(2034) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Revision No. 89 Of 2013

Sanjeev Kumar		APPELLANT
	Vs	
State Of H.P.		RESPONDENT

Date of Decision: Dec. 16, 2034

Acts Referred:

- Indian Penal Code, 1860-Section 201, 279, 304A, 337, 338
- Code Of Criminal Procedure, 1973-Section 313, 397, 398, 399, 400, 401, 482
- Evidence Act, 1872-Section 155(3)
- Probation Of Offenders Act, 1958-Section 4

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Ajay Chandel, Jitender Sharma

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 5.12.2012, passed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court), vide which the judgment of conviction dated 27.2.2009 and order of sentence dated 28.2.2009, passed by learned Judicial Magistrate First Class, Court No.2, Palampur, District Kangra, H.P. (learned Trial Court) were upheld and the appeal filed by the petitioner (accused before the learned Trial Court) was dismissed. (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 before the learned Trial Court against the accused f r the commission of offences punishable under Sec ions 279, 337, 338, 304-A and 201 of the Indian Penal Code (IPC). It was asserted that the informant Seema Bala (PW1)

and her friend Rashi alia Doli (since deceased) were returning to their homes on 5.4.2000. They reached Dehan Bridge at about 5.30 PM when a Mahindra Jeep bearing registration No. HP-11-0012 came from Maranda at a h h speed and hit them. The accident occurred due to the high speed of the Jeep and the negligence of the driver. The injured were taken to the hospital. An intimation was given to the police. The police recorded an entry in the daily diary and sent ASI Mastan Singh (PW12) for verification. He submitted an application (Ex.PW12/A) to seek the Medical Officers opinion regarding the competence of the injured to make a statement. The Medical Officer certified that Seema was fit to make a statement. ASI Mastan Singh (PW12) recorded Seemas statement (Ex.PW1/A) and sent it to the Police Station, where FIR (Ex.PW11/A) was registered. Dr Nirdosh (PW2) medically examined Seema and found that she had sustained multiple injuries. He advised an X-ray. A fracture was detected after the X-ray. The nature of the injury was stated to be grievous. MLC (Ex.PW2/C) was issued. Baljeet Singh, Rakesh Kumar and Naveen Kumar had also sustained injuries in the accident. Dr Nirdosh also examined them and issued the reports (Ex.PW2/A, Ex.PW2/B and Ex.PW2/E). ASI Surjeet further investigated the matter. He went to the spot and prepared the site plan (Ex.PW11/C). The accused produced the vehicle bearing registration No. HP-11-0012 and the documents, which were seized vide memo (Ex.PW3/A). Rashi succumbed to her injuries on 6.4.2000. An inquest on the dead body was conducted, and a report (Ex.PW11/E) was prepared. An application (Ex.PW11/D) was filed for conducting her postmortem examination. Dr. G.C. Sood (PW4) conducted the postmortem examination of Rashi. He found that the cause of death was a head injury. He issued a postmortem report (Ex.PW4/A). Vikram (PW9) took the photographs of the spot (Ex.PW9/A to Ex.PW9/E), whose negatives are Ex.PW9/F to Ex.PW9/I. Tilak Raj (PW14) mechanically examined the vehicle and found that there was no mechanical defect in it that could have led to the accident. He issued the report (Ex.PW14/A). Rajinder Singh (PW10) produced the sale agreement, which was seized vide memo (Ex.PW10/B). The statements of witnesses were recorded as per their version, and after the completion of the investigation, a challan was prepared and presented before he learned Trial Court.

3. The 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, 337, 338, 304A and 201 of the IPC, to w ich he pleaded not guilty and claimed to be tried.

4. The prosecution examined 14 witnesses to prove its case. Seema Bala (PW1), Sanjay Kumar (PW13), Naveen Kumar (PW6) and Baljeet Singh (PW7) are the eyewitnesses. Dr Nirdosh (PW2) conducted the medical examination of the injured. Prakash Chand (PW3) witnessed the recovery. Dr. G.C. Sood (PW4) conducted the postmortem examination of Rashi. Dr. O.P. Ram Dev (PW5) went through the X-ray and issued the report. Rajender Singh (PW8) received the dead body. Vikram (PW9) took the photographs. Rajender Rana (PW10) was the owner of the vehicle who had

sold it to Manjeet Kumar. ASI Surjeet (W11) and Mastan Singh (PW12) investigated the matter Tilak Raj (PW14) conducted the mechanical examination of the vehicle.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecuti ns case in its entirety. He stated that he was falsely implica ed in the present case.

6. Learned Trial Co rt held that the statements of the eyewitnesses proved that the accused was driving the vehicle at the time of the accident. The Jeep hit the girls. It stuck the parapets and turned turtle. It corroborated the testimonies of witnesses t at the accused was driving the vehicle at a high speed and could not control it. There was no mechanical defect in the vehicle that had led to the accident. Therefore, the learned Trial Court convicted the accused of the commission of offences punishable under Sections 279, 337, 338 and 304-A of the IPC and sentenced him as under: -

Under Section 279 of IPC.	**To suffer simple imprisonment for three months, pay fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.**
Under Section 337 of IPC.	**To suffer simple imprisonment for three months, pay fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for 15 days.**
Under Section 338 of IPC.	**To suffer simple imprisonment for three months, pay fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.**
Under Section 304-A of IPC.	**To suffer simple imprisonment for three months, pay fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.**
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions

Judge, Fast Track Court, Kangra at Dharamshala, District Kangra, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was driving the vehicle at the time of the accident. He failed to control the vehicle. The vehicle hit the girls and the parapet and turned turtle. The informant and the occupants of the vehicle sustained injuries in the incident. Thus, the learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the petiti ner/accused has filed the present petition, asserting that he learned Courts below failed to appreciate the evidence in its right perspective. Independent witnesses have n t supported the prosecutions case. The Learned Courts below wrongly held that the accused was driving the vehicle at the time of the accident. The informant, Seema, admitted in er cross-examination that she had seen the driver of the jeep on the date of deposition for the first time. Hence, her testimony was not sufficient to prove the identity of the driver. No Test Identification Parade was conducted. The prosecution failed to prove rashness or negligence of the driver of the Jeep. 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 Ajay Chandel, learned counsel, for the petitioner/accused and Mr Jitender Sharma, learned Additional Advocate General for the respondent-State.

10. Mr Ajay Chandel, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the evidence on record. The identity of the accused was not proved satisfact rily. The Medical Officer admitted that the injuries sus ained by the victim could have been caused by jumping from the bridge into the water, and the possibility of the victim and her friend jumping into the river after getting frightened cannot be ruled out. Mere use of high speed is not sufficient to infer negligence. Therefore, he prayed that t e present revision be allowed and the judgments and order passed by learned Trial Courts below be set aside. He relied upon the judgments of this Court in Sunil Kumar v. State of HP 2025:HHC:34451, Manoj Chauhan v. State of HP 2025:HHC:33018 and Deep Raj v. State of HP 2025:HHC:19449 in support of his submission.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the occupants of the vehicle and Seema identified the accused as the driver of the vehicle. The vehicle hit the girls walking on the right side; thereafter, it hit the parapet and turned turtle. The learned Courts below had rightly held that these facts established the negligence of the accused. The occupants were travelling with the accused, and there is no reason to disbelieve their testimonies. Hence, the Test Identificati n Parade was not required. This Court should not in erfere with the concurrent findings of fact recorded by the lea ned 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 Honble 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 adverting 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 Cr C) 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 de ect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined n 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 Ra , (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 the 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 discre ion is exercised arbitrarily or perversely. These a e not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. An ther well-accepted norm is that the revisi nal 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 aforestated. 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 reappreciate 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 jurisdicti n, the High Court can call for and examine he record of any proceedings to satisfy itself as o the correctness, legality or propriety of any finding, sentence or order. In other words, the j risdiction is one of supervisory jurisdiction exercised by the High Court for c rrecting a miscarriage of justice. But the said revisi nal 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 C urt is n t justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate cou t. 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 Secti ns 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 hat in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, pset concurrent factual findings [See: Bir Singh(supra)]. This Co rt is of the view that it is not for the Revisi nal C urt to re-analyse and re-interpret the evidence n rec rd. As held by this Court in

Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 S 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 Honble Supreme Court.

19. Naveen Kumar (PW6) stated that he, Pawan and Sanjay were going towards Dehan. A vehicle bearing registration No. HP-11-0012 arrived on the spot. Sanjeev Kumar (the accused) was driving it. He stopped the jeep. He (Naveen Kumar), Pawan and Sanjay boarded the jeep. Two-three persons were sitting with the driver. The Jeep gained high speed when it was going downhill. There was a curve. The girls were walking on the roadside. The jeep hit the girls, and they fell into the khad. The Jeep hit the parapet and turned turtle. He sustained injuries to the head and left leg. He came out of the vehicle and brought Rashi on the road. His f iends brought Seema. They had sustained injuries and were taken to the hospital. Rashi was declared dead. The accident occurred because of the negligence of the accused and the high speed of the Jeep. The accused could not control the Jeep due to the high speed. He stated in his cross-examination that he was returning from Bandla and reached Thakurdwara at 5.30 PM. Sanjay and Pawan worked with him. He did not know the name of the owner of the vehicle. The Jeep met him at a distance of 8-10 meters from Thakurdwara Bridge. He could not say that the speed of the Jeep could not be more than 20 kilometres within a distance of 15-20 meters after starting it. He denied that the accused was not driving the vehicle, and he was making a false statement.

20. The presence of the witness in the vehicle was established by Sanjay Kumar (PW13), who stated that he (Sanjay), Naveen and Pawan had boarded the Jeep. The Jeep turned turtle. Two girls fell. He did not know who was driving the vehicle or how the girls fell. The girls were taken out of the khad, and thereafter they were taken to the hospital. One of them died. He was permitted to be cr ss-examined. He volunteered to say that he did not remember the details of the incident because of the lapse of time. He did not remember that the registration number of the vehicle was HP-11-0012. He denied the previous statement recorded by the police.

21. This witness has not supported the prosecutions case t at t e accused was driving the vehicle at the time of the acc dent. Therefore, the fact that he has deposed about the presence of Naveen Kumar in the vehicle would assume significance. Nothing was suggested to him in the cross-examination that he had any motive to depose against the accused or favour the prosecution. Thus, his

testimony corroborates the statement of Naveen Kumar that he was travelling in the vehicle at the time of the accident.

22. Baljeet Singh (PW7) did not support the prosecutions case. He stated that he and Rajesh Kumar boarded the Jeep. Three other boys also boarded the Jeep after some distance. The Jeep turned turtle on the bridge. He could not say who was driving the jeep at the time of the accident. He was permitted to be cross-examined. He stated that he was not aware that Naveen Kumar, Pawan and Sanjay had boarded the Jeep. He could not tell that the speed of the Jeep was high. He admitted that he had sustained injuries but denied that he was making a false statement to save the accused.

23. It was submitted that the testimony of this witness does not prove that the accused was driving the vehicle at the time of t e accident. He specifically stated in the cross-examination by the learned counsel for the defence that the accused was not driving the vehicle at the time of the accident and his testimony will make the prosecutions case suspect. This submission will not help the accused. He specifically stated in his examination-in-chief that he was not aware who was driving the vehicle. Thus, his statement in the cross-examination that the accused was not driving the vehicle is contrary to his statement in the examination-in-chief, and cannot be relied upon. Hence, no advantage can be derived from this part of his testimony.

24. This witness denied his previous statement recorded by the police that the accused was driving the jeep ASI Surjeet Singh (PW11) specifically stated that he had recorded the statements of Baljeet, Sanjay Kumar, Ashok Kumar and Tilak Raj (Ex.PW11/F to Ex.PW11/I) as per their version. This was not proved to be incorrect in the c oss-examination. Therefore, Baljeet is shown to have made two inconsistent statements regarding the identity f the driver, one before the police and another before the Court. Hence, his testimony has been impeached under Section 155(3) of the Indian Evidence Act and cannot be relied upon.

25. It was laid down by the Hon'ble Supreme Court in Sat Paul v. Delhi Admn., (1976) 1 SCC 727 that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be

believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, a ter reading and considering the evidence f the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, hat part of his testimony which he finds to be creditwo hy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

26. This ourt also took a similar view in Ian Stilman versus. State 2002(2) ShimLC 16 wherein it was observed:

12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In Jagir Singh v. The State (Delhi Administration), AIR 1975 Supreme Court 1400, the Apex Court observed:

"It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony".

27. Since this witness made contradictory statements regarding the identity of the driver of the jeep, his testimony cannot be used to discard the prosecutions case that the accused was driving the jeep at the time of the accident.

28. Baljeet Singh (PW7) specifically stated that three boys boarded the jeep after some distance. This corroborates the statements of Naveen (PW6) and Sanjay (PW13) that they and Pawan had boarded the jeep.

29. The informant Seema (PW1) stated that she and her friend Rashi were returning to their village. A vehicle bearing registration No. HP-11-0012 came at a high speed and hit her and her friend. They sustained injuries. Rashi succumbed to the injuries. T e accused was driving the Jeep at the time of the acc dent. She stated in her cross-examination that she and Rashi went together in a bus to Thakurdwara to watch the fair. They were returning on foot. She saw the Jeep for the first time on the date of the incident. One person was sitting beside the driver. She had seen the driver on the date of the accident for the first time. She could not tell the approximate speed of the vehicle. She denied that she had named the accused at the instance of Tilak Raj.

30. The testimony of this witness corroborates the statement of Naveen (PW6) regarding the identity of the accused. Her statement in the cross-examination that she had seen the accused for the first time on the date of the incident will not help

the defence because she had an pportunity to see the accused and remember him af er the traumatic event of sustaining injury. Therefore, learned Courts below had rightly held that the identity f the accused as the driver of the Jeep was duly proved.

31. In Manoj Chauhan (supra), nobody had seen the driver. T ere was a contradiction regarding the colour of the veh cle, and this Court held that a Test Identification Parade was necessary to prove the identity of the driver of the vehicle. In the present case, one of the occupants, namely Naveen Kumar and one of the injured, Seema, identified the accused. Naveen Kumar was sitting inside the Jeep, and he had an opportunity to see the driver. It was laid down by the Honble Supreme Court in Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113: 1999 SCC OnLine SC 1243 that when the injured were assaulted in the broad day light, the identity of the assailant would be imprinted in their mind and the identification in the Court cannot be doubted. It was observed at page 369:

20 But even assuming as submitted by learned counsel for the appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewi nesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them.

32. In the present case, Naveen Kumar was travelling in the jeep t at had met with an accident. He would have an adequate opportunity to see and remember the driver. The njured Seema also saw the driver, and the absence of a test identification parade is not fatal to the prosecutions case.

33. Tilak Raj (PW14) mechanically examined the vehicle. He did not find any defect in the vehicle that could have led to the accident. He specifically stated that he had depressed the pedal of the vehicle, and it was functioning normally. The testimony of this witness rules out the mechanical defect in the vehicle, which could have led to the accident.

34. Informant Seema and Naveen Kumar consistently stated that the Jeep hit the girls who fell into the khad. Thereafter, the Jeep had hit the parapet and turned turtle. Site plan (Ex.PW11/C) mentions that the parapet had tyre marks. This corroborates the testimonies of the eyewitnesses that the Jeep had hit the parapet. The site plan (Ex.PW11/C) shows that the Jeep was lying towards its right side. The photographs (Ex.PW9/A to Ex.PW9/C) show that the Jeep had turned turtle on the road. Therefore, the site plan and the photographs corroborate the statements of the informant and Naveen Kumar that t e accused could not control the Jeep; it went towards the r ht side of the road, hit the girls and the parapet and thereafter turned

turtle.

35. 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 Fagu Moharana vs. State, AIR 1961 Orissa 71, that driving the vehicle on the right 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 directi n on the wrong side. The width of the bus is only 7 feet 6 inches, and as there was a space of more han 10 feet on the left side, the bus could easily have avoided he accident if it had travelled on the left side of the road.

36. In Shakila Khader v. Nausheer Cama, (1975) 4 SCC 122: 1975 SCC (Cri) 379: 1975 SCC OnLine SC 103, the car went to the right side of the road, hit the parapet and turned turtle. It was held by t e Honble Supreme Court that the driver was negli ent. It was observed at page 126:

6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but also the width of the road, the density of the traffic, and the attempt, as in this case, to overtake the other vehicles, resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye, it is not difficult for the eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. The criterion adopted by the learned Judge for assessing the evidence of PWs 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is difficult to be clear or specific in giving details as to the cause of the accident, but this is not one such case. The reference by the learned Judge about the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct, as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turned turtle showed that the car must have been travelling at an extremely high speed but there is a little blue paint on the pole and a faint gray stain on the parapet wall is self-contradict ry unless we are to infer that the learned Judge implied that the one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and the parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of

the road and hit an electric post and parapet wall, and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did, it would have stopped at one of those points. We should remember that the collision with the scooter and pushing it back would have considerably reduced the speed of the car. Even so, it travelled farther. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for the purpose of this case. The car would probably not have stopped but for turning turtle, and it should have been travelling quite fast before it could overturn, as the learned Judge himself realises. There is only one conclusion possible on the facts of this case, and that is that the accused came over to the wrong side of the road and was responsible for the accident, and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.

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

38. This position was eiterated in State of H.P. vs. Niti Raj 2009 Cr.L.J. 1922, and it was held:

16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches. On the left side, while going from Dangri to Kangoo, there was a 7 ft. kacha portion, and on the other side, there 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.

39. Thus, the accused had breached the Rules of the Road Regulations, which led to the accident, and the learned Courts below had rightly held him guilty of the commission of an offence punishable under Section 279 of the IPC.

40. The judgments in Deep Raj (supra) and Sunil Kumar (supra) hold that the mere use of the term high speed without the details of the speed is not sufficient to prove negligence. These judgments do not apply to the present case because the negligence of the accused was driving the vehicle towards the right side of the road and not the high speed. Thus, no advantage can be derived from the cited judgments.

41. Dr Nirdosh (PW2) medically examined Baljeet, Rakesh and Seema. He found that Baleet and Rakesh had sustained simple injuries while Seema had sustained grievous injuries. He admitted in his cross-examination that injuries sustained by Seema could have been caused by jumping over the bridge. It was submitted that the cross-examination does not rule out the possibility of the injured jumping over the bridge after seeing the Jeep. This submission will not help the defence.

This is an alternative hypothesis and will not make the prosecutions case suspect. It was laid down by the Honble Supreme Court in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2003 SCC OnLine SC 1086, that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative possibilities is not sufficient to discard the prosecutions case. It was observed at page 404:

22. It is trite that where he eyewitnesses' account is found credible and t ustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial pr cess. Eyewitnesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the credit of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

42. In the present case, no person stated that girls had jumped over the bridge; rather, it was stated that they had fallen after the Jeep had hit them. Thus, the statement of Dr Nirdosh (PW2) will corroborate the prosecutions case that the injuries were sustained by falling from the bridge into the khad. Further, it was not suggested to Dr Nirdosh (PW2) that Baljeet and Rakesh had not sustained any injury

in the accident. The testimony of Dr Nirdosh (PW2) proved that Baljeet and Rakesh had sustained simple injuries, whereas informant Seema had sustained grievous injuries in a motor vehicle accident.

43. Dr G.C. Sood (PW4) c nducted the postmortem examination of Rashi and found hat he cause of death was head injury. It could have been ca sed by a roadside accident. He was not cross-examined at all, which means that his testimony was accepted as correct. Therefore, the testimony of this witness established that Rashi had sustained injuries in the incident leading to er death. Thus, the learned Trial Court had rightly convicted the accused of the commission of offences punishable under Sections 279, 337, 338 and 304-A of the IPC.

44. Learned Trial Court sentenced the accused to undergo simple imprisonment for three months and pay a fine of ₹1,000/- for the commission of an offence punishable under Section 304-A of IPC. It was laid down by the Hon'ble Supreme Court in Dalbir Singh Versus State of Haryana (2000) 5 SCC 82 that a deterrent sentence is to be awarded to a person convicted of rash or negligent driving. It was observed:

11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent, and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country", the sa ura ion of accidents was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision, thus :

"Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."

12. In State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538 this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304-A, I.P.C. to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences of visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering

the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that rash driving need not necessarily cause an accident, or even if any accident occurs it need not necessarily result in the death of any human being, or even if such death ensues he might not be convicted of the offence, and lastly, that even if he is convicted he would be dealt with leniently by the C urt. He must always keep in mind the fear psyche hat if he is convicted of the offence of causing the dea h of a human being due to his callous driving of a vehicle, he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate f m t r accidents due to the callous driving of automobiles.

45. A similar view was taken in State of Punjab v. Balwinder Singh, (2012) 2 SCC 182, wherein it was held: -

13. It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, they must have better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh [(2000) 5 SCC 82: 2004 SCC (Cri) 1208].

46. Similarly, the judgment in State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182: (2015) 2 SCC (Cri) 751: 2015 SCC OnLine SC 278, wherein it was observed at page 196:

25. Before parting with the case, we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the Emperors of all they survey. Drunkenness contributes to careless driving, where other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty, and the civilised persons drive in constant fear, but are still app ehensive about the obnoxious attitude of the people who project themselves as larger than life. In s ch circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish.

47. In the present case, a young life was extinguished, and t e sentence of three months does not provide any deterrence. Thus, the sentence imposed by the learned Trial Court is inadequate. However, no appeal has been preferred for enhancing the sentence; therefore, no interference is required with the sentence imposed by the learned Trial Court as affirmed by the learned Appellate Court.

48. No other point was urged.

49. In view of the above, the present petition fails, and it is dismissed.

50. A copy of this judgment, along with the record of the learned Courts below, be sent back forthwith. Pending applications, if any, also stand disposed of.