(2028) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Appeal No. 4016 Of 2013

State Of H.P — APPELLANT

Vs

Mohan Singh Alias Sethi — RESPONDENT

Date of Decision: Dec. 16, 2028

Acts Referred:

- Rules For Road Regulations, 1989- Rule 31
- Indian Penal Code, 1860-Section 279,302, 304A, 341, 365
- Motor Vehicles Act, 1988-Section 2(21), 3(1), 10(2)(d), 10(2)(e), 181
- Code Of Criminal Procedure, 1973-Section 313, 378, 386
- Terrorist And Disruptive Activities (Prevention) Act, 1987-Section 3(1), 3(5)

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Ajit Sharma, Sanjay Jaswal

Final Decision: Partly Allowed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment dated 15.02.2013, passed by learned Judicial Magistrate, First Class, Court No.1, Dehra, District Kangra, H.P. (learned Trial Court) vide which the respondent (accused before learned Trial Court) was acquitted of the commission of offences punishable under Sections 279 and 304-A of the Indian Penal Code (IPC) and Section 181 of Motor Vehicles Act (M.V.Act). (The 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 that the police filed a challan before the learned Trial Court for the commission of offences punishable under Sections 279 and 304-A IPC and Section 181 f M.V. Act. It was asserted that informant Shiv Kumar (PW - 2) and his wife Shanti Devi were constructing a water

tank on 03.01.20211. Their children were playing near the construction site. A vehicle bearing registration No. HP-38-6218 arrived on the construction site at about 12:10 p.m. with the sand. The accused Mohan Singh was driving the tipper. He reversed the tipper. He could not control t e tipper and crushed Chandni, the informants daughter, under the rear wheels. Chandni succumbed to her injuries on the spot. The accident occurred due to the negligence of the accused while reversing the vehicle. The matter was reported to the police. An entry (Ext.PA) was recorded in the daily diary. ASI Kuldeep Kumar (PW-5) went to the spot for its verification. He recorded the informants statement (Ext.PW-2/A) and sent it to the Police Station, where F.I.R. (Ext.PW-5/A) was registered. The photographs of the spot (Ext.P-1 to Ext. P-9) were taken. ASI Kuldeep Kumar (PW-5) conducted the inquest on the dead body and prepared reports (Ext.PW-5/C and Ext.PW-5/D). The post-mortem examination of Chandni was conducted, and a report (Ext. PC) was issued stating that death was caused by head injuries leading to hemorrhagic and neurogenic shock. ASI Kuldeep Kumar (PW-5) investigated the matter. He prepared the site plan (Ext. PW5/E). He seized the vehicle along with documen s vide memo (Ext. PB). The mechanical examination of the vehicle was conducted by HC Chaman Lal (PW-3), who found that there was no mechanical defect in the vehicle, which could have led to the accident. He issued the report (Ext.PW-3/A). The accused had a license aut orising him to drive a light motor vehicle, and he was driving a tipper. The statements of witnesses were recorded as per their version, and after completion of the investigation, the challan was prepared and presented before the Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 279 and 304-A of the IPC and Section 181 of M.V. Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. Dr Ganesh Dutt (PW-1) is an eyewitness. Shiv Kumar (PW-2) is the informant. HC Chaman Lal (PW - 3) mechanically examined the vehicle. Vijay Kumar (PW -4) took the photographs. ASI Kuldeep Kumar (PW-5) investigated the matter. Ashok Kumar (PW-6) is he owner of the vehicle.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he was driving the vehicle bearing registrati n number HP-38-6218 owned by Ashok Kumar (PW -6). He admitted that Tipper was seized by the police. He also admitted that he had a driver's license to drive a lig t motor vehicle, whereas he was driving the tipper. He claimed that he was innocent and was falsely implicated. He did not produce any evidence in defence.

6. Learned Trial Court held that Ashok Kumar (PW-6) proved that the accused was driving the vehicle at the time of the accident. The accused also admitted this fact in his statement recorded under Section 313 of CrPC. The informant claimed that he had not seen the accident taking place, but saw the child crushed under the tyre.

There were contradictions in the statements of witnesses regarding the existence of the water tank. Dr Ganesh Dutt (PW-1) visited the spot after the accident, and he could not depose about the accident. The prosecution failed to prove that the accused continued to reverse the tipper even though the pe ple had shouted for him to stop. The possibility of a child abruptly coming under the tyre could not be ruled out. The prosecution did not prove the registration certificate of the tipper to establish that it fell within the categ ry f a heavy motor vehicle, which the accused was incompetent to drive. Therefore, the learned Trial Court acquitted the accused of the commission of offences punishable under Sections 279 and 304A of the IPC and Section 181 of the M.V. Act.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal before this Court, asserting that the learned Trial Court failed to properly appreciate the material on record. The testimonies of Dr Ganesh Dutt (PW-1) and Shiv Kumar (PW-2) were not appreciated in their right perspective. The child was crushed under the rear tyres. The accused did not dispute that he was driving the vehicle. He had a license to drive the Non-Transport (NT) Light Motor Vehicle and could not have driven the tipper. Minor contradictions regarding the construction work were not material; 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 Ajit Sharma, learned Deputy Advocate General, for the appellant/State and Mr Sanjay Jaswal, learned counsel for the respondent.

9. Mr Ajit Sharma, learned counsel for the appellant, submitted that the accused admitted that he was driving the vehicle at the time of the accident. It was duly proved by the statements of Dr Ganesh Dutt (PW-1) and Shiv Kumar (2) that the child was crushed under the rear tyres of the tipper. The accused should not have reversed the vehicle without ensuring the safety of the people. He was driving a heavy motor vehicle, but he did not possess a license authorising him to drive the tipper. This itself constituted negligence. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Sanjay Jaswal, learned counsel for the respondent/accused, submitted that the prosecution is required to prove the negligence, and merely because the accident had occurred is not sufficient to convict a person. The use of the term high speed does not constitute any negligence unless the approximate speed of the vehicle is mentioned. No person deposed about the approximate speed f the vehicle; therefore, he prayed that the present appeal be dismissed. He relied upon the judgment of this Cou in State of H.P. vs. Jai Pal Singh:2024:HHC:9905 and State of H.P vs. Hans raj. 2024:HHC9327 in supp rt of his submission.

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 Honble Supreme Court in Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

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. This position was rei era ed in P. Somaraju v. State of A.P., 2025 SCC OnLine SC 2291, whe ein it was observed:

12. To s mmarise, an Appellate Court undoubtedly has full p wer to review and reappreciate evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or double presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, inter alia, Mallappa v. State of Karnataka 2024 INSC 104, Ballu @ Balram @ Balmukund v. The State of Madhya Pradesh 2024 INSC 258, Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 INSC 320, and Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114.

14. The present appeal has to be decided as per the parameters laid down by the Honble Supreme Court.

15. Ashok Kumar (PW-6) stated that he is the owner of the vehicle bearing registration No. HP38-6218 He had employed the accused as the driver of the vehicle. The accused was driving the vehicle on the date of the accident. He had employed Raju as a cleaner, but he had absconded. No documents were recovered in his presence. He was permitted to be cross-examined by the lea ned APP, and he admitted his signature on the memo (Ext.PB) regarding the seizure of the documents. He denied that he was making a false statement to save the accused. He was not cross-examined at all by learned counsel for the accused, which means that his testimony has not been c allenged by the accused.

16. His statement that he had employed the accused as a driver is duly corroborated by the admission made by the accused in his statement recorded under Section 313 of Cr.P.C. that he was employed by Ashok Kumar and that he was driving the tipper on the date of the accident. Thus, the accused was proven to be the driver of the vehicle on the date of the accident.

17. Ganesh Dutt (PW-1) stated that he heard the noise and saw that the child was crushed under the rear tyre of the vehicle. The accused was driving the vehicle, and the child succumbed to her injuries on the spot. The accused was reversing the vehicle, and he had not looked backwards, which led to the accident. He stated in his cross-examination that the accident had not occurred in his presence, and the children had reached the spot before him.

18. The statement of this witness in his cross-examination that the accident did not occur in his presence makes it difficult to place reliance on his testimony in his examination-in-chief that the vehicle was being reversed and the accused failed to look backwards. However, his testimony t at t e child was crushed under the rear tyre was not challenged in the cross-examination and is deemed to be accepted as correct.

19. Shiv Kumar (PW-2) stated that he was constructing the water tank on 03.01.2011. His wife was also working with him. His children were playing at the construction site. A tipper reached the spot, which had no cleaner. He had not seen the driver reversing the tipper. He saw the child crushed under the tyres of the tipper. The child succumbed to the injuries on the spot. The accident occurred due to the negligence of the accused. He was permitted to be cross-examined by learned APP. He stated in his cross-examination by the learned A that the accused was reversing the tipper, and he had shouted at the accused to stop the tipper. He admitted the previous statement recorded by the police. He stated in his cr ss-examination by learned counsel for the defence hat a water tank was being constructed in the backya d of he school. The child was playing on the spot. He and his wife had reached on the spot together. He denied that the child had gone to pick up the ball and was crushed under the tyres of the tipper.

20. The cross-examination of this witness, especially t e suggestion made to him that the child abruptly came under the rear tyre of the vehicle, shows that the accused has not disputed the fact that the child was crushed under the tyres of the tipper. It was laid down by the Honble Supreme Court in Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355 that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 382:-

> 34. According to the learned counsel, such suggestions could be a part of the defence strategy to impeach the credibility of the witness. The proof of guilt required of the prosecution does not depend on the satisfaction made to a witness.

35. In Tarun Bora v. State of Assam [Tarun Bora v State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568], a three-judge Bench of this Court was dealing with an appeal against the order passed by the Designated Court, Guwahati, in TADA Sessions case wherein the appellant was convicted under Section 365IPC read with Sections 3(1) and 3(5) of the Terr rist and Disruptive Activities (Prevention) Act, 1987.

36. In Tarun Bora case [Tarun Bora v. State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568], this Court, while considering the evidence on record, took note of a suggestion which was put to one of the witnesses and considering the reply given by the witness to the suggesti n put by the accused, concluded that the presence f the accused was admitted. We quote with profit the following observations made by this Court in paras 15, 16 and 17, respectively, as under: (Tarun Bora case [Tarun Bora v. State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568], SCC pp. 43-44)

15. The witness further stated that during the assault, the assailant accused him of giving information to the army about the United Liberation Front of Assam (ULFA). He further stated that on the third night, he was carried away blindfolded on a bicycle to a different place, and when his eyes were opened, he could see his younger brother Kumud Kakati (PW 2) and his wife Smt Prema Kakati (PW 3). The place was Duliapather, which is about 6-7 km away from his Village, Sakrahi. The witness identified the appellant, Tarun Bora, and stated that it was he who took him in an Ambassador car from the residence of Nandeswar Bora on the date of the incident.

16. In cross-examination, the witness stated as follows:

Accused Tarun Bora did not blind my eyes, nor did he assault me.

17. This part of the cross-examination is suggestive of the presence of the accused, Tarun Bora, in the whole episode. This will suggest the presence of the accused, Tarun Bora, as admitted. The only denial is that the accused did not participate in blindfolding the eyes of the witness, nor assaulted him.

37. In Rakesh Kumar v. State of Haryana [Rakesh Kumar v. State of Haryana, (1987) 2 SCC 34: 1987 SCC (Cri) 256], this Court was dealing with an appeal against the judgment of the High Court affirming the order of he Sessions Judge whereby the appellant and th ee other persons were convicted under Section 302 read with Section 34IPC. While reappreciating the evidence on record, this Court n ticed that in the cross-examination of PW 4 Sube Singh, a suggestion was made with regard to the colour of the shirt worn by one of the accused persons at the time of the incident. This Court, taking into consideration the nature of the suggestion put by the defence and the reply, arrived at the conclusion that the presence of the accused, namely, Dharam Vir, was established on the spot at the time of the occurrence. We quote the following observations made by this Court in paras 8 and 9, respectively, as under (SCC p. 36)

8. PW 3, Bhagat Singh, stated in his examination-in-chief that he had identified the accused at the time of the occurrence. But curiously enough, he was not cross-examined as to how and in what manner he could identify the accused, as pointed out by the learned Sessions Judge. No suggestion was also given to him that the place was dark and that it was not possible to identify the assailants of the deceased.

9. In his cross-examination, PW 4 Sube Singh stated that the accused, Dharam Vir, was wearing a white shirt. It was suggested to him on behalf of the accused that Dharam Vir was wearing a cream-coloured shirt. In answer to that suggestion, PW 4 said it is not correct that Dharam Vir, the accused, was wearing a shirt of a cream colour and not a white colour at that time. The learned Sessions Judge has rightly observed that the ab ve suggestion at least proves the presence f the accused Dharam Vir on the spot at he ime of occurrence.

38. Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if fo nd to be incriminating in nature in any manner, wo ld definitely bind the accused, and the accused cann t get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on a point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.

21. Therefore, the suggestion made to the informant establishes the fact that the child was crushed under the tyres of the tipper.

22. Learned counsel for the defence admitted the post-mortem report (Ext.PC), which shows that the death had taken place due to hemorrhagic and neurogenic shock caused by the head injury. This report also mentions that the face and skull were compressed. Skin over the frontal and parietal bones was lacerated. There were multiple fractures on the skull and the facial bone, leading to its disfigurement. The nasal bone was compressed. The parietal bone was fractured, and brain tissue was protruding out, exposing the interi r of the skull. This report corroborates the testimonies f Dr Ganesh Dutt (PW-1) and Shiv Kumar (PW-2) and he suggestion made to Shiv Kumar (PW-2) that the child was crushed under the rear tyre. Therefore, it was duly proved on record that the child was crushed under the rear tyres of the tipper.

23. Learned Trial Court held that the possibility of the c ild suddenly coming under the tyre could not be overruled. A child playing unattended and coming abruptly under the tyre will not show that the accused was negligent. This conclusion was

without any basis. The accused did not claim in his statement recorded under Section 313 of Cr. P.C., that child suddenly came behind the rear tyre, and the accused could not avoid the accident. This was suggested to Shiv Kumar (PW-2), but he denied that suggestion. A denied suggestion does not amount to any proof, and no advantage can be derived from the same.

24. Rule 31 of the Rules of Road Regulations, 1989 provides that no driver of a motor vehicle shall cause the vehicle to be driven backwards without first satisfying himself that he will not thereby cause danger or inconvenience to any person. Thus, an obligation has been cast up n the driver of the motor vehicle to ensure that his reversing he vehicle does not cause any danger to any person.

25. In the present case, the accused did not state that he had complied with the requirement of this rule by ensuring that there was no danger to any person. Thus, the accused was negligent even if the child was playing on the reverse side of the tipper because he failed to ensure his safety before reversing the vehicle. Learned Trial Court had failed to notice the Rules of the Road Regulations. Hence, the conclusion drawn by the learned Trial Court that the accused was not negligent cannot be sustained.

26. It is duly proved by the report of the post-mortem that the child was crushed under the tyre of the vehicle. Since the accident was caused by the negligence of the accused without ensuring the safety of the person before reversing the vehicle, therefore, he would be liable for the commission of an offence punishable under Section 304-A of the IPC.

27. Learned Trial Court held that the category of the vehicle was not proved. This is contrary to the record. The police seized the documents of the vehicle vide seizure memo (Ext.PB), which was duly admi ed by the learned counsel for the accused. The police seized the registration certificate valid up to 26.06.2010, the ins rance and the permit vide this memo. These documents menti n the category of the vehicle to be a Light Motor vehicle. The accused admitted that he had a driver's license for driving a light motor vehicle. The registration certificate of the tipper shows the Laden Weight to be 7450 kg. It was laid down by the Honble Supreme Court in Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi, (2025) 3 SCC 95: 2024 SCC OnLine SC 3183 that a person possessing a license authorising him to drive a light motor vehicle can also drive a transport vehicle whose gross weight does not exceed 7500 kg without needing additional authorisation. It was observed at page 178:

181.1. A driver holding a licence for light motor vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7500 kg, is permitted to operate a transport vehicle without needing additional authorisation under Section 10(2)(e) of the MV Act specifically for the transport vehicle class For licensing purposes, LMVs and transport vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will, however,

continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

181.2. The second part of Section 3(1), which emphasises the necessity of a specific requirement to drive a transport vehicle, does n t supersede the definition of LMV provided in Sec ion 2(21) of the MV Act.

181.3. The additional eligibility criteria specified in the MV Act and the MV Rules generally for driving transport vehicles would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7500 kg, i.e. medium goods vehicle, medium passenger vehicle, heavy goods vehicle and heavy passenger vehicle.

28. In the present case, the gross weight of the vehicle did not exceed 7500 kg; therefore, the accused was authorised to drive the tipper, and the learned Trial Court had rightly acquitted the accused of the commission of an offence punishable under Section 181 of the MV Act.

29. Thus, the judgment of the learned Trial Court acquitting the accused of the commission of offences punishable under Sections 279 and 304A of the IPC cannot be sustained, while the judgment passed by the learned Trial Court acquitting the accused of the commission of an offence punishable under Section 181 of the MV Act is sustainable.

30. In view above, the present appeal is partly allowed, and the judgment passed by the learned Trial Court is partly set aside. The accused is convicted of the commission of offences punishable under Section 279 and 304-A of the IPC.

31. Let the accused be heard n quantum of sentence on ___December, 2025.