IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.377 of 2014
Reserved on: 12.03.2026
Date of Decision: 24.04.2026

Vipan Kumar **....Petitioner**

Versus

State of Himachal Pradesh **....Respondent**

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *No*

For the petitioner	:	*Mr Suneet Goel, Senior Advocate with Mr Aman Hansretta, Advocates.*
For the Respondent/ State	:	*Mr Lokender Kutlehria, Additional Advocate General.*

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 14.11.2014, passed by the learned Additional Sessions Judge, Hamirpur, Circuit Court Barsar, H.P. (learned Appellate Court), vide which judgment of conviction dated 15.02.2012 and order of sentence dated 23.02.2012, passed by learned Judicial Magistrate, First Class, Barsar District Hamirpur, H.P. (learned Trial Court), were upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

---

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

2026:HHC:13276

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 279, 337 & 338 of the Indian Penal Code (IPC) and Sections 181 & 184 of the Motor Vehicles Act (MV Act). It was asserted that Kishori Lal (PW-1) and his son Umesh Kumar (PW-11), the informant, were riding the scooter bearing registration No. HP55-4517 on 14.10.2009. When they reached Hareta bazaar at about 4:30 p.m., at some distance from the rest house, a vehicle came from the opposite side at a high speed. The informant took the scooter towards the unmetalled portion of the road. However, the vehicle hit the scooter on the wrong side of the road at high speed. The scooter fell. The informant and his father sustained multiple injuries. The driver of the vehicle revealed his name as Suresh Kumar, and the registration number of the vehicle as HP-55-2136. The accident occurred due to the negligence of the driver of the vehicle. The injured were taken to the hospital, and intimation was given to the police. The police recorded an entry (Ext.PW-7/A) in the daily diary and sent HC Baldev Raj (PW-6) to the spot for verification. HC

2026:HHC:13276

Baldev Raj (PW-8) recorded the informant's statement (Ext.PW-8/A) and sent it to the police station, where FIR (Ext.PW-10/A) was registered. HC Baldev Raj filed an application (Ext.PW-7/B) for conducting the medical examination of the injured. Dr Sanjay Ranaut (PW-9) examined Krishan Lal and found that he had sustained simple injuries, which could have been caused within six hours of the examination by a blunt weapon. He issued the MLC (Ext.PW-9/C). He also examined Umesh Kumar and found that he had sustained multiple injuries, which could have been caused within six hours of examination by means of a blunt weapon. He referred the injured to the Orthopaedic Surgeon and issued the MLC (Ext.PW-9/B). X-rays of the injured were taken, which were examined by Dr Sanjeet Sharma (PW-6), who found that there was a fracture of the right hip joint. He issued the report (Ext.PW-6/A). Dr Sanjay Ranaut (PW-9) issued the final opinion stating that the nature of the injury was grievous. HC Baldev Raj (PW-8) seized the vehicle bearing registration No. HP67-2136 and the scooter bearing registration No. HP55-4517 along with the documents vide memo (Ext.PW-8/C and Ext.PW-7/A).

2026:HHC:13276

Ramesh Chand (PW-3) examined the vehicles and found that there were no mechanical defects in them, which could have led to the accident. He issued the reports (Ext. PW-3/A and Ext.PW-3/B). Statements of the prosecution's witnesses were recorded as per their version. The challan was prepared and presented before the learned Trial Court after the completion of the investigation.

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 eleven witnesses to prove its case. Kishori Lal (PW-1) and Umesh Kumar (PW-11) were injured in the accident. Shambu Dutt (PW-2) is the owner of the vehicle, but he did not support the prosecution's case. Ramesh Chand (PW-3) examined the vehicles. Suresh Kumar (PW-4) claimed that he was driving the vehicle on the date of the accident. Sanjay Kumar (PW-5) claimed that he was travelling in the vehicle with Suresh Kumar. Dr Sanjeev Sharma (PW-6) is the Radiologist and went through the

2026:HHC:13276

X-ray and issued the report. Constable Sunil Kumar (PW-7) proved the entry in the daily diary. Baldev Raj (PW-8) investigated the matter. Sanjay Ranaut (PW-9) examined the injured. Inspector Anil Verma (PW-10) signed the F.I.R.

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 he was innocent and that the witnesses had falsely deposed against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that medical evidence proved that Kishori Lal (PW-1) and Umesh Kumar (PW-11) had sustained injuries, which could have been caused within 6 hours of the examination in a motor vehicle accident. The injured identified the accused as the driver of the offending vehicle. The accused had carried the injured to the hospital, and the injured had sufficient time to notice the facial features of the accused to enable them to identify him in the Court. Nothing was suggested in the cross-examination of the witnesses that the injured had any enmity with the accused. Statements of the owner of the vehicle and Suresh Kumar could not be relied upon in view of the identification by the

2026:HHC:13276

injured. The site plan revealed that the vehicle was being driven on the wrong side of the road, and the accident occurred on the unmetalled portion of the road. This clearly showed that the accused was negligently driving the vehicle. Hence, the learned trial Court convicted and sentenced the accused as under: -

1. For the commission of an offence punishable under Section 279 of IPC, sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹1000/- and in case of default of payment of fine, to further undergo simple imprisonment for three months.

2. For the commission of an offence punishable under Section 337 of IPC, sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹500/- and in case of default of payment of fine, to further undergo simple imprisonment for two months.

3. For the commission of an offence punishable under Section 338 of IPC, sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹1000/- and in case of default of payment of fine, to further undergo simple imprisonment for three months.

   All the substantive sentences of imprisonment were ordered to run concurrently.

2026:HHC:13276

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, Hamirpur, Circuit Court Barsar, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the identification of the accused was properly made by the injured. The medical evidence proved that Kishori Lal had sustained simple injuries and Umesh Kumar had sustained grievous injuries. The accident had occurred on the wrong side of the road on the unmetalled portion, which showed the negligence of the accused. The statements of Shambu Dutt (PW-2) and Suresh Kumar (PW-4) were not reliable. The learned Trial Court had imposed an adequate sentence, and no interference was required with it; hence, the appeal filed by the accused 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 the learned Courts below erred in appreciating the material on record. The statements of prosecution witnesses contradicted each other on material

2026:HHC:13276

aspects. The identity of the accused was not established. It was specifically mentioned in the FIR that the name of the driver was disclosed to be Suresh Kumar at the spot. Sanjay Kumar (PW-5) also stated that Suresh Kumar was driving the vehicle at the time of the accident, and he had taken the injured to the hospital. Therefore, the prosecution had failed to prove that the accused was driving the vehicle at the time of the accident. The learned Courts below erred in relying upon the certificate issued by Suresh Kumar (Ext.PW-4/A) that the accused was driving the vehicle at the relevant time. The investigation was not fair; 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 Suneet Goel, learned Senior Counsel, assisted by Aman Hansretta, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

10. Mr Suneet Goel, learned Senior Counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. It was specifically mentioned in the FIR that the name of the driver

2026:HHC:13276

was found to be Suresh Kumar. Suresh Kumar (PW-4) specifically stated that he was driving the vehicle at the time of the accident. This statement was duly corroborated by Sanjay Kumar (PW-5), who was occupying the vehicle. The Learned Courts below erred in relying upon the certificate (Ext.PW- 4/A) to record the conviction. The possibility of the informant being negligent cannot be ruled out, and learned Courts below had erred in convicting and sentencing 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 Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that both the injured properly identified the accused in the Court. Learned Trial Court had rightly observed that the injured had sufficient opportunity to observe the facial features of the accused and their identification cannot be doubted. The site plan shows that the accident had occurred on the right side of the road, and the accused was clearly negligent in taking the vehicle towards the right side of the road. Both the learned Courts below have concurrently held that the accused was the

2026:HHC:13276

driver of the vehicle and he was negligent, and this Court should not interfere with the concurrent finding of fact while exercising the revisional jurisdiction; hence, he prayed that the present revision be dismissed.

12. I have given a 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 ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy 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. The object of the provision is to set right a patent

2026:HHC:13276

defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> "**14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
>
> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
>
> > "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are

2026:HHC:13276

> grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
>
> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** ***(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to re-appreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> **"12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while

2026:HHC:13276

considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

> 5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 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 amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

2026:HHC:13276

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> **"16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
>
> **17.** 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

2026:HHC:13276

> order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

17. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> "**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 [See: ***Bir Singh*** (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse 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.

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

19. Statement (Ext.PW-8/A) mentions that the vehicle, Tata Ace, had hit the scooter bearing registration No. HP55-4517. The driver revealed his name as Suresh Kuamr, son of Shambhu Dutt (PW-2) and the registration number of the vehicle as HP55-2136. The police found both these facts to be incorrect during the investigation. The

2026:HHC:13276

chassis number of the offending vehicle corresponded to the vehicle bearing registration No. HP67-2136.

20. Umesh Kumar (PW-11) stated that the driver of the vehicle, who was present in the Court, brought him and Kishori Lal to the hospital, where first aid was provided to the injured. He denied that the accused had only carried them to the hospital, and a false case was made against him. He denied that the vehicle, which was being driven by the accused, had not hit the scooter.

21. Kishori Lal (PW-1) stated that a vehicle hit the scooter, due to which he fell. The vehicle was a Tata Ace, which was being driven by the accused. The accused carried them to Galore hospital. He denied in his cross-examination that the accused came to the spot after they were injured in the accident. He denied that the accused had only carried them to the hospital.

22. It is apparent from the cross-examination of these witnesses that their testimonies that the accused was driving the TATA Ace was not disputed in the cross-examination. It was laid down by the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561*** that where the

2026:HHC:13276

testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4,*** and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

2026:HHC:13276

59. The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is

2026:HHC:13276

> not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***, quoted from ***Browne v. Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13.* It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the

2026:HHC:13276

Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(*1*) to test his veracity,

(2) to discover who he is and what his position in life is, or

(*3*) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

"*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandalv.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the

2026:HHC:13276

witness account has been accepted as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***.

16. In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

2026:HHC:13276

23. It was suggested to the injured that the accused had only taken them to the hospital. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383: -

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
>
> ****
>
> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

2026:HHC:13276

24. Therefore, the suggestions made to the witnesses during the cross-examination can be considered while evaluating the evidence and since it was never disputed while cross-examining the witnesses that the accused was driving the vehicle at the relevant time, therefore, the statements of Shambu Dutt (PW-2), Suresh Kumar (PW-4) and Sanjay Kumar (PW-5) that Suresh Kumar was driving the vehicle was rightly discarded by the learned Courts below.

25. Sanjay Kumar (PW-5) claimed that he was travelling with Suresh Kumar (PW-4) in a Tempo. An accident had occurred, and the injured were carried by Suresh Kumar to the hospital. This is contrary to the suggestions given to the witnesses that the accused Vipan Kumar had carried the injured to the hospital in a tempo being driven by him, and learned Courts below had rightly rejected his testimony.

26. Suresh Kumar (PW-4) stated that he was driving a Tata Ace on the date of the accident. He was permitted to be cross-examined. He admitted that he had issued a certificate (Ext.PW-4/A), and it was signed by him. He denied the previous statement recorded by the police. He admitted that

2026:HHC:13276

the accused is his brother and that he was making a false statement to save his brother.

27. He stated that the certificate (Ext.PW-4/A) was written by him and bore his signature, but stated in his cross-examination that the police had obtained his signature on the blank papers. This shows that he made a contradictory statement regarding the issuance of the certificate, which shows that he was making false statements to save his brother. Further, his credit was impeached with reference to his previous statement recorded by the police, which was duly proved by HC Baldev Raj (PW-8). Therefore, his credit has been impeached under Section 155 (3) of the Indian Evidence Act, and no reliance can be placed upon his testimony. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

2026:HHC:13276

> "52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

28. This Court also took a similar view in ***Ian Stilman versus. State 2002(2) ShimLC 16*** wherein it was observed:

> "12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In ***Jagir Singh v. The State (Delhi Administration), AIR 1975 Supreme Court 1400***, the Apex Court observed:
>
> > "It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony.

2026:HHC:13276

29. Therefore, the learned Courts below had rightly discarded his testimony.

30. Shambhu Dutt (PW-2) stated that he does not own any vehicle, and Vipan Kumar is his son. Vipan Kumar was not driving the vehicle on the date of the accident. He had furnished the surety bonds of Vipan Kumar. He has not explained the reason for furnishing the surety bonds. If Vipan Kumar was not driving the vehicle at the time of the accident, there was no necessity to furnish the surety bonds, and he (Shambhu Dutt) could have told the police about this fact. Therefore, the learned Courts below had rightly rejected the testimonies of these witnesses and relied upon the identification of the injured to hold that the accused was driving the vehicle at the time of the accident.

31. Kishori Lal (PW-1) stated that a Tata Ace came from the opposite side at high speed. He told his son to take the vehicle towards the unmetalled portion of the road; however, the vehicle hit the scooter. Umesh Kumar (PW-11) also stated that a Tata Ace came from the opposite side, and he took the scooter towards the unmetalled portion of the road where the Tata Ace hit the scooter.

2026:HHC:13276

32. The statements of these witnesses are duly corroborated by the Site Plan (Ext.PW-8/D), in which the place of accident is shown on the unmetalled portion of the road towards the right side for a vehicle coming from Hareta. Thus, it was duly proved that the accused was driving the vehicle towards the right side of the road.

33. 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."

2026:HHC:13276

34. 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 blood stain marks and a V-shape slipper of 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."

35. 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 and 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

2026:HHC:13276

> 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."

36. In the present case, the Tata Ace was driven towards the right side of the road, which was the proximate cause of the accident. The learned Trial Court had rightly held that the accused was negligently driving the vehicle.

37. Dr Sanjay Ranaut (PW-9) proved that Krishan Lal has sustained simple injuries, whereas the injured Umesh Kumar had sustained grievous injuries. Since the injuries were caused in a motor vehicle accident, which was caused by the negligence of the accused, the learned Courts below had rightly held the accused guilty of the commission of offences punishable under Sections 279, 337 and 338 of the IPC.

38. Learned Trial Court sentenced the accused to undergo rigorous imprisonment, pay a fine of ₹1000/- and in default to further undergo simple imprisonment for 3 months for the commission of an offence punishable under Section 279 of IPC. The trial Court also sentenced the accused to undergo rigorous imprisonment for 6 months, pay a fine of ₹500 and, in default of payment of fine, to further undergo simple imprisonment for 2 months for the commission of an

2026:HHC:13276

offence punishable under Section 337 of IPC. Further, the learned Trial Court also sentenced the accused to undergo rigorous imprisonment for 6 months, pay a fine of ₹1000 and, in default of payment of fine, to further undergo simple imprisonment for 3 months for the commission of an offence punishable under Section 338 of IPC. IPC. It was laid down by the Hon'ble Supreme Court in ***Dalbir Singh Versus State of Haryana (2000) 5 SCC 82*** that a deterrent sentence is to be awarded to a person convicted of rash or negligent driving. It was observed:

> "11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent, and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country, the saturation of accidents was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision, thus :
>
> > "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."

2026:HHC:13276

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 of visiting 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."

2026:HHC:13276

39. A similar view was taken in ***State of Punjab v. Balwinder Singh*, *(2012) 2 SCC 182***, wherein it was held: -

> **"13.** It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, they must have better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in ***Dalbir Singh [(2000) 5 SCC 82: 2004 SCC (Cri) 1208]***.

40. Similar is the judgment in ***State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182: (2015) 2 SCC (Cri) 751: 2015 SCC OnLine SC 278***, wherein it was observed at page 196:

> **"25.** Before parting with the case, we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving, where other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty, and the civilised persons drive in constant fear, but are still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish."

2026:HHC:13276

41. Section 279 of the IPC provides for a maximum sentence of 6 months and a fine of ₹1000/-, which means that the learned Trial Court had imposed the maximum sentence upon the accused. It is an admitted case of the prosecution that the accused had taken the injured to the hospital. Therefore, the conduct of the accused was not such as should be visited with the maximum punishment. Further, the learned Trial Court had ordered the accused to undergo simple imprisonment for 3 months for the commission of an offence punishable under section 279 of the IPC. This was not permissible because, as per Section 30 of the Cr.P.C., the maximum sentence cannot exceed ¼ of the term of imprisonment, which the learned Magistrate is competent to inflict as punishment. Since the learned Magistrate could have inflicted the punishment of 6 months, the sentence in imprisonment of default cannot exceed 45 days.

42. Similarly, the legislature has provided a sentence of 6 months and a fine of ₹500 for the commission of an offence punishable under Section 337 of the IPC. The learned Trial Court had imposed the maximum sentence and awarded simple imprisonment for 2 months, which is not permissible.

2026:HHC:13276

Therefore, the interference is required with the sentence imposed by the Ld. Trial Court for the commission of offences punishable under sections 279 and 337 of the IPC. Considering the fact that the accused had taken the injured to the hospital, he is sentenced to undergo 3 months simple imprisonment, pay a fine of ₹500 and in default of payment of fine to undergo simple imprisonment for 15 days for the commission of the offence punishable under section 279 of IPC. He is also awarded simple imprisonment for 3 months, a fine of ₹200/- for the commission of an offence punishable under section 337 of IPC and in default of payment of fine to undergo simple imprisonment for 10 days. The sentence of 6 months imprisonment and a fine of ₹1000/- with a default sentence for the commission of an offence punishable under Section 338 is adequate because the fracture was caused to Umesh Kumar (PW-11) and no interference is required with this sentence.

43. Therefore, the present appeal is partly allowed, and the sentences imposed by the learned Trial Court are modified as under: -

Sentence awarded by the	**Sentence modified by this**

2026:HHC:13276

	learned Trial Court	**Court.**
1	For the commission of an offence punishable under Section 279 of IPC, sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹1000/- and in case of default of payment of fine, to further undergo simple imprisonment for three months.	For the commission of an offence punishable under Section 279 of IPC, sentenced to undergo simple imprisonment for three months, pay a fine of ₹500/- and in case of default of payment of fine, to further undergo simple imprisonment for 15 days.
2.	For the commission of an offence punishable under Section 337 of IPC, sentenced to undergo rigorous imprisonment for six months, pay a fine of ₹500/- and in case of default of payment of fine, to further undergo simple imprisonment for two months.	For the commission of an offence punishable under Section 337 of IPC, sentenced to undergo simple imprisonment for three months, pay a fine of ₹200/- and in case of default of payment of fine, to further undergo simple imprisonment for 10 days.

44. Subject to this modification, the rest of the judgment and order are upheld.

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

(Rakesh Kainthla)
Judge

24th April, 2026.
(ravinder)