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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 270 of 2013
Reserved on: 18.03.2026
Date of Decision: 27.4.2026.

State of H.P. ...Appellant

Versus

Surinder Kumar & Ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Appellant	:	Mr Lokender Kutlehria, Additional Advocate General.
For respondent No.1	:	Ms Anjali Soni Verma, Advocate.
For respondents No.2 & 3	:	Ms Sangeeta Vasudeva, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.12.2012 passed by learned Chief Judicial Magistrate, Kangra at Dharamshala, District Kangra, H.P. (Learned Trial Court) vide which the respondents (accused before learned Trial Court) were acquitted of the commission of offences punishable under Sections 41 and 42 of Indian Forest Act read with Rules 11 and 20 of Himachal Pradesh Forest Produce Transit (Land

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

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Routes) Rules 1978. (HP Forest Rules) *(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 before the learned Trial Court against the accused for the commission of offences punishable under Sections 41 and 42 of the Indian Forest Act and Rule 20 of the HP Forest Rules. It was asserted that ASI Ashwani Kumar (PW 16), Sarvesh Chand Sharma (PW 1), Jagdish Gautam (PW 11), Kehar Singh, Tarlok Chand, and other police officials had set up a naka on 13.04.2006 near petrol pump Rait. A vehicle bearing registration No. HP-68- 1060 came from Shahpur at high speed. The driver was signalled to stop. The driver stopped the vehicle at some distance. The driver and two other persons left the vehicle and ran away. The vehicle was checked. Three sleepers and 20 scants of different sizes of 'Peepal' were found in the vehicle. Rattan Chand and Feroz Deen were found along with the timber. They revealed during the enquiry that the timber belonged to Mohinder Kumar and Surinder Kumar, Misso was driving the vehicle, and the timber was being transported to Gharoh. Sarvesh Chand Sharma made a statement (Ext. PW 1/A),

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which was sent to the Police Station, where FIR (Ext. PW 10/B) was registered. SI Ashwani (PW 6) investigated the matter. He prepared the site plan (Ext. PW 16/A), seized the timber and the vehicle vide memo (Ext. PW 1/B) and arrested Surinder, Mohinder, and Rajinder Kumar. Mohinder and Surinder made statements (Ext. PW 1/A and Ext. PW-3/A) that they could get the timber recovered. Mohinder and Surinder led the police to the jungle and recovered six scants (Ext. P 24 to Ext. P 29), which were seized vide memo (Ext. PW 1/E). Surinder and Mohinder also identified a tree that they had felled, whose timber was converted into scants and sleepers. Memo (Ext. PW 1/D) was prepared. The timber was handed over to Sarvesh Chand Sharma on Sapurdari. The site plans (Ext. PW 16/A and Ext. PW 16/C) were prepared. The photographs of the spot (Ext. PW 16/D to Ext. PW 16/N) were taken. The spot was demarcated, and the report of demarcation (Ext. PW 16/O) was obtained. The truck bearing registration No. HP- 68- 1060 was seized along with the documents vide memo (Ext. PW 5/A). Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

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3. The 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 an offence punishable under Sections 41 and 42 of the Indian Forest Act, read with Rules 11 and 20 of the H.P. Forest Rules, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 16 witnesses to prove its case. Sarvesh Chand Sharma (PW1) is the informant and a witness to the recovery. Shubh Karan (PW2) was the person to whom timber was handed over on Sapurdari. Ravinder Kumar (PW3) is the witness to the disclosure statements. Janbheg Singh (PW4) proved that Onkar Singh had died on 24.08.2006. Sanjeev Kumar (PW5) witnessed the recovery. Rajinder Kumar (PW6) prepared the jamabandi and tatima. Prithvi Nath (PW7), Rattan Chand (PW9) and Rajesh Kumar (PW12) did not support the prosecution case. Madan Lal (PW8) is the Forest Guard. ASI Parvesh Kumar (PW10) signed the FIR. Jagdish Gautam (PW11) was a member of the Naka party. SI Onkar Nath (PW13) and SI Ashwani (PW16) investigated the matter. Pritam Singh (PW14) prepared the challan. Inspector Bahadur Singh (PW15) prepared the supplementary challan.

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5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution case in its entirety. They claimed that they were innocent and had been falsely implicated. They did not produce any evidence in their defence.

6. Learned Trial Court held that the identity of the persons who had run away from the spot could not be ascertained. The prosecution's evidence did not explain how the accused were connected to the commission of the crime. There was no evidence that Rajinder was driving the vehicle, and Mohinder and Surinder were transporting the wood. The disclosure statements made by the accused were also not properly proved. The prosecution had failed to prove its case beyond a reasonable doubt. Therefore, 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 failed to properly appreciate the evidence. The statements of prosecution witnesses were discarded without any cogent reasons. The witnesses specifically asserted that the accused were

transporting the wood without a permit. The accused had made the disclosure statements, which were duly proved by Sarvesh Chand Sharma (PW1) and Ravinder Kumar (PW3). The wood was recovered pursuant to the disclosure statements made by the accused, and it was produced before the Court. The prosecution had proved its case beyond a reasonable doubt, and the learned Trial Court had taken an unreasonable view while acquitting the accused. Hence, 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 Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Ms Anjali Soni Verma, learned counsel for respondent No. 1/accused and Ms Sangeeta Vasudeva, learned counsel for respondents No.2 and 3/accused.

9. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. Statements of prosecution witnesses corroborated each other in material particulars and proved the identity of the accused. The accused had made a disclosure statement, which led to the recovery of the wood. The

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learned Trial Court ignored all these circumstances and wrongly acquitted the accused. Hence, 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 respondent No.1/accused submitted that the accused were not apprehended on the spot. The learned Trial Court had rightly observed that there was no evidence to connect them to the commission of the crime. Learned Trial Court had taken a reasonable view, and this court should not interfere with a reasonable view of the learned Trial Court, even if another view is possible. Hence, she prayed that the present appeal be dismissed.

11. Ms Sangeeta Vasudeva, learned counsel for respondents No.2 and 3/accused adopted the submissions of Ms Anjali Soni Verma and prayed that the 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, 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 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 mis-reading/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. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. It is an admitted case of the prosecution that the police had only apprehended Rattan Chand and Feroz Deen on the spot, who disclosed the names of Mohinder Kumar and Surinder Kumar as the owner and the name of the driver as Misso. Sarvesh Chand Sharma (PW1) stated that Rajinder Kumar @ Misso was driving the vehicle. Mohinder and Surender were sitting in the vehicle. They ran away after stopping it. He admitted in his cross-examination that there was no streetlight and it was dark at the place of the incident. He admitted that occupants of the vehicle had run away from the spot, taking advantage of the darkness. He admitted that the accused were not apprehended in his presence and they were not identified by him.

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17. The cross-examination of this witness shows that the place of the incident was dark. No Test Identification Parade was conducted to identify the accused. It was laid down in ***State of Himachal Pradesh v. Ram Sarup, 1996 SCC OnLine HP 70,*** that when the incident occurred in total darkness, but it is not specified as to how the accused were identified, their identification is suspect. Similarly, it was held in ***Bollavaram Pedda Narsi Reddy v. State of A.P., (1991) 3 SCC 434: 1991 SCC (Cri) 586: 1991 SCC OnLine SC 183*** that where the occurrence took place in the night, and the assailants were strangers, the identification assumes significance. It was observed at page 440:

> **"10.** Therefore, in the absence of cogent evidence that PWs 1 and 2 by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the appellants are the real assailants. There is no whisper in Ex. P-1 that there was some source of light at the scene. The omission cannot be ignored as insignificant. When the Investigating Officer visited the scene, he made reference to the street lights, petrol bunk light, etc. Whether the street lights and the petrol bunk light had been burning at the time of the occurrence, and the spot where the incident happened was so located as to receive the light emanating from these sources, are required to be made out by the prosecution. When this significant fact is

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> left out in the earliest record, the improvement in the course of the investigation and trial could be of no avail. The fact that there had been no proof regarding the identity of the assailants until August 18, 1974, would suggest that even persons who collected at the scene in the course of the incident or soon thereafter were not in a position to identify any one of the assailants. Since the Investigating Officer arrived at the scene the same night and the inquest was held the next morning, it would have been possible for the investigating agency to collect information regarding the identity of the assailants earlier to August 18, 1974, if they had been really identified by any one of the witnesses examined in the case. When no natural light was available, and the street light was at a distance, it is unlikely that the eye-witnesses, by a momentary glance of the assailants who surrounded the victim, had a lasting impression and the chance of identifying the assailants without mistake. The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorise the impression. This aspect of the matter had been stressed by the trial court in appreciating the evidence of PWs 1 and 2. The High Court has ignored the inherent infirmity and failed to deal effectively with every important circumstance in the evidence which weighed with the trial court to disbelieve the prosecution's case."

18. The prosecution relied upon the identification made for the first time in the Court. Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

> "It might be thought that in criminal cases there could not be better identification of an accused than that of a

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> witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that, if there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.
>
> People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

19. It has been stated in ***Halsbury's Laws of England 4th Edition Volume 2*** that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

> "It is undesirable that a witness should be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

20. It was laid down by the Hon'ble Supreme Court in ***P. Sasikumar v. State of T.N., (2024) 8 SCC 600: (2024) 3 SCC (Cri) 791:***

2024 SCC OnLine SC 1652 that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed on page 605:

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP") was not conducted. All the prosecution witnesses who identified the accused in the Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!
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> **xxx**
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> **21.**It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW 1 made for the first time in the court was not proper.
>
> **xxxx**
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> **23.** We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the

dock identification by such a witness (see: ***Kunjumon v. State of Kerala***, (*2012) 13 SCC 750: (2012) 4 SCC (Cri) 406]*).

xxx

27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the recent two cases of ***Jayanv. State of Kerala, (2021) 20 SCC 38*** and ***Amrik Singh v. State of Punjab, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404***.

28. In ***Jayan v. State of Kerala, (2021) 20 SCC 38***, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the aspect of TIP in the following words: (***Jayan v. State of Kerala, (2021) 20 SCC 38***, SCC p. 44, para 18)

"*18*. It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

21. Jagadish Gautam (PW11) stated that a truck came from Shahpur at about 11:30 at a high speed. The driver of the truck stopped it at some distance from the naka party. The driver and two people ran away from the spot. Rattan Chand (PW9) and Feroz Deen were found sitting with the wood on the

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rear side of the vehicle. They disclosed that the timber belonged to Surinder Kumar and Mohinder, and the name of the driver was Misso. He stated in his cross-examination that he had apprehended two persons, Rattan Chand and Firoz Deen. He admitted that no Identification Parade was conducted by the police.

22. The cross-examination of this witness also shows that the accused were not apprehended on the spot and their names were disclosed by Rattan Chand and Firoz Deen. The police did not conduct any Test Identification Parade to test the power of observation of the witnesses and establish that the accused were the occupants of the vehicle.

23. SI Ashwani (PW16) stated that a vehicle came from Shahpur at a high speed. The driver stopped the vehicle at some distance. The driver and two people ran away from the spot. Rattan Chand and Firoz Deen were found sitting on the rear side of the vehicle.

24. The statement of this witness also does not establish the identity of the accused. He has not stated that there was light on the place of the incident to enable the witnesses to identify

the occupants of the vehicle. Therefore, the learned Trial Court was justified in holding that the statements of these witnesses did not establish the prosecution's case.

25. Rattan Chand (PW9) did not support the prosecution’s version. He stated that he was not aware of the facts of the present case. He was permitted to be cross-examined. He denied that Surender Kumar and Mohinder Kumar had brought him to saw timber on 13.11.2006. He denied that the Peepal tree was cut during the daytime and its wood was loaded in the vehicle bearing registration number HP-68-1060 during the night. He denied that the forest and police officials signalled the driver to stop the truck at Rait. He denied that Rajinder alias Misso, Mohinder and Surender ran away after stopping the truck. He denied that the police seized the timber. He denied that he was making a false statement to save the accused.

26. The statement of this witness does not establish that the accused were transporting the timber.

27. Feroz Deen was not produced before the Court, and the summons issued to him were not returned. Hence, the learned Trial Court closed the evidence by the order of the Court.

Thus, an adverse inference has to be drawn against the prosecution for withholding him.

28. The prosecution relied upon the disclosure statement made by Surinder and Mohinder, leading to the discovery of some scants. Learned Trial Court held that the disclosure statement was not proved. Even if it is assumed that a disclosure statement was made and the timber was recovered, there is no evidence to connect the recovered timber to the timber being transported in the vehicle. No expert examined the timber to establish that they belonged to the same tree. The demarcation report (Ext.PW-16/O) shows that the tree existed on Khasra number 945 owned by Onkar Chand (since deceased). Therefore, even if the tree was cut and converted into sleepers and scants, it would not constitute the commission of any offence, unless it is proved that it was being transported in violation of the HP Forest Rules.

29. There is no other evidence to connect the accused to the commission of the crime. Therefore, the learned Trial Court had taken a reasonable view that could have been taken based on the evidence led before the learned Trial Court. This Court will

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not interfere with a reasonable view of the learned Trial Court while exercising the appellate jurisdiction, even if another view is possible.

30. No other point was urged.

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

32. 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 bonds 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.

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

(Rakesh Kainthla)
Judge

27th April, 2026
(Nikita)