IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 454 of 2015
Reserved on 07.10.2026
Date of Decision: 30.10.2026.

Hans Raj ...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 . Sanjeev Kumar Suri, Advocate.
For Respondent/State: Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 23.07.2015, passed by learned Additional Sessions Judge (II), Una, Circuit Court Camp at Amb, District Una, H.P. (learned Appellate Court) vide which the judgment of conviction dated 11.11.2011 and order of sentence dated 19.11.2011 passed by learned Judicial Magistrate First Class, Court No.1, Amb, District Una,

---

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

H.P. (learned Trial Court) were upheld. (*The 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 Section 279, 337 and 338 of the Indian Penal Code (IPC). It was asserted that the informant, Vikesh Kumar (PW-2), was driving the car bearing registration No. HP-19A-1853 from Chintpurni towards Amb. A bus bearing Registration No. HP-36-5808 came from the opposite side at high speed and hit the car at village Aloh, at about 12:30 p.m. The informant sustained injuries in the incident. The accident occurred because of the negligence of the driver of the bus and the high speed of the bus. The injured was taken to the hospital. An intimation was given to the police, and the police recorded an entry (Ext.PW-11/A) in the daily diary. ASI Rampal (PW-12) recorded the informant's statement (Ext.PW-2/A) and sent it to the Police Station where FIR (Ext. PW-10/A) was registered. ASI Rampal investigated the matter. He prepared the site plan (Ext.PW12/A). He seized the bus bearing registration No. HP-36-5808 and a car

bearing registration No. HP-19A-1853 vide memos (Ex.PW3/A and Ext. PW4/A). He seized the log book and driving licence vide memo (Ext.PW-3/B). He also seized the documents of the bus and the car vide memos (Ext.PW-5/A and Ext-PW-3/C). He filed an application for the medical examination of the informant. Dr Parveen Kumar (PW-1) examined the informant and found that he had sustained multiple injuries that could have been caused in a roadside accident. He issued the MLC (Ext.PW-1/A). The informant was treated in Bharaj Life Care Private Hospital, and the discharge summary (Ext. PA) was seized. Saroop Lal (PW-6) conducted the mechanical examination of the bus and the car and found that they had no mechanical defect that could have led to the accident. He issued the reports (Ext. PW6/A and Ext. PW6/B). The photographs of the spot (Ext.P1 to Ext.P-4) were taken. 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. 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, 337, and 338 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses to prove its case. Dr Parveen Kumar (PW-1) conducted the informant's medical examination. Vikesh Kumar, informant (PW-2), narrated the incident. LHC Sanjeev Kumar (PW-3), Rajesh Kumar (PW-4), Shesh Pal (PW-5), and Rakesh Kumar (PW-9) witnessed the recoveries. Saroop Lal (PW-6) conducted the mechanical examination of the vehicles. Ramesh Dutt (PW-7) produced the documents of the vehicle. Beli Ram (PW-8) did not support the prosecution case. Mehar Chand (PW-10) signed the FIR and prepared the challan. Sada Shiv (PW-11) proved the entries in the daily diary. ASI Ram Pal (PW-12) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he was driving the bus bearing registration No. HP-36-5808 and that Vikesh Kumar was driving a car bearing registration No.HP-19A- 1853. He denied the rest of the prosecution version. He claimed that a false case was made against him and the witnesses

2026:HHC:47828

deposed against him because the informant was a local person. He did not produce any evidence in his defence.

6. Learned trial Court held that the informant's testimony was duly corroborated by the site plan and the photographs. The mere fact that Beli Ram (PW-8) had not supported the prosecution case was not sufficient to doubt it. The informant had sustained injuries in the accident, which was caused because of the negligence of the accused. Hence, the learned trial Court convicted and sentenced the accused as under:

Sections	Sentences
279 of IPC	The accused was sentenced to undergo simple imprisonment for two months, pay a fine of ₹500/- and, in default of payment of the fine, to further undergo simple imprisonment for ten days.
337 of IPC	The accused was sentenced to undergo simple imprisonment for two months, pay a fine of ₹500/- and in default of payment of the fine to further undergo simple imprisonment for ten days.

338 of IPC	The accused was sentenced to undergo simple imprisonment for two months, pay a fine of ₹500/- and in default of payment of the fine to further undergo simple imprisonment for 10 days.

It was ordered that all the sentences 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 Additional Sessions Judge (II), Una Circuit Court, Camp at Amb, District Una, H.P. (learned appellate Court). The learned appellate Court concurred with the findings recorded by the learned trial Court that the accused was driving the bus on the date of the accident. A road roller was parked on the left side of the road. The bus had overtaken it and hit the car on the wrong side of the road. The minor contradictions in the statements of the witnesses were not sufficient to doubt the prosecution version. 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 Vikesh Kumar (PW-2) stated in his cross-

examination that the police had obtained his signatures on a blank paper, which made the prosecution's version highly suspect. The photographs do not show that the bus was being driven on the wrong side of the road, and the conclusion drawn by the learned Courts below that the bus was being driven on the wrong side is not correct. Therefore, 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 Sanjeev Kumar Suri, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

10. Mr Sanjeev Kumar Suri, learned counsel for the petitioner, submitted that the photographs do not support the prosecution version. The testimony of Beli Ram (PW-8) made the prosecution version highly doubtful. The learned courts below erred in rejecting the testimony of this witness and relying upon the informant's testimony. The prosecution had not examined any passenger of the bus to prove the manner of the accident. The benefit of the Probation of Offenders Act was not granted to the accused. Therefore, he prayed that the present revision be

allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State, submitted that both the learned Courts below have concurrently held that the accused was driving the bus towards the wrong side of the road, which violated the Rule of Road Regulation 1989. There is no infirmity in the judgments and order passed by the learned courts below. This Court should not reappreciate 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 upon 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 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 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.

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

15. The informant, Vikesh Kumar (PW-2), stated that he was driving a Maruti car bearing Registration No. HP-19A-1853 on 02.05.2008. An HRTC bus came from the opposite side and hit the car on the wrong side of the road. He stated in his cross-examination that he had produced his driving licence before the police. He admitted that there was a curve at the place of the accident. He voluntarily said that he had moved beyond the curve. He denied that a road roller was moving on the left side of the road. He admitted that a person has to go downhill while going from Bharwain to Mubarikpur and a person coming from Mubarikpur to Bharwain has to go uphill. He had not moved his car towards the unpaved portion of the road. He clarified that there was no unpaved portion of the road at the place of the accident and he had taken the car towards the extreme left side of the road. He denied that there was no negligence on the part of the accused.

16. His testimony that the accused was driving the bus on the date of the accident is duly corroborated by the statement of the accused recorded under Section 313 of the Code of Criminal Procedure (CrPC) in which the accused had admitted that he was driving the bus and the informant was driving the car. Thus, the learned Courts below had rightly held that the accused was driving the bus on the date of the accident.

17. The site plan (Ext.PW-12/A) mentions the width of the road as 24 feet. The car is shown to be towards its extreme left-hand side, and the bus is shown to have crossed the central line and is towards the right side of the road. This is also corroborated by the photographs (Ext.P1, P2 and P3), in which the car is shown towards the extreme left side of the road. The photographs (Ext.P3 and P4) show that the bus had moved towards the right side. Thus, the site plan and the photographs corroborate the informant's version that the accused was driving the bus towards the right side of the road.

18. Beli Ram (PW-8) stated that the car came from the opposite side towards the wrong side of the road while overtaking a road roller and hit the bus. He was permitted to be

cross-examined. He stated that he had not seen the car before the accident and he only saw the car after the accident because he was busy issuing the tickets. He admitted that the road was 24-25 feet wide at the place of the accident. He denied the previous statement recorded by the police. He stated in cross-examination by learned counsel for the defence that the driver was driving the bus towards its own side. A road roller was coming from Bharwain to Mubarikpur. Maruti car was overtaking the road roller, and the driver could not control the car and caused the accident.

19. The testimony of this witness was rightly rejected by learned Courts below. The site plan (Ext.PW-12/A) shows that the road roller was parked behind the bus. The bus had overtaken the road roller, whereas the car was yet to reach the road roller. Therefore, the statement made by this witness that the car was overtaking the road roller and was being driven towards the wrong side of the road is contrary to the site plan. Further, the photographs also do not show any road roller; rather, they show the car towards the extreme left side, which was not possible had the car overtaken the road roller. It is trite to say that men may lie

2026:HHC:47828

but circumstances do not. Thus, the learned Courts below had rightly rejected the testimony of this witness.

20. It was submitted that the bus had many passengers, but no passenger was examined by the prosecution, and an adverse inference has to be drawn against the prosecution for withholding the passengers of the bus. This submission will not help the accused. In ***Appabhai and another Vs. State of Gujarat AIR 1988 SC 696***, the incident had taken place at the bus stand. It was contended that independent witnesses were not examined and the prosecution case was doubtful. It was held by the Hon'ble Supreme Court that the prosecution case cannot be doubted due to the non-examination of the independent persons. It was observed:

> "11. In light of these principles, we may now consider the first contention urged by the learned counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. The experience reminds us that civilised people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves

> away from the Court unless it is inevitable. They think that a crime, like a civil dispute, is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere, whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness, must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."

21. Therefore, the prosecution version could not have been discarded because of the non-examination of the passengers travelling in the bus.

22. The informant's statement, site plan and the photographs clearly show that the bus was being driven towards the right side of the road after leaving sufficient distance towards its left side. Learned Courts below had rightly held that driving the bus towards the right side of the road proved the negligence of the accused.

23. The Central Government has framed the Rules of the Road Regulations, 1989, to regulate the movement of traffic. Rule 2 provides that the driver of a vehicle shall drive the vehicle as close to the left side of the road as may be expedient and shall allow all the traffic which is proceeding in the opposite direction

to pass on his right side. It was laid down in ***Fagu Moharana vs. State, AIR 1961 Orissa 71,*** that driving the vehicle on the right side of the road amounts to negligence. It was observed:

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

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

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

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

> "16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches.

> On the left side, while going from Dangri to Kangoo, there was a 7 ft. kacha portion, and on the other side, there was an 11 ft. kacha portion. The total width of the road was about 28 ft. The injured person was coming from the Dangri side and was walking on the left side of the road. This has been stated both by the injured as well as by PW-6. This fact is also apparent from the fact that after he was hit, the injured person fell into the drain. A drain is always on the edge of the road. The learned Sessions Judge held, and it has also been argued before me, that nobody has stated that the motorcycle was on the wrong side. This fact is apparent from the statement of the witnesses, who state that they were on the extreme left side, and the motorcycle, which was coming from the opposite side, hit them. It does not need a genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side."

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

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

assessing the evidence of PWs 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is difficult to be clear or specific in giving details as to the cause of the accident, but this is not one such case. The reference by the learned Judge to the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct, as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turned turtle showed that the car must have been travelling at an extremely high speed, but there is a little blue paint on the pole and a faint grey stain on the parapet wall, is self-contradictory unless we are to infer that the learned Judge implied that one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and the parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of the road, hit an electric post and parapet wall, and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did, it would have stopped at one of those points. We should remember that the collision with the scooter and pushing it back would have considerably reduced the speed of the car. Even so, it travelled farther. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for this case. The car would probably not have stopped but for turning turtle, and it should have been travelling quite fast before it could overturn, as the learned Judge himself realises. There is only one conclusion possible on the facts of this case, and that is that the accused came over to the wrong side of the road and was responsible for the accident, and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic."

2026:HHC:47828

27. The accused breached the Rules of the Road Regulations, which was the proximate cause of the accident. Hence, the prosecution's version that the accident occurred because of the negligence of the accused has to be accepted as correct.

28. Dr Parveen Kumar (PW-1) medically examined the informant and found that he had sustained multiple injuries which could have been caused in a motor vehicle accident. He was not cross-examined at all, which means that his testimony was accepted as correct by the accused. He had issued a final opinion in which a fracture of the humerus was detected. This final opinion was accepted by learned counsel for the defence. Therefore, it is duly proved on record that the informant had sustained simple and grievous injuries in the accident.

29. The learned Trial Court convicted the accused of the commission of offences punishable under Sections 279, 337 and 338 of the IPC. Section 338 of the IPC deals with negligently causing grievous hurt to a person, whereas Section 337 of the IPC deals with negligently causing simple hurt to a person. Thus, Section 338 of the IPC is an aggravated form of Section 337 of the

IPC. In the present case, simple and grievous hurt were caused to the informant. Section 71 of the Indian Penal Code prohibits the punishment of a person for the commission of a minor offence when he has been punished for committing a major offence in the course of the same transaction. It was laid down in ***Rajesh v. State of M.P., 2010 SCC OnLine MP 178: (2010) 3 MP LJ 706*** that a person sentenced for the commission of an offence punishable under Section 304A of the IPC cannot be sentenced for committing an offence punishable under Section 337 of the IPC as the former is a major offence in relation to the latter. It was observed at page 707:

> "**9.** In the facts of the present case and after going through the entire evidence available on record, I am of the opinion that the applicant is entitled to the benefit of such judgment. As per the evidence, a higher degree of negligence has not been fully established; therefore, the judgment passed by the two Courts below convicting the applicant for the offence under sections 304-A and 337 of the Penal Code, 1860 is hereby set aside. It is to be observed here that section 71 of the Penal Code, 1860 specifies that if the accused/applicant has been punished for the higher offence, for the same offence, a conviction is not required to be passed...."

30. Therefore, learned Courts below erred in sentencing the accused for the commission of offences punishable under Sections 337 and 338 of the IPC, and the sentence for the

commission of an offence punishable under Section 337 of the IPC is to be set aside.

31. 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 not acceptable. 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 the commission of offences punishable under Sections 279 and 304-A of the IPC. 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 accident toll was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision, thus :
>
> "Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."
>
> 12. In ***State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538,*** this Court did not allow a sentence of fine, imposed on

a driver who was convicted under S. 304-A, I.P.C., to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences for the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in 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."

32. A similar view was taken in ***Thakur Singh v. State of Punjab, (2003) 9 SCC 208,*** wherein it was observed: -

> **6.** Learned counsel lastly made an alternative plea that the Probation of Offenders Act may be applied to secure his job. This Court has held in ***Dalbir Singh v. State of Haryana [(2000) 5 SCC 82]*** that the Probation of Offenders Act cannot be invoked in cases involving rash or negligent driving of the bus resulting in the death of human beings."

33. This position was reiterated 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]***.

34. Therefore, it is impermissible to grant the benefit of the Probation of Offenders Act to a person convicted of driving a vehicle in a rash and negligent manner

35. Learned trial Court had sentenced the accused to undergo simple imprisonment for 2 months and pay a fine of ₹500/- with default clause for the commission of an offence punishable under Sections 279, 337 and 338 IPC each. Considering that the grievous injury was caused to the informant

by the negligence of the accused, the sentence of 2 months cannot be said to be excessive, requiring any interference from this Court.

36. No other point was urged

37. In view of the above, the present petition is partly allowed, and the sentence imposed by the learned Trial Court, as modified by the learned Appellate Court, for the commission of an offence punishable under Section 337 of the IPC is set aside. Subject to this modification, the rest of the judgments and order are upheld.

38. The records of the learned Courts below be returned along with a copy of the judgment of this Court.

(Rakesh Kainthla)
Judge

30th October, 2026
(Ravinder)