

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 188 of 2013****Reserved on: 16.09.2026****Date of Decision: 29.09.2026.**

State of H.P.

...Appellant

Versus

Sadiq Mohammad & Ors.

...Respondents

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ No*For the Appellant : Mr Jitender Sharma,
Additional Advocate General.For Respondents No.1, 2 & 4 : Mr Suneet Goel, Senior
Advocate with Mr Aman
Hansretta, Advocate.

Respondent No.3 stated to have expired.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 19.12.2012 passed by learned Chief Judicial Magistrate Sirmaur, District at Nahan (learned Trial Court) vide which the respondents (accused before learned Trial Court) were acquitted of the charged offences. *(The parties shall hereinafter be referred*

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

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 before the learned Trial Court against the accused for the commission of offences punishable under Sections 435, 323 and 325 read with Section 34 of the Indian Penal Code (IPC). It was asserted that the informant, Nazir Ali (PW1), Sharafat Ali (PW2), Husna and Noor Jahan were sorting the chaff in their cattle shed on 30.11.2008. Accused Sharif, Sadiq, and Ramjan came to the spot armed with sticks at about 05:30 p.m. and claimed that they should not sort the chaff on the spot because the land belonged to them. They gave beatings to the informant party with the sticks. Sharafat Ali, Husna and Noor Jahan sustained injuries. They reported the matter to the police. When they returned on 01.12.2008, Fatima Khatoon told them that the chaff was thrown into the river by the accused on 30.11.2008 and Ali Mohammad had burnt the chaff. The matter was reported to the police, and the informant's statement (Ext.PW1/A) was recorded, which was sent to the Police Station where FIR (Ext.PW6/A) was registered. ASI Babu Ram (PW6) investigated the matter. He prepared the

site plan (Ext.PW6/C) and took the photographs (Ext.PW6/1 to Ext.PW6/5), whose negatives are Ext.PW6/6 to Ext.PW6/10. He seized the ash of the burnt chaff (Ext.PX) vide memo (Ext.PW3/A). Sadiq Mohd and Sharif produced the sticks (Ext.P1 and Ext.P2) which were seized vide memo (Ext.PW4/A and Ext.PW4/B). The ash was put in a cloth parcel, and the parcel was sealed with seal "A". Seal impression (Ext.PW6/D) was taken on a separate piece of cloth. The resolution of Gram Panchayat Mark "X" was seized vide memo (Ext.PW6/E). Dr Sanjay Sharma (PW5) examined the injured Sharafat Ali, Salamti, Niymat, Husna and Noor Jahan and found that they had sustained simple injuries that could have been caused by means of the sticks (Ext.P1 and Ext.P2). He issued the MLC (Ext.PW5/A, Ext.PW5/B, Ext.PW5/D2, Ext.PW5/F. He also examined Nazir Ali and found that he had sustained multiple injuries. He sought the opinion of the Radiologist, who found a fracture of the third metacarpal of the left hand. Hence, the nature of the injury was grievous, which could have been caused by means of the sticks (Ext.P1 and Ext.P2). He issued the MLC (Ext.PW5/C). Statements of witnesses were recorded as per their version, and after the

completion of investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under Sections 435, 325 and 323 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. Nazir Ali (PW1) and Sharafat Ali (PW2) are the victims. Noor Mohammad (PW3) and Constable Nasib Singh (PW4) witnessed the recovery. Dr Sanjay Sharma (PW5) conducted the medical examination. ASI Babu Ram (PW6) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution case in its entirety. They claimed that no independent witness had deposed against them and they were innocent. They did not produce any evidence in their defence.

6. The learned Trial Court held that the statements of the prosecution witnesses contradicted each other on material

aspects. They exaggerated the initial version narrated to the police. The person who had seen the accused putting the chaff on fire was not examined. There was a delay in reporting the matter to the police. One independent witness to the recovery has not supported the prosecution case. All these circumstances made the prosecution case suspect. Therefore, the learned Trial Court acquitted the accused of the charged offences.

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 had failed to appreciate the evidence on record. The statements of witnesses were corroborated by the medical evidence, and there was no justification to reject the statements of the prosecution witnesses. 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 Sharma, learned Additional Advocate General for the appellant/State and Mr Suneet Goel, learned Senior Advocate, assisted by Mr Aman Hansretta, learned counsel for respondents No.1, 2 & 4/accused.

9. Mr Jitender Sharma, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. The statements of prosecution witnesses corroborated each other on material aspects. The medical evidence had also supported the version of the prosecution witnesses, and the learned Trial Court erred in rejecting the prosecution case. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Suneet Goel, learned Senior Advocate for the respondents, submitted that there was a delay in reporting the matter to the police which was not explained. The person who had seen the accused putting the chaff on fire was not examined. The statements of prosecution witnesses contradicted each other on material aspects, and the learned Trial Court was justified in rejecting the prosecution version. The learned Trial Court had taken a reasonable view that could have been taken based on the evidence led before it, and this Court should not interfere with the reasonable view of the learned Trial Court even if another view is possible. Therefore, he 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 *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 technical; 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.

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

14. The statement (Ext.PW1/A) mentions that the informant party was sorting the chaff on 30.11.2008, when they were beaten at about 05:30 p.m. They went to the police station to report the matter. However, no such report was brought on record. ASI Babu Ram (PW6) stated that somebody had made a report to the Police regarding the incident and he had gone to the village for verification. This report was probably written at the instance of Eid Mohammad. Thus, the Investigating Officer had not supported the prosecution version that the informant party had gone to Nahan for reporting the matter to the police, and they had reported the matter to the police as well.

15. Nazir Ali (PW1) stated that they went to the hospital where the police met them. He volunteered to say that the police had met him in the village. Sharafat Ali (PW2) has not stated

anything about reporting the matter to the police. ASI Babu Ram (PW6) had recorded the informant's statement on 02.12.2008 at about 03:20 p.m., two days after the incident. There is no explanation for the delay. The learned Trial Court had rightly held that the delay in reporting the matter would be a circumstance against the prosecution. 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-dated 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."

16. 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].”

17. 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.”

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

19. The statement (Ext.PW1/A) mentions that Fatima Khatoon told the informant Nazir Ali (PW1) that the accused had

thrown the chaff into the river and Ali Mohammad had put the chaff on fire. Fatima Khatoon was not examined as a witness, and there is no reason for her non-examination. Therefore, the learned Trial Court was justified in holding that the prosecution version that the accused had put the chaff on fire was not proved.

20. Nazir Ali (PW1) stated that the accused Sharif Mohd, Sadiq Mohd. and Ramjan Ali came to the spot and claimed that the land belonged to them. They gave beatings to the informant party, and the informant party sustained injuries. Sharafat Ali (PW2) stated that Sadiq, Sharif, Ali Muhammed and Ramjan came to the spot and gave beatings to the informant party with sticks. Thus, it is apparent that the witnesses have made a generalised statement without specifying the individual role of a person. They have not mentioned the names of the assailants and the names of the victims. It was laid down by the Hon'ble Supreme Court in *Pandurang vs. State of Hyderabad, AIR 1955 SC 216*, that it is unsafe to rely upon the omnibus statement that the accused had committed the offence. It was observed:

“Rasikabai says that the "accused" raised their axes and sticks and threatened her when she called out to them, but

that again is an all-embracing statement which we are not prepared to take literally in the absence of further particulars. People do not ordinarily act in unison like a Greek chorus, and, quite apart from dishonesty, this is a favourite device with witnesses who are either not mentally alert or are mentally lazy and are given to loose thinking. They are often apt to say "all" even when they only saw "some" because they are too lazy, mentally, to differentiate. Unless, therefore, a witness particularises when there are several accused, it is ordinarily unsafe to accept omnibus inclusions like this at their face value."

21. Therefore, the statements of the witnesses that the accused persons had given beatings to the informant party could not have been used to convict the accused.

22. Sharafat Ali (PW2) claimed that his three teeth were damaged in the incident. Dr Sanjay Sharma (PW5) examined Sharafat Ali (PW2) and found a lacerated wound on the occipital region and an abrasion on the back. He had not found any injury to the face or any damage to the teeth. Therefore, his testimony is not supported by the medical evidence.

23. Nazir Ali (PW1) stated in his cross-examination that they went to the hospital and not to the police station. The police were called to the hospital, but his statement was not recorded in the hospital. He remained admitted to the hospital. The police left the spot. He remained in the hospital for 8-10 days.

Thereafter, he stated that he had visited the village on the next day.

24. Learned Trial Court had rightly pointed out that this witness has grossly exaggerated his version. It is nobody's case that the informant party was admitted to the hospital for 8-10 days.

25. Nazir Ali (PW1) admitted in his cross-examination that he and his uncle had a civil suit pending before the Court, which shows that the relationship between the parties was strained and the learned Trial Court was justified in seeking the corroboration of the statement of this witness.

26. Sharafat Ali (PW2) stated in his cross-examination that he could not say who had beaten whom and which part of the body was injured. Nazir Ali (PW1) stated that he had sustained one injury on his left hand, but he could not say who was injured in the other person. Thus, these witnesses could not give the details of the incident regarding the role of the accused and the injuries sustained by the informant party.

27. Sharafat Ali (PW2) stated that all the persons had sustained bleeding injuries and the clothes were stained with

blood. He had reported the matter to the police, and thereafter he went to the hospital. The police came to the hospital first, but did not record his statement. He had left for PGI, where he remained admitted for 3-4 days.

28. Dr Sanjay Sharma (PW5) had examined Sharafat Ali on 30.11.2008 at about 09:45 p.m. The examination of the informant party on 30.11.2008 has not been explained by the prosecution. The earliest version narrated by the informant party to the police, which led to their examination on 30.11.2008, was withheld, which would have been the immediate version of the incident and would have revealed the genesis of the incident. Therefore, the learned Trial Court was justified in doubting the prosecution case because of this fact.

29. The other injured were not examined before the Court and there is no corroboration to the testimonies of Nazir Ali (PW1) and Sharafat Ali (PW2).

30. Noor Mohammad (PW3) is the witness to the recovery of ash. However, there is no evidence that the accused had put the raised chaff on fire. Therefore, this recovery will not implicate the accused.

31. Constable Naseeb Singh witnessed the recovery of the sticks. However, the evidence that the accused had used the stick is not satisfactory, and no benefit can be derived from the recovery of the sticks.

32. There is no other evidence to prove the prosecution case, and the learned Trial Court had taken a reasonable view while acquitting the accused. This Court will not interfere with a reasonable view of the learned Trial Court, even if another view is possible

33. No other point was urged

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

35. 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 are directed to furnish bail bond in the sum of ₹50,000/- each with one surety each of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the

leave, the respondents on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

29th September, 2026
(Nikita)