

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 331 of 2015

Reserved on: 15.7.2026

Date of Decision: 22.7.2026.

State of H.P.

...Appellant

Versus

Radha Devi & anr.

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Appellant : Mr Prashant Sen, Deputy Advocate General.

For the Respondents : Mr S.D. Gill, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 2.1.2015, passed by learned Additional Sessions Judge-II, Shimla, District Shimla, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 19.12.2013, passed by learned Judicial Magistrate First Class, Court No.1, Shimla, H.P. (learned Trial Court) were set-aside (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience*).

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Section 353 and 173 read with Section 34 of the Indian Penal Code (IPC). It was asserted that Sunil Kumar (PW5) was posted as a Bailiff in the Court of a learned Civil Judge, Senior Division-cum-Chief Judicial Magistrate, Shimla. He went to Jitender Bhavan, Vikas Nagar, on 04.11.2009 at about 10.45 p.m. to deliver a summons to Meera Negi. She was not present at home; however, her mother, Radha Devi and brother Jitender Kumar were present at the home. Sunil Kumar told them about the summons, and they replied that Meera was not at home. Radha Devi enquired about the nature of the summons, and Sunil Kumar replied that the summons pertained to the suit for recovery. Radha Devi got infuriated and started abusing Sunil Kumar. She refused to accept the summons. Sunil Kumar tried to paste the summons on the wall, but Jitender Kumar and Radha Devi tore the summons. Sunil Kumar informed the police telephonically. An entry (Ex.P6/A) was recorded in the Police Station. ASI Balak Ram (PW6) went to the spot for the verification of the information. He recorded the statement

(Ex.PW5/A) of Sunil Kumar, which was sent to the Police Station, where FIR (Ex. PW6/B) was registered. ASI Balak Ram investigated the matter. He visited the spot, prepared the site plan (Ex.PW6/D) and recorded the statements of witnesses as per their version. He seized the torn pieces of the summons and the notice and put them in an envelope. He sealed the envelope with seal 'K' and seized it vide memo (Ex.PW1/A). He obtained the sample seal (Ex. P2) on a separate piece of cloth. He filed an application (Ex.PW6/E) for obtaining the appointment order of the informant Sunil Kumar. Prakash Chauhan (PW2) produced the appointment order (Ex. PW2/A). ASI Balam Ram filed an application (Ex.PW6/F) for obtaining the informant's duty abstract. Mrs Lakshmi Chauhan (Ex.PW3) produced the extract (Ex.PW3/A). After the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to them for the commission of offences punishable under Sections 353 and 506 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined eight witnesses to prove its case. Babu Ram (PW1) is an eyewitness. Prakash Chand (PW2) produced the appointment order. Lakshmi Chauhan (PW3) produced the duty abstract. HC Suresh Kumar (PW4) carried the informant's statement to the Police Station. The informant Sunil Kumar (PW5) had gone to Vikasnagar to deliver the summons. ASI Balak Ram (PW6) investigated the matter. Constable Kushal (PW7) proved the entry in the daily diary. HC Yog Raj (PW8) was posted as MHC, with whom the case property was deposited.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure, admitted that Sunil Kumar was posted as Process Server in the Court of the learned Chief Judicial Magistrate, Shimla. They also admitted that he had visited their house to deliver the summons to Meera Negi on 04.11.2009 at about 10.45 a.m. They admitted that Sunil Kumar obtained the instruction from Meera Negi for the delivery of the summons. They admitted that Sunil Kumar had also informed the accused that the summons pertained to a recovery suit. They stated that they had refused to accept the summons because Meera Devi had asked them not to accept the summons. They denied the rest of the prosecution's case. They claimed that

a false case was made against them. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimony of the informant Sunil Kumar was reliable. The informant had immediately informed the police about the incident, which ruled out the possibility of concoction. It was duly proved that the informant was discharging the official duties. There was no reason for the informant to depose falsely against the accused. His testimony was duly corroborated by the torn summons and statement of Babu Ram (PW1). The prosecution had proved its case beyond a reasonable doubt for the commission of an offence punishable under Section 353 of the IPC. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 353 of IPC and sentenced him to undergo simple imprisonment for 3 months, pay a fine of ₹500/- and in default of payment of fine, to undergo further simple imprisonment for 15 days.

7. Being aggrieved by the judgment and order passed by the learned Tribal Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla

(learned Appellate Court), who held that the testimony of Babu Ram falsified the prosecution's version. The summons/notice was not torn, and only the copy of the plaint was found to be torn. Therefore, the informant's version that the summons was torn was not proved. The mere refusal to accept the summons does not constitute any offence. The learned Trial Court had erred in convicting and sentencing the accused, and the judgment and order passed by the learned Trial Court were not sustainable. Hence, the learned Appellate Court allowed the appeal and set aside the judgment and order passed by the learned Trial Court.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court had erred in acquitting the accused. The witnesses had no reason to falsely depose against the accused. The statements of the informant and Babu Ram corroborated each other. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Prashant Sen, learned Deputy Advocate General for the appellant/State and Mr S.D. Gill, learned counsel for the respondent/accused.

10. Mr Prashant Sen, learned Deputy Advocate General for the appellant /State, submitted that the learned Appellate Court erred in acquitting the accused. The testimony of the informant Sunil Kumar was corroborated by Babu Ram and the recovery of a torn summons. The learned Trial Court had convicted the accused by passing a well-reasoned judgment, and the learned Appellate Court erred in setting aside the well-reasoned judgment of the learned Trial Court. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Mr S.D. Gill, learned counsel for the respondent/accused, submitted that the testimony of Babu Ram made the prosecution's version highly doubtful. The copy of the plaint and not the summons was found to be torn, which falsifies the prosecution's version that the accused had torn the summons. Babu Ram provided an explanation that the copy was torn in the Police Station, which was not challenged by re-

examining him. Learned Appellate Court had taken a reasonable view of the matter, and this Court should not interfere with the reasonable view of the Court acquitting the accused. Therefore, he prayed that the present appeal be dismissed.

12. I have given a 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 *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, 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 on 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.

14. 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.

15. 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.”

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

17. The informant Sunil Kumar (PW5) stated that Radha Devi refused to accept the summons and started abusing him. He tried to affix the summon on the wall, but Jitender snatched the summon and tore it. He went inside the room with the notice and the summons. The statement of this witness was made

doubtful by the statement of Babu Ram (PW1), who stated in his cross-examination that all the documents were pasted on the wall, and it took about 10 minutes in the affixation. The copy of the notice was pasted on the top. He admitted that the copy of the notice was not torn. He admitted that the remaining documents were torn in the Police Station.

18. This witness was not re-examined by the prosecution, which means that this part of his testimony was accepted as correct. In similar circumstances, when a witness had supported the case of the defence, but was not re-examined by the prosecution to clarify his testimony, it was held in *Ramsewak v. State of M.P.*, (2004) 11 SCC 259: 2004 SCC OnLine SC 477 that the benefit of the discrepancy would go to the defence. It was observed at page 265:

“14.... Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has, in specific terms, taken a stand that the FIR came into being only after the dead body was recovered....”

19. It was held in *Javed Masood v. State of Rajasthan*, (2010) 3 SCC 538: (2010) 2 SCC (Cri) 1176: 2010 SCC OnLine SC 347

that the defence can take advantage of any statement made in the cross-examination. It was observed at page 543:

“20. In the present case, the prosecution never declared PWs 6, 18, 29 and 30 “hostile”. Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence from relying on their evidence.

21. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)* [(2005) 5 SCC 258: 2005 SCC (Cri) 1037] observed: (SCC pp. 270-71, paras 30-31)

“30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*[(2005) 5 SCC 272: 2005 SCC (Cri) 1050]. In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared ‘hostile’. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor, and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police, in which the police had gone to the Bahai Temple and apprehended the accused. When Goel did not support that case, the accused could rely on that evidence.”

The proposition of law stated in the said judgment is equally applicable to the facts in hand.”

20. Hence, his testimony will make the prosecution suspect that the accused had obstructed the informant from discharging his duties.

21. The informant stated that the accused had taken away the notice to their room. This was also not supported by Babu Ram, who stated that the pieces of the paper were picked up from the spot and were handed over by Radha Devi to the police.

22. Babu Ram stated in his cross-examination that he is the brother-in-law of Sunil, and he did not have a cordial relationship with Radha Devi. Thus, he had no reason to favour the accused and all the reasons to favour the informant. The fact that Babu Ram has not supported the informant's version would make the prosecution's version doubtful.

23. There was no other corroboration to the testimony of the informant, and the learned Appellate Court had taken a reasonable view while acquitting the accused. This Court will not interfere with the reasonable view of the Court acquitting the accused, even if another view is possible.

24. No other point was urged.

25. In view of the above, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

26. 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.

27. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

22nd July, 2026
(Chander)