IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.472 of 2011

Date of Decision: 21.08.2026

State of Himachal Pradesh ……Appellant

Versus

Gafur @ Pannu … Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Appellant: Mr. Vishal Panwar, Additional Advocate.

For the Respondent: Mr. Anirudh Sharma, Advocate.

Sandeep Sharma, Judge(oral):

Instant Criminal Appeal filed under Section 378(3) of the Code of Criminal Procedure, lays challenge to judgment of acquittal dated 16.12.2010, passed by learned Judicial Magistrate, First Class, Court No.VI, Shimla, Himachal Pradesh, in Criminal case No.213-2 of 2010/-6, titled **State of Himachal Pradesh versus Gafur @ Pannu,** whereby learned trial Court held respondents-accused ***(hereinafter referred to as the accused)*** not guilty of having committed offence punishable under Sections 279 and 304-A IPC and accordingly acquitted him.

2. In nutshell, case of the prosecution as emerges from the record, is that on 07.09.2006, at about 9:15 AM, the respondent-accused **(hereinafter referred to as the accused)**, while driving a

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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Trax bearing registration No. HP-01A-3213, hit a girl named Jyoti at NH-22 Banuti Chowk near Tutu, as a result which, she suffered serious injuries and died on the spot. ASI Desh Raj (PW-14) upon reaching the spot, conducted the investigation, prepared spot map, sent the dead body of the deceased Jyoti to the hospital for post-mortem examination, obtained the post-mortem report and thereafter recorded the statements of the witnesses. Besides above, Investigating Officer also got the vehicle mechanically examined. After completion of the investigation, police presented the challan in the competent court of law, which being satisfied that prima-facie case exists against the accused, framed charge under Sections 279 and 304-A of IPC against him, to which he pleaded not guilty and claimed trial.

3. Prosecution, with a view to prove its case, examined as many as 14 witnesses, whereas accused in his statement recorded under Section 313 Cr.P.C., denied the case of the prosecution in *toto* and claimed innocence. However, despite sufficient opportunity, he failed to lead any evidence in defence.

4. Learned trial Court, on the basis of the evidence, be it ocular or documentary adduced on record, held accused not guilty of his having committed offences punishable under Sections 279 and 304-A IPC and accordingly acquitted him. In the aforesaid

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background, petitioner-State has approached this Court in the instant proceedings, praying therein for the conviction of the accused after setting aside the judgment of acquittal recorded by learned trial Court.

5. Precisely, the grouse of the petitioner-State, as has been highlighted in the grounds of the appeal and further canvassed by Mr. Vishal Panwar, learned Additional Advocate General, is that Court below has failed to appreciate the evidence in its right perspective, as a result thereof, findings to the detriment of the case of the prosecution have come to the fore. He stated that all the material prosecution witnesses categorically stated that at the time of accident vehicle was being driven at high speed in a rash and negligent manner, but yet Court below acquitted the accused by misconstruing and mis-appreciating the evidence on record

6. To the contrary, Mr. Anirudh Sharma, learned counsel representing the accused, supported the impugned judgment of acquittal and submitted that bare reading of the statements made by all the material prosecution witnesses clearly reveals that there was no fault on the part of the accused, rather accident occurred on account of sudden appearance of the deceased girl in front of the vehicle driven by the accused. He further submitted that as per the statement of the Investigating Officer (PW-14), he, after having reached the spot, prepared the spot map, perusal whereof clearly

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reveals that at the time of the accident, offending vehicle was on its side and he purposely did not get photographs clicked because the vehicle was found to be parked on its own side. He further submitted that none of the prosecution witnesses stated anything specific with regard to rash and negligent driving on the part of the accused and as such, there was otherwise no occasion, if any, for the court below to convict accused under Section 279 and 304-A of IPC. He submitted that since there is overwhelming evidence adduced on record by the prosecution itself suggestive of the fact that accident did not occur on account of rash and negligent driving of the accused, rather due to sudden appearance of the deceased girl in front of the vehicle, no illegality can be said to have been committed by the court below, while passing the impugned judgment of acquittal.

7. Having heard learned counsel for the parties and perused the material adduced on record *vis-à-vis* reasoning assigned in the impugned judgment of acquittal recorded by court below, this Court finds no illegality or perversity in the same and as such, no interference is called for.

8. If the statements made by all the material prosecution witnesses are perused in their entirety, they clearly suggest that all the witnesses in unison admitted that accident occurred because the girl suddenly came before the vehicle. All the witnesses admitted that

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accused was plying the vehicle at a normal speed on its side of road. Moreover, upon mechanical examination, the mechanic found no mechanical defect in the vehicle and admitted that the speed of the vehicle was merely 10 to 15 km/h at the time of accident as the vehicle was found engaged in the first gear.

9. Interestingly, in the case at hand, the offending vehicle was an ambulance and at the relevant time, there were five to six persons sitting inside it. None of the occupants travelling in the offending vehicle was ever examined or cited as prosecution witness. Since occupants of the vehicle had an occasion to see the accident with their eyes, they would have been the relevant witnesses, but for the reasons best known to the Investigating Officer, they were not cited or examined.

10. Moreover, this Court finds that none of the prosecution witnesses specifically stated that at the time of the accident vehicle was being driven rashly or negligently, rather they stated that vehicle was being driven in high speed, which version of their, is totally contradictory to the version given by PW-5, Gian Chand, mechanic, who, after inspecting the vehicle mechanically, reported no defects and confirmed the speed of vehicle was only 10 to 15 km/h, being in first gear. Though, there is no evidence suggestive of the fact that vehicle was being driven in high speed, but once all the material

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prosecution witnesses have stated that girl suddenly came before the moving vehicle in order to cross the road and admitted that it was due to sudden appearance of girl before the vehicle, accident was caused, no illegality can be said to have been committed by the Court, while acquitting the accused.

11. Though, PW-7, Sh. Pikesh Sharma, deposed that the accident occurred due to rash and negligent driving of the accused, but in his cross-examination, he admitted that his shop is 40-50 feet away from the spot. However, in his statement, he made contradictory statement by deposing, on one hand, that he was inside the shop and on the other hand, that he was outside the shop at the time of the incident, and as such, version put forth by him was rightly discarded by the Court below, while ascertaining the guilt of the accused.

12. Since none of the independent witnesses stated anything specific with regard to rash and negligent act, if any, of the accused, coupled with the fact that majority of material prosecution witnesses stated that there was mistake on the part of the deceased girl, learned Court below rightly held that prosecution failed to prove that death of deceased girl was caused due to rash and negligent driving of the accused.

13. 'Speed' is not the criteria to ascertain the rash and negligent driving, rather it is the manner, in which offending vehicle

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was driven, which determines rashness and negligence. At this stage, learned counsel for the accused placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in case ***State of H.P and ors versus Parmjit Singh,*** latest HLJ 2012(HP) 297 to substantiate his plea that speed is not the only criteria to prove the rash and negligent driving. The relevant para Nos.14 and 15 of the judgment is reproduced as under:-

> "14. It is a settled law that the speed is not a criterion to prove the rash or negligent act of driving. The prosecution, as already stated above is obliged to prove the necessary ingredients of the offence by direct or circumstantial evidence. To fasten the criminal liability for the offences charged, there should be consistent, convincing and reliable evidence. Even in the exceptional cases, where the rule of *res ipsa laquitar* applies, it cannot be taken for guaranteed that the driver of the vehicle involved in the accident is guilty of offence. In the same situation, there could be civil liability as well, in addition to the criminal liability, but so far as the criminal liability, it has to be proved beyond reasonable doubt and civil liability can be proved by preponderance of probabilities.
> 15.On the strength of the aforesaid evidence, it is very difficult to conclude that the accused was driving the vehicle rashly or negligently, more specifically when it has also come in the evidence that the deceased came in contact with the offending vehicle while crossing the road. Therefore, in my considered opinion, the offences punishable under Sections 279 and 304-A of the Indian Penal Code against the accused are not made out."

14. It is well settled that a person cannot be held criminally accountable for his rashness and negligence merely because evil consequences flow from his act, rather rashness must be such as to endanger human life or personal safety of others. Similarly, for criminal liability, the rashness or negligence must show a disregard for human life or personal safety of others. Question whether an act is criminally rash or negligent is a question of fact depending upon the

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circumstances of particular case and as such, needs to be elucidated minutely and with certain degree of precision. But in the instant case, prosecution was unable to prove beyond reasonable doubt negligence, if any, on the part of the petitioner-accused. In this regard, reliance is placed upon the judgment passed by the Hon'ble Apex Court in ***Braham Dass versus State of H.P***. (2009) 7 Supreme Court Cases 353. The relevant para No. 6 and 8 are reproduced herein below:-

> "6. In support of the appeal, learned counsel for the appellant submitted that there was no evidence on record to show any negligence. It has not been brought on record as to how the appellant-accused was negligent in any way. On the contrary what has been stated is that one person had gone to the rooftop and the driver started the vehicle while he was there. There was no evidence to show that the driver had knowledge that any passenger was on the rooftop of the bus. Learned counsel for the respondent on the other hand submitted that PW-1 had stated that the conductor had told the driver that one passenger was still on the roof of the bus and the driver started the bus.
>
> 8. Section 279 deals with rash driving or riding on a pubic way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under Section 279 IPC is not (sic) negligence. Similarly, in Section 304-A the stress is on causing death by negligence or rashness. Therefore, for brining on application of either Section 270 or 304-A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved."

15. The Hon'ble Apex Court in case titled "**State of Karnataka v. Satish,"**1998 (8) SCC 493. The relevant paras of which are being reproduced herein below:-

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"1. Truck No. MYE-3236 being driven by the respondent turned turtle while crossing a "nalla" on 25-11-1982 at about 8.30 a.m. The accident resulted in the death of 15 persons and receipt of injuries by about 18 persons, who were travelling in the fully loaded truck. The respondent was charge-sheeted and tried. The learned trial court held that the respondent drove the vehicle at a high speed and it was on that account that the accident took place. The respondent was convicted for offences under Sections 279, 337, 338 and 304A IPC and sentenced to various terms of imprisonment. The respondent challenged his conviction and sentence before the Second Additional Sessions Judge, Belgaum. While the conviction and sentence imposed upon the respondent for the offence under Section 279 IPC was set aside, the appellate court confirmed the conviction and sentenced the respondent for offences under Sections 304A, 337 and 338 IPC. On a criminal revision petition being filed by the respondent before the High Court of Karnataka, the conviction and sentence of the respondent for all the offences were set aside and the respondent was acquitted. This appeal by special leave is directed against the said judgment of acquittal passed by the High Court of Karnataka.

2. We have examined the record and heard learned counsel for the parties.

3. Both the trial court and the appellate court held the respondent guilty for offences under Sections 337, 338 and 304A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the trial court or by the first appellate court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the courts pressed into aid the doctrine of res ipsa loquitur to hold the respondent guilty.

4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the

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> *maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.*

16. At this stage, this Court also cannot lose sight of the stern observations made by the Hon'ble Apex Court in ***State of Punjab*** *versus* ***Saurabh Bakshi 2015 (5) SCC 182,*** wherein it has been observed as follows:-

> *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 the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the law-makers should scrutinize, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."*

17. There cannot be any quarrel, whatsoever, with regard to the observations made by the Hon'ble Apex Court with regard to the careless/reckless driving of the drivers and the fact that drivers driving under the influence of alcohol deserve to be punished but in the present case careful perusal of evidence adduced on record by the prosecution, nowhere suggest that the prosecution was able to prove

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beyond reasonable doubt that vehicle was being driven by the petitioner-accused in rash and negligent manner and he was under the influence of liquor.

18. Consequently, in view of the detailed discussion made hereinabove, this Court finds no illegality or infirmity in the judgment of acquittal recorded by learned trial Court, which is based upon proper appreciation of evidence and as such, no interference is called for. Accordingly, the same is upheld. Record of learned trial Court be returned forthwith. Bail bonds, if any, furnished by the accused are hereby discharged.

19. The present appeal fails and accordingly same is dismissed alongwith pending application (s), if any.

(Sandeep Sharma),
Judge

August 21,2026
(shankar)

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