nor could he identify him. Therefore, the learned Trial Court had rightly held that his testimony does not establish the identity of the driver of the vehicle.

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17. Pardeep Kumar (PW2) stated that Anil Kumar telephoned and informed him that an accident had occurred. He went to the spot and saw that the informant's vehicle was damaged from the rear. One vehicle was parked at some distance whose tyres had burst. 3-4 persons were present in the vehicle, but he could not identify the driver. He was permitted to be cross-examined. He denied that Atul Sharma was the driver of the vehicle, who was present near the vehicle with Vivek. He denied the previous statement recorded by the police.

18. This witness has also not identified the accused as the driver of the vehicle. He categorically stated that he could not know who was driving the vehicle at the time of the accident. Therefore, his testimony does not establish the identity of the driver of the offending vehicle.

19. Anil Kumar (PW3) stated that he received a call at about 9 PM and was told about the accident. He went to the spot where Desh Raj (PW1) narrated the incident to him. The driver of the vehicle was present in the Court. Another person was also present with the driver.

20. The statement of this witness shows that he was not present at the time of the accident. He was not even present when the offending vehicle was intercepted. He had only seen the accused and another person present on the spot. He has not stated as to how he concluded that the accused was the driver of the vehicle. Since he is not an eyewitness, his testimony that the accused was the driver of the vehicle is not sufficient to prove the prosecution's case.

21. Prithvi Raj (PW4) stated in his cross-examination that he came to know of the accident on the next date of hearing.

22. The testimony of this witness also does not establish that the accused was the driver of the vehicle, and no advantage can be derived from the prosecution’s case.

23. Rajesh Kumar (PW5) admitted in his cross-examination that he was not present on the date of the accident, and he could not say as to how the accident had occurred. The statement of this witness also does not establish the identity of the driver of the vehicle.

24. Tsering (PW6) stated that he received a call from Desh Raj (PW1) at about 9 pm. He and Pardeep Kumar (PW6) went to

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the spot and saw that the informant's vehicle was damaged on the spot, and a Rhino car was parked at some distance. He was permitted to be cross-examined. He denied that Atul Sharma and Vivek were present near the Rhino vehicle. He stated that no person had disclosed the name of the driver. He had not seen the accused on the spot.

25. The statement of this witness also does not establish that the accused was driving the vehicle at the time of the accident.

26. The accused specifically denied in his statement recorded under Section 313 of Cr.P.C. that he was driving the vehicle at the time of the accident. He only claimed that his vehicle had hit another vehicle due to the bursting of the tyre. It is admitted that the two persons were present in the vehicle. Therefore, it was for the prosecution to prove that the accused was the driver and not Vivek. The use of the term my vehicle does not mean that there is an admission regarding the accused being the driver, as the term can be used by any occupant of the vehicle. Therefore, the statement of the accused recorded under Section

313 of Cr.P.C is not sufficient to prove that he was driving the vehicle at the time of the accident.

27. Therefore, the learned Trial Court had rightly concluded that there was insufficient material to show that the accused was driving the vehicle at the time of the accident. This was a reasonable view that could have been taken based on the evidence led before the learned Trial Court, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

28. No other point was urged.

29. In view of the above, the present appeal fails, and it is dismissed. Pending applications, if any, also stand disposed of

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/ learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent on

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receipt of notice thereof shall appear before the Hon'ble Supreme Court

31. A copy of the judgment, along with the record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

27th April, 2026
(Nikita)