IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 4 of 2015
Reserved on: 26.10.2026
Date of Decision: 16.11.2026.

Dev 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 : Ms Kusum Chaudhary, Legal Aid Counsel.

For the Respondent : Mr Pawan Kumar Nadda, Additional Advocate

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 28.10.2014 passed by the learned Sessions Judge, Kinnaur, Session Division at Rampur Bushehar (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 06.05.2010 passed by learned Chief Judicial Magistrate, Kinnaur District at Reckong Peo (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same*

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

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 an offence punishable under Sections 279, 337 and 304A of the Indian Penal Code (IPC). It was asserted that the informant, Hitesh Negi (PW1), was taking tea on 06.11.2008 at about 01:30 p.m. He heard some noise and went to the spot. He found that a tractor bearing registration No. HP-25-0198 was parked on the spot, and an injured child was lying in the lap of a woman. The child was bleeding heavily, and he was taken to Regional Hospital, Reckong Peo. The accident occurred because of the negligence of the driver of the tractor. An intimation was given to the police, and the police recorded an entry (Ext.PW7/A). ASI Shiv Kumar (PW9) visited the spot for verification. He recorded the informant's statement (Ext.PW1/A) and sent it to the police station where FIR (Ext.PW7/A) was registered. He investigated the matter and prepared the site plan (Ext.PW9/A). He seized the tractor along with the documents vide memo (Ext.PW1/B). He filed an application (Ext.PA1) for conducting the medical examination of

the injured and obtained an MLC (Ext.PB). The injured was referred to IGMC Shimla, but he succumbed to his injuries on the way. ASI Shiv Kumar (PW9) conducted the inquest on the dead body and prepared the report (Ext. PC). He filed an application (Ext.PA2) for conducting the postmortem examination of the deceased and obtained the postmortem report (Ext. PB). Ram Singh (PW2) conducted the mechanical examination of the tractor and found that the bigger tyre of the tractor had worn out and the brake system was not functioning properly. There was no other mechanical defect in the tractor that could have led to the accident. The photographs (Ext.P1 to Ext.P6), whose negatives are Ext.P7 to Ext.P12, were taken. 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 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 and 304A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Hitesh Kumar (PW1) is the informant. Ram Singh (PW2) conducted the mechanical examination of the tractor. Ram Swaroopa (PW3) is the mother of the child. Rukmani (PW4) is an eyewitness. Vidya Mani (PW5) reached the spot after the accident. Rampal (PW6) is the owner of the tractor, who proved that he had employed the accused as the driver. LHC Mamta Kumari (PW7) signed the FIR. SI Paras Ram (PW8) and SI Shiv Kumar (PW9) investigated the matter.

5. The accused in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC) admitted that the documents of the tractor were handed over to the police and they were seized. He denied the rest of the prosecution case and claimed that a false case was made against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the testimonies of Ram Swaroopa (PW3), Vidya Mani (PW5) and Rukmani (PW4) corroborated each other. The testimony of Ram Pal (PW6) proved that he had employed the accused as a driver. The accused was also found on the spot by the persons who came to the scene

after the incident. The witnesses Ram Swaroopa (PW3) and Rukmani (PW4) specifically stated that the accused was driving the vehicle at a high speed in a rash and negligent manner. The mechanical defect in the vehicle would not help the accused because he was supposed to check the vehicle before driving it. The child had died in the accident because of the negligence of the accused. Hence, the learned Trial Court convicted and sentenced the accused as under:

Sections	Sentence
Section 279 of IPC	To undergo rigorous imprisonment for three months.
Section 304A of IPC	To undergo rigorous imprisonment for one year.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Sessions Judge, Kinnaur, Sessions Division at Rampur Bushehar (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the tractor at the time of the accident. The testimonies of the prosecution

witnesses proved that the accused was negligent in driving the tractor. Ram Swaroopa (PW3) specifically stated that the accused had not blown the horn. The child had died in the accident. The learned Trial Court had imposed an adequate sentence, and no interference was required with the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present revision asserting that the accused was not identified by the witnesses and there is no evidence that he was driving the tractor at the time of the accident. The statements of the witnesses contradicted each other in material particulars, and learned Courts below erred in relying upon them. 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 Ms Kusum Chaudhary, learned Legal Aid Counsel for the petitioner/accused, and Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State.

10. Ms Kusum Chaudhary, learned Legal Aid Counsel for the petitioner/accused, submitted that the defence version that

the child had fallen himself is highly probable. No injuries were found on the child's body except an injury on the head, which falsifies the prosecution version that the tractor had hit the child. The accused was not properly identified, and the statements of the witnesses contradicted each other regarding the identity of the accused. Learned Courts below erred in relying upon the statements of the witnesses that the accused was negligent because the precise negligence has to be proved by the prosecution. Therefore, she prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent/State, submitted that the statements of prosecution witnesses corroborated each other in material particulars. Ram Swaroopa (PW3) specifically stated that the accused was driving the tractor at a high speed without blowing the horn, which proved the negligence of the accused. This Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

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

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
>
> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
> >
> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate

jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely

erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming

to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of 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 to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

15. Ram Swaroopa (PW3) stated that she and her child Anshu were returning to their home on 06.11.2008. They reached near the LIC Office at about 01:30 p.m. A tractor bearing registration No. HP-25-0198 came to the spot at high speed and hit Anshu. Anshu sustained injuries to his head. He was taken to the hospital, from where he was referred to IGMC Shimla, but he succumbed to his injuries on the way. The accused was driving the tractor at the time of the accident. The place of the accident was wide. The road was going downhill, and the tractor was also

moving downhill. The accident occurred because of the negligence of the accused. She admitted in her cross-examination that there was a curve at the place of the accident, and that a tractor creates a huge noise while moving. Vidya Mani (PW5) came to the spot after the accident. She denied that the accused was not driving the tractor at the time of the accident and that she had made a false statement.

16. The MLC (Ext. PB) of Anshu shows a single injury on the scalp. The postmortem report (Ext.PD) mentions CLW over the left side of the forehead and fracture of the right side of the forehead. No other injury has been noticed in the postmortem report. It was rightly submitted on behalf of the accused that the injured would have sustained injury on his rear by the impact of the tractor had he been hit by the tractor coming from the rear. The absence of any corresponding injury on the rear of the injured would make the testimony of Ram Swroopra (PW3) suspect that the tractor had hit the child.

17. Rukmani (PW4) stated that the tractor hit Anshu and Anshu was crushed between the tractor and the coal tar drum. Anshu sustained an injury to his head. He was taken to the

hospital, from where he was referred to Shimla. The accused was driving the tractor at the time of the accident, and the accident occurred because of the negligence of the accused. She stated in her cross-examination that the accident had not occurred in Bazar but at a distance of 5 meters from LIC Office. She denied that Kuldeep and Parveen were present in the tractor and Parveen was driving it. She denied that the child had hit the drum and sustained injury. She denied that no accident had occurred and that she was deposing falsely.

18. The statement of this witness also does not explain only one injury on the child. As per her version, the tractor had crushed the child against the coal tar drum. Therefore, multiple crushed injuries should have been sustained by the child. However, no such injuries were noticed. Thus, her testimony that the child was crushed by the tractor with the coal tar drum is not acceptable.

19. The site plan (Ext.PW9/A) mentions point "B" where the tractor had hit the iron drum. The report of mechanical examination (Ext.PW2/A) does not mention any damage caused to the front side of the tractor. The photographs (Ext.P1 and

Ext.P3) also do not show any damage to the front side of the tractor. The police had also not taken a photograph of the iron drum stated to have been hit by the tractor and where the child is stated to have been crushed. The photographs would have corroborated the prosecution's version that the accused had crushed the child between the tractor and the drum. Thus, the note B in the site plan that the tractor had hit the iron drum is not corroborated by the report of the mechanical expert, the photographs or the medical evidence.

20. Shiv Kumar (PW9) admitted in his cross-examination that, as per the initial version, Kuldeep Kumar was driving the tractor. He stated that he had interrogated Kuldeep Kumar by calling him to the police station. The accused Pradeep Kumar was called to the police station, and he was interrogated afterwards. This statement makes the identity of the accused highly doubtful because Ram Sawroopa (PW3) stated in her cross-examination that she had slapped the driver, and he remained on the spot. Rukmani (PW4) also stated that the accused was driving the tractor and he was apprehended on the spot. Vidya Mani (PW5) stated that the accused was present on the spot and he identified himself as Dev Raj. Thus, as per the testimonies of these

witnesses, the accused was on the spot and should have been apprehended on the spot. It is not explained that if the accused was present on the spot and he was also slapped by Ram Swaroopa, why the police had initially found that Kuldeep Kumar was driving the tractor and had interrogated Kuldeep.

21. The testimonies of Ram Swaroopa (PW3), Rukmani (PW4) and Vidyamani (PW5) that the accused was on the spot are not supported by Hitesh Kumar (PW1), who stated in his cross-examination that when he reached the spot, no person was present on the spot, and the police had told him that Kuldeep was the driver of the tractor. He did not know the accused.

22. Ram Pal (PW6) stated that he had employed Kuldeep and Dev Raj as drivers in the tractor bearing registration number HP-25-0198. He heard the noise and went to the spot. The driver was not on the spot. Kuldeep revealed that the accused Dev Raj was driving the tractor at the time of the accident. The testimony of this witness does not prove that he had only employed the accused Dev Raj as driver. He had not seen the driver on the spot, and the name of the accused as driver was revealed by Kuldeep, who was not examined before the Court. Hence, his testimony

does not prove the identity of the accused as the driver of the tractor.

23. Thus, there is a reasonable doubt about the identity of the accused as the driver of the tractor.

24. Smt. Ram Swaroopa (PW3) and Rukmani (PW4) stated that the accused was driving the tractor at a high speed. They have not mentioned the approximate speed of the tractor. It was laid down by the Hon'ble Supreme Court in ***Mohanta Lal vs. State of West Bengal, 1968 ACJ 124,*** that the use of the term ‘high speed’ by a witness amounts to nothing unless it is elicited from the witness what is understood by the term 'high speed'. It was observed:

> “Further, no attempt was made to find out what this witness understood by high speed. To one man, the speed of even 10 or 20 miles per hour may appear to be high, while to another, even a speed of 25 or 30 miles per hour may appear to be a reasonable speed. On the evidence in this case, therefore, it could not be held that the appellant was driving the bus at a speed which would justify holding that he was driving the bus rashly and negligently. The evidence of the two conductors indicates that he tried to stop the bus by applying the brakes; yet, Gopinath Dey was struck by the bus, though not from the front side of the bus, as he did not fall in front of the bus but fell sideways near the corner of the two roads. It is quite possible that he carelessly tried to run across the road, dashed into the bus

> and was thrown back by the moving bus, with the result that he received the injuries that resulted in his death."

25. This position was reiterated in ***State of Karnataka vs. Satish 1998 (8) SCC 493,*** *and* it was held:

> "Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution, and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject, of course, to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur."

26. This Court also held in ***State of H.P. Vs. Madan Lal 2003, Latest H.L.J. (2) 925,*** that speed alone is not a criterion for judging rashness or negligence. It was observed: -

> "It may be pointed out that speed alone is not a criterion to decide rashness or negligence on the part of a driver. The deciding factor, however, is the situation in which the accident occurs."

27. This position was reiterated in ***State of H.P. Vs. Parmodh Singh 2008 Latest HLJ (2) 1360*** wherein it was held: -

> "Thus, negligent or rash driving of the vehicle has to be proved by the prosecution during the trial, which cannot be automatically presumed even on the basis of the doctrine of res ipsa loquitur. Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, speed is no criterion to establish the fact of rash and negligent driving of a vehicle. It is only a rash and negligent act as its ingredients, which the prosecution has failed to prove in the instant case."

28. Therefore, the accused cannot be held liable because the witness had used the term high speed.

29. Ram Swaroopa (PW3) and Rukmani (PW4) stated that the accused was driving the tractor negligently. However, they have not mentioned the precise negligence of the accused. The statements of the witnesses that the accused was negligent are also not sufficient. A witness can only depose about the fact which had occurred in his presence, and he is not permitted to draw inferences from the facts. The inferences have to be drawn by the Jury or the Judge when he is sitting without a Jury. It was laid down by Goddard LJ in ***Hollington v. Hawthorn 1943 KB 507*** that a witness cannot depose about negligence. It was observed at 595:

> "It frequently happens that a bystander has a full and complete view of an accident. It is beyond question that

> while he may inform the court of everything he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide, but in truth, it is because his opinion is not relevant. Any fact that he can prove is relevant, but his opinion is not."

30. Similar is the judgment in ***State of H.P. vs. Niti Raj 2009 Cr.L.J. 1922 (HP)***, where it was held:

> "It is not necessary for a witness to say that the driver of an offending vehicle was driving the vehicle rashly. The issue of whether the vehicle was being driven in a rash and negligent manner is a conclusion to be drawn based on evidence led before the Court."

31. Therefore, no advantage can be derived from the statements that the accident had occurred because of the negligence of the accused.

32. Learned Courts below were swayed by the fact that a precious life has been lost and the witnesses have deposed about the negligence and high speed without appreciating that the use of the term high speed and negligence is not sufficient to record the conviction. Therefore, the judgments and order passed by the learned Courts below cannot be sustained.

33. Hence, the present revision is allowed, and the accused is acquitted of the charged offences. The fine, if deposited, be refunded to the petitioner/accused after the expiry

of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

34. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

16th November, 2026
(Nikita)