

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

**Cr. Revision No. 165 of 2011**

Reserved on 18.11.2016.

**Date of Decision: 30.11.2016**

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Mohd. Hanif	.....Petitioner.
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Vs.

State of Himachal Pradesh	.....Respondent.
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***Coram:***

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge***

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

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For the petitioner:	Mr. Javed Khan, Advocate .
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For respondent:	Mr. Vikram Thakur and Ms. Parul Negi, Deputy advocate Generals.
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**Ajay Mohan Goel, Judge.**

By way of this revision petition, the petitioner has challenged the judgment passed by the Court of learned Sessions Judge, Sirmaur at Nahan in Criminal Appeal No. 07-Cr.A/10 of 2009 dated 1.8.2011 vide which learned appellate court while dismissing the appeal so filed by the petitioner upheld the judgment of conviction and sentence imposed upon the petitioner by the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Court No.1, Paonta Sahib in Criminal Case No. 237/2 of 2006/04 dated 12.2.2009 and 17.2.2009, whereby learned trial court while convicting the accused for commission of offences punishable under Sections 279, 337, 338 of IPC and Sections 181 and 192 of Motor Vehicles Act

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

sentenced him to undergo simple imprisonment for 03 months and to pay fine of Rs. 500/- for commission of offence punishable under Section 279 IPC, to undergo simple imprisonment for 03 months and to pay fine of Rs. 500/- for commission of offence punishable under Section 337 IPC, to undergo simple imprisonment for 06 months and to pay fine of Rs. 500/- for commission of offence punishable under Section 338 IPC, to pay fine of Rs.200/- for commission of offence punishable under Section 181 of MV Act and to pay fine of Rs. 500/- for commission of offence punishable under Section 196 of MV Act.

2. The case of the prosecution was that on 30.1.2004 on receipt of telephonic message about an accident on Tibati Colony road, HC Rattan Singh along with other police officials visited the spot where he came to know that injured Alamgir son of Manjoor Hussain was hit by a Tata Estate Vehicle and had been removed to Vohra Hospital. On this HC Rattan Singh visited Vohra Hospital where the injured reported to him that he was working as servant of one Bittu at Bhupper and on 30.1.2004 he came to know that a tractor while reversing had struck against their house which had resulted in a crack thereto whereupon he was going to his house from the shop but when he reached in between a pulhia, a vehicle Tata Estate bearing registration No. DL-1CD-6677 came from behind in a high speed and as the road was narrow, he being afraid that he would be hit by the said vehicle he kept one of his leg on the pulhia but the said vehicle struck against him and his left leg was trapped in between the vehicle and the pulhia, as a result of which he fell down and

was thereafter removed to Vohra Hospital. Further as per the prosecution on the basis of said statement of the complainant, FIR Ext. PW9/A was registered. Investigation was carried out and in the course of investigation spot map Ext. PW10/A was prepared. The vehicle of the accused was taken into possession which was subjected to mechanical examination, report of which is Ext. PW4/A. Photographs of the spot were taken and the injured was subjected to medical examination vide MLC Ext. PW8/A. His X-ray etc. was also taken and report thereof was also taken into possession.

3. Statements of witnesses were recorded and after completion of the case challan was filed in the Court and as a prima facie case was found against the accused, accordingly notice of accusation was put to him for commission of offences punishable under Sections 279, 337, 338 of IPC as well as Sections 181 and 192 of Motor Vehicles Act to which he pleaded not guilty and claimed trial.

4. On the basis of material produced on record by the prosecution both ocular as well as documentary learned trial court held that the prosecution had successfully proved its case against the accused for commission of offences for which accused was charged and accordingly it convicted the accused for commission of the said offences. While arriving at the said conclusion, it was held by learned trial court that whereas complainant PW6, Alamgir, categorically proved the case of the prosecution, the statements of PW1, Gurbax Singh and PW2, Lal Singh, corroborated the testimony of PW6, Alamgir, which showed that

accused was driving the vehicle in a rash and negligent manner resulting in injuries sustained by PW6. It was further held by learned trial court that presence of PW1 and PW2 on the spot was quite natural. Learned trial court held that it stood established on record that on the fateful day the house of PW6 was struck by a tractor and as PW6 was an employee of PW1, PW1 was following PW6 to his house to assess the damage caused to the house of PW6. It was further held by learned trial court that owner of the vehicle who entered the witness box as PW3 had also stated that he had given his vehicle to PW3 for getting it repaired and the contention of the accused that he was not in fact driving the vehicle on the relevant time, when the accident took place, was belied as nothing could be adduced from the statements of the complainant and other witnesses showing either any enmity or motive for the false implication of the accused. Learned trial court further held that the photographs of the spot as well as spot map also clearly and categorically demonstrated that though the road was narrow at the spot, however, there was sufficient space for driving the vehicle over the pulhia as the width of the pulhia was 11 feet, which showed that the accident in fact took place due to rash and negligent driving of the accused resulting into pressing of left leg of PW6 against the pulhia. Learned trial court also took note of the fact that the factum of injury being received by accused on account of vehicle being driven in a rash and negligent manner was duly proved by PW8 Dr. Vijay Vohra who had stated that injuries present on the person of injured were possible with a moving vehicle and the medical evidence on record

demonstrated that the injured had received grievous injuries as his leg was fractured. On these bases it was held by learned trial court that the prosecution had succeeded in establishing the guilt of the accused beyond reasonable doubt that on 30.1.2004 at around 11:00 a.m. he was driving the vehicle bearing registration No. DL-1CD-6677 in a rash and negligent manner so as to endanger human life and personal safety of others and struck the same against PW6 Alamgir resulting into simple as well as grievous injuries to him. Learned trial court further held that evidence demonstrated that the accused was driving the vehicle without any valid driving licence and insurance at the relevant time. On these bases it was held by learned trial court that the accused was also guilty of violation of the provisions of Section 181 and 196 of the MV Act.

5. Feeling aggrieved by the said judgment passed by learned trial court, the petitioner filed an appeal. In appeal learned appellate court while upholding the judgment of conviction and sentence imposed upon the petitioner by learned trial court held that the victim PW6 Alamgir had sustained fracture on his left leg on account of rash and negligent driving of a "tractor" by the accused who while reversing it struck the same against his house causing cracks in it. Thereafter in the same breath it has been held by learned appellate court that since the victim was proceeding to his house from the shop of Bittu and on his reaching in middle of pulhia, vehicle driven by accused appeared at a high speed and width of the pulhia being narrow the victim was struck by the vehicle and his left leg got trapped between the "tractor" and pulhia.

Learned appellate court further went on to hold that Ext. PW1/A and Ext PW10/A i.e. photographs and spot map of the spot of occurrence demonstrated that the width of pulhia where the accident took place was 11 feet which provide sufficient space for the “tractor” to move ahead without causing mishap and the conclusion which had to be formed then was that the mishap as it occurred was otherwise avoidable in case standard of due care and caution was adhered to by its driver.

6. While referring to the findings returned by learned appellate court, Mr. Javed Khan learned counsel for the petitioner has argued that there is perversity in the findings so returned by learned appellate court because whereas the case of the prosecution was that the complainant was allegedly hit by a Tata Estate vehicle bearing registration No. DL-1CD-6677 which was being driven by the accused, however, learned appellate court had returned the findings to the effect that the complainant had sustained injuries on account of a tractor which was being driven by accused in a rash and negligent manner. On these bases, it was argued by Mr. Khan that the judgment passed by learned appellate court was perverse and not sustainable in the eyes of law. It was further argued by Mr. Khan that in fact even the judgment of conviction passed against the accused by learned trial court was not sustainable in the eyes of law as the conclusion arrived at by learned trial court that the prosecution had proved its case against the accused beyond all reasonable doubt was a perverse finding, as the evidence produced on record by the prosecution could not prove the guilt of the accused beyond

all reasonable doubt. Mr. Khan argued that there was no material on record to substantiate that the vehicle was either being driven by accused or if it was being driven by accused, the same was driven in a rash and negligent manner. He further argued that learned trial court had also failed to appreciate that PW1 and PW2 whose testimonies was relied upon by learned trial court while convicting the accused were interested witnesses and they had falsely deposed in favour the victim. On these bases it was urged by Mr. Khan that the judgment of conviction passed against the accused by learned trial court as well as the judgment passed by learned appellate court were perverse and liable to be set aside.

7. On the other hand Mr. Vikram Thakur learned Deputy Advocate General submitted that there was no perversity with the findings of guilt returned by both the learned courts below against the accused as it stood proved beyond all reasonable doubt that the complainant had suffered injuries on account of rash and negligent driving of the accused who was driving the offending vehicle which caused the accident. It was further argued by Mr. Thakur that keeping in view the fact that both the learned courts below had held that the accused was guilty of the offences for which he was charged, this Court should not interfere with findings returned by both the learned courts below while exercising its revisional jurisdiction. It was further argued by Mr. Thakur that though learned appellate court had used the expression 'tractor' at some occasion, however, this did not render the judgment passed by learned appellate court to be perverse .

8. I have heard the learned counsel for the parties and also gone through the records as well as the judgments passed by learned Courts below.

9. It is a matter of record that as per prosecution, the accident was caused by the accused resulting in injuries to the complainant while driving a Tata Estate vehicle bearing registration No. DL-1CD-6677. It is not the case of the prosecution that the accused had caused injuries to the complainant while driving a tractor in a rash and negligent manner. In fact as per prosecution on the fateful day a tractor had struck against the wall of the house of the accused and it was for this reason that the accused was on the pulhia where the accident took place while on his way from the shop where he worked to his house.

10. In this background, when we peruse the judgment passed by learned appellate court it is but evident that the findings which have been returned by learned appellate court to the effect that the accident in fact took place on account of rash and negligent driving of a "tractor" by the accused resulting in injuries to the complainant are perverse findings being contrary to the records of the case.

11. In my considered view taking into consideration this perversity which is apparently there in the judgment passed by learned appellate court, the interest of justice would be served in case the said judgment is set aside and the appeal is remanded back to learned appellate court to decide the same afresh on the basis of evidence on record after taking into consideration the grounds on which the judgment



of conviction passed against the petitioner stands assailed by him in the appeal.

Accordingly, the present petition is allowed. Judgment passed by the learned appellate court in Criminal Appeal No. 07-Cr.A/10 of 2009 dated 1.8.2011 is set aside and the appeal is remanded back to the court of learned Sessions Judge, Sirmaur District at Nahan, H.P. with a direction to learned appellate court to decide the same afresh on the basis of evidence on record after taking into consideration the grounds on which the present petitioner has challenged the judgment of conviction passed against him by learned trial court. The parties through their respective counsel are directed to appear before learned Sessions Judge, Sirmaur at Nahan on 19.12.2016. Registry is also directed to return back the records of the case to the learned appellate court forthwith.

**(Ajay Mohan Goel)**  
**Judge**

**November 30, 2016**  
*(Guleria)*