

**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

**Cr.A. No. 375 of 1999**

**Date of Decision: 29.3.2006**

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State of H.P.

...Appellant.

**Versus.**

Tirath Singh

.. Respondents.

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***Coram:***

***The Hon'ble Mr. Justice Deepak Gupta, Judge.***

***Whether approved for Reporting?***

**For the Appellant(s):        Mr. J.S.Guleria, Law Officer.**

**For the Respondent(s):     Mr. Subhash Sharma, Advocate.**

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**Deepak Gupta, J. (Oral).**

This appeal by the State is directed against the judgment of the Judicial Magistrate Ist Class, Una in case No.172-II of 1996 decided on 11.5.1999 whereby he has acquitted the accused of having committed the offences under Section 279,337 and 338 of the Indian Penal Code.

The facts which are not in dispute are that on 16.11.1994 PW1 Vipin Kumar injured along with his two friends Harinder Singh and Dalbinder Singh was going to school. When PW1 tried to cross the road, he was hit by scooter No.PBW-7250 which was being driven by the accused- respondent. The accused did not deny the accident. In fact, he had taken the injured to hospital also. The only question

which is to be decided is whether the accident had occurred due to rash and negligent driving of the scooterist or for some other reason.

PW2 and PW3 are the eye witnesses with regard to the accident. In examination-in-chief they have stated that the accident had occurred due to the fact that the scooter was being driven at a high speed. However, in cross-examination they admitted that they were facing the school side and the scooter was coming from behind and they did not see the scooter approaching. As such their versions with regard to the speed of the scooter cannot be believed. Even, the version of PW1 himself is not totally free from doubt. Admittedly, at the spot a large number of school children were crossing the road and there was heavy rush on the road due to some sports tournament which was going on in the school. It would be impossible to drive the scooter at a high speed in this rush. The accident may have occurred due to error of judgment and there is no proof that the accident occurred due to rash and negligent driving of the accused.

In this view of the discussion, the appeal is dismissed. Bail bonds are discharged.

March 29, 2006.

( Deepak Gupta ), J.

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