

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 114 of 2014****Reserved on: 12.05.2026****Date of Decision: 15.06.2026**

State of H.P.

...Appellant

Versus

Kikkar Singh

...Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting? No*For the Appellant/State : Mr Jigtender Sharma, Additional
Advocate General.

For the Respondent : Ms Anjali Soni Verma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 25.11.2013 passed by learned Judicial Magistrate 2nd Class, Court No.2, Kangra, District Kangra, H.P. (learned Trial Court) vide which the respondent (accused before learned Trial Court) was acquitted of the commission of an offence punishable under Section 325 of the Indian Penal Code (IPC). *(The 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 before the learned Trial Court for the commission of an offence punishable under Section 325 of the IPC. It was asserted that the accused, Kikkar Singh is the brother of the informant Dhani Ram (PW1). They have another brother and all of them were the co-owners of the land. The Revenue Department partitioned the land into three parts and delivered the possession to each brother. The informant went to cultivate the land allotted to him on 11.06.2004. He saw that the accused Kikkar Singh was cultivating the land. The informant asked the accused as to why he was cultivating the land allotted to him (the informant). The accused stopped the cultivation and inflicted 2-3 fist blows on the informant's face. As a result, the informant's lower tooth was broken. Kanta Devi (PW2) tried to rescue the informant, but the accused pushed her. The matter was reported to the police, and the police recorded an entry in the daily diary (Ex. PW3/A). An application (Ext.PW9/A) was filed for the medical examination of the informant. Dr Parveen (PW6) examined the informant. He referred the informant to a dental surgeon for expert opinion. Doctor Rakesh Sharma (PW7) examined the informant and found that he had

sustained grievous injury, which could have been caused by a fist blow. The nature of the injury was stated to be grievous. MLC (Ext.PW6/A) was issued. FIR (Ext.PW8/A) was registered in the Police Station after the receipt of the MLC. HC Balwant Singh (PW9) investigated the matter. He visited the spot and prepared the site plan (Ext.PW9/A). He recorded the statements of witnesses as per their version. After the completion of the investigation, the challan was prepared, and it was presented before the Court.

3. Learned Trial Court found sufficient reasons to frame the charges against the accused for the commission of an offence punishable under Section 325 of the IPC, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 10 witnesses to prove its case. Dhani Ram (PW1) is the informant. Kanta Devi (PW2) is an eyewitness. Sunita Devi (PW3) was a Pradhan to whom the complaint was made. Constable Rakesh Kumar (PW4) proved the entry in the daily diary. Puran Chand (PW5) did not support the prosecution's case. Dr Parveen (PW6) examined the informant. Dr Rakesh Sharma (PW7) is the Dental Surgeon to whom the informant was referred for expert opinion. SI Prem Chand (PW8)

signed the FIR. HC Balwant Singh (PW9) investigated the matter. Inspector Sanjeev Chauhan (PW10) prepared the challan.

5. The accused, in his statement recorded under Section 313 of the Criminal Procedure Code (Cr.P.C.), admitted that he and the informant are the real brothers. He admitted that the land has been partitioned between the brothers. He denied the rest of the prosecution's case. He stated that Dhani Ram (PW1) fell and suffered injury. Dhani Ram (PW1) filed a false case against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the statements of the informant and his wife materially contradicted each other. The broken tooth was not taken into possession. There was a delay in reporting the matter to the police, which made the prosecution's case doubtful. The informant stated that 2-3 fist blows were given, but corresponding injuries were not noticed by the Medical Officer. The blood-stained clothes of the informant were not taken into possession to corroborate the informant's testimony. The prosecution failed to prove its case beyond a reasonable doubt. Hence, the learned Trial Court acquitted the accused.

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

the learned Trial Court has not properly appreciated the evidence. The testimonies of prosecution witnesses were discarded without assigning cogent reasons. The statement of the informant and his wife, Kanta Devi (PW2), supported the prosecution's case. The accused also admitted that the land had been partitioned, which corroborated the informant's testimony. Minor contradictions were blown out of proportion to record an order of the acquittal. The informant's statement was duly corroborated by the medical evidence. 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 Jitender K Sharma, learned Additional Advocate General for the appellant/State and Ms Anjali Soni Verma, learned counsel for the respondent/accused.

9. Mr Jitender K Sharma, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. The statements of the prosecution witnesses corroborated each other. The Medical Officer had also found that the informant's tooth was broken. The partition between the informant and the accused was admitted by the accused in his statement recorded under Section 313 of Cr.P.C.

All these circumstances proved the prosecution's version beyond a reasonable doubt, and the learned Trial Court erred in acquitting the accused. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Ms Anjali Soni Verma, learned counsel for the respondent/accused, submitted that the learned Trial Court had rightly held that the informant and his wife contradicted each other on material aspects of the case. The tooth was not seized by the police, and no explanation was provided for it. No independent person was examined from the locality, even though the incident had taken place in broad daylight. The learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court. Hence, she prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, (2025) 5 SCC 433: 2025 SCC

OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC *OnLine SC 1743*, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

14. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

- (a) whether the judgment of acquittal suffers from patent perversity;
- (b) whether the judgment is based on misreading/omission to consider the material evidence on record;
- (c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’
- (d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
- (e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
- (f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

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

16. As per the informant, the incident had occurred on 11.06.2004 at 6:30 a.m. The matter was reported to the police on 11.06.2004 at 4:45 p.m. The FIR mentions the distance between the Police Station and the place of the incident as seven kilometres. Thus, the learned Trial Court had rightly held that there was a delay in reporting the matter to the police. It was laid down in *Mehraj Singh v. State of U.P. (1994) 5 SCC 188* that the delay in lodging FIR leads to embellishments, concoction and fabrication and the court should see the prosecution case with utmost care and caution in case of delay. It was observed:

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence to appreciate the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of the delay, the FIR not only gets bereft of the advantage of spontaneity, but danger also creeps in with the introduction of a coloured version or exaggerated story. With a view to determining whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of a copy of the FIR, called a special report in a murder case, by the local

Magistrate. If this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. The prosecution has presented no evidence at all in this case. The second external check, equally important, is the sending of a copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution's case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution's story was still in an embryonic state and had not been given any shape, and that the FIR came to be recorded later on, after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity, and it appears to us that the same has been ante-dated and had not been recorded till the inquest proceedings were over at the spot by PW 8."

17. This position was reiterated in *P Rajagopal vs State of Tamil Nadu 2019 (5) SCC 40*, wherein it was observed: -

"12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of a concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on the merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See *Apren Joseph v. State of Kerala*, (1973) 3 SCC 114; *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1]."

18. A similar view was taken in *Sekaran v. State of T.N.*, (2024) 2 SCC 176: (2024) 1 SCC (Cri) 548: 2023 SCC OnLine SC 1653, wherein it was observed on page 182:

“14. We start with the FIR, to which exception has been taken by the appellant, urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution’s version.

15. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.”

19. Therefore, the learned Trial Court was justified in doubting the prosecution’s case because of the delay.

20. The informant stated in his cross-examination that the Dental Surgeon had sealed the broken tooth. Dr Rakesh Sharma (PW7) also stated that he had sealed the tooth and handed it over to the police official accompanying the injured. HC Balwant Singh

(PW9) stated that he was not aware whether the Medical Officer had seized the tooth. He had checked the register of Malkhana, but there was no entry regarding the deposit of the broken tooth. Therefore, the learned Trial Court had rightly held that the broken tooth was not produced before the Court, and no proper explanation was provided for the non-production of the broken tooth.

21. The informant stated in the FIR that he had gone to cultivate the land allotted to him on 11.06.2004, and found that the accused Kikkar Singh was cultivating his land. When he inquired as to why the accused was cultivating the land allotted to him (the informant), the accused gave him beatings. He changed this version in the Court. He stated that he was cultivating his land when Kikkar Singh came and pushed him. His tooth was broken in the incident. It is apparent from the informant's statement in the Court that he has given an entirely different version regarding the incident. He had claimed in the FIR that Kikkar Singh was cultivating the field at the time of the informant's arrival, but stated in the Court that he was cultivating the field when the accused Kikkar Singh arrived on the spot. He had stated in the FIR that the accused had given him fist blows, and his tooth was

broken because of those blows but stated in the Court that the accused had pushed him and broken his tooth. It was laid down by the Hon'ble Supreme Court in *State of M.P. v. Dhirendra Kumar*, (1997) 1 SCC 93: 1997 SCC (Cri) 54 that when the prosecution projects a different case during the Trial, its case becomes suspect.

It was observed:

“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. 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 for its 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.”

22. The informant stated that the accused had given a fist blow to his face, and his face started bleeding. This is not corroborated by the statement of Dr Parveen (PW6), who stated that the patient complained of dental injury, so he referred the patient to a dental surgeon. He had not noticed any other injury. Therefore, the medical evidence has not supported the informant's statement that the accused had given a fist blow to him, due to which he sustained a bleeding injury on the face.

23. The informant stated in his cross-examination that he was all alone at the time of the incident. This makes the presence of Kanta Devi (PW2) highly doubtful.

24. Kanta Devi (PW2) stated that she and her husband went to cultivate the land and found that the accused was already cultivating the land. She and her husband requested the accused not to cultivate the land. The accused started quarrelling with her and her husband. She and her husband were returning when the

accused gave beatings to her husband, and her husband's tooth was broken.

25. The statement of this witness is contrary to the prosecution's version and the informant's statement. She stated that the accused had beaten her husband on the way when they were returning, whereas the prosecution's case is that the accused had beaten the informant in the field. Therefore, the learned Trial Court was justified in not relying upon the statement of this witness.

26. No other witness was examined to corroborate the informant's statement. Therefore, the learned Trial Court had rightly held that the prosecution's version was not proved. This was a reasonable view that would have been taken based on the material placed before the learned Trial Court, and no interference is required with the reasonable view of the learned Trial Court, even if, another view is possible.

27. No other point was urged

28. In view of the above, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety 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 respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

30. Records be sent back to the learned Courts forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

15th June, 2026
(Nikita)