

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-62-2023 (O&M)

Date of Reserved: 19.02.2026

Date of Pronouncement: 06.03.2026.

State of Haryana

....Applicant.

Versus

Krishan Kumar and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Yuvraj Shandilya, AAG, Haryana.

Mr. Sumit Ruhel, Advocate and
Mr. K.D.S. Hooda, Advocate
for respondent No.2.

Sukhvinder Kaur, J.

1. Applicant-State has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 11.07.2022, passed by learned Additional District and Sessions Judge, Fatehabad, vide which respondents have been acquitted of offences punishable under Sections 341, 323, 325, 307, 506 read with Section 34 of IPC.

2. The factual scenario, as highlighted by the prosecution, is that on 25.02.2016, on receipt of a telephonic information regarding admission of Hanuman and Krishan, ASI Devi Lal along with Constable Sandeep Kumar reached at General Hospital, Fatehabad and after obtaining medical ruqa and MLR, sought the opinion of doctor concerned regarding fitness of

both the injured, whereupon the doctor declared injured Krishan as unfit for making statement whereas, Hanuman was stated to be referred to higher centre. Thereafter, he received intimation regarding admission of Hanuman at V.K. Neurocare Hospital, Hisar and sought the opinion regarding his fitness and the doctor declared injured Hanuman, unfit for making statement. Complainant Ram Niwas (PW4) was found present with the injured in the hospital, who got recorded his statement alleging that he was an agriculturist. On 25.02.2016, his brother Hanuman had left Dhani Badopal on a bicycle for village Badopal and he was standing ahead of the their Dhani. When his brother Hanuman reached near the dhani of accused Shri Ram, he heard some noise whereupon he saw that accused Shri Ram; Krishan and Makhan were beating his brother Hanuman by waylaying him. Accused Shri Ram, Krishan and Makhan were holding weapons like lathis in their respective hands. The complainant further stated that when he ran to the spot to save his brother, then, all the three assailants threatened him that they had already killed one and if he would come there, he would also be killed. However, then all the three assailants along with their weapons fled away from the spot. The incident took place at about 09:30/09:45 am. His brother Hanuman was shifted to General Hospital, Fatehabad by his cousin, namely Ramesh and after first aid, his brother Hanuman was referred by the doctor to higher center and they got him admitted at V.K.Neurocare Hospital. On the basis of his statement, FIR was registered. Tehrir was sent to police station and case was got registered under Section 323, 341, 506 read with Section 34 of IPC. On 26.02.2016, the place of occurrence was inspected in the presence of complainant/ eye witness Ram Niwas and photographs were clicked. Blood stained earth, one broken bamboo stick

one pair of slippers (chappal), one monkey cap and one Atlas cycle were taken into police possession from the spot. From 25.02.2016 to 28.02.2016, injured Hanuman was declared unfit for statement by the doctor concerned. On 29.02.2016, on being declared as fit, statement of injured Hanuman was recorded. After obtaining x-ray report and CT Scan report, opinion of doctor was sought who declared the head injury as dangerous to life and fracture was detected in left hand. Offences under Section 325 and 307 of IPC were added. Accused Makhan Lal and Krishan were arrested. Case property was sent to FSL, Madhuban. After completion of other formalities of investigation, report under section 173 of Cr.P.C. was submitted against accused Krishan and Makhan.

3. After finding a prima facie case against the accused, they were charge-sheeted for the offence punishable under Sections 341, 323, 325, 307, 506 IPC read with Section 34 of IPC, to which they pleaded not guilty and claimed trial.

4. It is pertinent to mention here that during the course of recording of evidence, injured Hanuman was examined as PW2 and complainant Ram Niwas was examined as PW3. Thereafter, an application under Section 319 of Cr.P.C was moved on behalf of complainant Ram Niwas for summoning of Shri Ram as additional accused to face trial with accused Krishan and Makhan in the present case. Vide order dated 13.05.2019 passed by learned Appellate Court, the said application was allowed and Shri Ram was summoned as additional accused to face trial. On appearance of accused Shri Ram, all the three accused persons were charge sheeted for commission of offences punishable under sections 341, 323, 325, 307, 506 of IPC read with section 34 of IPC vide order dated

30.07.2019 by learned Appellate Court to which accused persons pleaded not guilty to the charge and claimed trial.

5. In order to prove its case, the prosecution examined as many as 14 witnesses.

6. A glance at the prosecution evidence reveals that in order to prove its case, prosecution examined PW1 SI Rajender, who tendered his affidavit Ex.PW1/A regarding depositing of parcels containing case property in FSL, Madhuban.

PW2 Rajender Parsad, Patwari, Halqa Badopal, deposed that he had prepared the scaled site plan Ex.P3 and his statement under Section 161 of Cr.P.C. was recorded by investigating officer.

PW3 Inspector Bijender Singh, deposed that after completion of investigation, he prepared final report under Section 173 Cr.P.C. against accused Krishan and Makhan.

PW4 Ram Niwas, complainant, deposed that on 25.02.2016, he was present at his house and he did not see any altercation taking place with his brother Hanuman. He further deposed that accused did not cause any injuries to his brother Hanuman.

PW5 HC Sita Ram, tendered in evidence his duly sworn affidavit Ex.PW5/A regarding depositing of case property and further sending the same except one parcel containing papers and one Atlas cycle, to FSL, Madhuban. He stated that the case property was not tampered with until it remained in his custody.

PW6 Dr. Gaurav Saini, deposed that he prepared MLR Ex.P8 and he had also sent ruqa Ex.P9 to the police station. He further deposed that on 08.03.2016, police moved an application Ex.P10 to CMO, Fatehabad

upon which a Board of Doctors was constituted including him and Dr. Subhash and examination of injured Hauman was conducted and again his MLR (Ex.P8/A) was got prepared.

PW7 Dr. Subhash Chander, deposed that on 08.03.2016, police moved an application Ex.P10 to CMO, Fatehabad upon which a Board of Doctors was constituted including him and Dr.Gaurav Saini and examination of injured Hauman was conducted and again his MLR (Ex.P8/A) was got prepared. On 09.03.2016, he and Dr. Gaurav Saini vide their opinion Ex.P12 declared injury No.01 as dangerous to life.

PW8 SI Devi Lal, the Investigating Officer of this case carried out entire investigating proceedings since the registration of the FIR. He deposed about various investigating proceedings conducted by him during the course of the investigation.

PW9 ASI Ravinder Kumar, accompanied the Investigating Officer on 08.03.2016 and deposed about the various investigating proceedings conducted by the Investigating Officer on the said date.

PW10 SI Sadi Ram, deposed that on 18.04.2016, he moved an application to Tehsildar, Fatehabad, upon which Tehsildar appointed Halqa Patwari Rajender Parshad to visit the place of occurrence. Thereafter, he along with Rajender Parshad, Patwari visited the place of occurrence and Rajender Parshad prepared scaled site plan Ex.P3. On completion of investigation, report under Section 173 of Cr.P.C. was prepared against accused Makhan Lal and Krishan Kumar.

PW11 Dr. Pawan Kumar, deposed that he radiologically examined patient Hanuman and found fracture of lower end radius left side, in the part x-rayed. In this regard, he prepared x-ray report Ex.P24.

PW12 EHC Devender Kumar, deposed that he remained associated with ASI Devi Lal during the investigation in this case.

PW13 Dr. V.K. Gupta, V.K. Neurocare & Trauma Research Hospital, Hisar, deposed that at the time of admission, patient was semi-conscious and not oriented, CT Scan dated 25.02.2016 showed left FT SDH and SAH. X-ray wrist and hand showed fracture left radius and left scaphoid waste. Patient was treated conservatively and discharged on 06.03.2016. He further deposed that he sent ruqa Ex.P29 to police regarding admission of injured Hanuman. The patient was declared unfit for statement vide opinion dated 25.02.2016 to 28.02.2016 Ex.P30 to Ex.P33. On 29.02.2016, the patient was declared fit for making statement vide opinion Ex.P34. He stated that on 29.02.2016, he declared the head injury of patient Hanuman as dangerous to life vide opinion Ex.P36 on the basis of CT-Scan Report Ex.P36/A from Shivam Diagnostic Centre situated in his hospital. He also proved the complete bed head ticket of patient as Ex.P37.

PW14 Anju Bala, Senior Scientific Officer (Serology), FSL, Madhuban, prepared the FSL report Ex.P67 and Ex.P68. She deposed that as per report, blood was detected on Ex.1 i.e. blood stained earth, Ex.2 chappal, Ex.3 lathi, Ex.6 binda of kassi and Ex.7 cap. Ex.4A kurta and Ex.4B payjama, Ex.5A kurta were stained with blood stains. Ex.4C baniyan, Ex.4B sweater, Ex.5B payjama were stained with few small blood stains and human blood was detected on Ex.4A kurta, Ex.4B payjama, Ex.4C baniyan, Ex.4D sweater, Ex.5A kurta, Ex.5B payjama.

7. Statements of accused under Section 313 Cr.P.C. were recorded in which, all incriminating evidence was put to them, which they denied and pleaded innocence and false implication. However, no defence evidence

was led by the accused.

8. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who were accordingly acquitted of the offence for which they had been charge-sheeted, vide impugned judgment dated 11.07.2022.

9. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused/ respondents.

10. Learned counsel for the appellant vehemently contended that the trial Court has failed to consider that PW2 Hanuman had been partially cross-examined by the counsel for the accused and has wrongly held that his examination-in-chief cannot be read into evidence and if unfortunately he had expired his statement is material for fairly adjudicating the case. He further contended that PW2 Hanuman was the injured witness and due to the fact that his remaining cross-examination was not recorded, his statement cannot be discarded completely. He also argued that PW3 Ram Niwas was not a reliable witness as he deliberately concealed the truth and did not support the prosecution case and was declared hostile. Earlier to filing of application under Section 319 Cr.P.C. he had supported the case of the prosecution while appearing as PW3. The trial Court has also failed to appreciate the corroborative medical evidence and the injuries detailed in deposition of PW2 are corroborated with the medical evidence led by the prosecution. He urged that the accused failed to prove any animus for their alleged false implication in the present case. He thus prayed that this appeal be accepted, judgment dated 11.07.2022 be set aside and accused be convicted for the offences as charged with and be punished accordingly.

11. After having heard learned counsel for the appellant at length

and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond the reasonable doubt.

12. In this case, there are two most material witnesses of the prosecution i.e. PW4 Ram Niwas (complainant) and injured/ witness PW2 Hanuman (since deceased). Earlier, before filing of an application under Section 319 Cr.P.C. in his examination-in-chief, PW2 Hanuman supported the case of the prosecution. After summoning of accused Shri Ram as an additional accused and after reframing of charge against accused persons, he could not be examined as by that time he had expired. Thus, the examination-in-chief of this witness had been recorded, earlier to reframing of charge against accused persons after summoning of accused Shri Ram as an additional accused and as such his aforesaid statement cannot advance the case of the prosecution.

13. In the case of **Shashikant Singh Vs. Tarkeshwar Singh,** **2002(5) SCC 738** the Hon'ble Supreme Court held as under:-

“7. Clearly, the proceedings against the person summoned under sub-section (1) are required to be commenced afresh and the witnesses reheard. The entire proceedings have to recommence from the beginning of the trial. All the witnesses have to be examined afresh. Opportunity has to be granted to such a person to cross-examine those witnesses. There has to be a de novo trial.

8. The effect of the conclusion of the trial against the accused who was being proceeded with when the order was passed under Section 319(1) for proceeding against the newly added person, is to be examined in the light of sub-section (4) of Section 319 which stipulates a de novo trial in respect of the newly added persons and certain well settled principles of interpretation.

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10. *The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses re-heard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the Court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination in chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words 'could be tried together with the accused' in Section 319(1), appear to be only directory. 'Could be' cannot under these circumstances be held to be 'must be'. The provision cannot be interpreted to mean that since the trial in respect of a person who was before the Court has concluded with the result that the newly added person cannot be tried together with the accused who was before the Court when order under Section 319(1) was passed..”*

14. Reliance can also be placed on ***Sukhpal Singh Khaira Vs. The State of Punjab, 2023(1) SCC, 289***, where the Constitutional Bench of Hon'ble Supreme Court while giving the guidelines the competent Court must follow while exercising power under Section 319 Cr.P.C. 1973 held as under:-

“33(III)(xi) Even in such a case, at this stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.”

15. The perusal of LCR reveals that as per order dated 04.05.2022 of learned trial Court, this witness (Hanuman) was given up due to his demise. Learned trial Court has rightly held that as such his earlier examination-in-chief recorded as PW2 has no value in the eyes of law and cannot be relied upon and read into evidence.

16. PW4 Ram Niwas, who is complainant in the present case

testified that accused persons facing trial did not cause any injury to his brother Hanuman. He did not identify the accused persons to be the assailants in the alleged occurrence. He denied that he had suffered any statements during the investigation with incriminating allegations against the accused facing trial. He also denied the suggestion that he had compromised the matter with the accused persons. Trial Court has rightly observed that the statement given by the witness in the Court on oath carries much evidentiary value and it would be travesty of justice in case statements suffered by the witnesses before the police during the investigation are preferred, over and above, the statements given in Court on oath. Thus, even PW4 the complainant did not advance the case of the prosecution in any manner and nothing useful to the prosecution could be extracted even during his cross-examination by learned public prosecutor.

17. Only from the medical evidence on record it is not established that the accused persons facing the trial had caused the injuries as alleged.

18. After analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed not sufficient to convict the accused persons of the offence as charged with and they have been rightly acquitted by learned trial Court.

19. It is well settled that judgment of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Supreme Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the

presumption of innocence in favour of the accused is reinforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law.

20. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 11.07.2022 which calls for interference.

21. In view of the above, no case is made out for grant of leave to appeal against acquittal of accused/ respondents. The application without having any merits stands dismissed and the leave to appeal is declined.

22. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(ANOOP CHITKARA)
JUDGE

06.03.2026.

Komal

Whether speaking/reasoned?	:	Yes/ No
Whether reportable?	:	Yes/ No