2026:HHC:12753

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 43 of 2015
Reserved on: 12.03.2026
Date of Decision: 22.04.2026.

Dalel 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 : Mr Surya Chauhan, Advocate.

For the respondent/State : Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 24.01.2015 passed by the learned Additional Sessions Judge-I, Una, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 03.09.2012 passed by the learned Chief Judicial Magistrate, Una (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in*

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

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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 for the commission of offences punishable under Section 279, 337 and 304A of the Indian Penal Code (IPC). It was asserted that the informant, Santosh Kumar (PW10), made a complaint (Ext.PW1/A) to the police, asserting that his brother Surinder Kumar and Rohit (since deceased) were going towards Bhatoli Chowk on the motorcycle bearing registration No. PB-16B-8543 on 15.03.2007 at about 2:15 PM. A bus bearing registration No. HP-20-4957, Tikra Coach, came from Una at a high speed and hit Hussan Lal (PW8), who was cycling. The driver turned the bus towards the other side and hit the motorcycle. Surinder Kumar and Rohit died on the spot. Devender Kumar (accused) was driving the bus at the time of the accident, and the accident occurred due to the high speed of the bus and the negligence of the accused. The matter was reported to the police, and entry (Ext.PW7/A) was recorded in the Police Station. SI Bhumi Cham (PW14), HHC Govind Ram and Constable Manjeet Singh were sent to Bhatoli Chowk for verification. Santosh Kumar

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made a statement (Ext.PW1/A), which was sent to the Police Station, where FIR (Ext.PW2/A) was recorded. Bhumi Chand (PW14) investigated the matter. Photographs (Ext.P1 to Ext.P11) whose negatives are Ext.P12 to Ext. 22 were taken. SI Bhumi Chand (PW14) prepared the site plan (Ext.PW14/A). He conducted the inquest on the dead body and prepared the report (Ext.PW14/B). He filed an application (Ext.PW14/C) for the post-mortem examination of the dead bodies. The post-mortem report of Rohit and Surinder Kumar (Ext.PY and Ext.PZ) were obtained. Dr Komal Malik (PW15) examined Hussan Lal and issued a prescription slip (Ext.PW15/B). SI Bhumi Chand (PW14) found that the motorcycle was pressed under the front tyres of the bus. He removed the motorcycle and seized it along with the documents vide memo (Ext.PW1/B). He seized the bus along with the documents vide memo (Ext.PW1/A). SI Bhumi Chand (PW14) also seized the cycle vide memo (Ext.PW1/C). Rajender Kumar produced the driving licence of Surinder, which was seized vide memo (Ext.PW11/B). HHC Sarup Lal (PW5) examined the bus, the cycle and the motorcycle. He found that there was no mechanical defect in them that could have led to the accident. He issued his reports (Ext.PW5/A to (Ext.PW5/C). The statements of witnesses

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were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. 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, 337 and 304A of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 16 witnesses to prove its case. Mohinder Singh (PW1), Mani Thakur (PW6), and Vivek Kumar (PW12) are eyewitnesses. HHC Joginder Ram (PW2) carried the statement to the Police Station. Manmohan Singh (PW3) took the photographs. Constable Manjeet Singh (PW4), HC Rajinder Kumar (PW9), Jaswant Singh (PW11) and Rajinder Kumar (PW16) witnessed the recoveries. HHC Sarup Lal (PW5) mechanically examined the vehicles. Constable Kamal Krishan (PW7) proved the entry in the daily diary. Hussan Lal (PW8) did not support the prosecution's case. Santosh Kumar (PW10) is the informant. Harmesh Kumar (PW13) is the conductor of the bus, but he did not support the prosecution's case. SI Bhumi Chand

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(PW14) investigated the matter. Dr Komal Malik (PW15) examined the injured.

5. The accused, in his statement recorded under Section 313 of the Cr.P.C., admitted that two people had died in the accident. He denied the rest of the prosecution's case. He claimed that he was innocent and was falsely implicated. He did not produce any evidence in his defence.

6. Learned Trial Court held that the accused had swerved the bus towards the wrong side of the road, which was the proximate cause of the accident. The accused admitted in his statement recorded under section 313 of the Cr.P.C. that two persons had died in the accident. The plea taken by the accused that his act was protected under Section 81 of the IPC was not acceptable. The motorcycle was dragged for a distance of about 15-20 feet, which showed the high speed of the bus. Minor discrepancies in the statements of the witnesses were not sufficient to discard the prosecution's case. Hence, the learned Trial Court convicted and sentenced the accused as follows:

Sections	*Sentences*
279 of the Indian	The accused was sentenced to

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Penal Code	undergo simple imprisonment for six months, pay a fine of ₹1000/-, and, in default of payment of the fine, undergo further simple imprisonment for one month.
337 of the Indian Penal Code	The accused was sentenced to undergo simple imprisonment for six months, pay a fine of ₹500/-, and, in default of payment of the fine, to undergo further simple imprisonment for 15 days.
304A of the Indian Penal Code	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹50,000/-, and, in default of payment of the fine, to undergo further simple imprisonment for six months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and the order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Una, District Una (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had taken the bus towards the wrong side of the road. This was duly corroborated by the site plan and the photographs. The motorcycle was dragged for a considerable

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distance, which showed that the bus was being driven at a high speed. The plea taken by the accused that it was a case of an error of judgment was not acceptable. The accused had no justification to take the bus towards the wrong side of the road. learned Trial Court had imposed an adequate sentence, and no interference was required with the judgment and order passed by the learned Trial Court. Therefore, the appeal filed by the accused was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material on record. The statements of eyewitnesses showed that they did not know the accused and had not seen him before the incident. No Test Identification Parade was conducted. The statements of prosecution witnesses contradicted each other on material aspects. The oral evidence showed that the motorcycle had hit the front portion of the bus, and the documentary evidence showed that the motorcycle had hit the rear portion of the bus. This was a material discrepancy which was ignored by the learned Courts below. Therefore, it was

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prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Surya Chauhan, learned counsel for the petitioner/accused, and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

10. Mr Surya Chauhan, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The defence taken by the accused that he had tried to avoid harm to the cyclist and was protected by Section 81 of the IPC was highly probable, and the learned Courts below erred in rejecting this plea. The identification of the accused was not proper as no Test Identification Parade was conducted. The learned courts below had imposed an excessive sentence, and the benefit of the Probation of Offenders Act should have been granted to the accused. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the defence of Section 81 of

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the IPC would have been applicable had the accused tried to avoid a greater harm. In the present case, the accused had swerved the bus towards the right side of the road and crushed two persons under the tyres of the bus to avoid harm to one person. The accused was driving the bus at a high speed, which is evident from the fact that the motorcycle was dragged for a considerable distance. The accused could have applied the brakes to avoid the accident, and the defence taken by him that his act is protected under Section 81 of the IPC was rightly rejected by the learned Courts below. This Court should not re-appreciate the evidence while exercising the revisional jurisdiction. Hence, he prayed that the present revision be dismissed.

12. I have given a 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

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> 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 that 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 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

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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 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.

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 re-

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appreciate 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)
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>> 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 amount 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. ..."
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> **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

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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

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> Revisional Court to re-analyse and re-interpret the evidence on record.
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> **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."

17. A similar view was taken 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. Mohinder Singh (PW1) stated that he was present in his shop on 15.03.2005 at about 2:00 PM when he saw that a bus

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coming from Una had hit the cyclist. The driver swerved the bus and hit a motorcycle, crushing it under the tyres. Surinder Kumar and Rohit died in the accident. The bus was being driven at a high speed.

20. Mani Thakur (PW6) stated that a bus came from Una towards Mehatpur at a high speed and hit a cyclist. The driver swerved the bus and hit a motorcycle towards the wrong side of the road. The motorcyclist died on the spot.

21. Santosh Kumar (PW10) stated that a bus came from Una at about 2:15 PM and hit the motorcycle. The motorcyclists sustained injuries in the accident.

22. Vivek Kumar (PW12) stated that a bus came from Una and hit the motorcycle, and the motorcyclists sustained injuries. Both of them died on the spot.

23. The statements of these witnesses corroborated each other, and there is nothing in their statements to show that they were making false statements or had any motive to depose against the accused. Therefore, the learned Courts below had rightly accepted these testimonies.

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24. It was suggested to Mohinder Singh (PW1) in the cross-examination that the cyclist was towards the wrong side of the road. The driver of the bus swerved and hit the motorcycle. The accident occurred because the driver of the bus wanted to save the cyclists. Similarly, it was suggested to Mani Thakur (PW6) that the cyclist was towards the wrong side of the road, and the bus driver attempted to save the cyclist and drove the bus towards the wrong side of the road. Similarly, it was suggested to Santosh Kumar (PW10) in his cross-examination that the accident occurred because the driver was trying to save the cyclist. Vivek Kumar (PW12) admitted in his cross-examination that the cyclist was cycling on the wrong side of the road, and the bus driver attempted to save him.

25. Therefore, the statements of the prosecution witnesses that the accused was driving the bus and that he had hit the motorcycle on the spot by taking the bus towards the wrong side of the road were not challenged in the cross-examination. Rather, it was suggested to the witnesses that the bus was taken to the wrong side of the road to save the cyclist, who was cycling on the wrong side of the road. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra,***

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(2023) 13 SCC 365: 2023 SCC OnLine SC 355 that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383:-

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
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> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
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> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

26. A submission was made before the learned Trial Court that the accused was entitled to the benefit of Section 81 of the IPC. The suggestions made to the witnesses in their cross-examination and extending the benefit under Section 81 of the IPC show that the accused never disputed the fact that he was

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driving the bus at the time of the accident. Therefore, the submissions made before this Court in the memorandum of revision that the identification of the accused was not proper cannot be accepted. The fact that the accused was driving the bus at the time of the accident was never disputed and cannot be disputed before this Court in the exercise of revisional jurisdiction.

27. It was submitted that the learned Courts below erred in denying the benefit of Section 81 of the IPC to the accused. Reliance was placed upon the judgment of the Andhra Pradesh High Court in ***Kutcharlapati Krishnam Raju vs. State of H.P. 2003(2) APLJ 469 (HC)*** in support of this submission. This submission will not help the accused. Section 81 of the IPC applies where a person causes lesser harm while trying to protect against a major harm. This position was also recognised in ***Kutcharlapati*** (supra), wherein it was observed:

> "10. Now, coming to the contention of the learned counsel that the facts and circumstances attract the provisions under Section 81 of the IPC, it is necessary to have a look at the above provisions, which read thus:
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> > Section 81: Act likely to cause harm but done without criminal intent and to prevent other harm- Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be

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> done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property. Explanation - It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.
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> Illustrations (a) A, the captain of a steam vessel, suddenly and without any fault or negligence o his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers onboard, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat (c) with only two passengers on board, which he may possible clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may rundown the boat C by doing an act which he knew was likely to cause that effect, if it be sound as a matter of fact that the danger which he intended to a void was such as to excuse him in incurring the risk of running down C.
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> B) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such nature and so imminent as to excuse A's act, A is not guilty of the offence.

It recognises the doctrine of self-preservation. It gives legislative sanction to the doctrine of salvage common in the law of all nations. In fact, it is a doctrine of necessity which has, since the sacrifice of Iphigenia, found ready recognition in all mundane transactions. It sanctions doing of an evil so that good may come. It permits the infliction of

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a lesser evil to avert a greater evil. The only thing that is required is that the act done should be without criminal intention. The Supreme Court in BASDEO v. STATE OF PEPSU made a distinction between intention and knowledge and observed that motive is something which prompts a man to form an intention. Intention is a state of mind consisting of the desire that certain consequences shall follow from the party's physical act. The distinction between motive, intention and knowledge can be stated in the language of the Supreme Court in Baseo's case (supra 3) as follows. Motive is something which prompts a man to form an intention, and knowledge is an awareness of the consequences of the act. In many cases, intention and knowledge merge into each other and mean the same thing more or less, and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.

11. In Dr Hari Singh Gour's Penal Law of India, 11th Edition Volume No. 1, at note 9, page No. 606, it was stated as under:

> As has already been remarked, this section is grounded on the wide doctrine of necessity. It is the universal law that all good involves some expectancy of an abundant harvest, which is probably appealing to the same law of necessity that led Agamemnon to make the sacrifice of Iphigenia. The captain who capsizes a boat to save his own, a person who dismantles houses to arrest the progress of fire, appeals to the same law of necessity as those who deal blow for blow, or even take away another's life to save their own. Necessity vincit legem. How far the Indian Legislature has thought fit to sanction this doctrine will be manifested from this section. It places no limit on the extent of the injury that may be caused, and the question may be whether this injury may extend to the slaughter of a fellow being to assuage hunger. Such a question arose in England,

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> and it forms the leading case on the point. It laid down that the law does not recognise in man the absolute necessity of preserving his life and that, as regards morality, it recognises the duty of sacrificing it for the sake of saving another life. It is further admitted that there was in this case no such excuse unless the killing was justified by what has been called necessity. But the temptation to the act which existed there was not what the law has ever called necessity, nor is it to be regretted. It was also observed in the said case that to preserve one's life is generally speaking a duty, but it may be the plainest and highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live but to die. The duty in the case of a shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children. These duties impose on men the moral necessity not of the preservation, but of the sacrifice of their lives for others.

12. The illustrations under Section 81 IPC also make it clear that to avoid major harm, a minor harm can be caused without any intention. The accused is entitled to invoke the principle laid down under the maxim 'vincit legem', which has been met with approval under Section 81 IPC. This aspect has not been considered or adverted to by both the Courts below. In that view of the matter, this Court is inclined to exercise its revisional jurisdiction for consideration of the above aspect. In the instant case, the petitioner-accused gave dash to the stationary vehicle while preventing a head-on collision between his vehicle and the vehicle coming in the opposite direction. Had there been a collision, it would have caused more damage and loss of lives. Further, nobody expects a vehicle to be stationed on the road itself. As already stated, there may be an error of judgment as he has been driving the vehicle at speed, which is not prohibited on a national highway, and the speed of the vehicle is not specified or limited under any statute."

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28. In the present case, even if the plea of the accused is accepted to be correct that he was trying to save a cyclist, he caused major harm by crushing two persons under the tyres of the bus, and he cannot claim the benefit of Section 81 of the IPC.

29. The site plan (Ext.PW14/A) shows that the accident had occurred towards the right side of the road. The total width of the road was 16 feet on one side and 20 feet on the other side. The bus was taken from one side to the other side. The photograph (Ext.P3) shows that the bus has crossed the divider and moved towards the other side of the road after crushing the cycle. Therefore, it is apparent that the driver of the bus had taken it towards the right side of the road.

30. 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 right side of the road amounts to negligence. It was observed:

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> "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."

31. 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."

32. 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

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> 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."

33. In the present case, the accused had breached the rules of the Road regulation, which led to the accident, and both the learned Courts below had rightly held that the accused was negligently driving the bus.

34. The site plan (Ext.PW14/A) shows that the motorcycle was dragged for 25+5 feet. Therefore, learned Courts below had rightly drawn an inference that the bus was being driven at a high speed and the accused was unable to stop it even after hitting the motorcycle. It was laid down by this Court in ***State of H.P. versus Dinesh Kumar, 2008 Cr. L.J 2024,*** the skid marks of 74 feet on the road indicated that the vehicle was being driven at a high speed, and the accused could not control it, which amounts to the negligence of the accused. It was observed:

> 10. Once again reverting to the spot map Ext. P.W. 10/A, the skid marks on the road were 74 feet in length. For the

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> vehicle going from Hamirpur to the Nadaun side point 'A' shown in the spot map Ext. P.W. 10/A is on the extreme right side. It is not the case that the accident took place on the left side of the road for a vehicle going from Hamirpur to Nadaun, or even in the middle of the road. The skid marks of 74 feet on the road are clear to show that the jeep was being driven at high speed. The respondent could not control the jeep due to his rash or negligent driving and high speed, and the jeep went from the left side to the right side and crushed the girl at point 'A'."

35. Thus, the inference drawn by the learned Courts below regarding the negligence of the accused cannot be faulted.

36. It was submitted that, as per the statements of eyewitnesses, the front tyres of the bus had crushed the motorcycle, whereas the photographs show that the dead body is lying under the rear tyre. This falsifies the prosecution's case. This submission cannot be accepted. The photographs (Ext.P2, Ext.P5 and Ext.P6) show that the motorcycle is trapped under the front tyre of the bus. The photographs (Ext.P3 and Ext.P10) show the dead body under the rear tyre. Since the motorcycle was dragged for 30 feet, the pillion rider would have fallen at the point of impact, and the motorcycle would have been dragged for some distance. Hence, the fact that the dead body is seen beneath the rear tyre of the bus does not falsify the prosecution's case.

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37. The accused admitted that two persons had died in the accident. The post-mortem reports of Rohit (Ex.PY) and Surinder Kumar (Ext.PZ) were tendered based on this admission. Hence, it was duly proved that Surinder and Rohit had died in the accident.

38. Hussan Lal (PW8) stated that he was cycling. When he reached Bhatoli road, a bus hit him, and he fell. He was permitted to be cross-examined, and he denied that the bus had hit the motorcycle after hitting his cycle. His statement that he had sustained injury in the accident was not challenged in the cross-examination by the defence.

39. Dr Komal Malik (PW15) examined Hussan Lal and found that he had sustained injuries, which could have been caused in a roadside accident. The statement of the Medical Officer corroborates the statement of Hussan Lal that he had sustained injuries in the accident.

40. Therefore, learned Courts below had rightly held the accused guilty of the commission of offences punishable under Sections 279, 337 and 304A of the IPC.

41. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused. This

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submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Dalbir Singh Versus State of Haryana (2000) 5 SCC 82*** that a deterrent sentence is to be awarded to a person convicted of rash or negligent driving. It was observed:

> "11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent, and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country, the saturation of accidents was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision, thus :
>
> > "Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."
>
> 12. In ***State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538*** this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304-A, I.P.C. to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.
>
> 13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences of visiting the victims and their families, Criminal Courts cannot treat the

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nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that rash driving need not necessarily cause an accident, or even if any accident occurs it need not necessarily result in the death of any human being, or even if such death ensues he might not be convicted of the offence, and lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in mind the fear psyche that if he is convicted of the offence of causing the death of a human being due to his callous driving of a vehicle, he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to the callous driving of automobiles."

42. A similar view was taken in ***State of Punjab v. Balwinder Singh, (2012) 2 SCC 182*****,** wherein it was held: -

"**13.** It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, they must have better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by

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this Court in ***Dalbir Singh [(2000) 5 SCC 82: 2004 SCC (Cri) 1208]***.

43. Similar is the judgment in ***State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182: (2015) 2 SCC (Cri) 751: 2015 SCC OnLine SC 278***, wherein it was observed at page 196:

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

44. In the present case, two precious lives were lost, and one person sustained injuries in the accident. Therefore, the benefit of the Probation of Offenders Act could not have been extended to the accused.

45. The learned Trial Court sentenced the accused to undergo simple imprisonment for 2 years and pay a fine of ₹50,000, which cannot be said to be excessive, considering that two persons had lost their lives in the accident and one person

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was injured in the accident. Hence, no interference is required with the sentence imposed by the learned Trial Court.

46. No other point was urged.

47. In view of the above, the present revision fails, and it is dismissed.

48. The present revision stands disposed of, and so are the pending miscellaneous application(s), if any.

49. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

22nd April, 2026
(Nikita)

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