

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 144 of 2012****Reserved on: 14.09.2026****Date of Decision: 25.09.2026.**

Jaggar Nath**...Appellant****Versus****Ramesh Kumar & Ors.****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No*****For the Appellant : Mr H.S. Rangra, Advocate.****For Respondents No.1 to 3 : Mr Jagat Pal, Advocate.****For Respondent No.4/State : Mr Jitender Sharma,
Additional Advocate General.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 23.12.2011 passed by learned Sessions Judge, Mandi, District Mandi, H.P. (learned Appellate Court) vide which the respondents (accused before learned Trial Court) were acquitted of the commission of offences punishable under Sections 341 and 307 read with Section 34 of the Indian Penal Code (IPC). (*The*

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

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 307, 341, 325, 504 read with Section 34 of the IPC. It was asserted that Ramesh Kumar, Kamla Devi, and Maya Devi came to the informant Jaggar Nath's (PW1) house on 05.03.2006 at about 08:15 a.m. and started abusing him without any reason. The informant enquired as to why they were abusing him. The accused became infuriated. The accused Kamla Devi and Maya Devi caught hold of the informant, and Ramesh Kumar inflicted a blow by means of a stick. The informant shouted for help. Surjan Ram (PW4) and Payaru Ram (PW3) reached the spot and rescued the informant. The informant was taken to PHC Dehar, and intimation was given to the police. HC Swaran Singh (PW10) went to PHC Dehar. He filed an application (Ext.PW9/A) for the informant's medical examination and sought an opinion on whether the informant was fit to make a statement. Dr Rakesh Bhardwaj (PW9) certified that the informant was fit to make the statement. He examined the informant and found that the latter

had sustained an injury on the left side of the head. He referred the informant to Zonal Hospital, Mandi for the CT scan and the opinion of the radiologist. Dr P. K. Soni (PW8) went through the CT scan and found a fracture of the left temporal bone and bilateral epidural haemorrhage in the temporal region. He issued the report (Ext.PW8/B). Dr Rakesh Bhardwaj (PW9) issued the report (Ext.PW9/C). HC Swaran Singh recorded the informant's statement (Ext.PW1/A) and sent it to the Police Station where FIR (Ext.PW10/A) was registered. HC Swaran Singh (PW10) investigated the matter. He visited the spot and prepared the site plan (Ext.PW10/A). He seized the stick (Ext.P1) vide memo (Ext.PW4/A) and recorded the statements of witnesses as per their version. He also prepared the sketch of the stick (Ext.P1). After the completion of investigation, the challan was prepared and presented before the learned Additional Chief Judicial Magistrate, Sundar Nagar, District Mandi, who committed it to the learned Sessions Judge, Mandi (the learned Trial Court) for trial.

3. Learned Trial Court charged the accused with the commission of offences punishable under Sections 307 and 341

read with Section 34 of IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined ten witnesses to prove its case. Jaggar Nath (PW1) is the informant/victim. Kanshi Ram (PW2) is an eyewitness. Payaru Ram (PW3) and Surjan Ram (PW4) did not support the prosecution case. NK Sharma prepared the challan. ASI Amar Singh (PW6) signed the FIR. Jeram Singh (PW7) arrested the accused. Dr P.K. Soni (PW8) went through the CT scan and issued his report. Dr Rakesh Bhardwaj (PW9) examined the informant. HC Swaran Singh (PW10) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that their house is located adjacent to the informant's house. They claimed that they had an inimical relationship with the informant. They were implicated in the present case to compel them to compromise the matter with the informant. They tendered the judgment passed by learned Judicial Magistrate, First Class Court No. 2, Sundar Nagar in their evidence.

6. Learned Trial Court held that the informant had asserted in the initial statement made to the police that injury was inflicted by means of a stick. However, the Investigating Officer seized a *fati*. There is a distinction between a stick and a *fati*. The informant also changed his version in court to say that he was hit with a *fati*, which made the prosecution's case highly doubtful. The informant claimed on oath that the injury was inflicted on the right side, but the Medical Officer found that the informant was complaining of injury on the left side. The CT scan revealed that the fracture was on the left side, whereas the informant's treatment summary stated that a right temporal craniotomy was conducted. There was a discrepancy regarding the side of injury. The witnesses materially improved upon their initial version. There were material contradictions in the statements of the witnesses. The relationship between the parties was inimical, and the possibility of false implication could not be ruled out. The prosecution had failed to prove its case beyond reasonable doubt. Hence, the learned Trial Court acquitted the accused of the charged offences.

7. Being aggrieved by the judgment passed by the learned Trial Court, the victim has filed the present appeal,

asserting that the learned Trial Court erred in acquitting the accused. Minor contradictions were blown out of proportion. The statements were recorded after considerable delay, and the contradictions were bound to come with time. The contradiction regarding the site of injury was not significant and was wrongly held to be material by the learned Trial Court. The informant was referred to PGI Chandigarh for treatment, which proved that he had sustained serious injury which could not have been treated at Zonal Hospital, Mandi. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr H.S. Rangra, learned counsel for the appellant/victim, Mr Jagat Pal, learned counsel for respondents No. 1 to 3, and Mr Jitender Sharma, learned Additional Advocate General for the respondent No. 4/State.

9. Mr H.S. Rangra, learned counsel for the appellant/victim, submitted that the learned Trial Court erred in acquitting the accused. Minor contradictions were blown out of proportion to record the acquittal. The contradictions were bound to come with time and could not have been used to

discard the prosecution version. The medical evidence proved that the victim had sustained an injury to his head, which was dangerous to life. The testimony of an injured person is entitled to a great weight, but this principle was ignored by the learned Trial Court. The enmity is a double-edged weapon, and it can furnish a motive for the commission of the crime. The learned Trial Court had taken a view that could not have been taken by any reasonable person. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Jagat Pal, learned counsel for respondents no. 1 to 3, submitted that the learned Trial Court had rightly noticed that there is a distinction between stick and *fati*. The informant had changed the weapon of offence, which made the prosecution case suspect. The site of the injuries was not proved. These contradictions related to the core of the prosecution case, namely the infliction of injuries and cannot be called minor. Learned Trial Court had taken a reasonable view while acquitting the accused and no interference is required with the reasonable view of learned Trial Court. Hence, he prayed that the present appeal be dismissed.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent No. 4/State, submitted that the prosecution had proved its case beyond reasonable doubt and learned Trial Court erred in acquitting the accused. Hence, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Sanjay Kumar v. State of Bihar*, 2026 SCC OnLine SC 1373, that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

Scope of interference with an acquittal:

26. At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In *Kali Ram v. State of Himachal Pradesh* (1973) 2 SCC 808: 1973 SCC (Cri) 1048, this Court explained the

golden thread running through criminal jurisprudence in the following words:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt

should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

28. The decision in *Kali Ram* (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not a technical rule; it is a substantive safeguard flowing from the presumption of innocence.

29. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, this Court reiterated the limited scope of interference with acquittals. This Court observed:

“75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable.”

30. The decision in *Ghurey Lal* (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325, this Court held that though the appellate court has full power to review and reappreciate

the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in *Mrinal Das v. State of Tripura (2011) 9 SCC 479*, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

14. The present appeal is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The informant had specifically stated in the statement (Ext.PW1/A) that the accused Ramesh Kumar inflicted a blow by means of a stick on his head. He stated on oath while appearing as PW1 that Maya Devi and Kamla Devi had caught hold of him and accused Ramesh Kumar struck a Danda (Fati) blow on his head on the right side. He stated in his cross-examination that he was hit by the sharp side of Danda (*fati*) (Ext.P1) and not from the left side. Only one blow was given to

him. The learned Trial Court had rightly noticed that there is a distinction between a stick and *fati*, and the use of the term *fati* in the statement on oath will make the informant's credibility highly suspect. It was laid down by the Hon'ble Supreme Court in *Badri v. State of Rajasthan*, (1976) 1 SCC 442: 1976 SCC (Cri) 60 that where a witness can modulate his version to suit the prosecution case, his testimony is suspect. It was observed at page 448:

“19.... The trial court has noted that Patram was “compelled to change his version a little” because of the doctor's opinion after the post-mortem examination was held on the spot the following morning. If a witness, who is the only witness against the accused to prove a serious charge of murder, can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered a reliable person and no conviction can be based on his sole testimony.”

16. It was laid down by this Court in *Nirmal Singh v. State of Himachal Pradesh*, 1986 SCC OnLine HP 27: 1987 Cri LJ 1644 that where the prosecution tries to introduce a new version during the trial, the Court should be reluctant to accept it at its face value. It was observed at page 1647:

“9. Before we advert to the evidence we would like to point out that in case where the prosecution endeavours to introduce at the trial a new version or a version which

is materially different from the original, as narrated in the first information report, the Court, as a rule of prudence, is required to act with utmost care and circumspection in scrutinising the evidence and normally it should be reluctant to accept the prosecution evidence at its face value unless a satisfactory and cogent explanation is given for the deviations and improvements made. This rule of prudence was completely ignored by the trial Court in the instant case, though it was fully applicable.”

17. It was held by the Hon’ble Supreme Court in *Ram Kumar Pandey v. State of M.P.*, (1975) 3 SCC 815: 1975 SCC (Cri) 225 that omission to state an important fact in the FIR will affect the probabilities of the prosecution’s case. It was observed at page 818:

“9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-3 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.”

18. It was held in *State of M.P. v. Dhirendra Kumar*, (1997) 1 SCC 93: 1997 SCC (Cri) 54 that when the material facts not mentioned in the FIR are narrated by a witness, the substratum

of the prosecution case gets altered and would cause a dent to the edifice on which the prosecution case is built. It was observed at page 96:

“11. It was very emphatically contended by Shri Gambhir that as in the first information report (FIR), there is no mention of the dying declaration, we should discard the evidence of PW 1 and PW 2 regarding the dying declaration, because of what has been pointed out by this Court in *Ram Kumar Pandey v. State of M.P.* [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026] We do not, however, agree with Shri Gambhir, for the reason that what was observed in *Ram Kumar case* [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026] after noting the broad facts, was that *material omission in the FIR would cast doubt on the veracity of the prosecution case, despite the general law being that statements made in the FIR can be used to corroborate or contradict its maker. This view owes its origin to the thinking that if there be a material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause a dent to the edifice on which the prosecution case is built, as the substratum of the prosecution case then gets altered. It is apparent that the prosecution cannot project two entirely different versions of a case. This is entirely different from thinking that some omission in the FIR would require disbelieving the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested on its own strength or weakness. While doing so, if the fact deposed be a material part of the prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question.*”

19. It was held in *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406: (2014) 1 SCC (Cri) 677: 2013 SCC OnLine SC 488 that omission to narrate important facts is an important fact under Section 11 of the Indian Evidence Act. It was observed at page 416:

“24. Undoubtedly, the FIR lodged has disclosed the previous statement of the informant which can only be used to either corroborate or contradict the maker of such statement. However, in the event that the informant is a person who claims to know the facts, and is also closely related to the victim, it is expected that he would have certainly mentioned in the FIR all such relevant facts. The omission of important facts affecting the probability of the case is a relevant factor under Section 11 of the Evidence Act to judge the veracity of the case of the prosecution. (Vide *Ram Kumar Pandey v. State of M.P.* [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026])”

20. Therefore, the learned Trial Court was justified in doubting the prosecution version because of a change of weapon of offence.

21. The informant asserted that an injury was inflicted on his head on the right side. Dr Rakesh Bhardwaj (PW9) stated that the informant Jaggar Nath was complaining of head injury towards the left side. He sent the informant to Zonal Hospital, Mandi. Dr P.K. Soni (PW8) went through the X-ray and found a

fracture of the left temporal bone and bilateral epidural haemorrhage in the temporal region. The victim was referred to PGI, Chandigarh, and a treatment summary (Ext.PW9/D) was obtained, which mentions right craniotomy and evacuation of BHGA. There is no evidence as to how the injury noticed on the left side by the radiologist and the Medical Officer at Mandi was changed to the right side in the PGI. Therefore, the medical evidence also made the prosecution case suspect.

22. The informant has specifically stated that he was rescued by Surjan Ram (PW4) and Payaru Ram (PW3). However, Payaru Ram did not support the prosecution case. He stated that when he reached the informant's house, he found Jaggar Nath lying unconscious and his father Kanshi Ram holding him in his lap. Jaggar Nath was brought to Dehar hospital in a jeep. He was permitted to be cross-examined. He denied his previous statement recorded by the police. Thus, the testimony of this witness does not advance the prosecution case.

23. Surjan Ram (PW4) stated that accused Mahesh and Ramesh were talking loudly on 05.03.2006 at about 08:15. He came out. Jaggar Nath enquired as to why the accused were

abusing. Kamala and Maya caught hold of Jaggar Nath, and accused Ramesh inflicted a blow on the informant's head with a *fati*. Jaggar Nath fell. He was taken to the hospital. He was permitted to be cross-examined, and he denied that the recovery of the *fati* was made in his presence. He stated in his cross-examination that he could not notice what was happening. He could not say on which side of the head the informant had sustained injury. No blood had oozed from the injury. Only an altercation took place in his presence. He admitted that his wife had lodged criminal cases against the accused.

24. The statement of this witness is not satisfactory. He stated in his cross-examination that only an altercation had taken place in his presence, which makes his version in the examination-in-chief doubtful that injury was inflicted in his presence. He also stated that he could not know what was happening, which also makes it difficult to rely upon his testimony regarding the incident. He was inimical to the accused, and his testimony was required to be seen with due care and caution. In these circumstances, the learned Trial Court was justified in discarding his testimony.

25. Kanshi Ram (PW2) stated that he heard the noise and came out of the house. He saw that accused Maya and Kamala had caught hold of the informant, and Ramesh inflicted a blow by means of a stick on the informant's head. The accused gave another blow, but he (Kanshi Ram) stopped it with his hand. The accused ran away from the spot. He stated in his cross-examination that the blow was given on the left side of the head and the blood started oozing out of the head.

26. The Medical Officer did not notice any blood oozing out of the injuries, and his testimony that the blood was oozing out of the injuries is not supported by independent medical evidence. His name was not mentioned in the initial statement made to the police. He is the victim's father, and the victim would have mentioned his name had he been present on the spot. He stated that the accused had inflicted two blows, which is contrary to the informant's statement, who was quite categorical in saying that the accused had inflicted one blow. The absence of his name and the discrepancies regarding the manner of infliction of injuries make it difficult to rely upon his testimony.

27. There was no other evidence to corroborate the informant's version. Thus, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible while deciding an appeal against acquittal.

28. No other point was urged.

29. In view of the above, the present appeal fails, and it is dismissed. Pending applications, if any, also stand disposed of.

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondents/accused are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondents/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

31. A copy of the judgment, along with record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

25th September, 2026
(Nikita)