Latest HLJ 2025 (HP)(1) 169 In the High Court of Himachal Pradesh, Shimla.

Cr. Revision No.4 of 2013

Indian Penal Code, 1860 Section 279 & 304A–Rash driving or riding on a public way–Causing death by negligence–The petitioner was alleged to have been driving a bus rashly, leading to the death of Hardeep, a pedestrian–The petitioner was convicted by the Trial Court and conviction was upheld by the Appellate Court–Revision against–Held–Revisional jurisdiction can be invoked, where decision under challenge is grossly erroneous and there is no compliance with the provision of law–Besides above, court can also exercise revisional jurisdiction, if it finds that the order sought to be laid challenge is based on no evidence and the court passing the same has ignored the material evidence–Evidence failed to conclusively establish that the petitioner was driving the bus at the time of the accident–Conflicting witness statements created significant doubt– Crucial evidence like the spot map was not produced, and the investigating officer was not examined, weakening the prosecution's case–The conviction unsustainable–Impugned order of conviction set aside–Petition allowed. (Paras 12, 20 and 21)

Cases referred:

(1) “State of Kerala vs. Puttumana Illath Jathavedan Namboodiri” (1999) 2 SCC 452.

(2) Amit Kapoor vs. Ramesh Chander, (2012) 9 SCC 460.

(3) Krishnan and another vs. Krishnaveni and another, (1997) 4 SCC 241.

(4) Tarsem Singh vs. State of Haryana (2007) 4 RCR (Criminal) 605.

Parties represented by:

For the Petitioner: Mr. Mr. Ravinder Thakur, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar & Mr. B.C.

Verma, Additional Advocate Generals with Mr. Ravi Chauhan, Deputy Advocate General.

Sandeep Sharma, J. (Oral):- Instant criminal revision petition filed under Section 397 alongwith Section 401 of Criminal Procedure Code, lays challenge to judgment dated 31.10.2012 passed by learned Additional Sessions Judge, Fast Track Court, Solan, HP, in Criminal Appeal No. 5FTC/10 of 2011, affirming the judgment of conviction and order of sentence dated 15.01.2011/31.01.2011 passed by learned Judicial Magistrate First Class, Kasauli, District Solan, H.P., in criminal case No. 100/2 of 2007/04 titled as State of HP Vs. Mohammad Saleem, whereby learned court below, while holding the petitioner-accused (hereafter,

‘petitioner’) guilty of having committed offence punishable under Section 279 and 304-A IPC, convicted and sentenced him as under:

Section Sentence Fine

279 IPC 6 months simple imprisonment NA

304-A IPC One year simple imprisonment NA

2. For having bird's eye view, facts relevant for adjudication of the case at hand are that on 17.08.2003 at about 07:30 p.m., complainant Yog Raj alongwith petitioner Mohammad Saleem and Hardeep (since deceased), went to Village Patta in bus bearing registration No. HP-51-4124to celebrate the birthday of brother of Hardeep. After having reached the house of Hardeep's brother, an altercation took place inter se deceased Hardeep and the petitioner. Hardeep, who was conductor of the bus in question, left the house of his brother in anger and walked towards the road. PW-1 Yog Raj alongwith petitioner also went towards Bhaguri in bus, in question. Though complainant Yog Raj was the driver of the bus, but at the relevant time, bus was allegedly being driven by the petitioner. Allegedly petitioner, while driving the bus rashly and negligently hit Hardeep, who at the relevant time, was walking on the metalled road, as a result thereof, he was crushed under the front tyre of the bus and, while being taken to the Hospital, died on account of fatal injuries sustained by him in the accident. Matter came to be reported to the Police. Statement of Yog Raj-complainant was recorded under S.154 CrPC, who alleged that the offending vehicle was being driven rashly and negligently by the petitioner. On the basis of such statement, FIR in question was lodged against the petitioner. Investigating Officer/ Head Constable Jagjit Singh, got the post-mortem of dead body of the deceased Hardeep conducted, wherein it was opined that death was caused due to crush injury on the lower abdomen leading to excessive blood loss. Investigating Officer started investigation and arrived at a conclusion that the accident occurred on account of rash and negligent driving of the petitioner.

3. After completion of investigation, Police presented challan in the competent court of law, which subsequently on the basis of material adduced on record alongwith challan found prima-facie case against the petitioner and accordingly, put notice of accusation to the accused, for commission of offence punishable under Ss. 279 and 304-A IPC and Section 181 of Motor Vehicles Act, to which the petitioner pleaded not guilty and claimed trial.

4. Though, prosecution with a view to prove its case examined as many as nine witnesses, however, for the adjudication of the case at hand, statements of PW-1 Yog Raj, PW-2 Amit Gupta, PW-3 Abhinav Kumar and PW-4 Chaman Lal i.e. owner of the bus, are relevant.

5. Petitioner in his statement recorded under Section 313 Cr.P.C. denied the case of the prosecution in toto and claimed himself to be innocent. However, fact remains that despite opportunity, he failed to lead evidence in defence. Subsequently on the basis of evidence adduced on record by the prosecution, learned trial Court held petitioner guilty of offences punishable under Sections 279 & 304-A IPC and accordingly, convicted and sentenced him as per the description given hereinabove.

6. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recorded by the learned Court below, petitioner preferred an appeal in the court of learned Additional Sessions Judge, Fast Track Court, Solan, HP, which came to be dismissed vide judgment dated 31.10.2012 as a consequence of which, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, petitioner has

approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the courts below.

7. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Ravinder Thakur, learned counsel for the petitioner, is that both the Courts below failed to appreciate the evidence in its right perspective, as a result thereof, findings to the detriment of the petitioner came to the fore, who is otherwise innocent and has been falsely implicated. While making this court peruse statements made by material prosecution witnesses i.e. PW-1 Yog Raj, PW2 Amit Gupta, PW-3 Abhinav Kumar and PW-4 Chaman Lal, Mr. Thakur, vehemently argued that, at no point of time, prosecution was able to establish the identity of the driver, who at the relevant time was driving the vehicle. Mr. Thakur, submitted that though PW-4 Chaman Lal i.e. owner of the vehicle categorically deposed that complainant Yog Raj was the driver of the vehicle, but yet learned trial Court merely on the statement of PW-1 Yog Raj proceeded to hold that at the time of accident, vehicle in question was being driven by the petitioner. While referring to the statement of PW-2 Amit Gupta, Mr. Thakur, submitted that aforesaid witness can only be said to be an eye witness for the reason that he was the first person to reach the spot after accident, but version put-forth by this witness never came to be appreciated in its right perspective. Mr. Thakur submitted that aforesaid witness categorically deposed that when he reached on the spot driving his scooter, he saw that one bus was being reversed and one person was lying in injured condition below the rear tyre of the offending vehicle. Mr. Thakur, submitted that this witness nowhere stated anything specific with regard to presence of the petitioner, rather he categorically stated that when he reached on the spot, complainant Yog Raj came out of the bus and then they both took the deceased Hardeep to nearby hospital, however, deceased succumbed to the injuries suffered by him in the accident. Mr. Thakur, further submitted that conviction recorded against the petitioner is solely based upon the statement of PW-1, who was the only person present at the time of accident, if any, alongwith the petitioner. Mr. Thakur, while making this court peruse statement of this witness vehemently argued that version put-forth by this witness may not be trustworthy for the reason that this witness deposed that before accident he alongwith petitioner and deceased had consumed liquor, but such statement of this witness stands falsified on account of report given by the FSL, wherein no alcohol was detected from the urine sample of the petitioner. Mr. Thakur, further submitted that Investigating Officer, whose name was otherwise given in the list of witnesses, never came to be examined. He also submitted that the spot map, which is most crucial in the accident cases, never came to be prepared or if prepared was never

exhibited, as a result thereof, petitioner was deprived of opportunity to cross- examine the material prosecution witness on the point of spot map.

8. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while supporting the impugned judgments passed by both the Courts below, vehemently argued that both the Courts below have appreciated the evidence in its right perspective and there is no scope of interference by this Court. Mr. Kahol, submitted that though PW-4 Chaman Lal in his statement stated that PW-1 Yog Raj was the driver of the vehicle, but there is overwhelming evidence adduced on record suggestive of the fact that at the time of accident vehicle was not being driven by PW-1 Yog Raj, rather same was being driven by the petitioner. While referring to the statement of PW-2 Amit Gupta, Mr. Kahol, submitted that this witness nowhere stated anything specific with regard to presence of the petitioner in the bus at the time of accident, but he also

nowhere stated that at the time of accident the bus was not being driven by the petitioner. Lastly Mr. Kahol, submitted that once PW-1 Yog Raj, who is an eye witness of the accident, categorically deposed that at the time of accident, vehicle was being driven by the petitioner, no further evidence was required to prove the guilt of the petitioner. He submitted that since evidence of the prosecution was closed by the order of the Court, there was no occasion, if any, for the prosecution to examine the Investigating Officer, whose non-examination otherwise cannot be said to be fatal to the case of prosecution because, in the event of his being examined, he could have only deposed with regard to his having visited the spot of accident. Mr. Kahol, further submitted that since PW-1 Yog Raj, who is an eye witness, specifically stated that at the time of accident vehicle was being driven by the petitioner, omission, if any, on the part of the prosecution to get the spot map exhibited, may not be of much consequence. Mr. Kahol, further submitted that, while exercising revisional jurisdiction under Section 397 Cr.P.C. this Court has very limited jurisdiction to reappreciate the evidence and as such, present revision petition is otherwise not maintainable, especially when, there is nothing to suggest that the findings returned by the courts below are perverse.

9. I have heard learned counsel for the parties and gone through the record.

10. Since question of maintainability has been raised by learned Additional Advocate General, this court at first instance deems it fit to deal with the scope and competence of this court, while exercising power under Section 397 Cr.P.C. 11. No doubt, this Court has a very limited jurisdiction under Section 397 Cr.PC, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the Courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case "State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri" (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

12. Bare perusal of S.397 Cr.PC, reveals that the court having revisional jurisdiction has power to call for and examine the record of any proceedings before any inferior criminal court situate within its local jurisdiction for the purpose of satisfying itself 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. Object of this provision is to set right a patent defect or an error of jurisdiction or law, however, there has to be a well-founded error and it may not be proper or appropriate for court to scrutinize order, which on the face of it appears to be passed on careful consideration of material available on record. Revisional jurisdiction can be invoked,

where decision under challenge is grossly erroneous and there is no compliance with the provision of law. Besides above, court can also exercise revisional jurisdiction, if it finds that the order sought to be laid challenge is based on no evidence and the court passing the same has ignored the material evidence. By now it is well settled norm that the revisional jurisdiction is not to be exercised in a routine manner rather court should keep in mind that the exercise of revisional jurisdiction should not lead to injustice ex-facie. Reliance is placed upon judgment rendered by Hon'ble Supreme Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, wherein Hon'ble Apex Court has held as under:

“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 exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C”

13. As far as scope and power of this Court, while exercising revisionary jurisdiction under Section 397 CrPC is concerned, Hon’ble Apex Court in Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241, has held that in case High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order. Relevant para of the judgment is reproduced as under:- “8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent

miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order.”

14. Hon'ble Apex Court in the judgment (supra) has held that in case court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order.

15. Admittedly, in the case at hand, statement of PW-4 Chaman Lal-owner of the vehicle, if read in its entirety, clearly reveals that driver of the offending vehicle was complainant Yog Raj. PW-4

has categorically stated in his statement that on the date of alleged incident, vehicle was being driven by the complainant. PW-4, at no point of time, had engaged petitioner as the driver of the vehicle. No doubt, in the case at hand, PW-1 Yog Raj, got his statement recorded under S.154 Cr.P.C., alleging therein that vehicle in question was being driven by the petitioner, but that may not be sufficient to conclude the guilt of the petitioner, especially when, identity of the driver, who at the time of alleged accident was driving the vehicle, had become doubtful on account of statement given by PW-4 owner of the offending vehicle.

16. PW-2 Amit Gupta, who was first to reach the spot after the accident, categorically deposed that, while he was returning from Patta on his scooter, he noticed one bus was being reversed and one person was lying underneath its rear tyre. He deposed that PW-1 Yog Raj got down and went to call the brother of deceased i.e. Hardeep. In his cross-examination, this witness deposed that dead body of the deceased was lying at a distance of about 2 feet from the tyre of the bus, which suggests that deceased suffered injuries after being crushed under the front tyre of the bus. Though, this witness deposed that bus was being reversed, but he nowhere stated that at that time bus was being driven by the petitioner, rather he categorically stated that when he reached on the spot, Yog Raj got down from the bus and went to call the brother of the deceased i.e. Hardeep. Aforesaid version put-forth by this witness creates serious doubt with regard to the story putforth by the prosecution. Question of reversing the bus, if any, would only arise once factum with regard to accident or obstruction, if any, in front of the vehicle had come to the notice of the driver of the vehicle. As per statement of PW-2 Amit Gupta, Yog Raj got down from the bus when he reached the spot, meaning thereby, Yog Raj got down from the bus after reversing the bus. Interestingly, this witness deposed that Yog Raj went to call brother of Hardeep. He further deposed

that after arrival of brother of Hardeep, they took deceased to the hospital, but he nowhere stated anything specific with regard to presence of the petitioner on the spot at the time of alleged incident. 17. As per evidence, deceased was taken to hospital in the offending vehicle, but PW-2 nowhere stated that at the relevant time bus was being driven by petitioner. Statement of aforesaid PW-2 Amit Gupta, if read in its entirety, not only creates doubt with regard to presence of the petitioner at the time of accident, rather version put-forth by this witness, coupled with the statement given by PW-4, wherein he categorically stated that PW-1 Yog Raj was employed by him as a driver of the offending vehicle, persuades this Court to agree with Mr. Ravinder Thakur, learned counsel for the petitioner, that learned Courts below, without ascertaining the identity of the driver of the bus, proceeded to hold petitioner guilty of having committed offence punishable under S.304-A IPC merely on the statement of PW-1 Yog Raj, who otherwise was under obligation to explain that why and under what circumstances, petitioner was permitted to drive the vehicle, especially when, Yog Raj was engaged by him to drive the bus. It is apparent from the bare reading of impugned judgments passed by both the Courts below that factum of consumption of liquor by the petitioner, Complainant Yog Raj and brother of deceased weighed heavily with the courts below, while accepting the version putforth by PW-1 Yog Raj that they boozed together at the residence of Hardeep, where Hardeep and his brother had quarreled. Quarrel inter se Hardeep and his brother took place on account of question raised by the brother of Hardeep that why they came to his house after consuming liquor. As per version put-forth by PW-1 (Yog Raj), Hardeep, who was conductor of the bus, left the house of his brother and proceeded towards the road side.

18. There is no independent witness, save and expect PW-1 Yog Raj, who could say that at the time of accident, vehicle was being driven by the petitioner, who admittedly was not driver of the vehicle, rather driver of the vehicle was PW-1 Yog Raj. Had any person other than Yog Raj stated anything specific with regard to driving of the offending vehicle by the petitioner at the time of accident, version putforth by PW-1 Yog Raj could have been accepted by the courts below in toto, but once identity of the driver, who at relevant time was driving vehicle, had come under suspicion, courts below could not have straightway placed heavy reliance upon the version put-forth by PW-1 Yog Raj, who otherwise should have been under the scanner, especially in view of statement made by PW-4 Chaman Lal that he had employed PW-1 as driver of the vehicle and he was driving the vehicle on the relevant day. No doubt, statement of PW-2 Amit Gupta establishes factum of accident, in which deceased Hardeep suffered injuries and ultimately died, but it nowhere proves factum of driving of the vehicle in question by the petitioner, rather statement of the PW-2, if read in its entirety, suggests that after reversing the vehicle, PW-1 Yog Raj came out of the vehicle and thereafter, he alongwith brother of deceased and Amit took the deceased to hospital.

19. In the case at hand, courts below, while holding petitioner guilty of having committed offences punishable under Sections 279 and 304-A IPC placed heavy reliance upon the suggestion put-forth by defence to PW-9 Kailash Chand i.e. brother of the owner of the bus that whether he had the knowledge that petitioner Mohammad Saleem was driving the bus or not? On the basis of

aforesaid suggestion, both the courts below returned the finding that this mere suggestion establishes factum with regard to driving of the vehicle at the relevant time by the petitioner. However, this Court sees no reason to agree with afore finding returned by both the courts below for the reason that there is no explanation rendered on record, that how PW-9 Kailash Chand i.e. brother of the owner of the bus could have gained the knowledge that petitioner Mohammad Saleem was driving the bus on the relevant date and time, especially when, his brother PW-4 being owner of the vehicle categorically stated that PW-1 Yog Raj was engaged as a driver and he was driving the bus on the relevant date. Moreover, PW-9, in his statement categorically stated that on the date of accident, vehicle was brought by Yog Raj from Shimla and he has no knowledge, whether at the time of accident vehicle was being driven by the petitioner or not?

20. Leaving everything aside, this court finds that no spot map ever came to be exhibited, which is most crucial in accident cases, as a result whereof, petitioner was deprived of opportunity of cross-examining the prosecution witnesses on this aspect. Though, Mr. Rajan Kahol, learned Additional Advocate General attempted to argue that omission, if any, on the part of prosecution to exhibit the spot map may not of much relevance because after accident, bus was removed from the place of spot of accident for taking the deceased to hospital, however, this Court is not impressed with aforesaid submission of learned Additional Advocate General for the reason that to establish factum of accident, especially with regard to position of vehicle as well as person, who suffered injuries, it is necessary to prepare the spot map to establish the allegation of rash and negligent driving. Spot map is necessary for the reason that it can only be ascertained from the spot map that what was the length and breadth of the road and at the time of accident, whether vehicle was being driven on its side or the deceased, who suffered injuries was himself negligent, while crossing or using the road.

21. Another important aspect of the matter is that the Investigating Officer, who could be a material prosecution witness, especially where identity of the driver was under suspicion, never came to be examined. Investigating Officer in his deposition could have categorically stated with regard to factum of driving of the vehicle by the petitioner. Investigating officer is the first person, who reached the spot after his having received information with regard to the accident and as such, he could only say that on his having arrived at the spot, it was disclosed to him that vehicle in question was being driven by the petitioner or he could also bring to the notice of trial court, statements, if any, recorded by him at the spot suggestive of the fact that vehicle at the time of accident was being driven by the petitioner.

22. Though Mr. Kahol, learned Additional Advocate General, argued that in the event of his being examined, Investigating Officer, would have only deposed with regard to investigation carried out by him and non-examination of this witness may not be fatal to the case of prosecution, however, this Court does not find force in the aforesaid submission of Mr. Kahol, for the reason that it is only Investigating Officer, who conducted investigation, who could disclose before the court names of persons, who were present on the spot at the time of accident. He, after having visited the hospital, recorded statement of complainant PW-1 under Section 154 Cr.P.C, who in his statement though admitted himself to be the driver of the

vehicle, but yet nowhere explained that why vehicle was being driven by the petitioner. Whether Investigating officer had put such question to the complainant PW-1, could have been answered by him only during his examination. But since Investigating Officer never came to be examined, petitioner was deprived of opportunity of cross-examining him, especially with regard to identity of driver. 23. In Tarsem Singh v. State of Haryana (2007) 4 RCR (Criminal) 605 Punjab & Haryana High Court held that non-examination of Investigating Officer as well as non-exhibiting of spot map is fatal for the case of prosecution. Relevant paras of the afore judgment are as under:

“12. The next contention, advanced by the learned Counsel for the petitioner is that the Investigating Officer has not been examined in the case. While arguing that non-examination of the investigating officer as fatal to the prosecution case, the learned Counsel referred to the judgment delivered by the Apex Court in case Nageshwar Shri Krishna Ghobe Vs. State of Maharashtra...

13. Having deliberated over the aforesaid contentions, I find some substance in the same. I have the testimony of Vikram complainant (PW 1) alone to unfold the prosecution version, but the same does not find corroboration from any other source. The best evidence to corroborate the testimony of Vikram complainant (PW 1) could have been any other witness or ASI Bhoop Singh Investigating Officer, but surprisingly he was not examined.

14. Admittedly, there is no corroboration to the testimony of Vikram complainant (PW 1) who could be dubbed as an interested witness due to lack of corroboration. The Investigating Officer was the material witness to lend corroboration who had visited the place of occurrence; seen the skid marks of the tyres; prepared the site plan of the place of occurrence; got the place of the occurrence and body photographed; examined the witnesses and made visual observations about the occurrence. He could

explain after examining the site as to who was at fault. Thus, his non- examination materially affects the case. Certainly, it has been invariably

observed that the Investigating Officer being not an eye witness, his non- examination could not be fatal to the prosecution, but, where corroboration

is lacking and material documents including arrest of the accused, driving licence of the accused, disclosure statements, recovery memos and the visual observations regarding position of vehicles at the spot are to be proved, then certainly, his testimony could be treated as important piece of evidence and in the absence of any other corroboration, his evidence could be given importance. In case Nageshwar Shri Krishna Ghobe Vs. State of Maharashtra.., cited by the learned Counsel for the petitioner, has gone further, wherein the Apex Court while commenting upon the perfunctory investigation made by the Investigating Officer in case of accident, observed as under (Para 8):

The Investigating Officer unfortunately did not care to have taken the photographs of the position of the vehicle, the electric pole and the persons injured and dead as a result of the accident. He did not care even to take the measurement of the height of the curve, which in our view, was a very relevant factor. Nor did he care to get the vehicle examined by a mechanic for the purpose of ascertaining if its mechanism was in order and particularly if its brakes were working properly. The rough sketch prepared by him is a highly unsatisfactory document as it only gives us an extremely rough idea of the position; this is of little assistance in determining the question of the appellant's guilt in the criminal trial.

24. Reliance is also placed upon judgment rendered by the High Court Of Judicature at Bombay in State of Maharashtra Vs. Kuldeep Subhash Pawar, Criminal Appeal No. 1238 of 2012. Relevant para of the afore judgment is as under:

“It is really strange state of affairs, when such matters are conducted neither Investigating Officer has prepared a map/rough sketch, nor trial court has taken pains in recording directions correctly in the evidence. If there is some confusion, the trial Court could have clarified it from the witnesses by putting questions which is permissible by law.”

25. Though in the case at hand, prosecution by examining PW-5 Dr. M.R. Verma has successfully proved on record that death of deceased occurred on account of injuries sustained by him in the accident, but that may not be sufficient to conclude guilt, if any, of the petitioner, when prosecution miserably failed to connect the petitioner with the accident in which allegedly deceased suffered injuries.

26. Having scanned entire evidence led on record, this court finds that prosecution has miserably failed to establish the identity of the driver, who at the time of accident was driving the vehicle and wrongly placed reliance upon the statement of PW-1 Yog Raj, who otherwise as per the version put-forth by the material prosecution witnesses PW-4 and PW-9 was driver of the offending vehicle at the time of accident. Though, both the Courts below returned the finding that version put-forth by PW-1 Yog Raj is corroborated by PW-2 Amit Gupta, but having perused statement of both the witnesses juxtaposing each other, this court finds that, at no point of time, PW-2 Amit Gupta deposed factum of driving the vehicle by the petitioner, rather his statement

suggests that when he reached the spot, PW-1 Yog Raj came out of the bus and thereafter, he along with brother of the deceased took the deceased to the hospital in the offending vehicle. This witness nowhere stated that he saw petitioner driving the vehicle or that the petitioner was present on the spot at the time of alleged incident. Needless to say, prosecution is always expected and is duty bound to prove the case against the accused beyond reasonable doubt, however, in the case at hand, prosecution has not been able to prove the guilt of the petitioner beyond reasonable doubt, rather factum of driving vehicle at the time of incident by the petitioner is under suspicion and as such, Court below ought not have placed much reliance upon statement of PW-1 Yog Raj, while ascertaining the guilt, if any, of the petitioner.

27. Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, present revision petition is allowed. Judgment dated 31.10.2012, passed by learned Additional Sessions Judge, Fast Track Court, Solan, H.P., in Criminal Appeal No. 5 FTC/10 of 20211 and judgment of conviction dated 15.01.2011 and order of sentence dated 31.01.2011, passed by learned Judicial Magistrate First Class, Kasauli, District Solan, H.P., in Criminal Case No.100/2 of 2007/04, are quashed and set-aside. Petitioner is acquitted of the charges framed against him. Interim direction, if any, stands vacated. applications, if any, also stand disposed of. Bail bonds/personal bonds, if any, furnished by the petitioner are also discharged.