

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

**Cr. Appeal No. 407 of 2004.**

**Decided on: June 30, 2011.**

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**State of Himachal Pradesh.**

**.....Appellant.**

**Versus**

**Mehar Chand.**

**.....Respondent.**

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Coram

**Hon'ble Mr. Justice Surinder Singh, Judge.**

***Whether approved for reporting<sup>1</sup>? No.***

**For the appellant** : Mr. A.K.Bansal, Addl. Advocate General.

**For the respondent** : Ms. Vidushi Sharma, Advocate, vice Ms. Bindiya Sharma, Advocate.

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**SURINDER SINGH, J (oral).:**

The State has challenged the judgment of acquittal passed by the learned trial Court in CrI.Case No.136-II/99 on 15.6.2004, for the offences punishable under Sections 279 and 337 of the Indian Penal Code and Section 181 of the Motor Vehicles Act.

2. In short, the prosecution story is that on 6.5.99, at about 7.45 p.m., when it had gone slightly dark, the respondent came on Scooter No.HP-40-1630 at a public highway at village Birta, and is alleged to have

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<sup>1</sup>Whether reporters of the Local papers are allowed to see the judgment?

hit PW3 Magha Devi while carrying a load of grass on her head. She fell down and sustained injuries. At that time, she was accompanied by her son PW1 Ravinder Kumar and daughters PW1 Veena Devi and Sharda Devi (not examined).

3. The matter was reported to the police, which culminated into FIR Ext.PW5/A. Complainant Magha Devi was got medically examined. She has sustained the minor injuries as per MLC Ext.PA. Police prepared the site plan Ext.PW5/B of the place of alleged accident and recorded the statements of the witnesses. Respondent was found driving the Scooter aforesaid without driving licence, as such presented the challan against him in the aforesaid sections. At the end of trial, he was acquitted.

4. On reappraisal of the evidence on record, it is absolutely clear that the prosecution has failed to prove the rash and negligent act of driving by the respondent at the relevant time. According to PW3 Magha Devi, PW1 Ravinder Kumar, her son and PW2 Veena Devi, her daughter, the Scooter in question was being driven by the respondent in high speed and the injured (PW3) was standing on the kacha

portion of the road with a head load of grass and hit her, whereas, the stand taken by the respondent is that he was though driving the Scooter at the relevant time, but suddenly, PW3 Magha Devi came on the road. He blew the horn and further slowed down his scooter and applied the brakes, but even despite that he hit his Scooter. His defence stands probablised by the site plan Ext.PW5/B, prepared by the Investigating Officer, which shows that the place of accident was the middle of the road and not the kacha portion of the road, as projected by the prosecution witnesses.

5. It is a settled law that the speed is not a criteria even to infer the rash or negligent act of driving. To prove the rashness and negligence, something more is required and it is within the onus which shifts upon the accused if he has taken due care and caution, but in the instant case, the necessary ingredients of the offences under Sections 279 and 337 of the Indian Penal Code are lacking.

6. Therefore, from the scrutiny of the evidence, the aforesaid offences are not made out. But insofar as the offence under the Motor Vehicles Act is

concerned, the respondent did not show that he was having a valid and effective driving licence with him to drive the said vehicle and the acquittal of the respondent for the offence under Section 181 of the Motor Vehicles Act is perverse, as such set-aside.

7. Therefore, the acquittal of the respondent for the offence punishable under Sections 279 and 337 of the Indian Penal Code is upheld, but qua Section 181 of the Motor Vehicles Act, is set-aside and he is found guilty for the said offence and is accordingly convicted for driving the Scooter at the relevant time without a valid driving licence on the public highway, thus, sentenced him to pay a fine of ₹500/-. In default of payment of fine, he shall further undergo the imprisonment for a period of one month. Accordingly, the appeal is partly allowed.

8. The respondent is hereby directed to deposit the amount of fine in the learned trial Court on or before 30.7.2011.

9. The appeal stands disposed of.

10. Send down the records.

**(Surinder Singh),  
Judge.**

June 30, 2011.  
(Pds)

