

ABC 2020 (I) 124 HP  
ACQUITTAL & BAIL CASES  
**HIGH COURT OF HIMACHAL PRADESH**

(Sureshwar Thakur, J.)

Criminal Appeal No. 624 of 2008

Decided on 29 November, 2019

**STATE OF HIMACHAL PRADESH** - Appellant(s).

*Versus*

**KABUL SINGH** - Respondent(s).

**Law Covered:-** *Rash driving – Eruption of defect in the offending vehicle – pre-accidental or a sequel to accident – deciding of – Expert report – Eyewitnesses expressed ignorance about the defect mentioned in the report of Mechanical expert – Held, when both the afore are ocular witnesses to the occurrence & when the mechanical expert, was not an ocular witness to the occurrence – Pre-collision or pre-accidental happening of defects bolstered – Acquittal upheld. (Para 6)*

**Facts:-** *The offending jeep was driven by the accused which collided against another jeep and, in sequel thereto, the driver of the said jeep, sustained fatal injuries, on his person. Moreover, the accused had also sustained injuries on his person. The complainant and another eyewitness feigned ignorance regarding the offending jeep developing a mechanical snag, whereas in the report of Mechanical expert, it was mentioned that the snag was post-collision. The honourable Himachal Pradesh High Court upheld the acquittal.*

**Law of relief:-** *Ignorance of the eyewitness whether the eruption of the snag in the offending vehicle was pre-accidental or an sequel to collision is significant.*

**Held:-** *However, the afore construction, made upon, the afore echoing borne, in, Ex. PW8/ A, and, in PW8/ B, cannot be countenanced by this Court, (a) as, both the afore PWs feigned ignorance, vis-à-vis, eruption of the afore defects, in, the offending vehicle, (b) whereas they became enjoined, to, with clarity and precision, make bespeakings, in their respectively rendered testifications, qua, the impact of the collision begetting rather eruption of the afore defects, in, the offending vehicle, (c) or, whether the afore defects which erupted, in, the offending vehicle being preaccident*

a defects, and, hence leading, it to, become mismaneuvered, on to, the middle of the road. Also, when both the afore are ocular witnesses to the occurrence, and, when the mechanical expert, was not an ocular witness to the occurrence, rather his examining the vehicle, after, the occurrence of the afore mishap, (a) thereupon the nonoccurrence of the afore echoings in the respectively rendered testifications, by, the b afore witnesses, constrains this Court, to, conclude, vis-à-vis, reticence by both, vis-à-vis, the afore factum probandum, rather bolstering an inference, vis-à-vis, the afore defects, rather happening, at the precollision, or, preaccident phase, of, hence driving, of, the offending vehicle rather by the deceased. (Para-6)

c Counsel:- For Appellant(s): Mr. Hemant Vaid, Adv.  
For Respondent(s): Mr. Anup Rattan, Adv.

### JUDGMENT

d **SURESHWAR THAKUR, J.:** - 1. The instant appeal is directed by the State of Himachal Pradesh, against, the impugned judgment rendered by the learned Judicial Magistrate, 1st Class, Court No.1, Una, H.P., upon, Criminal Case No. 13-I-02/ 10-II-02, wherethrough, the respondent herein (for short 'accused'), stood acquitted, by the e learned trial Court, vis-à-vis, the charge framed against him.

f 2. The offending jeep bearing registration No. HP20-A-2468, was driven at the relevant time, hence, by the accused, one Kabul Singh. In sequel to the purported rash and negligent hence driving of the afore jeep, by the accused, it collided against another jeep bearing registration No. HP23-1763, rather driven by one Charanji Lal, and, in sequel thereto, the, driver of the afore jeep, sustained fatal injuries, on his person. Moreover, the accused had also sustained injuries on his person.

g 3. The complainant one Kuldeep Kumar (PW3) made a testification, vis-à-vis, the offending jeep, being driven by the accused, on, the middle of the road, however, he feigned ignorance, vis-à-vis, the offending jeep, upon, arriving near the jeep driven by the deceased Charngi Lal, it, developing a mechanical snag, (i) in as h much, as, the front right side tyre thereof getting burst, and, also the main leaf spring of the right side of the jeep becoming broken, and, in sequel whereto the offending jeep became mismaneuvered towards the right side.

4. Jasbir Singh (PW4), has also supported the testification, as, made, vis-à-vis, the occurrence, hence, by PW3 one Kuldeep Kumar.

However, as apparent, on a reading, of testification(s) of the afore witnesses, though they ascribe negligence to the accused, ascription, of, negligence, whereof is, embodied in the offending vehicle, becoming driven by the accused, on, the middle of the road, and, also it becoming driven, in, a rash and negligent manner. However, both feigned ignorance, vis-à-vis, at the relevant time, the afore mechanical snags abruptly developing in the vehicle, hence leading it to become mismaneuvered, on to, the inappropriate side of the road.

5. Be that as it may, the accused also espoused, a, defence, vis-à-vis, the afore mechanical snags, suddenly erupting in the offending vehicle, and, hence strived, to, disimpute, the, afore ascription of negligence qua him, by PW3, and, by PW4. Since, as aforestated both the afore witnesses feigned ignorance, vis-à-vis, the afore propagated defence, by the accused, (i) thereupon, for, construing whether the afore reared defence by the accused, assumes validity or not, it is imperative to bear in mind the report, of, the Mechanical expert, who, inspected the offending vehicle, and, prepared besides proved the mechanical reports, respectively comprised in Ex. PW8/ A and in Ex.PW8/B. A perusal thereof(s), though, discloses, vis-à-vis, the afore propagation, of, the defence becoming succored therefrom. However, the learned Additional Advocate General, submits, that, also with echoings becoming borne in the afore exhibits, vis-à-vis, the afore requisite mechanical snags, being a sequel of the illfated collision, hence occurring interse the jeep driven by the accused, and, the jeep driven by Charangi Lal, (ii) thereupon the afore defects, cannot be construed to be premishap defects, rather are construable, to be erupting, in, the offending vehicle, in, sequel of the illfated collision, hence occurring, interse, the offending vehicle, and, the vehicle driven, by, the deceased Charangi Lal.

6. However, the afore construction, made upon, the afore echoing borne, in, Ex. PW8/ A, and, in PW8/ B, cannot be countenanced by this Court, (a) as, both the afore PWs feigned ignorance, vis-à-vis, eruption of the afore defects, in, the offending vehicle, (b) whereas they became enjoined, to, with clarity and precision, make bespeakings, in their respectively rendered testifications, qua, the impact of the collision begetting rather eruption of the afore defects, in, the offending vehicle, (c) or, whether the afore defects which erupted, in, the offending vehicle being preaccident defects, and, hence leading, it to, become mismaneuvered, on to, the middle of the road. Also, when both the afore are ocular witnesses to

a the occurrence, and, when the mechanical expert, was not an ocular witness to the occurrence, rather his examining the vehicle, after, the occurrence of the afore mishap, (a) thereupon the nonoccurrence of the afore echoings in the respectively rendered testifications, by, the afore witnesses, constrains this Court, to, conclude, vis-à-vis, reticence by both, vis-à-vis, the afore factum probandum, rather bolstering an inference, vis-à-vis, the afore defects, rather happening, at the precollision, or, preaccident phase, of, hence driving, of, the offending vehicle rather by the deceased.

c 7. In view of the above, there is no merit in the appeal, and, the same is accordingly dismissed. The impugned judgment is maintained and affirmed. All pending applications stand disposed of accordingly.

**Result:-** Appeal dismissed.

d

ABC 2020 (I) 127 HP  
ACQUITTAL & BAIL CASES  
**HIGH COURT OF HIMACHAL PRADESH**

(Sandeep Sharma, J.)

CrMMO No 215 of 2019

e

Decided on 28 November, 2019

JAGDEEP SINGH

-Petitioner(s).

Versus

f

RAMESH SINGH

- Respondent(s).

g **Law Covered:-** (A) *Negotiable Instruments Act, 1881 – Section 138, 145(1) & 145(2) – Seeking recall/re-examination/ cross-examination of the complainant by accused – assigning reason(s) – requirement for –Held, the second part of S.145(2), nowhere talks about assigning reasons in the application for recall/re-examination of a witness – meaning thereby that it is obligatory for the court to recall complainant or its witnesses, if an application is made in that behalf – Order of the Court below, rejecting the application of the accused for examination/cross-examination of the complainant rectified – Directed to fix a date for examination/cross-examination. (Para 8)*

h

(B) *Negotiable Instruments Act, 1881 – Section 145(2) – Seeking recall/re-examination/ cross-examination of the complainant by accused – effect on complainant – Held, no prejudice, whatsoever, would be caused to the complainant, in case*