

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 505 of 2011****Reserved on: 30.5.2025****Date of Decision: 19.06.2025**

State of H.P.

...Appellant

Versus

Baldev Singh alias Kewal Singh

...Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ Yes.*

For the Appellant : Mr. Prashant Sen, Deputy Advocate General.

For the Respondent : Mr. Divya Raj Singh, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 1.8.2011, passed by learned Judicial Magistrate First Class, Court No.1, Dehra, District Kangra, H.P. (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code (in short IPC). (*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 appeal 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 and 304-A of the IPC. It was asserted that the accused Naresh Chand (PW1) had gone to Bane-Di-Hatti on his motorcycle bearing registration No. PB-35F-0962 on 25.3.2007 with his father Jagat Ram (since deceased). The motorcycle reached near the Bus Stand Bane-Di-Hatti at 4.15 PM. A Scorpio Jeep bearing registration No. PB-29F-0088 came from Jawalamukhi at high speed and hit the motorcycle. Informant Naresh Chand (PW1) and his father Jagat Ram sustained injuries. They were taken to the Civil Hospital, Jawalamukhi, where Jagat Ram succumbed to his injuries. Naresh Chand made a statement (Ex.PW1/A) to the police, which was sent to the Police Station where an FIR (Ex.PW5/A) was registered. ASI Surinder Kumar (PW8) conducted the investigation. He prepared the inquest report of Jagat Ram (Ex.PW8/A). He filed an application (Ex.PW8/B) for conducting the postmortem examination of Jagat Ram. A report (Ex.PF) was

issued, in which it was mentioned that the cause of death was shock caused by haemorrhage. An application (Ex.PW8/C) was filed for conducting a medical examination of the injured. MLC (Ex.PC) was issued. ASI Surinder Kumar went to the spot and prepared the site plan (Ex.PW8/D). The photographs of the spot (Ex. P1 to Ex. P5), whose negatives are Ex.P6 to Ex.P10, were taken. Photographs of the dead body (Ex.P11 and Ex.P12), whose negatives are Ex.P13 and Ex.P14, were taken. ASI Surinder Kumar seized the Scorpio Jeep along with documents and key vide memo (Ex.PG) and the motorcycle vide memo (Ex.PW2/A). Constable Mangal Singh mechanically examined the vehicles and found that there was no mechanical defect that could have led to the accident. However, damage was caused to the vehicles due to the accident. Reports (Ex.PA and Ex.PB) were obtained. Statements of witnesses were recorded as per their version, and after the completion of the investigation, a challan was prepared and presented before the Court.

3. Learned Trial Court put the notice of accusation to the accused for the commission of offences punishable under Sections 279, 337, 338 and 304-A of IPC, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined eight witnesses to prove its case. Naresh Kumar (PW1) is the informant and injured, Surinder Kumar (PW2) is the witness to the recovery of the motorcycle. Vipin Kumar (PW2) and Satish Kumar (PW4) are the eyewitnesses. Prem Chand (PW5) signed the FIR. Bhupinder Sharma (PW6) took the photographs. Pawan Kumar (PW7) did not support the prosecution's case. ASI Surinder Kumar (PW8) conducted the investigation.

5. Accused in his statement recorded under Section 313 of Cr.P.C. admitted that he was driving the Scorpio on 25.3.2007 at 4.15 PM. He stated that the accident occurred due to the negligence of the motorcyclist, who could not control his motorcycle and hit the Jeep by coming on the wrong side of the road. He admitted that Naresh Kumar and his father had sustained injuries, the police conducted the investigation and seized the vehicle and medical examination of the injured and postmortem examination of the deceased were conducted. He stated that a false case was made against him. No defence was sought to be adduced by the accused.

6. The Learned Trial Court held that the prosecution's evidence showed that the accident occurred on the left side of the

road, which means that the motorcycle was being driven towards the right side, and the motorcycle was negligent. The bags were also found on the spot, and the possibility of the motorcyclist losing balance could not be ruled out. Naresh Kumar admitted that he had crossed the road from the depot, and the possibility of the accident due to the sudden appearance of the informant with his motorcycle on the National Highway could not be ruled out. The prosecution's case regarding the negligence of the accused was not proved beyond a reasonable doubt. Hence, the accused was acquitted of the commission of offences punishable under Sections 279, 337, 338 and 304-A of the IPC.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal, asserting that the learned Trial Court failed to properly appreciate the evidence. The reasoning of the learned Trial Court is unsustainable. The prosecution's case was rejected without any cogent reason. Testimonies of Naresh Kumar (PW1) and Satish Kumar (PW4) were not appreciated from the right perspective. Both of them categorically stated that the accident occurred due to the negligence of the motorcyclist. It was wrongly held that Naresh Kumar was driving the vehicle on the

wrong side of the road. Learned Trial Court failed to appreciate that 45 ft. skid marks were found behind the tyres of the Scorpio, which clearly shows that the Scorpio was being driven at a high speed. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr. Prashant Sen, learned Deputy Advocate General, for the appellant-State and Mr. Divya Raj Singh, learned counsel for the respondent/accused.

9. Mr. Prashant Sen, learned Deputy Advocate General, for the appellant-State submitted that the learned Trial Court erred in acquitting the accused. The informant Naresh Kumar categorically stated that the accident occurred due to the negligence of the accused. Learned Trial Court wrongly held that the accident occurred due to the negligence of the accused. Learned Trial Court wrongly held that the accused was driving the vehicle on the wrong side of the road. The skid marks on the spot show that the accused was driving the Scorpio at a high speed, which was the cause of the accident. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr. Divya Raj Singh, learned counsel for the respondent/accused, submitted that the learned Trial Court had taken a reasonable view of the matter and this Court should not interfere with the plausible view of the learned Trial Court. The site plan and the photographs clearly show that the accident had taken place on the left side of the road. The accused was supposed to drive the vehicle towards the left side of the road, and there was no negligence on his part while driving the vehicle. Therefore, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed:

“11. Recently, in the case of *Babu Sahebagouda Rudragoudar v. State of Karnataka* 2024 SCC OnLine SC 4035, a Bench of this Court to which one of us was a

Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.

39. This Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (*Chandrappa case* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.
- (3) Various expressions, such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc., are not intended to

curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in *H.D. Sundara v. State of Karnataka* [*H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

“8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by

the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

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

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

14. Naresh Kumar (PW1) stated that he was driving the motorcycle bearing registration No. PB-35F-0962. His father was sitting as a pillion rider. When the motorcycle reached near Bane-Di-Hatti Bus Stand, a Scorpio bearing registration No. PB-29F-0088 hit the motorcycle. He and his father sustained injuries. The accident occurred due to the negligence of the driver of the Scorpio.

15. It was submitted that this witness has specifically stated that the accident occurred due to the negligence of the driver of the Scorpio; however, this statement will not help the prosecution because a witness is not permitted to derive any inference from the facts but he is supposed to place the facts before the Court, leaving the jury or the judge, when he is sitting without the jury, to draw the inferences. The statement of a witness that the driver of the vehicle was negligent is an inference, which cannot be drawn by the witness. It was laid down by Goddard LJ in *Hollington vs. Hawthorn 1943 KB 507 at 595* that a witness cannot depose about negligence. It was observed:

“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.”

16. 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 whether the vehicle was being driven in a rash and negligent manner is a conclusion to be drawn on the basis of evidence led before the Court.”

17. Therefore, the statement of the witness that the driver was negligent by itself without anything more do not constitute legally admissible evidence upon which a reliance can be placed by the Court of law to base its judgment.

18. Naresh Kumar (PW1) stated in his cross-examination that Scorpio was coming from Jawalaji towards Kangra. He admitted that he was to cross the road. He volunteered to say that he had crossed the road. He stated that he had to go from the left side of the road. He admitted that the place of the accident is a public Highway.

19. The photographs (Ex.P3 to Ex.P5) show the Scorpio towards the left side of the road. 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. Therefore, the driver of the Scorpio was driving towards the left side of the road as per Rule 2, and there was no negligence on his part. The motorcycle on the other hand was being driven towards its right side which is a violation of Rule 2. It was laid down in *Fagu Moharana vs. State AIR 1961 Orissa 71* that driving the vehicle on the wrong 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.”

20. Similarly, it was held in *State of H.P. Vs. Dinesh Kumar 2008 H.L.J. 399* that 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 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 spot map Ext. P.W. 10/A is almost on the extreme right side of the road.”

21. 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 is an 11 ft. of kacha portion. The total width of the road was about 28 ft. The injured 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 apparent also from the fact that after he was hit the injured 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 its 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 the genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side.”

22. Thus, the learned Trial Court had rightly held that the negligence of the motorcycle rider led to the accident.

23. The site plan (Ex.PW8/D) shows a bifurcation towards Bankhandi. Naresh Kumar (PW1) admitted that he had to cross the road, and he had to move from the left to the right side of the road. It means that he was approaching the National Highway

from the link road. Rule 8 of the rules of the Road Regulation provides that the rider of a motorcycle shall slow down while approaching a road intersection, a road junction, a pedestrian crossing or a road corner and shall not enter any such intersection, junction or crossing until he has become aware that he may do so without endangering the safety of the persons. Rule 9 provides that the driver of a motorcycle shall, on entering a road intersection, give way to the vehicles proceeding along that road. The combined effect of both these rules is that a person approaching the road intersection is not supposed to enter the same unless he is sure that safety of any person would not be endangered by his entry and when he has entered into the road intersection, he will give way to the traffic proceeding on the road.

24. In the present case, since Naresh Kumar was entering the main road, therefore, he was supposed to give way to the already moving traffic on the main road. He stated in his cross-examination that he was not aware of the distance from which he had seen Scorpio. This admission shows that he had not followed the Rule of the Road Regulation for giving way to the traffic moving on the road.

25. The mechanical reports of the vehicle do not show that the motorcycle was hit from the side after it had entered the main road; rather the mechanical report of the motorcycle (Ex.PA) shows that the front shocker and front mudguard were damaged. The lock guard on the left side was bent. This report suggests that the motor cycle was hit from the front in a head on collision, which does not support the informant's version that he was trying to enter the main road, through the link road. Rather, it appears that the accident had occurred when the motorcycle was being driven on the main road towards its right side. This violated the Rule of the Road Regulation that the driver of the vehicle shall drive the vehicle to the left side of the road or as close to the left as is possible. This was the proximate cause of the accident, and the accused could not have been held liable in these circumstances.

26. It was submitted that the accused was driving the vehicle at a high speed, which is evident from the fact that there were 45 ft. skid marks behind the tyre of the Scorpio. This submission will not help the prosecution case because the accident did not occur due to the high speed of the Scorpio but because motorcycle was being driven towards the right side of

the road. Had the motorcycle been driven towards its left side or the motorcyclist had taken precautions before entering the main road, the accident would not have occurred. Hence, the presence of skid marks will not establish the negligence of the accused.

27. Therefore, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court while deciding an appeal against acquittal, even if the other view is possible or this Court would have taken a different view while deciding the matter in original side.

28. Therefore, there is no infirmity in the judgment passed by the learned Trial Court.

29. Consequently, the present appeal fails, and the same is dismissed.

30. Records be sent back forthwith along with a copy of the judgment. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

19th June, 2025
(Chander)