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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 178 of 2014
Reserved on: 15.10.2025
Date of Decision: 21.11.2025.

Param Jeet Singh ...Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?*[1] *Yes.

For the Petitioner : M/s Y.P. Sood and Parveen Chauhan, Advocates.

For the Respondent/State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 31.3.2014, passed by learned Additional Sessions Judge, Chamba, District Chamba, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 13.3.2013, passed by learned Judicial Magistrate First Class, Dalhousie, District Chamba, H.P. (learned Trial Court) were upheld and the appeal filed by the petitioner (accused before the

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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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 for the commission of offences punishable under Sections 279, 337 and 338 of the Indian Penal Code (IPC) and Sections 184 and 187 of the Motor Vehicles Act (MV Act). It was asserted that the informant Ameen Khan (PW1), Mauj Deen, Atro Bibi (PW13), Saleema (PW3), Lal Hussain (PW2) and Sadiq Ali (since deceased) were taking their buffaloes from Jhandoli Dinanagar to Kalaban. They were moving near Banikhet Helipad on 22.5.2006 at about 9.30 AM, when a Scorpio bearing registration No.PB-07N-0074 came at a high speed and hit Sadiq Ali. Sadiq Ali fell on the spot and became unconscious. He was taken to PHC Banikhet. The accident occurred due to the negligence of the driver of the Scorpio bearing registration No. PB-07N-0074. The matter was reported to the police. An entry in the daily diary (Ex.PW6/A) was registered in the Police Station. HC Roop Singh (PW10) went for the verification of the entry. He recorded the statement

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(Ex.PW1/A) of the informant as per his version and sent it to the Police Station, where FIR (Ex.PW10/A) was registered. He filed an application (Ex.PW10/C) for obtaining the MLC of the injured; however, Doctor Vinay Patial (PW11) declared the injured to be dead. Inquest report (Ex.PW10/D) was prepared. An application (Ex.PW10/E) was filed for conducting the postmortem examination of the deceased. Dr Maan Singh (PW7) conducted the postmortem examination and issued the report (Ex.PW7/A) mentioning that the deceased had died from a head injury leading to cardio-respiratory arrest and death. ASI Roop Singh (PW10) prepared the site plan (Ex.PW10/F) and took the photographs (Ex.PW10/G1 to Ex.PW10/G9) whose negatives are Ex. PW10/G10 to Ex.PW10/G18. A message was sent to Tunnuhatti Barrier regarding the accident. HHC Arun Kumar (PW12) and ASI Ravi Kumar (PW14) were posted at the Barrier. They intercepted the Scorpio bearing registration No. PB-07N-0074 and found that the front glass of the Scorpio was damaged. They handed over the vehicle to Roop Singh (PW10), who seized it. Kishori Lal (PW8) mechanically examined the Scorpio and found no defect in the vehicle that could have led to the accident. He issued the report (Ex.PW8/A). Statements of witnesses were

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recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the 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, 304-A of the IPC and Sections 184 and 187 of the MV Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 14 witnesses to prove its case. Amin Khan (PW1) is the informant. Lal Hussain (PW2), Saleema (PW3) and Atro Bibi (PW13) are the witnesses to the accident. HC Prabhat Singh (PW4) witnessed the recovery. Chamaru Ram (PW5), HHC Arun Kumar (PW12) and SI Ravi Kumar (PW14) were posted at the Tunuhatti barrier who intercepted the Scorpio. Constable Gajinder Singh (PW6) proved the entry in the daily diary. Dr Maan Singh (PW7) conducted the postmortem examination of the deceased. Kishori Lal (PW8) conducted the mechanical examination of the vehicle. Constable Vikas (PW9) carried the informant's statement to the Police

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Station. Roop Singh (PW10) investigated the matter. Dr Vinay Patial (PW11) declared the child to be dead.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he was driving the Scorpio bearing registration PB-07N-0074. He denied the rest of the prosecution's case. He stated that his vehicle was not involved in the accident. No damage was caused to the front glass. Ameen Khan had made a false report against him based on suspicion. He did not produce any evidence in defence.

6. Learned Trial Court held that the statements of the eye witnesses were credible. The Scorpio was intercepted at the Tunnuhatti barrier. This fact was admitted by the accused in his statement recorded under Section 313 Cr.P.C. The front glass of the vehicle was damaged. The accused could not provide any explanation for it. The accused admitted that he was driving the vehicle at the time of the accident. He failed to take adequate care while driving the vehicle, which led to the accident. He fled away from the spot and did not carry the injured to the hospital. Therefore, the learned Trial Court convicted and sentenced the accused as under: -

Under Section 279 of IPC read with Section 184 of MV Act.	To suffer imprisonment for six months and in default of payment of fine, to undergo simple imprisonment for one month.
Under Section 304-A of IPC	To suffer simple imprisonment for one year and to pay fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for one month.
Under Section 187 of MV Act	To suffer imprisonment for three months and in default of payment of fine, to undergo simple imprisonment for one month.
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, Chamba (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the Scorpio, being driven by the accused, was involved in the accident. The vehicle was intercepted at the Tunnuhatti barrier. Minor contradictions in the statements of the prosecution witnesses were not sufficient to doubt the prosecution's case. The accused failed to carry the injured to the

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hospital. He was rightly convicted by the learned Trial Court. The learned Trial Court had imposed an adequate sentence, 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 petitioner/accused has filed the present petition, asserting that the learned Courts below erred in appreciating the material on record. There was no evidence to prove that the vehicle being driven by the accused was involved in the accident. The informant turned hostile and did not identify the accused. Lal Hussain (PW2) and Salima (PW3) denied the identity of the vehicle. Therefore, there was insufficient evidence to show that the vehicle driven by the accused had caused the accident. No independent witness was associated. The interception of the vehicle of the accused at the Tunnuhatti barrier could not connect it to the commission of the crime. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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9. I have heard M/s Y.P. Sood and Parveen Chauhan, learned counsel, for the petitioner/accused and Mr Jitender Sharma, learned Additional Advocate General for the respondent-State.

10. Mr Y.P. Sood, learned counsel for the petitioner/accused, submitted that the petitioner is innocent and he was falsely implicated. There is insufficient evidence to show that the vehicle being driven by the accused was involved in the accident. The informant turned hostile, and the other witnesses denied the identity of the vehicle. The vehicle of the accused was intercepted at the Tunuhatti barrier based on suspicion without any evidence. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Trial Court be set aside.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the registration number of the vehicle was mentioned in the statement (Ex.PW1/A) and the FIR recorded by the police; therefore, the identity of the vehicle was duly established. The police found that the front glass of the vehicle was damaged,

and no explanation was provided for it. There is no infirmity in the judgments and order passed by learned Courts below, and this Court should not interfere with the concurrent finding of fact recorded by learned Courts below. Therefore, he prayed that the present revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before 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 "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the

provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> "**14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **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)
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> > "*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

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> can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories 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 jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> “*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly

unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

"**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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17. This position was reiterated in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> **"27.** It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: ***Bir Singh***(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> **28.** Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. The informant Ameen Khan (PW1) stated that he, Lal Hussain, his mother Attro Bibi, Mauj Deen and Saleema were walking with the buffaloes in the year 2006. They reached Banikhet at about 9.30 AM. A Scorpio bearing registration No. PB-07N-0074 hit Sadiq at a high speed. The driver sped away from the spot. Sadiq sustained an injury to his head, and he succumbed to his injuries. He had noted the registration of the vehicle, but could not identify the vehicle. He narrated the

incident to the police, and the police recorded his statement. The accident occurred due to the negligence of the driver. He stated in his cross-examination that he was moving on Chamba-Banikhet Road at the time of the accident. He admitted that many vehicles were moving on the road. He admitted that it is difficult to know about the vehicles coming from the rear. He volunteered to say that the offending vehicle came from the opposite side. He admitted that there was a sharp curve and he could not identify the driver.

20. His testimony that he had noticed the registration number of the vehicle as PB-07N-0074 was not challenged in the cross-examination, which means that the defence has accepted it to be correct. It was laid down by the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561*** that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4,*** and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is

and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, such the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than

> not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***, quoted from ***Browne v. Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13.* It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:
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> (*1*) to test his veracity,
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> (2) to discover who he is and what his position in life is, or
>
> (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

> "*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandalv.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***.
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> *16*. In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A

> Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83*** has laid down that when attestation is not specifically challenged and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

21. Ameen Khan (PW1) stated that the vehicle was shown to him at Banikhet Police Post. He was permitted to be cross-examined. He admitted that the vehicle was shown to him at the Tunuhatti barrier, and he had identified the registration number of the vehicle as PB-07N-0074.

22. It was submitted that this witness was declared hostile, his credibility is suspect, and the learned Courts below erred in relying upon his testimony. This submission will not help the petitioner. Ameen Khan wrongly mentioned the place

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where he had seen the Scorpio, and this was no reason to declare him hostile. It was laid down by the Hon'ble Supreme Court in ***Shivkumar v. State of Chhattisgarh, 2025 SCC OnLine SC 2223,*** that a witness should not be indiscriminately declared hostile. It was observed:

> "**9.** We are at a loss to understand why the witness was treated as hostile in the first place. We are frequently coming across cases where the prosecutor, for no ostensible reason, wants to treat the witnesses as hostile, and the Court indiscriminately grants permission. It is well settled, by judgments of this Court, that before a witness can be declared hostile and the party examining the witnesses is allowed to cross-examine, there must be some material to show that the witnesses are not speaking the truth or have exhibited an element of hostility to the party for whom he is deposing. No doubt, the circumstances under which the Court will exercise the discretion under Section 154 of the Evidence Act, 1872 (Section 157 of the Bharatiya Sakshya Adhiniyam (BSA), 2023) and permit the party calling the witness to put any question which might be put in cross-examination by the adverse party will depend on the facts and circumstances of each case. However, this Court has held that the contingency of cross-examining the witness by the party calling is an extraordinary phenomenon and permission should be given only in special cases. Small or insignificant omissions cannot be the basis for treating the witnesses as hostile, and the Court, before exercising its discretion, must scan and weigh the circumstances properly and ought not to exercise its discretion in a casual or routine manner."

23. It was laid down by the Hon'ble Supreme Court in ***Selvamani v. State, 2024 SCC OnLine SC 837,*** that the testimony of

a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

> "**9.** A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627: 1991 INSC 153***, relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana (1976) 1 SCC 389: 1975 INSC 306, Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka (1980) 1 SCC 30: 1979 INSC 126***, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.
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> **10.** This Court, in the case of ***C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567: 2010 INSC 553***, has observed thus:
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> > "**81.** It is a settled legal proposition that (***Khujji case***, SCC p. 635, para 6)
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> > > '*6.....* the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'
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> > 82. In ***State of U.P. v. Ramesh Prasad Misra,(1996) 10 SCC 360,*** this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or

> the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in ***Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543, Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516, Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450, Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360*** and ***Subbu Singh v. State, (2009) 6 SCC 462***.
>
> 83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence."

24. Thus, the informant's testimony cannot be rejected simply because the prosecution had declared him hostile on a trivial matter.

25. He stated that he was unable to identify the accused. This will not make any difference to the prosecution's case because the accused admitted in his statement recorded under Section 313 of Cr.P.C. that he was driving the Scorpio and was apprehended at the Tunuhatti barrier. Thus, the fact that the accused was driving the vehicle is not in dispute.

26. The intimation of the accident given to the police and an entry (Ex.PW6/A) was recorded at 10.15 AM. The police went to the hospital and filed an application (Ex.PW10/C) for

obtaining the fitness of the injured to make the statement. It was specifically mentioned in the application (Ex.PW10/C) that the vehicle bearing registration No. PB-07N-0074 was involved in the accident. Dr Vinay Patial (PW11) stated that the injured was brought to the hospital at 10.15 AM with the history of sustaining injuries in a roadside accident. He had signed the application (Ex.PW10/C) and mentioned the time as 10.15 AM. There is no reason to disbelieve his testimony. He was not cross-examined regarding this aspect. He was cross-examined regarding the time of death, which was mentioned as 12.40 and some white fluid was applied to the time. Therefore, the contents of the application (Ex.PW10/C) proved that the vehicle bearing registration No. PB-07N-0074 was involved in the accident and the learned Courts below had rightly held that the vehicle bearing registration No. PB-07N-0074 was involved in the accident.

27. Lal Hussain (PW2) stated that he was moving with his cattle. He reached near Banikhet at about 9.00 AM. A vehicle shown in the photograph came from the opposite side at a high speed and hit the child, who sustained injuries to the head. The accused present in the Court was driving the vehicle, and the

accident occurred due to his negligence and high speed because he was not driving the vehicle on his side of the road. He stated in his cross-examination that he used to walk behind their cattle. Around 100-150 buffalo were moving on the road. Many vehicles moved on the road. The vehicles move slowly when the cattle are moving on the road. He volunteered to say that the vehicle being driven by the accused was moving at a high speed. He admitted that he had not identified the accused on the spot.

28. Lal Hussain (PW2) stated in his cross-examination that he was walking behind the buffalo and was unable to identify the vehicle coming from the opposite side. It was submitted that this admission made the identification of the vehicle suspect. This submission cannot be accepted. Lal Hussain (PW2) did not explain how he was unable to identify a vehicle coming from the opposite side. The vehicle would have faced him, and he would have ample opportunity to see and identify the vehicle. He specifically identified the vehicle in his examination in chief from the photographs shown to him. Thus, his statement in the cross-examination that he was unable to identify the vehicle is not sufficient to discard his testimony.

29. He stated in his cross-examination that he was not aware of the registration number of the vehicle. This will also not help the accused because he had identified the vehicle from the photograph that was shown to him in his examination-in-chief; therefore, the failure to remember the registration number of the vehicle will not make his testimony doubtful.

30. The statements of witnesses show that the cattle were moving on the road, and the people were walking behind the cattle. Therefore, a driver was supposed to drive the vehicle carefully so as to avoid any injury to any person or animal. It was laid down by the Orissa High Court in ***Prafulla Kumar Rout v. State of Orissa*, *1994 SCC OnLine Ori 229: (1995) 79 CLT 153*** that the speed is a relative term and a vehicle being driven on a congested road at a speed of 30 kilometres may constitute high speed. It was observed at page 157:-

> "**8.** High speed is a relative term. A vehicle which is driven on a congested road even at a speed of 30 k.ms.may constitute high speed, but driving a vehicle at a speed higher than 30 k.ms in an open road may not be considered driving at high speed. It would depend upon the nature and situation of the road, concentration of pedestrians and vehicular traffic on it and many such other relevant factors. In the case at hand, the vehicle, which was being driven on the National Highway, caused an accident in front of a school. It is expected of a driver to be cautious

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> and slow down the vehicle when nearing an educational institution. Unshaken evidence of eyewitnesses shows that the vehicle was driven at a high speed, though no exact speed was indicated by them. A responsible Revenue Officer (p.w. 13) is supposed to know what high speed is compared to normal speed. On consideration of the evidence, courts below have held that the vehicle was being driven at a very high speed. Added to the above, reappraisal of evidence while exercising revisional power is uncalled for, unless conclusions of the courts below are perverse, unreasonable or of such a nature that no reasonable person can reach such a conclusion. That does not appear to be the case here. The courts below have rightly found the accused guilty."

31. It was laid down by the Patna High Court in ***Laxmi and Co. v. Savitri Devi Agarwal (Loyalka)***, ***1989 SCC OnLine Pat 246: (1990) 2 PLJR 174*** that driving a vehicle at a speed of 10 miles per hour in a crowded place may constitute negligence. It was observed at page 176:

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

32. In the present case, the accused failed to slow down the vehicle when the cattle and people were moving on the road and this would constitute negligence.

33. Lal Hussain (PW2) specifically stated that Sadiq was on his own side, which means that the vehicle was taken towards the right side of the road. This is duly corroborated by the site plan (Ex.PW10/F), which mentions that the width of the road was 30 ft., and the driver of the vehicle had taken the vehicle 2 ft. towards the other side and hit Sadiq at 14 ft. Thus, it was duly proved on the record that the accused had driven the vehicle towards the right side of the road.

34. 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 wrong side of the road amounts to negligence. It was observed:

> "The car was on the left side of the road, leaving a space of nearly 10 feet on its right side. The bus, however, was on the right side of the road, leaving a gap of nearly 10 feet on its left side. There is thus no doubt that the car was coming on the proper side, whereas the bus was coming from the opposite direction on the wrong side. The width of the bus is only 7 feet 6 inches, and as there was a space of more than 10 feet on the left side, the bus could easily

have avoided the accident if it had travelled on the left side of the road."

35. 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 spot map Ext. P.W. 10/A is almost on the extreme right side of the road."

36. This position was reiterated 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."

37. Saleema Bibi (PW3) stated in her cross-examination that the vehicle had not hit the child in her presence. A car had hit the child, and she did not know who was driving the vehicle at the time of the accident. She could not say whose negligence led to the accident because she was walking ahead, and the accident had occurred in the rear. The statement of this witness shows that she had not witnessed the accident, and her statement will not help the prosecution or the defence.

38. Attro Bibi (PW13) stated that she came to know of the accident when the cries were heard. The accident did not happen in her presence, and she came to know of the accident from the cries. Her statement shows that she had not witnessed the incident. Therefore, her testimony cannot be used by the prosecution or the defence.

39. The accused admitted in his statement recorded under Section 313 of Cr.P.C. that his vehicle was apprehended at Tunuhatti by Ravi Kumar (PW14), Arun Kumar (PW12) and HHC Chamaru Ram (PW5). Thus, the interception of the vehicle was not in dispute. Chamaru Ram specifically stated that the front

glass was damaged. This was not challenged in the cross-examination. HHC Arun Kumar (PW12) stated that the front side glass of the vehicle was damaged. SI Ravi Kumar (PW14) also stated that when the vehicle was intercepted, the front glass was broken. Kishori Lal (PW8) conducted the mechanical examination of the vehicle and issued the report (Ex.PW8/A). He found the damage to the glass of the left headlight. This corroborates the statements of Chamaru Ram, HHC Arun Kumar and SI Ravi Kumar that the front glass of the vehicle was damaged at the time of its interception.

40. The accused has not provided any explanation for the damage to the front glass. Rather, he claimed that his vehicle was not involved in the accident and no damage was caused to the front glass. Therefore, learned Courts below had rightly taken it to be an incriminating circumstance against the accused.

41. Thus, the learned Courts below had rightly held that the vehicle bearing registration No. PB-07N-0074, being driven by the accused, had caused an accident.

42. Ameen Khan (PW1) stated that Sadiq sustained injuries in the accident, and he succumbed to the injuries. Dr Maan Singh (PW7) conducted the postmortem examination of the deceased and found that the cause of death was a hit to the head. In his opinion, the injury could have been caused in a motor vehicle accident. He stated in his cross-examination that the injury can be caused by falling on a hard surface, but clarified that the injury is possible if a person is hit by a vehicle. Therefore, his testimony proves that the accident led to the death of Sadiq. The accused had not stopped the vehicle and carried the injured to the hospital as required under Section 134 of the MV Act. Therefore, the learned Trial Court had rightly convicted the accused of the commission of offences punishable under Sections 279 and 304-A of the IPC and Sections 184 and 187 of the MV Act.

43. Learned Trial Court had sentenced the accused to undergo simple imprisonment for one year for the commission of an offence punishable under Section 304-A of the IPC. This sentence cannot be said to be excessive because a life was lost. Therefore, no interference is required with the sentence imposed by the learned Trial Court.

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44. No other point was urged.

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

46. 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.

(Rakesh Kainthla)
Judge

21st November 2025
(Chander)