**(2016) 06 SHI CK 0119**

**High Court of Himachal Pradesh**

**Case No:** Criminal Appeal No. 188 of 2008.

State of H.P. - Appellant @HASH Sanjay — APPELLANT

Vs

RESPONDENT

**Date of Decision:** June 15, 2016

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 181, Section 192, Section 196
- Penal Code, 1860 (IPC) - Section 279, Section 337, Section 338

**Citation:** (2016) ILRHP 1930

**Hon'ble Judges:** Sureshwar Thakur, J.

**Bench:** Single Bench

**Advocate:** Mr. Vivek Singh Attri, Dy. A.G, for the Appellant; Mr. Karan Singh Kanwar, Advocate, for the Respondent

**Final Decision:** Dismissed

**Judgement**

**Mr. Sureshwar Thakur, J.**(Oral) - The instant appeal stands directed by the State of Himachal Pradesh against the impugned judgment rendered on 31.10.2007 by the learned Chief Judicial Magistrate, Sirmaur District at Nahan, H.P in Criminal Case No. 20/2 of 2005/04 whereby the it acquitted the respondent (for short "accused") for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code read with Sections 181, 192 and 196 of the Motor Vehicles Act.

2. The brief facts of the case are that on 6.12.2004 the accused was driving the motorcycle bearing registration No. HP18-4512 on Nahan-Kala Amb State Highway in rash and negligent manner so as to endanger human life and personal safety of others, as a result of which the accused collided his motorcycle against the motorcycle bearing No. HR04-6727 driven by the complainant. As a result of the accident Kali Charan and Satish Kumar sustained simple as well as grievous injuries. The accused was found to be driving the vehicle without driving licence, RC and

Insurance certificate. On receipt of information the police visited the spot and recorded the statement of complainant Krishan Lal under Section 154 Cr.P.C. FIR Ex.PW-10/A was registered. The investigating Officer during investigation prepared site plan Ex.PW-10/B. Photographs of the spot Ex.P-1 to P-6 were clicked. The vehicles were taken into police custody vide separate seizure memos Ex.PW-3/A and PW-3/B. Mechanical reports of the vehicles are comprised in Ex.PW-8/A and PW-8/B. After completing all codal formalities and on conclusion of the investigation into the offence, allegedly committed by the accused challan was prepared and filed in the Court.

3. Notice of accusation stood put to the accused by the learned trial Court for his committing offences punishable under Sections 279, 337 and 338 of I.P.C read with Sections 181, 192 and 196 of M.V Act, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 10 witnesses. On closure of prosecution evidence, the statement of the accused under Section 313 of the Criminal Procedure Code was recorded in which he pleaded innocence. He also examined one Rashid Mohd as his defence as DW-1.

5. On an appraisal of the evidence on record, the learned trial Court returned findings of acquittal in favour of the accused.

6. The learned Deputy Advocate General has concertedly and vigorously contended qua the findings of acquittal recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of acquittal being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of conviction.

7. The learned Counsel appearing for the respondent/accused has with considerable force and vigour contended qua the findings of acquittal recorded by the learned trial Court standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side has with studied care and incision, evaluated the entire evidence on record.

9. The complainant Krishan lal (PW-1) in his deposition comprised in his examination-in-chief has attributed therein negligence to the accused comprised in his driving his motor vehicle on the inappropriate side of the road. However, in his cross-examination he has admitted the suggestion put to him by the learned defence counsel of at the relevant time the vehicle driven by the accused ascending the road whereas the vehicle driven by him descending the road. He has also denied the suggestion put to him by the learned defence counsel of his not at the relevant time carrying fuel wood atop his motor vehicle. However he admits the suggestion

put to him by the learned defence counsel of the width of the road at the relevant site being sufficiently wide. For testing the veracity of the deposition of the complainant, an allusion to the testimony of PW-2 who at the relevant time was occupying the pillion of the vehicle driven by the complainant is imperative. In case PW-2 contradicts the deposition of PW-1, obviously an inference would stand underscored of the version qua the occurrence deposed by PW-1, the complainant being bereft of sanctity besides uninspiring whereupon this Court would constrained to not record findings of conviction against the accused.

10. An allusion to the testimony of PW-2 brings forth the stark facet of his contradicting PW-1 qua the factum as deposed by the latter of the accused at the relevant time driving his vehicle on the inappropriate side of the road necessarily when hence it has to be inferred therefrom of the accused at the relevant time driving his vehicle on the appropriate side of the road besides when concomitantly it is to be concluded of the genesis of the prosecution case embodied in the FIR standing ridden with falsity. Obviously thereupon the version comprised in the FIR qua the occurrence stands unsubstantiated. The further effect thereof is of the genesis of the prosecution case suffering erosion. In sequel, the findings of acquittal recorded by the learned trial Court do not warrant any interference.

11. Be that as it may with PW-2 portraying his ignorance qua whether the accident occurred on account of the accused being perplexed after his vehicle at the relevant time skidded on the road is a communication which is ridden with a vice of equivocation whereas in case PW-2 had categorically with unequivocality bespoken of the ill-fated occurrence standing sequelled by the accused driving his vehicle in a rash and negligent manner would rather constitute prime evidence to succor findings of conviction against the accused. Contrarily when he has deposed with equivocation qua the aforesaid prime factum also constrains this Court to hold of the findings of acquittal recorded by the learned trial Court not meriting any interference.

12. A wholesome analysis of the evidence on record portrays that the appreciation of evidence as done by the learned trial Court does not suffer from any perversity and absurdity nor it can be said that the learned trial Court in recording findings of acquittal has committed any legal misdemeanour, in as much, as, its mis-appreciating the evidence on record or its omitting to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate that the findings of acquittal recorded by the learned trial Court merit any interference.

13. In view of the above discussion, I find no merit in this appeal, which is accordingly dismissed and the impugned judgment of the learned trial Court is maintained and affirmed. Record of the learned trial Court be sent back forthwith.