IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4148 of 2013
Reserved on: 31.10.2026
Date of Decision: 23.11.2026.

State of H.P. ...Appellant

Versus

Tilak Raj & Ors. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the Appellant/State : Mr Tarun Pathak, Deputy Advocate General.

For the respondents : Mr Karan Singh Kanwar, Senior Advocate, with Mr Yogesh Kumar, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 06.04.2013 passed by learned Judicial Magistrate First Class, Court No. 2, Palampur, District Kangra (learned Trial Court) vide which the respondents (accused before learned Trial Court) were acquitted of the commission of offences punishable under Sections 147, 148, 323, 325 and 427 read with Section 149 of the Indian Penal Code (IPC). *(The parties shall hereinafter be*

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

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 147, 323, 325, and 427 read with Section 149 of the IPC. It was asserted that the informant Jitender Shukla (PW2), Pankaj Dogra (PW1), and Sunny Sharma (PW5) were sitting in a rain shelter at Sakoh on 17th March 2008. The accused, Tilak Raj, Ashok Kumar, Pampla, Neeta, Bablu, Goldi, Chunna, Neelu and some other persons came to the spot at about 9 p.m. Ashok and Pampla inflicted blows on the informant's head with bricks held by them. They pushed the informant and gave beatings to Pankaj. Jeet Kumar (PW3) and Akshay Kumar witnessed the incident. The accused also damaged the windshield of the vehicle bearing registration number DL-3CR-7155. The injured were taken to the police post at Lambagaon, where the informant filed an application (Ex. PW2/A). An FIR (Ex. 11/A) was registered at the police station. An application (Ex. PW15/A) was filed for conducting the medical examination of the injured. Doctor Rajnish Sharma (PW15)

examined the injured, Pankaj Dogra, and found that he had sustained simple injuries that could have been caused within six hours of the examination. He issued the MLC (Ex. PW15/B). Doctor Rajnish Sharma also examined Pankaj Dogra, found that he had sustained multiple injuries, and advised an X-ray. Doctor Kalpana Mahajan (PW10) went through the X-ray and found a fracture of the patella bone. She issued the report (Ex. PW-10/A). Doctor Rajneesh issued the final opinion (Ex. PW15/D) that Pankaj Dogra had sustained grievous injury. ASI Dalip Singh (PW16) investigated the matter. He visited the spot and prepared the site plan (Ext.PW16/A). Jitender Shukla produced the pieces of bricks (Ex. P3 and Ex. P4), which were seized vide memo (Ext.PW2/B). These were put in a cloth parcel, and the parcel was sealed with seal "M". The seal impression (Ex. PX) was taken on a separate piece of cloth. He also seized the Maruti Van vide memo (Ext.PW2/C). Rajesh Kumar took the photographs of the van (Ex. PW9/A1 to Ex. PW9/A3), whose negatives are Ex. PW9/A4 to Ex. PW9/A6. ASI Dalip Singh arrested the accused. Santosh Kumar produced one T-shirt (Ex. P1), undervest (Ex. P2) and sticks (Ex. P5 & Ex. P6) which were seized vide memo (Ex. PW6/A). The T-shirt and undervest were put in a

cloth parcel, and the parcel was sealed with seal 'T'. The seal impression (Ext. PY) was taken on a separate piece of cloth. The 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.

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 147, 148, 323, 325 and 427 read with Section 149 of the IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined sixteen witnesses to prove its case. Pankaj Dogra (PW1) and Jatinder Shukla (PW2) are the victims. Jeet Kumar (PW3) and Sunny Sharma (PW5) are the eyewitnesses. Om Prakash (PW4), Ram Swaroop (PW6), and Santosh Kumar (PW8) witnessed the recovery. Puran Chand (PW7) and Urmila (PW12) reached the spot after the incident and carried the injured to the police station. Rajesh Kumar (PW9) took the photographs. Doctor Kalpana Mahajan (PW10) went through the X-rays and issued the report. ASI Ram Ditta (PW11) signed the FIR. SI Tilak Chand prepared the challan. Doctor Vipin

Sharma (PW14) operated on Pankaj. Doctor Rajnish Sharma (PW15) examined the injured. ASI Dalip Singh (PW16) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. Accused Tilak Raj stated that he had a land dispute with Subhash and that he was falsely implicated. The accused did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of prosecution witnesses contradicted each other on material aspects. The chargesheet was not filed against the persons named in the complaint made to the police. The identity of the accused and the recovery of the weapons were not established. The prosecution had failed to prove its case beyond 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 had failed to properly appreciate the material on record. The statements of the

witnesses corroborated each other. The medical evidence also proved that Pankaj and Jatinder had sustained injuries. The FIR was lodged promptly and corroborated the informant's testimony. Learned Trial Court erred in rejecting the prosecution version. 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 Tarun Pathak, learned Deputy Advocate General for the appellant/State and Mr Karan Singh Kanwar, Senior Advocate, assisted by Mr Yogesh Kumar, learned counsel for the respondent/accused.

9. Mr Tarun Pathak, learned Deputy 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 on material aspects. Minor contradictions in their statements were not sufficient to discard the prosecution version. The statements of the witnesses were duly corroborated by the medical evidence, and the testimony of the injured witness should not have been ignored. The learned Trial Court had taken a reasonable view,

and this Court should not interfere with it. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Karan Singh Kanwar, learned Senior Advocate for the respondents/accused, submitted that the prosecution witnesses had materially improved upon their version. They had made contradictory statements. The identity of the assailants was not established. The learned Trial Court had taken a reasonable view that could have been taken based on the material placed before it. This Court should not interfere with a reasonable view of the learned Trial Court, even if another view is possible while deciding an appeal against acquittal. Hence, 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:**
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> **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.
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> **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:
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> > *"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.
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> **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 re-appreciate 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.
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> **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.
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> **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. Pankaj Dogra (PW1) and Sunny Sharma (PW5) stated that they were going towards Sakoh. They found the accused quarrelling with each other near a shop. The accused gave beatings to Pankaj Dogra without any reason. This is contrary to the initial version recorded in the complaint (Ex. PW2/A) that the informant Jitender, Pankaj and Sunny were sitting in a rain shelter. Even the informant Jitender (PW2) changed this version and stated that he was sitting near the rain shelter. The accused came and gave him beatings. Thus, the prosecution's witnesses have changed the initial version projected in the complaint made to the police.

15. Sunny Sharma (PW5) stated that the accused Tilak Raj and Goldy gave beatings to the informant with sticks. This is contrary to the initial version recorded in the complaint (Ex. PW2/A) that accused Ashok and Pampla inflicted injuries by means of bricks on the informant's head. Thus, he has projected an entirely different version regarding the infliction of injuries. 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."

16. The informant Jitender Shukla (PW2) stated in his cross-examination that he knew the names of Pampla, Ashok, Tilak, Goldy and nephew of Natha. Pankaj Dogra (PW1) stated in his cross-examination that he had identified Shoki, Bablu, Niju,

Golu and Situ on the spot. Sunny Sharma (PW5) stated that it was dark at 9 p.m. ASI Dalip Singh (PW16) admitted in his cross-examination that he had not conducted any test identification Parade during the investigation. 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 a test identification parade is necessary. 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 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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> **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.

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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*).

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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."

17. In the present case, the accused were not known to the informant party, and the incident had taken place during the night; therefore, the learned trial Court had rightly held that the identification of the accused was necessary in a previous test identification Parade and its absence will make the prosecution case regarding the identity doubtful.

18. Sunny Sharma (PW5) stated that the accused indiscriminately beat Pankaj and Goldy. Pankaj (PW1) stated that the accused gave beatings to him and Jitender. Jitender (PW2) stated that the accused gave beatings to Pankaj. No witness has attributed any specific role to the accused. 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."

19. The learned trial Court had rightly pointed out that the assailants mentioned in the complaint were not arrayed as accused before the Court and no reason was assigned for dropping their names, which would put the court on guard.

20. The investigating officer had recovered the pieces of brick and the sticks. However, the complaint (Ex. PW2/A) does not mention that any sticks were used. Doctor Rajnish Sharma also stated that the injuries could have been caused by means of the sticks. Hence, the absence of the sticks in the complaint (Ex. PW2/A) made to the police will be significant.

21. Therefore, the learned Trial Court was justified in holding that there were many discrepancies in the prosecution version, which made it doubtful. The learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible while deciding an appeal against acquittal.

22. No other point was urged.

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

24. 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.

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

(Rakesh Kainthla)
Judge

23rd November, 2026
(Chander)