

(2025) 11 SHI CK 0003

Himachal Pradesh HC

Case No: Criminal Revision No. 4090 Of 2013

Bhajan Dass

APPELLANT

Vs

State Of Himachal
Pradesh

RESPONDENT

Date of Decision: Nov. 10, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 201, 279, 337
- Motor Vehicles Act, 1988-Section 184, 185
- Code Of Criminal Procedure, 1973-Section 313, 397, 398, 399, 400, 401, 482
- Evidence Act, 1872-Section 114, 134

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Shashi Shirshoo, Lokender Kutlehria

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 11.04.2013 passed by learned Sessions Judge (Forests), Shimla, District Shimla, H.P. (learned Appellate Court), vide which judgment of conviction dated 24.11.2010 and order of sentence dated 29.11.2020, passed by learned Judicial Magistrate, First Class Court No.2, Shimla, District Shimla, 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.)

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused for the commission of offences punishable under Sections 279, 337 and 201 of the Indian Penal Code, 1860 (I C) and Sections 184 and 185 of the Motor Vehicles Act, 1988 (MV Act). It was asserted that informant Prem Chand (PW-1) and Shyam Lal Kashyap (PW-6) had parked their vehicle bearing registration No.HP06-3393 near Dhalli Link Road, Inder Nagar, towards the left side of the road on 03.04.2006, and were talking on the telephone. A truck bearing registration No. HP-63-1157 came from Sanjauli and hit the rear side of the car. The truck did not stop and sped away towards Dhalli. The informant followed the truck. The truck also hit a Tata Specio Sumo bearing registration No. HP51-0460 near Anubhav Enterprises, a Wagon R bearing registration HP09A-0717, Zen car bearing registration No. HP 62-7777 near Swati Car Care and a Maruti car bearing registration No. HP09A-0609 near Dhalli Bazar.

The truck was stopped near the Mashobra bifurcation. The truck was being driven in a dangerous manner, which caused danger to the parked vehicles and pedestrians walking on the road. The name of the driver was found to be Bhajan Dass (present petitioner/accused). He was intoxicated. The matter was reported to the police. An entry (Ext.PW-8/A) was recorded in the Police Station. SI Pal Chand (PW-15), HC Surinder Singh (PW-7), HC Man Dass (PW-9), Constable Diwan Chand and Constable Chander Prakash went to the spot to verify the correctness of the information. The informant made a statement (Ext.PW-1/A), which was sent to the Police Station, where F.I.R. (Ext. PW-13/A) was registered. HC Man Dass (PW-9) investigated the matter. He prepared the site plan (Ext.PW-9/A) and seized the truck bearing registration No.HP63-1157, driving licence (Mark X1), Insurance Certificate (Mark X2), (Mark X3), and National Permit (Mark X4) vide memo (Ext.PW-1/B). Constable Rajinder Singh (PW-11) mechanically examined the vehicle, and he did not find any defect in the vehicle, which could have led to the accident. He issued a report (Ext.PW-11/A). Constable Lokinder Singh (PW-12) took the photographs (Ext.PW-12/A-1 to Ext.PW-12/A-6), whose negatives are Ext.PW-12/A-7 to Ext. PW12/A-12. Dr Aman Madaik (PW10) examined the accused. He found that the accused had sustained simple injuries. His speech was slurred, his gait was staggering, and his breath smelled of alcohol. He preserved the blood and the urine sample and issued the report (Ext.PW10/A). Blood and urine samples were sent to FSL, and the result of the analysis (Ext.PZ) was issued, in which it was mentioned that the blood contained 78.2 mg% and the urine contained 235.8 mg% alcohol. Statements of prosecution witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279 and 201 of the IPC and Section 185 of the MV Act to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined fifteen witnesses to prove its case. Prem Chand (PW-1) is the informant. Ram Lal (PW-2), Shyam Singh Verma (PW-3), Rakesh Sharma (PW-4), Shyam Lal Kashyap (PW-6) and Davinder Negi (PW-14) are the owners of the damaged vehicles. Inder Singh (PW-5) is the owner of the truck bearing registration No. HP63-1157, who proved that the accused was employed as a driver in the truck. HC Surinder Singh (PW-7) is the witness to recovery. Constable Anil Kumar (PW-8) proved the entry in the daily diary. HC Man Dass (PW-9) investigated the matter. Dr Aman Madaik (PW-10) conducted the medical examination of the accused and took his blood and urine samples. Constable Rajinder Singh (PW-11) mechanically examined the truck. Constable Lokinder Singh (PW-12) took the photographs. DSP Vijay Sharma (PW-13) prepared the challan. SI Pal Chand (PW-15) signed the F.I.R.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that the truck and documents were seized. He denied the rest of the prosecution's case. He stated that he was not driving the truck and was sitting in the truck parked on the roadside. A false case was made against him. He did not produce any evidence in defence.

6. Learned Trial Court held that the testimonies of the prosecution's witnesses corroborated each other. The photographs and site plan also corroborated the statements of witnesses. The truck had hit many vehicles. The accused was apprehended on the spot. Minor contradictions in the statements were not sufficient to discard the prosecution's case. The non-examination of shopkeepers did not make the prosecution's case suspect. The report of the FSL proved that the accused was driving the vehicle with 78.2 mg % of alcohol in his blood. The prosecution's case was proved beyond a reasonable doubt. Hence, the accused was convicted for the commission of offences punishable under Sections 279 and 201 of IPC and Section 185 of M.V.Act and sentenced as under: -

Sections Sentences

279 of IPC
accused was sentenced to undergo simple

imprisonment

for two months, pay a fine of

and, in default of payment of the fine, to

■500/-

further simple imprisonment for fifteen

undergo

days.

201 of IPC

accused was sentenced to undergo simple

imprisonment

for two
months,
pay a fine
of

in default of payment of the fine, to

■500/- and

undergo

further
simple
imprisonment
for fifteen

days.

185 of M.V.Act

accused was sentenced to undergo simple

imprisonment

for two
months,
pay a fine
of

and in default of payment of the fine, to undergo further simple imprisonment for fifteen days.

■1000/-

It
was
ordered
that
all
the
substantive
sentences
of
imprisonment
shall
run
concurrently.

7. Being aggrieved by the judgment of conviction and order of sentence passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Appellate Court. Learned Appellate Court

concurred with the findings recorded by the learned Trial Court that the testimonies of the prosecution witnesses corroborated each other. Even if vehicles were parked in a No Parking Zone, it did not authorize the accused to damage them. The accused was driving the truck with alcohol in his blood exceeding the prescribed limit. Learned Trial Court had rightly convicted and sentenced the accused, and no interference was required with the judgment and order passed by the learned Trial Court. Consequently, the appeal was dismissed.

8. Feeling aggrieved and dissatisfied with the judgments and order passed by the learned Courts below, the petitioner/accused preferred the present revision, asserting that the learned Courts below failed to appreciate the material placed before them. The informant party had caused injury to the accused, and a false case was made out to escape from liability. No independent witness was associated, even though the accident had taken place in a heavily populated area. Material contradictions and improvements were ignored by the learned Courts below. 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 Shashi Shirshoo, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

10. Mr Shashi Shirshoo, learned counsel for the petitioner, submitted that the learned Courts below erred in appreciating the material placed before them. The prosecution's case was inherently suspect. The vehicles were parked in a No Parking Zone. The prosecution witnesses stated that the truck was being driven at a high speed, and the use of the term high speed amounts to nothing. The learned Courts below did not appreciate this aspect. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon *State of Karnataka vs. Satish* (1998) 8 SCC 493 and *C. Magesh and others vs. State of Karnataka* (2010) 5 SCC 645 in support of his submission.

11. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the accused was driving the truck in a state of intoxication. He could not control the truck and hit the vehicles parked on the roadside. The road was wide, and taking the truck to the unmetalled portion of the road constituted negligence. Learned Courts below had taken a reasonable view of the matter, and this court should not interfere with the concurrent findings of fact recorded by the learned Courts below. 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 *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 advertent 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 defect or an error of jurisdiction or law. There has to be a well-founded error which 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 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 aforesaid. 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 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 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 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)

“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 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. This position was reiterated 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. The informant, Prem Chand (PW-1), stated he had parked his car bearing registration no. HP-06-3393 near Dhalli Post Office on the roadside. A truck bearing registration No. HP63-1157 came from the Sanjauli side at high speed and hit the rear side of the car. The truck did not stop and sped away towards Dhalli Bazar. He followed the truck in his car. The truck also hit Tata Specio, Wagon R, Zen, etc. The accident occurred due to the negligence of the accused. The truck was intercepted at the Mashobra bifurcation. The accused was driving the truck, and he appeared to be intoxicated. The accident occurred due to the high speed, negligence and intoxication of the accused.

20. Prem Chand (PW-1) stated in his cross-examination that he was coming to Shimla from Kumarsain. It was submitted that this statement makes the prosecution's case highly suspect because a vehicle coming from Kumarsain would be facing Sanjauli and would be hit on the front portion and not on the rear portion. This submission will not help the accused. Prem Chand (PW-1) specifically stated that he had parked the car near Dhalli Post Office; hence, the accident had not taken place while the Maruti car was in motion, but when the car was parked. It was possible for Prem Chand (PW-1) to park the car with the rear facing towards Sanjauli, and the mere fact that the truck had hit the rear portion of the car will not make the prosecution's case doubtful.

21. It was submitted that his testimony does not establish the negligence. He stated that the vehicle was being driven at a high speed, and the high speed does not amount to any negligence. There can be no dispute with the proposition of law that mere use of the term high speed without anything more is not sufficient to convict a person of the commission of an offence punishable under Section 279 of the IPC. However, in the present case, the site plan (Ext.PW-9/A) shows that the Maruti car was parked on the extreme left side of the road, but it was hit by the truck. Taking a vehicle to the extreme left side of the road when there was sufficient space on the road constituted negligence.

22. Prem Singh (PW-1) stated in his cross-examination that the place of the incident had heavy movement of vehicles. Ram Lal (PW-2) stated in his cross-examination that the place of the accident had many shops and residential houses. Rakesh Sharma (PW-4) stated that there are many shops adjacent to his shop, and residential houses are also located in the vicinity. Many vehicles were moving at the place of the accident. The place of the incident was on the road leading from Sanjauli towards Dhalli Bazar. HC Man Dass (PW-9) admitted in his cross-examination that many shops are located at the place of the accident, and many vehicles moved on the road. Therefore, it was duly proved by the statements of prosecution witnesses that the accident had occurred in a heavily populated area having shops and residential houses. Hence, the accused was supposed to drive the vehicle carefully so as to avoid any injury to pedestrians or damage to the property. It was laid down by the Orissa High Court in *Prafulla Kumar Rout v. State of Orissa*, 1994 SCC OnLine Ori 229: (1995) 79 CLT 153 that a driver is supposed to exercise caution near an educational institution. It was observed at page 157:

“8. High speed is a relative term. A vehicle which is driven on a congested road even at a speed of 30 k.ms. may constitute high speed, but driving a vehicle at a speed higher than 30 k.ms in an open road may not be considered driving at high speed. It would depend upon the nature and situation of the road, concentration of pedestrians and vehicular traffic on it and many such other relevant factors. In the case at hand, the vehicle, which was being driven on the National Highway, caused an accident in front of a school. It is expected of a driver to be cautious and slow down the vehicle when nearing an educational institution. Unshaken evidence of eyewitnesses shows that the vehicle was driven at a high speed, though no exact speed was indicated by them. A responsible Revenue Officer (p.w. 13) is supposed to know what high speed is compared to normal speed. On consideration of the evidence, courts below have held that the vehicle was being driven at a very high speed. Added to the above, reappraisal of evidence while exercising revisional power is uncalled for, unless conclusions of the courts below are perverse, unreasonable or of such a nature that no reasonable person can reach such a conclusion. That does not appear to be the case here. The courts below have rightly found the accused guilty.”

23. It was laid down by the Patna High Court in *Laxmi and Co. v. Savitri Devi Agarwal (Loyalka)*, 1989 SCC OnLine Pat 246 : (1990) 2 PLJR 174 that driving a vehicle at a speed of 10 miles per hour in a crowded place may constitute negligence.

It was observed at page 176:

“20. It may be true that driving of vehicle at a high speed may not itself constitute rashness or negligence. The question as to whether driving at a high speed itself constitutes negligence or not depends upon the facts of each case. A vehicle driven at a speed of 10 miles per hour on a crowded road may constitute negligence, whereas driving a vehicle at a speed of 50 miles per hour on a highway where there is little or no traffic may not constitute rashness or negligence.”

24. In the present case, the accused failed to slow down the truck in a crowded area. He hit the car along with other vehicles, which were parked on both sides of the road. Therefore, the testimony of this witness proved the negligence of the accused.

25. Prem Chand (PW-1) stated in his cross-examination that he was coming towards Shimla, and the truck was being driven towards Dhalli. He admitted that the road is uphill at the place of the accident, and the truck was not being driven at a high speed.

26. The statement of this witness in the cross-examination that the truck was not being driven at a high speed is contrary to his examination-in-chief, wherein he had specifically stated that the accident had occurred due to the high speed of the truck. Further, even if the accused was driving the truck slowly, hitting the vehicles parked on the roadside was clearly negligent; therefore, not much advantage can be derived from the admissions made by Prem Chand (PW1).

27. Prem Chand (PW - 1) admitted in his cross-examination that he had parked his vehicle on the roadside of the National Highway where there was no authorised parking. Ram Lal (PW-2) also admitted in his cross-examination that the place of the accident was a No Parking Zone. Shyam Singh Verma (PW-3) admitted in his cross-examination that he had parked his car in a No Parking Zone. Sham Lal Kashyap (PW-6) stated that the place near Dhalli Post Office was not a Parking Zone. It was submitted based on these statements that the vehicles were parked in a No Parking Zone, and the vehicle owners were at fault. This submission is not acceptable. Learned Trial Court had rightly held that a vehicle parked in a No Parking Zone cannot be hit by another vehicle. Thus, not much advantage can be derived from the admissions made in his cross-examination.

28. Dr Aman Madaik (PW-10) medically examined the accused and found two lacerated wounds, 2 cm and 3 cm in size, over the scalp. The nature of the injuries was simple. He stated in his cross-examination that injuries were caused by blunt trauma. He has not even stated that the injury could have been caused by way of beating. Even the accused did not state in his statement recorded under Section 313 of Cr.P.C. that anybody had given beatings to him. Therefore, the submission made on behalf of the accused that he was beaten and a false case was made to escape from the liability is not established.

29. Shyam Singh Verma (PW-3) stated that he had parked his vehicle bearing registration No. HP-09A 0609 near the garbage dumper. The truck hit the garbage dumper and his car. The accused was driving the vehicle. He admitted in his cross-examination that the accident did not occur in his presence. Therefore, his testimony regarding the accused being the driver of the vehicle is hearsay and will not help the prosecution.

30. Inder Singh (PW-5) also admitted in his cross-examination that the accident did not take place in his presence. Therefore, his testimony does not help in determining the question of negligence.

31. Rakesh Sharma (PW-4) stated that he had parked his vehicle bearing registration No. HP51 - 0460 outside his shop. A truck bearing registration No. HP63-1157 came from Sanjauli and hit two vehicles, and hereafter, his vehicle. The truck also hit the Wagon R, which was parked at some distance. The accused was apprehended at the Mashobra bifurcation.

32. Davinder Negi (PW-14) stated that he was coming to Shimla from Theog on 03.04.2006 in a vehicle bearing registration No. HP62-7777, and when he reached Swati Car Care, a truck bearing registration No. HP63-1157 hit his car. The car was damaged in the accident. One Wagon R and one Tata Sumo were also hit by the truck. The truck did not stop after the accident and sped away towards Dhalli. The testimony of this witness is duly corroborated by the site plan (Ext.PW-9/A), wherein the location of various vehicles damaged in the accident has been shown. The marginal notes of the site plan read that the Sumo bearing registration No. HP51-0461 was parked in the parking lot outside Anubhav Enterprises, and it was hit. The car bearing registration No. H.P. 09A-0717 was parked near Swati Car Care. A Zen car bearing registration HP62-7777 was hit near the shop of Gurbax Welder. A car bearing registration No. HP09A-0609, parked near the garbage dumper, was also hit. Swati Car Care and Anubhav Enterprises are shown towards the left side for a vehicle coming from Sanjauli towards Dhalli, whereas Zen is shown towards the right side of the vehicle coming from Sanjauli. Similarly Post office is also shown towards the right side. Thus, some of the cars were hit towards the left side of the road, and some vehicles were hit towards the right side of the road. This clearly suggests that the accused was driving the truck in a zig-zag manner. Sumo was parked in a parking lot, and the accused was clearly negligent in taking the truck to the parking lot and hitting the parked vehicle. This shows that the accused was unable to control his vehicle, which led to the accident.

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 *FaguMoharana 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.”

34. 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, 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 P. vs. Niti Raj* 2009 Cr.L.J. 1922, and it was held:

“16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches. On the left side, while going from Dangri to Kangoo, there was a 7 ft. kacha portion, and on the other side, there was an 11 ft. kacha portion. The total width of the road was about 28 ft. The injured person was coming from the Dangri side and was walking on the left side of the road. This has been stated both by the injured as well as by PW-6. This fact is also apparent from the fact that after he was hit, the injured person fell into the drain. A drain is always on the edge of the road. The learned Sessions Judge held, and it has also been argued before me, that nobody has stated that the motorcycle was on the wrong side. This fact is apparent from the statement of the witnesses, who state that they were on the extreme left side, and the motorcycle, which was coming from the opposite side, hit them. It does not need a genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side.”

36. In the present case, the fact that the Zen was hit towards the right side of the road shows the negligence of the accused by violating the Rule of Road Regulations 1989.

37. It was submitted that independent witnesses were not associated, and this made the prosecution's case suspect. This submission is only stated to be rejected. The prosecution has examined the owners and eyewitnesses of the incident. There is no evidence that any other person had seen the incident, because the shops and residences were located in the vicinity cannot lead to any inference that any person had seen the incident. This was to be specifically elicited. There is nothing in the cross-examination of any of the witnesses that any other person had seen the incident. Hence, the submission that witnesses were withheld is not acceptable.

38. Learned Courts below had rightly held that non-examination of the independent witnesses is not sufficient to doubt the prosecution's case. It was laid down by the Hon'ble Supreme Court in *Pohlu v. State of Haryana*, (2005) 10 SCC 196, that the intrinsic worth of the testimony of witnesses has to be assessed by the Court, and if the testimony of the witnesses appears to be truthful, the non-examination of other witnesses will not make the testimony doubtful. It was observed: -

“[10]..It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined will not adversely affect the case of the prosecution...”

39. This position was reiterated in *Rohtash vs. State of Haryana* 2013 (14) SCC 434, and it was held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. It was observed:

“23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined, witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution, and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive." In an extraordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness if it is so warranted in the interests of justice. The evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.”

40. This position was reiterated in *Rajesh Yadav v State of U.P.*, (2022) 12 SCC 200: 2022 SCC OnLine SC 150, wherein it was observed at page 224: -

Non-examination of the witness

34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials, sufficient to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the party that alleges that a witness has not been produced deliberately to prove it.

35. The aforesaid settled principle of law has been laid down in *Sarwan Singh v. State of Punjab* [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]: (SCC pp. 377-78, para 13)

“13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the “pakodewalla”, hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. The onus of proving the prosecution's case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecution's case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted, a large crowd had gathered, and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country, there is a general tendency amongst the witnesses in

motivated to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness to a murder or any serious offence if they can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes.” (emphasis supplied)

36. This Court has reiterated the aforesaid principle in *Gulam Sarbar v. State of Bihar*, (2014) 3 SCC 401: (2014) 2 SCC (Cri) 195]: (SCC pp. 410-11, para 19)

“19. In the matter of the appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy or otherwise. The legal system has emphasised the value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness if the same inspires confidence. (*Vadivelu Thevar v. State of Madras*, 1957 SCR 981: AIR 1957 SC 614], *Kunju v. State of T.N.* [*Kunju v. State of T.N.*, (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], *Bipin Kumar Mondal v. State of W.B.* [*Bipin Kumar Mondal v. State of W.B.*, (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], *Mahesh v. State of M.P.* [*Mahesh v. State of M.P.*, (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], *Prithipal Singh v. State of Punjab* [*Prithipal Singh v. State of Punjab*, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and *Kishan Chand v. State of Haryana* [*Kishan Chand v. State of Haryana*, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807]

41. Therefore, no adverse inference can be drawn from the non-examination of the witnesses.

42. It was submitted that there are material contradictions in the statements of prosecution witnesses, and reliance was placed upon the judgment of the Hon’ble Supreme Court in *C. Magesh* (supra). This judgment will not help the petitioner. The learned Courts below had rightly held that there were minor contradictions in the statements of prosecution witnesses, which were bound to come with the passage of time. Further, the statements of witnesses were corroborated by the site plan and locations of the damaged vehicles on the spot. Therefore, any inconsistency in the statements of witnesses was not sufficient to doubt them.

43. The accused was apprehended on the spot, and the identification was not in dispute. *Inder Singh* (PW-5), owner of the vehicle, stated that he had engaged the accused as a driver on the payment of ₹2500/- per month. He and the accused were returning from Chandigarh on 28.03.2006. They loaded the coal tar in the truck on 01.04.2006. He had instructed the driver to take the truck to Karsog. He went to his home and came to know that the accused was unable to cross Dhalli. His testimony that he had employed the accused as a driver was not challenged in his cross-examination. Therefore, his testimony duly proved that the accused was driving the vehicle on the date of the incident.

44. Dr Aman Madaik (PW10) medically examined the accused and found that he was smelling of alcohol. His breath was slurred. He obtained the urine and blood samples and sent them to FSL. As per the report of the analysis blood contained 78.2 mg% proof of alcohol in it. Section 185 of the M.V. Act punishes a person who drives a vehicle with alcohol exceeding 30mg % in his blood. Therefore, the accused had violated the provisions of Section 185 of the M.V. Act.

45. In view of the above, the learned Courts below had rightly held that the accused was driving the truck in a negligent manner, which led to the accident, causing damage to the vehicles, and he was driving the truck in a state of intoxication. He fled away from the spot. Hence, the accused was rightly held guilty for the commission of offences punishable under Section 279 & 201 of the IPC and Section 185 of the M.V. Act.

46. Learned Trial Court sentenced the accused to undergo simple imprisonment for two months each for the commission of offences punishable under Sections 279 & 201 of IPC and Section 185 of M.V. Act. This cannot be said to be excessive, and no interference is required with the sentence imposed by the learned Trial Court as affirmed by the learned Appellate Court.

47. No other point was urged.

48 In view of the above, the present revision fails, and it is dismissed, so also the pending applications, if any.

49. The records of the learned Courts below be returned along with a copy of this judgment for the information.