(2025) 11 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Appeal No. 228 Of 2024

Dilbag Singh	APPELLANT
Vs	
State Of H.P.	RESPONDENT

Date of Decision: Nov. 10, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 34, 279, 302, 304A, 304AA, 326, 337, 338, 436
- Code Of Criminal Procedure, 1973-Section 313, 313(1), 313(2), 342, 482
- Motor Vehicles Act, 1988-Section 185
- Code Of Criminal Procedure, 1898-Section 342(1)

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Karan Kapoor, Jitender Kumar

Final Decision: Disposed Of

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment of conviction and order of sentence dated 30.04.2024 passed by learned Sessions Judge (Forests), Shimla (learned Trial Court), vide which the appellant (accused before the learned Trial Court) was convicted of the commission of offences punishable under Sections 279 and 304AA of the Indian Penal Code (IPC) and was sentenced as under:-

Sections	**Sentences**
279 of IPC	The accused was sentenced to undergo simple imprisonment for six months.
304-AA of IPC	The accused was sentenced to undergo rigours imprisonment for seven years, pay a fine of ■10,000/-, and in default of payment of the fine, to undergo further simple imprisonment for six months.
It was ordered that both the substantive sentences of imprisonment shall run concurrently	

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are t at t e police presented a challan for the commission of offences punishable under Section 279, 337, 338 and 304-AA of the IPC. It was asserted that information was received in the Police Station that a truck had fallen into a gorge. The information was reduced into writing and an entry (Ext.P1/PW12) was recorded in the Police Station. SI Kewal Singh (PW12) and Constable Anil (PW11) went to the spot in the official vehicle bearing registration No. HP07A-0726, which was being driven by HHG Vishal. SI Kewal Singh noticed that a vehicle bearing registration No. HP38B-7031 distance of around 100 meters towards the Kufri side. SI Kewal Singh and other police officials went towards Kufri and found one dead person lying on the kachha portion of the road in a crushed condition. The injured in the ambulance disclosed his name as Dilbag Singh (accused) and the name of the deceased as Kundru alias Krishan. Dilbag Singh revealed that he was a conductor, and the deceased was the driver. SI Kewal Singh obtained the phone number of the owner. He contacted the owner, and the owner revealed that Dilbag Singh was the driver and Kundru @ Krishan was the conductor. The accident occurred due to t e negligence of the accused. Rukka (Ext. P1/PW9) was prepared and was sent to the Police Station, where FIR (Ext.P2/PW9) was registered. Dilbag Singh was sent for medical examination to IGMC Shimla. The forensic team was called to the spot. Gayan Thakur specialist from SFSL Junga, and Dr Rahul Gupta Forensic Expert from IGMC Shimla, reached the spot. Anjana Chauhan and Shalinder (PW2) were also called to the spot. SI Kewal Singh inspected the dead body and prepared the inquest reports (Ext.P1/PW2 and Ext.P1/PW12). The dead body was turned, and blood was found, which was lifted with the help of a piece of gauge. The sample so collected was kept on paper, which was put in a plastic container. The blood-stained soil and stones were lifted from the spot, which were put in separate containers, the containers were put in separate cloth parcels, and each parcel was sealed with three seals of seal impression ‘ ’. Seal impression (Ext.P1/PW3) was taken on a separate piece of cloth. Parcels were seized vide memo (Ext.P2/PW3). An application (Ext.P2/PW12) was filed for conducting the pos mortem examination of the deceased. Dr Vinod Bhardwaj (PW17) conducted the postmortem examination of deceased Krishan @ Kundru. He found multiple injuries. He opined that the cause of death was gross lacerations of the brain secondary to blunt trauma consistent with crush injuries in a road traffic accident. He issued the report (Ext.P12/PW12). SI Kewal Singh investigated the matter. He prepared the site plan (Ext.P3/PW12), and seized the truck bearing registration No. P38A-7031 and 613 apple boxes, being transported in the truck, vide memo (Ext.P3/PW3). The photographs of the spot (Ext.P4/PW12 to Ext.P10/PW12) were taken. The dead body was handed over to Yashpal vide memo (Ext.P11/PW12). Sanjeev Kumar mechanically examined the vehicle and found that there was no mechanical defect in the vehicle which could have led to the accident. The medical examination of injured Dilbag was conducted by Dr Aman Madhaik (PW7), who found that Dilbag had sustained multiple injuries. He preserved the blood and the urine sample in different vials, sealed them with hospital seals and handed them over to the police official accompanying the injured. He issued the report (Ext.P2/PW7). He advised the X-ray. As per the X-ray report (Ext.P3/PW7), a fracture of the Navicular bone was found on the left foot. Hence, the nature f the injury No.1 was stated to be grievous, which could have been caused by means of a blunt weapon within 12 hou s of examination. The samples were sent to the SFSL, Junga, and as per the report, the blood contained 21.68 % of ethyl alc h l, and the urine contained 12.65% of Ethyl alcohol. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate F rst Class, Court No.3, Shimla, who committed it to the learned Sessions Judge, Shimla, for trial.

3. Learned Sessions Judge assigned the case to learned Additional Sessions Judge-I, Shimla, who charged the accused with the commission of offences punishable under Sections 279, 337, 338, 304-AA of IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 22 witnesses to prove its case. Umang Dutt (PW1) proved the insurance of the apple boxes. Shalinder (PW2), HHG Jai Dev (PW3), ASI Joginder (PW5), and HC Devender (PW13) are the witnesses to various proceedings conducted by the police on the spot. ASI Sanjeev Kumar (PW4) mechanically examined the vehicle. Vishal Singh (PW6) accompanied the police official to the spot and carried the rukka to the police station. Dr Aman Madaik(PW7) medically examined the injured. Pradeep Kumar (PW8) carried the case property to SFSL Junga for analysis. Kamal Dev (PW9) signed the FIR. HC

Ravi Kumar (PW10) carried the samples from the hospital to the Police Station. Constable Anil Kumar (PW11) went to the spot after receiving the information. Kewal Singh (PW12) investigated the matter. LC Gitanjali (PW14) brought the case property and the result of analysis from SFSL Junga to the police station. Yudhvir S ngh (PW15) is the owner of the vehicle. Constable Suresh Kumar (PW16) brought the report of the analysis from SFSL, Junga. Dr Vinod Bhardwaj (PW17) conducted the postmortem examination. Yashpal (PW18) is the brother of the deceased to whom the dead body was handed over. SI Sukesh Kumar (PW19) added Section 304-AA after the receipt of the report of the analysis. HC Ravinder Kumar (PW20) partly investigated the matter and arrested the accused. Dr Pradeep Jalota (PW21) initially treated the injured/accused. ASI Om Parkash (PW22) was posted as MHC with whom the case property was deposited.

5. The accused, in his statement recorded under Section 313 of CrPC, admitted that he was the driver of the truck He denied the rest of the prosecution's case. He stated that the deceased was a conductor who got out of the vehicle to put the stone behind the wheels, so that the vehicle would n t m ve. The accused heard some noise, and the vehicle fell. He had not consumed any alcohol. He did not produce any evidence in defence.

6. Learned Trial C urt held that the testimonies of police officials could not be disregarded simply because they happened to be police officials. Their testimonies corroborated each other. Yud vir Singh (PW15) proved that he had employed the accused as a driver in the truck and Krishan @ Kundru as a cleaner/conductor. The accused also admitted in his statement recorded under Section 313 of Cr.P.C. that he was driving the vehicle; therefore, it was duly proved on record that the accused was driving the vehicle. It was also proved that the vehicle had fallen into the gorge, and Krishan Kumar @ Kundru died in the accident. As per the report, the accused had 21.68% of Ethylalcohol in his blood. The accident occurred due to the negligence of the accused. Hence, the accused was convicted and sentenced as mentioned above.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court did not properly appreciate the evidence on record. There was no evidence of the rashness or negligence of the accused. The chemical expert was not examined, and there was nothing on eco d o prove that the accused was intoxicated. The defence taken by the accused that the deceased had got out of the vehicle to put the stone behind the rear tyre of the truck was probable, but was wrongly ignored by the learned Trial Court. There are various contradictions in the statements of the official witnesses, which were ignored by the learned Trial Court. 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 Karan Kapoor, learned counsel for the petitioner/accused, and Mr Jitender Kumar Sharma, learned Additional Advocate General for the respondent/State.

9. Mr Karan Kapoor, learned counsel for the petitioner/accused, submitted that the learned Trial Court erred in convicting and sentencing the accused. There was no evidence of rashness or negligence of the accused. No person had seen the accused driving the vehicle. The defence suggested by the accused that the deceased got out of the vehicle to put the stone under the rear tyre of the vehicle was highly probable, and the learned Trial Court erred in rejecting it. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Jitender Kumar Sharma, learned Additional Advocate General for the respondent/State, submitted that the vehicle had fallen ff the road into a gorge. The vehicles do not leave the road unless there is negligence of the driver. Therefore, the principle of res ipsa locutor can be applied to the present case. The burden would shift upon the accused to explain the accident, but he has not provided any explanation. Therefore, he was rightly convicted by the learned Trial Court. The sentence imposed by the learned Trial Court is not excessive, because a precious life was lost. 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. Section 304-AA of IPC reads as under: 304-AA. Causing death or injury by driving any vehicle while in a state of intoxication.--Whoever, while in a state of intoxication, drives or attempts to drive any vehicle and causes the death of any person not amounting to culpable homicide, or causes any bodily injury likely to cause death, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, as if the act by which death or bodily injury is caused, is done with the knowledge that he is likely by such act to cause death or cause such bodily injury as is likely to cause death.

13. This Section punishes a person who is driving a vehicle in a state of intoxication. It has been stated in Lyon's Medical Jurisprudence and Toxicology, 11 h Edi ion (2012), Delhi Law House, that a person having 150-300 mg % alcohol in his blood is intoxicated. It is observed at page 620:

“In different countries, the prescribed limit for permissible blood alcohol is as follows:

India	-	30 mg%
USA	-	100 mg%
Australia	-	40 mg%

Terminologies used in the medico-legal context: The following terminologies are employed in medico-legal cases. Their exact meaning should be understood.

• Sober - blood alcohol concentration of less than 10 mg%

• Drinking - blood alcohol concentration of 20-70 mg%

• Under the influence of alcohol - blood alcohol concentration of 80-100 mg%

• Drunk or intoxicated - blood alcohol concentration of 150-300 mg%

• Coma and death - blood alcohol concentration in excess of 400 mg%.’

14. In the present case, the report of analysis shows that the quantity of alcohol found in the blood of the accused was 21.68mg which is much less than 150 mg%, and the accused could not be said to be intoxicated.

15. Section 185 of the Motor Vehicle Act (MV Act) provides that no person shall drive a vehicle having 30 mg % alcohol in his blood. It was held in IFFCO-Tokio General Insurance Co. Ltd. v. Pearl Beverages Ltd., (2021) 7 SCC 704: (2021) 3 SCC (Cri) 167: (2021) 4 SCC (Civ) 175: 2021 SCC OnLine SC 309 hat he prosecution has to prove that the accused was driving the vehicle having alcohol more than 30 mg per 100 ml f bl d to secure the conviction under Section 185 of the MV Act. It was observed at page 744:

“55. It is clear that Section 185 deals with driving or at-tempting to drive a motor vehicle by a person with alcohol in excess of 30 mg per 100 ml in blood, which is detected in a test of a breath analyser. Being a criminal offence, it is in-disputable that the ingredients of the offence must be es-tablished as contemplated by law, which means that the case must be proved beyond a reasonable doubt and evi-dence must clearly indicate the level of alcohol in excess of 30 mg in 100 ml blood and what is more such presence must be borne out by a test by a breath analyser. We may also no-tice that with effect from 1-9-2019, the following words have been added to Section 185, that is “or in any other test including laboratory test”.

16. In the present case, the quantity of alcohol was 21.68mg%, and the accused had not violated Section 185 of the MV Act. It is difficult to believe that the legislature would have penalised a person having less than 30 mg % alcohol in his blood under Section 304AA of the IPC but exonerated him under Section 185 of the MV Act. The legislature is not presumed to contradict itself by enacting laws which conflict with each other. Therefore, it is impermissible to hold that a pers n having less than 30 mg% alcohol can be

punished under Sec ion 304-AA of the IPC. Thus, the judgment of the learned T ial Court convicting the accused of the commission of an offence punishable under Section 304AA of the IPC cannot be sustained.

17. Yudhvir (PW15) stated that he is the owner of the truck bearing registration No. HP38B-7031. He had employed Dilbag S n h as a driver in the truck and Krishan @ Kundru as a cleaner/conductor. He stated in his cross-examination that Dilbag Singh was an experienced driver and had been driving the truck for 10-12 days.

18. The statement of this witness regarding the accused being the driver of the truck bearing registration No. HP38B-7031 was not challenged in the cross-examination and is to be accepted as correct.

19. The accused admitted in his statement recorded under Section 313 of Cr.P.C. that he was driving the vehicle. It was laid down by the Hon'ble Supreme Court in State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421 that the Courts can rely upon the statement of the accused made under Section 313 of Cr.P.C. It was observed at page 742:

“51. That brings s to the question of whether such a state- ment recorded nder Section 313 of the Code can constitute the sole basis f r conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punish-ment if he gives false answers. Then comes sub-section (4), which reads:

“313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evi-dence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into considera-tion in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See State of Maharashtra v. R.B. Chowdhari [(1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95]. This Court, in the case of Hate Singh Bhagat Singh v. State of M.B. [1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468] held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution wit-ness. In Narain Singh v. State of Punjab [(1963) 3 SCR 678 : (1964) 1 Cri LJ 730], this Court held that if the accused con-fesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, pro-ceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the wit-nesses for the prosecuti n have been examined and be-fore the accused is called up n f r his defence shall put questions to the accused person for the purpose of en-abling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evi-dence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the in-cident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may ‘be taken into consideration’ at the enquiry or the trial. If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that con-fession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evi-dence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.” (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clari-fying that in summons cases where the presence of the ac-cused is dispensed with, his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), asd the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the

jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force."

20. This question was again considered by the Hon'ble Supreme Court in Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933 , and it was held that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but a part of such statement cannot form he sole basis for conviction. It was observed at page 244: -

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend cre-dence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the in-culpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See Nishi Kant Jha v. State of Bihar (1969) 1 SCC 347: AIR 1969 SC 422: (SCC pp. 357-58, para 23)

"23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contra-dicted by the other evidence. According to this state-ment, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The in-jury found on his body when he was examined by the doctor on 13-10-1961, negatives of both these versions. Neither of these versions accounts for the profuse bleed-ing which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book and his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood ac-cording to the report of the Chemical Examiner. Accord-ing to the post-mortem report, this knife could have been the cause of the injuries n the victim. In circum-stances like these, there being en ugh evidence to reject the exculpatory part of he s a ement of the appellant in Exhibit 6, the High Cou t had ac ed rightly in accepting the inculpa-tory part and pie cing the same with the other evidence to come to the concl sion that the appellant was the person re-sponsible for the crime." (emphasis supplied)

21. It was laid d wn in Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that t e statement of the accused under Section 313 Cr.P.C., in so far as it supports the case of the prosecution, can be used against h m for rendering a conviction. It was observed at page 275: -

"52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a state-ment under this provision of the CrPC is to give an opportu-nity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the ac-cused so desires. But once he does not avail this opportu-nity, then consequences in law must follow. Where the ac-cused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law."

22. This position was reiterated in Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

24. We are of the view that, under Section 313 statement, if the accused admits that, fr m the evidence of various wit-nesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 sta ement cannot be brushed aside. This Court in State of Maha ashtra v. Sukhdev Singh [(1992) 3 SCC 700: 1992 SCC (Cri) 705] held that since no oath is

adminis-tered to the acc sed, the statement made by the accused un-der Secti n 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-sec-tion (4) says that the answers given by the accused in re-sponse to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in Hate Singh Bhagat Singh [Hate Singh Bhagat Singh v. State of Madhya Bharat, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933] held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In Narain Singh v. State of Punjab [(1964) 1 Cri LJ 730 : (1963) 3 SCR 678], this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in Mohan Singh v. Prem Singh [(2002) 10 SCC 236: 2003 SCC (Cri) 1514] held that: (SCC p. 244, para 27)

"27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend cre-dence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."

In this connection, reference may also be made to the judg-ments of this Court in Devender Kumar Singla v. Baldev Krishan Singla [(2005) 9 SCC 15: 2005 SCC (Cri) 1185] and Bishnu Prasad Sinha v. State of Assam [(2007) 11 SCC 467: (2008) 1 SCC (Cri) 766]. The abovementioned decisions would indicate that the statement of the accused under Sec-tion 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis or inding the accused guilty, the reason being he is n t making the statement on oath, but all the same the c nfessi n or admission of guilt can be taken as a piece of evidence since the same lends cre-dence to the evidence led by he prosecution.

26. We may, howeve , indicate that the answers given by the accused while examining him under Section 313, fully cor-roborate the evidence of PW 10 and PW 13 and hence the of-fences levelled against the appellant stand proved and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC."

23. It is apparent from the judgments of the Hon'ble Supreme Court that the Court can rely upon the statement of the accused made under Section 313 of Cr.P.C. to lend assurance to the prosecution's case.

24. In the present case, the statement of owner Yudhvir (PW15) is corroborated by the statement of the accused recorded under Section 313 of CrPC, and the conclusion drawn by the learned Trial Court that the accused was driving the vehicle cannot be faulted.

25. The accused, in his statement recorded under Section 313 of Cr. P.C. stated that the deceased got out of the vehicle to put the stones under the rear tyre. He heard some noise, and the vehicle fell. Thus, the fall of the vehicle into the gorge was admitted by the accused in his statement recorded under Section 313 of Cr.P.C. Kewal Singh (PW12) stated that he found that the vehicle had fallen into the gorge 200-250 eet below the road. This part of the statement was not challenged in the cross-examination; rather, it was sugges ed to him that some vehicle had hit the truck and the deceased was crushed under the tyre, the accused became perplexed, and the truck rolled down the road. Therefore, it was duly established that the vehicle had left the road and fallen into the gorge. It was rightly submitted on behalf of the State t at t e vehicles do not usually leave the road and fall into a or e. Therefore, a principle of res ipsa locutor can be applied to the present case. It was laid down by the Hon'ble Supreme Court in Syed Akbar versus State of Karnataka 1980 (1) SCC 30, that the burden of proving everything essential to establish the charge against the accused rests on the prosecution. However, where the facts of the accident are such that the accident could not have been caused except for the negligence of the accused, the principle of res ipsa loquitor can be applied. It was observed:-

"29. However, shorn of its doctrinaire features, understood in the broad, general sense, as by the other line of decisions, only as a convenient ratiocinative aid in the assessment of evidence, in drawing permissive inferences under S. 114, Evidence Act, from the circumstances of the particular case, including the

constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the accused stands charged), such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that act beyond a reasonable doubt. Such harnessed, functi nal use of the maxim will not conflict with provisions and the principles of the Evidence Act relating to the burden of proof and other cognate matters peculiar to c iminal jurisprudence.

30. Such simplified and pragmatic application of the notion of res ipsa loq it r, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. There are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances should make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence and inferentially exclude all reasonable doubt about his guilt."

26. In Keshavamurthy versus State 2002 Cri. L.J 103, a car left the road and hit a tree. It was held that the accident prima facie showed that the driver was negligent, and he had to explain the circumstances leading to the accident. It was observed: -

"It could therefore be seen that, at about 1.00 a.m. in the night, on a road of a total width of 19ft with 6ft kacha road on either side, with no other vehicles in the area, the car hits the roadside tree. As the Supreme Court points out in Mohammed Aynuddin @ Miyam v. State of Andhra Pradesh (2000 (3) Crimes 119 (2000 Cri LJ 3508 (SC)), an accident of such a nature would prima facie show that it cannot be accounted other than the negligence of the driver of the vehicle may create a presumption, and in such a case, the driver has to explain how the accident was for a reason other than his negligence. This is what the Supreme Court states in paragraph 6 of the judgment:-

"It is a wrong pr p siti n that for any motor accident, negligence f the driver should be presumed. An accident of such a nature as would prima facie show hat it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption, and in such a case, the driver has to explain how the accident happened without negligence on his part."

In light f this ratio of the decision of the Supreme Court, the facts of the present case could be seen. Here is a car proceeding from Bangalore to Shimoga. At the place concerned, there are no other vehicles on the road. There is no obstruction. The road is of a width of 19 ft. of cement and tar road, with 6 ft. kacha road on either side. Still, the vehicle hits a roadside tree. Added to that, there is a report of IMV Inspector at Ex.P5 to the effect that the accident is not due to any mechanical defect in the vehicle. In such a situation, an accident of this nature would prima facie show that the same could not be accounted for anything other than the negligence of the driver of the vehicle, i.e., the petitioner. A presumption in that regard thus arises. In such a case, as pointed out by the Supreme Court, it was for the petitioner driver to explain how the accident occurred without negligence on his part. What the petitioner has done in the course of his examination under S.313 Cr. P.C. is simply denying everything. He does not say anything, and even to the general question that is asked at the end as to whether he has got anything to say, he did not choose to say anything, nor did he care to explain the manner in which the accident occurred, i.e., in order to rebut the above said presumption as regards the accident occurring due to his negligence, and in order to show that accident occurred for a particular reason not attributable to his negligence This was, therefore, an appropriate case wherein, based on a presumption that the Supreme Court was speaking about a conviction that could be based on.

27. In Thakur Singh versus State of Punjab (2003) 9 SCC 208, the accused admitted that he was driving the bus, which left the road and fell into the canal. The Hon'ble Supreme Court held that the principle of res ipsa loquitur will apply and the burden will shift upon the accused to explain how he accident had taken place. It was observed:-

“4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that the bus was driven over a bridge, and then it fell into the canal. In such a situation, the doctrine of res ipsa loquitur comes into play, and the burden shifts onto the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.”

28. Thus, in view of the binding precedents of the Hon’ble Supreme Court, where the facts speak for themselves and there can be no explanation for the accident except the negligence of the accused, the Court can apply the principle of res ipsa loquitur, and the burden will shift upon the accused to show how the accident took place.

29. In the present case, the accused explained that the deceased had got out of the vehicle to put the stone under the rear tyre. The vehicle moved, and the deceased was crushed under the vehicle and fell into the gorge. The site plan (Ext.P3/ W12) shows the place of the accident as a hill. Similarly, the mechanical report (Ext.P1/PW4) shows the site plan. It does not show any damage to the vehicle, but only the damage to the ront show, wind glass, cabin door, body, tank roof, etc., because f the accident. This report falsifies the suggestion made to the Investigating Officer that another vehicle had hit the truck, due to which the truck rolled down after cr shing the deceased. Further, it was not suggested to ASI Sanjeev Kumar (PW4), who mechanically examined the vehicle, that there was some evidence of the damage caused by t e impact of a collision with another vehicle. Therefore, the plea taken in the cross-examination that some other vehicle had hit the truck, due to which the vehicle moved, cannot be accepted.

30. It is an admitted case that the vehicle was moving from Charabra towards Dhalli. It was carrying the apple and met with an accident near Hasan Valley. Therefore, its face would have been towards Dhalli. Any person putting the stone under the rear tyre cannot be crushed beneath the truck because the vehicle would move forward and not backward. Thus, the version propounded by the defence that the deceased had got out of the vehicle to put the stone under the tyre and was crushed under it does not provide any explanation for the accident. There is no other explanation for the accident. Therefore, the only inference which can be drawn is that the accused was negligently driving the vehicle, which led to the accident.

31. Dr Vinod Bhardwaj (PW17) c nducted the postmortem examination and found multiple injuries which could have been caused in a road traffic accident. He was not cross-examined at all, which means that his testimony regarding the injuries in a road accident was not disputed in the cross-examination. Therefore, it was duly proved on record that Kandru @ Krishan had died in a Motor Vehicle accident, which was caused due to the ne li ence of the accused.

32. These facts would constitute the commission of offences punishable under Sections 279 and 304A of the IPC. Section 304-AA of IPC is an aggravated form of Section 304A of IPC because a person driving a vehicle negligently in a state of intoxication is to be punished under Section 304AA of the IPC, and a person driving the vehicle negligently is to be punished under Section 304A of the IPC. Therefore, the accused was aware of the ingredients of the offence. He had defended himself against the charges of the greater offence, and he can be convicted of the commission of the lesser offence; hence, the conviction recorded under Section 304-AA is reduced to Section 304A of the IPC

33. Learned Trial Court had sentenced the accused to undergo simple imprisonment for a period of 6 months for the commission of an offence punishable under Section 279 of IPC and seven years and a fine of ■10,000/- for the commission of an offence punishable under Section 304AA of the IPC. The accused has been found guilty of the commission of an offence punishable under Section 304A of the IPC, which is punishable with a maximum sentence of two years. Considering the fact that a young life as been lost, the accused is sentenced to undergo mprisonment for a period of 18 months for the commission of an offence punishable under Section 304 A of IPC and pay a fine of ■10,000/- and in default of payment of fine to undergo simple imprisonment of 4 months for the commission of an offence punishable under Section 304A of IPC. He will be entitled to the benefit of a set off as per Section 428 of Cr.P.C. for the period of the imprisonment already undergone by him during the trial.

34. A modified jail warrant be prepared accordingly.

35. The present appeal stands disposed of and so are the pending miscellaneous applications if any.