

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Criminal Appeal No.316 of 2011
Date of Decision: 21.08.2026**

State of Himachal Pradesh	Versus	Appellant
Thakur Dass @ Thakaru & Anr.		Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the appellant: Mr. Vishal Panwar, Additional Advocate General with Mr. Ravi Chauhan, Deputy Advocate General.

For the respondents: Mr. Varun Rana, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal appeal filed under Section 378 of Cr.P.C., lays challenge to judgment dated 25.03.2011 passed by the learned Sessions Judge, Mandi, H.P., in Criminal Appeal No. 37 of 2007, reversing the judgment of conviction and order of sentence dated 27.11.2007 passed by learned Sub-Divisional Judicial Magistrate, Chachiot at Gohar, District Mandi, HP, whereby the trial Court, while holding the respondents/accused (hereinafter referred to as the “**accused**”), guilty of having committed offence punishable under Section 324 read with Section 34 of the Indian

Penal Code, convicted and sentenced them to undergo simple imprisonment for a period of six months and pay a fine of Rs.1,000/- each.

2. Precisely, the facts of the case, as emerge from the pleadings, as well as the other material adduced on record by the respective parties, are that on 15.08.2003, complainant Yog Raj (PW-1) lodged a report at Police Station Gohar, alleging therein that at about 11:00 a.m., while he, along with Tek Singh (PW-8), had gone to see the programme of 15th August at Killing High School, and was sitting in the verandah of the school, where 150-200 persons were already sitting, accused, who were sitting behind them, started arguing with them without any reason. He alleged that when they objected to the same, the accused became furious and one of accused Thakru gave a knife blow on his back and another accused caught hold of him from his neck. He alleged that when Tek Singh tried to rescue him, accused Thakru Ram also gave him a knife blow on his right leg. He alleged that aforesaid incident was witnessed by Amar Singh, Duni Chand, and many others, but accused fled away from the spot taking advantage of the crowd. In afore background, FIR No. 99/2003 dated 16.08.2003 under Sections 324 & 34 of Indian Penal Code came to be registered against the accused.

3. Police, after getting both the injured, namely, Yog Raj and Tek Singh medically examined, visited the spot, prepared the site plan, and took into possession the weapon of offence, i.e., knife along with blood-stained clothes vide seizure memos. After completion of the investigation, police presented the *challan* in the competent court of law, which, being satisfied that a prima facie case under Section 324 read with Section 34 Indian Penal Code is made out against the accused named in the FIR, framed charges against them under aforesaid provision of law, to which they pleaded not guilty and claimed trial.

4. Prosecution, with a view to prove its case, examined as many as eight witnesses. Accused, in their statements recorded under Section 313 Cr.P.C., denied the case of the prosecution in toto. However, despite sufficient opportunities, accused failed to lead any evidence in defence. Learned trial Court, on the basis of evidence, both oral and documentary, adduced on record, held the accused guilty of their having committed the offences punishable under Sections 324 and 34 of Indian Penal Code, and accordingly sentenced them as per the description given hereinabove.

5. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and sentence, the accused preferred an appeal in the Court of

learned Sessions Judge, Mandi, H.P., which was allowed vide judgment dated 25.03.2011. In the aforesaid background, appellate-State has approached this Court in the instant proceedings, praying therein for setting aside the judgment of acquittal passed by the learned Sessions Judge and restore the judgment of conviction and order of sentence recorded by the learned Court below.

6. Precisely, the grouse of the appellant-State, as has been highlighted in the grounds of appeal and further canvassed by Mr. Vishal Panwar, learned Additional Advocate General representing the appellant/State, is that learned Sessions Judge, Mandi, H.P, while reversing the judgment of conviction and order of sentence recorded by the trial Court, has misconstrued and misinterpreted the cogent and convincing evidence adduced on record by the prosecution to prove the guilt of the accused. He submitted that the learned Sessions Judge, without assigning any plausible reason, has reversed the findings returned by the learned trial Court, which were based upon proper appreciation of evidence. He submitted that the learned First Appellate Court discarded the testimony of the prosecution witnesses for untenable reasons, despite there being no evidence of any enmity between the witnesses and the accused. He

further submitted that no reasons whatsoever were assigned for discarding the version of the official witnesses. He submitted that acquittal of the accused in this case in disregard of material evidence adduced on record is wholly unreasonable and as such, the impugned judgment is liable to be set aside. He submitted that learned Appellate Court wrongly discarded the truthful testimony of prosecution witnesses, particularly when there was nothing on record to show that witnesses had any hostile animus or enmity towards the accused to implicate them in a false case. While making this Court peruse statements of prosecution witnesses, Mr. Panwar submitted that nothing favourable to the accused had emerged in the cross-examination of witnesses, and virtually there was no effective cross-examination of the witnesses on record, from which it could be inferred that the injuries sustained by the victims were caused due to a fall and were not the result of the beatings allegedly given by the accused. While referring to paragraph 22 of the judgment passed by the learned First Appellate Court, Mr. Panwar submitted that learned Sessions Judge has given self-contradictory findings to disbelieve the truthful deposition of the prosecution witnesses. On one hand, learned Court below held that application moved by the complainant party, seeking therein to compound

the offence, is not relevant for deciding the appeal and on the other hand, it relied upon the contents of the said application to the advantage of the accused, despite there being overwhelming evidence adduced on record to prove their guilt beyond reasonable doubt.

7. To the contrary, Mr. Varun Rana, learned counsel representing the accused, supported the impugned judgment of acquittal passed by the learned Sessions Judge, Mandi, Himachal Pradesh.

8. Having heard learned counsel for the parties and perused the material available on record vis-à-vis reasoning assigned in the impugned judgment of acquittal recorded by the learned Sessions Judge, Mandi, District Mandi, Himachal Pradesh, this Court finds no illegality or infirmity in the same and as such, no interference is called for.

9. Before ascertaining the correctness of findings returned in the impugned judgment passed by the learned Sessions Judge, it would be apt to take note of statements of some of the material prosecution witnesses.

10. Complainant, while deposing as PW-1, stated that on 15.08.2003, while he had gone to Killing High School to watch the programme, at about 1:00 p.m., accused, who were sitting behind him, started pelting stones. He deposed that he requested the accused not to do

so, but they became furious, and one of the accused namely Thakur Dass gave him a knife blow on his back, while another accused caught hold of him by his neck. He deposed that when Tek Singh (PW-8), who was sitting with him, tried to rescue him, accused Thakur Dass also gave him a knife blow on his right leg. He further deposed that Duni Chand, Amar Singh, Hukam Chand and other persons, who were present at the spot, had witnessed the incident. He deposed that he, along with Tek Singh (PW-8), went to Police Station Gohar and reported the matter. He also deposed that accused Thakur Dass left the knife at the spot, which was handed over to the police by Tek Singh. He also stated that on the following day, he handed over his blood-stained underwear to the police, which was taken into possession vide seizure memo Ext. PW-1/A, bearing his signatures as well as those of Inder Singh and Hukam Chand. He identified the knife Ext. P-1 and underwear Ext.P-2 belonging to him. In his cross-examination, nothing favourable to the accused could be elicited from his testimony. However, he could not state who was sitting on his right and left sides.

11. PW-2 Inder Singh is a formal witness, in whose presence Tek Chand (PW-5) handed over the knife to the police vide seizure memo Ext. PW-1/A and he also signed the same.

12. PW-3 Amar Singh, who was also present at the scene of occurrence, deposed that injured Yog Raj (PW-1) and Tek Singh (PW-8) were also watching the programme there, and quarrel took place *inter se* the accused and the injured persons. He deposed that Yog Raj and Tek Singh were given knife blows by the accused.

13. PW-4 Tek Chand deposed that, while the programmeme was in progress, he heard a noise that Yog Raj and Tek Singh had been given knife blows by the accused persons and had suffered injuries, whereafter the accused persons fled from the spot.

14. PW-5 Dr. Banita Kapoor proved the MLCs Ext. PW-5/A and PW-5/B pertaining to Tek Singh and Yog Raj, respectively. She deposed that injuries shown in the MLCs were possible by knife blow. She admitted that if a person falls on a sharp object, injuries shown in the MLCs are possible.

15. Similarly, PW-6 Padam Singh, proved the copies of Rapat Nos. 13 and 16, marked as Ext. PW-6/A and Ext. PW-6/B, respectively, on the basis of which FIR Ext. PW-6/C came to be lodged.

16. Inder Singh (Investigating Officer), while deposing as PW-7, deposed that he conducted the investigation and prepared the site plan Ext.

PW-7/A including the marginal notes. He further deposed that he took into possession the blood-stained trouser vide seizure memo Ext.PW-7/B. He deposed that he recorded the statements of witnesses and after completion of the investigation, handed over the file to SI/SHO Sharvan Kumar, who prepared the challan and presented the same before the Court. In his cross-examination, he admitted that knife Ext. P-1 is easily available in the market. He further deposed that there was no blood at the spot.

17. Tek Singh, another injured witness, was examined as PW-8, who corroborated the version of PW-1 Yograj. He deposed that while they were watching the programme at Killing High School on 15.08.2003, at about 1:00 p.m., accused started pelting stones and when they were requested to sit quietly, accused Thakur Dass took out a knife and gave blow on the back of Yograj, and when he tried to rescue Yograj, accused also gave him knife blow on his leg. He deposed that accused Shyam Lal caught hold of Yograj by his neck, and in the meantime, chaos ensued and the accused persons fled from the spot, leaving behind the knife at the spot. In his cross-examination, he admitted that number of persons were present at the spot. He deposed that when the scuffle took place, confusion was

created and persons stood up at their places. He admitted that there were no bloodstains on the knife.

18. As per the MLC brought on record, the injury found by the doctor on the right thigh of Tek Singh (PW-8) was 3 cm in length and was caused by a sharp-edged weapon, whereas the injury on the person of Yograj (PW-1) was located near the lumbar spine on the right side, measuring 0.5 cm in depth, with the edges being muscle-deep at the centre.

19. As has been taken note herein above, both Tek Singh and Yog Raj categorically stated that Thakur Dass gave a knife blow on the back of Yograj. The knife produced in the court was not having bloodstains, meaning thereby, the knife was not scientifically connected with the injuries sustained by the injured persons.

20. PW-5, Dr. Banita Kapoor, stated that injuries could have been caused with knife Ext. P-1, but in her cross-examination, she admitted that if a person falls on sharp substance, the injuries shown in the MLC could also have been caused.

21. Interestingly, in the case at hand, an application was filed before the court by the complainants, seeking therein permission to compound the offence. In afore application as well as compromise,

complainants stated that they were all-good friends. In case the aforesaid fact is taken into consideration that they were all-good friends, case of the prosecution becomes doubtful, particularly when several persons were present at the spot at the time of the incident. As per injured, stones were pelted by the accused persons, who were just behind them. If stones were pelted, then other persons might have received injuries, and non-examination of such persons itself creates doubt with regard to factual story put forth by the prosecution. Moreover, weapon of offence was not scientifically connected with the accused, coupled with the fact that the doctor specifically stated that, if a person falls on a sharp-edged object or surface, severe injuries could be caused. Once in view of events and subsequent events, as taken note herein above, story put forth by the prosecution became doubtful, no illegality can be said to have been committed by the learned Sessions Judge, while reversing the judgment of conviction and order of sentence recorded by learned trial court, which otherwise does not appear to be based upon proper appreciation of evidence.

22. Once complainants themselves moved an application for compounding of offence on the ground of their old friendship, possibility of

false implication of the accused cannot be ruled out. As per material prosecution witnesses, stones were pelted during the incident and the accused persons may have been falsely implicated. Once knife allegedly used in the commission of offence has not been connected with the injuries inflicted on the person of the complainant, coupled with the fact that stones were pelted at the time of alleged incident, there is a possibility that complainants suffered injury on account of pelting of stones, cannot be ruled out.

23. It also emerges from the evidence that steel chairs were kept for the programme. Since chaos took place after altercation *inter se* accused and the complainants, possibility of complainants' having suffered injury on their fall on steel chairs also cannot be ruled out.

24. Hon'ble Apex Court in case titled **Chandrappa and Others Vs. State of Karnataka (2007) 4 Supreme Court Cases 415**, laid down the general principle regarding power of Appellate Court, while dealing with the appeal against order of acquittal. In afore judgment, Hon'ble Apex Court held that while deciding appeal, Appellate Court, must keep in mind that in case of acquittal, there are two presumptions in favour of the accused. Firstly, the presumption of innocence available to him under the

fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

25. If two reasonable views are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.

Relevant paras of the afore judgment read as under:-

“41. Recently, in Kallu v. State of M.P. [(2006) 10 SCC 313 : (2006) 3 SCC (Cri) 546 : AIR 2006 SC 831] this Court stated : (SCC pp. 317-18, para 8)

“8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

26. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds no illegality or infirmity in the impugned judgment of acquittal passed by the learned Sessions Judge, Mandi, Himachal Pradesh, which appears to have been passed on the proper appreciation of facts and as such, same is upheld. Accordingly, present appeal fails and is dismissed along with pending applications, if any. Bail bonds, if any, furnished by the respondents are hereby discharged.

August 21, 2026
(sunil)

(Sandeep Sharma),
Judge