

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 4146 of 2013****Reserved on: 3.7.2026****Date of Decision: 15.7.2026**

State of H.P.

...Appellant

Versus

Sushil Kumar and others

...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 the Respondents : Mr Arun Kaushal, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 20.03.2013 passed by the learned Judicial Magistrate First Class, Court No. 1, Nurpur District, Kangra, H.P. (learned Trial Court), vide which the respondents (accused before the learned Trial Court) were acquitted of the commission of an offence punishable under Section 324 of the Indian Penal Code (IPC). (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the Learned Trial Court for convenience*).

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

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 an offence punishable under Section 324, read with Section 34 of the IPC. It was asserted that the accused, Sushil Kumar, abused the informant, Pradeep Kumar (PWw), in his field on 26.07.2006 at about 11.00 a.m. The informant requested the accused not to abuse him, but the accused entered the informant's field and started quarrelling with him. The accused called his brothers Gurudev Singh and Tara, and all of them gave beatings to the informant. Sushil Kumar inflicted a blow on the informant's arm with a sickle. Parents of Sushil Kumar and wives of Sushil Kumar, Gurdev Singh and Tara, also reached the spot. Informant's father and his uncle, Darshan Singh (PW3), also came to the spot. The accused gave beatings to the informant party. Keshav rescued the informant party from the accused. The matter was reported to the police, and an entry (Ex.PW9/A) was registered in the Police Station. An application (Ex.PW10/A) was filed for the medical examination of the informant. Dr. R.K. Mehta. (PW1) examined the informant and found the injuries that could have been caused by means of a sharp-edged weapon within 2 to 3 hours of the examination. He

issued the MLC (Ex.PW1/A). An entry (Ex.PW9/B) was recorded in the Police Station, and FIR (Ex.PW10/B) was registered. ASI Ashwani Kumar (PW11) investigated the matter. He visited the spot and prepared the site plan (Ex.PW11/A). Sohan Singh (PW4) produced one sickle which was put in a cloth parcel, and the parcel was sealed with seal 'A'. Seal impression (Ex.PA) was taken on a separate piece of cloth, and the seal was handed over to witness Virender Singh after its use. The parcel was seized vide memo (Ex.PW3/A). The informant produced one shirt, which was put in a cloth parcel. The parcel was sealed with seal 'A'. Seal impression (Ex.PB) was taken on a separate piece of cloth, and the seal was handed over to Virender after use. The parcel was seized vide memo (Ex.PW2/A). The statements or 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. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of an offence punishable under Section 324 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Dr R.K. Mittal (PW1) examined the victim. Pradeep Kumar (PW2) is the informant/victim. Darshan Singh (PW3), Sohan Singh (PW4), Bishan Singh (PW5) and Parveen Kumar (PW6) are the eyewitnesses. Purshotam Singh (PW7) and Joginder Singh (PW8) did not support the prosecution's case. Constable Rajinder Singh (PW9) proved the entries in the daily diary. ASI Sher Singh (PW10) proved the FIR. ASI Ashwani Kumar (PW11) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.PC.), denied the prosecution's case in its entirety. They claimed that they were innocent and were falsely implicated. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of prosecution witnesses contradicted each other on material particulars. The weapon of offence was not connected to the commission of the crime. The accused had also sustained injuries, which were not explained by the prosecution's witnesses, and this non-explanation made their testimonies doubtful. Hence, the learned Trial Court acquitted the accused of the commission of an

offence punishable under Section 324 read with Section 34 of the IPC.

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 erred in appreciating the material on record properly. The testimonies of prosecution witnesses corroborated each other in material particulars. The medical evidence also proved that the informant had sustained a simple injury that could have been caused by means of a sharp-edged weapon. The witnesses had no reason to falsely depose against the accused. 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 Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Mr Arun Kaushal, learned Counsel for the respondents/accused.

9. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the prosecution has succeeded in proving its case beyond a reasonable doubt. The statements of prosecution witnesses corroborated each other on material particulars, and there was no reason as to why the witnesses would be deposing falsely against the accused. The

medical evidence also proved that the informant had sustained simple injuries that could have been caused by means of a sharp-edged weapon. This provided valuable corroboration to the testimonies of prosecution witnesses. Learned Trial Court had taken a view that could not have been taken by any reasonable person. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Arun Kaushal, learned counsel for the respondents/accused, submitted that the accused had sustained injuries which were not explained by the informant party. Learned Trial Court had rightly held that failure to explain the injuries would make the prosecution's case highly suspect. There were material contradictions in the statements of the witnesses, which made the prosecution's case highly doubtful. 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 *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 at 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 misreading/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.

13. 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 Rudragoudarv. 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.

14. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

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

16. The police filed an application (Ex.PW10/A) for the medical examination of the victim, in which it was mentioned that the informant, Pradeep Kumar, had made a complaint to the police that Sushil Kumar and Gurudev Singh had hit him with a darati. He had sustained injuries on his body, and he should be examined. The medical examination of the informant was conducted on 26.07.2006 at 02.00 p.m. The Informant was produced before the Medical Officer on 26.07.2006 at 01.30 P.M. The entry in the Daily Diary (Ex.PW9/A) was recorded on 26.07.2006 at 01.45 p.m. Therefore, the application made to the Medical Officer contained the earliest version of the incident, which shows that the prosecution's witnesses have materially improved upon this version in the Court, by saying that the injuries were inflicted by Sushil, Gurudev, Tara, their parents and their wives. It was laid down by the Hon'ble Supreme Court in *Badri v. State of Rajasthan*, (1976) 1 SCC 442: 1976 SCC (Cri) 60: 1975 SCC OnLine SC 417 that where a witness can 'modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable

person and no conviction can be based on his testimony'. It was held in *Ram Kumar Pandey v. State of M.P.* [(1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026] that if there be a material departure in the prosecution case as unfolded in the FIR, it would cause a dent to the edifice on which the prosecution case is built, as the prosecution cannot project two entirely different versions of a case. Thus, the learned Trial Court was justified in doubting the prosecution's version.

17. ASI Ashwani Kumar (PW11) admitted in his cross-examination that the accused had sustained injuries on their person. The informant admitted in his cross-examination that a criminal case was registered against him and the other members of the informant party for the commission of an offence punishable under Section 326 of the IPC. He also admitted that Shakuntla Devi had sustained injury on her hand, but he denied that he had inflicted that injury. Darshan Singh (PW3), Sohan Singh (PW4), Bishan Singh (PW5) and Parveen Kumar (PW6) stated that Shakuntla Devi sustained injury when she had tried to snatch the sickle from the co-accused. The learned Trial Court has rightly pointed out that this is hardly any explanation because Shakuntla Devi had no reason to snatch the sickle from the accused. It was

laid down by the Hon'ble Supreme Court in *Parshuram v. State of M.P.*, 2023 SCC OnLine SC 1416, that the non-explanation of the injuries to the accused makes the prosecution's case doubtful. It was observed: -

“31. We do not find the said observation of the trial court correct. The injuries sustained by Ramrup @ Roopa are from a sharp weapon. It will be trite to refer to the following observations of this Court in the case of *Lakshmi Singh v. State of Bihar* (1976) 4 SCC 394:

12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of the altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on the most material point, and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution's case.”

The omission on the part of the prosecution to explain the injuries to the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4

and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus, neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution's case. We must hasten to add that, as held by this Court in *State of Gujarat v. Bai Fatima* (1975) 2 SCC 7: 1975 SCC (Cri) 384, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution's case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

32. A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of *State of Rajasthan v. Madho* 1991 Supp (2) SCC 396, *State of M.P. v. Mishrilal (Dead)* (2003) 9 SCC 426, *Nagarathinam v. State Represented by Inspector of Police* (2006) 9 SCC 57 and recently in the case of *Nand Lal v. State of Chhattisgarh* 2023 SCC OnLine SC 262

33. Undisputedly, in the present case also, the witnesses are interested. The injuries sustained by the three accused persons are not at all explained. The trial court and the High Court have not considered this aspect of the matter.

34. Non-explanation of injuries on the persons of the accused would create doubt as to whether the prosecution has brought on record the real genesis of the incident or not. Undisputedly, as observed hereinabove, a cross-case was also registered against the complainant party for the injuries sustained by the accused persons.”

18. Therefore, the learned Trial Court had rightly doubted the prosecution's version because of the non-explanation of the injuries of the accused.

19. Dr R.K. Mehta (PW1) medically examined the informant. He stated in his cross-examination that the weapon was broken and the injury could have been caused by means of a sickle had it not been broken. Thus, the prosecution's version becomes suspect that the sickle recovered by the police could have been used to cause injury to the informant.

20. The informant Pradeep Kumar stated that the accused were armed with a pickaxe and a sickle. He had not mentioned in his earliest version that the accused were also armed with a pickaxe. Darshan Singh (PW3) stated that the accused were armed with huge sticks. Sohan Singh (PW4) stated that the accused gave beatings to the informant party with the sticks. Bishan Singh (PW5) stated that the accused were armed with a sickle. Parveen Kumar (PW6) stated that Sushil Kumar was armed with a sickle and a pickaxe. Therefore, the witnesses have given different descriptions of the weapons of offence, which would make their testimonies highly suspect.

21. Purshotam Singh (PW7) and Joginder Singh (PW8) did not support the prosecution's case. They were permitted to be cross-examined; however, they did not support the prosecution's case that the accused had inflicted injuries to the informant by means of a sickle, and their testimonies do not provide any corroboration to the informant's testimony.

22. The entry in the Daily Diary (Ex.PW9/A) mentioned that Keshav had rescued the informant party from the accused. However, Keshav was not examined, and an adverse inference has to be drawn against the prosecution for withholding him.

23. It is an admitted version that the informant party is facing a trial for the commission of an offence punishable under Section 326 of the IPC; therefore, they have an instinct to save themselves and shift the blame to the other side. This would put the Court on guard while appreciating their testimonies, and if the testimonies of the prosecution witnesses are seen carefully, they are not sufficient to record the conviction. Learned Trial Court had taken a reasonable view while acquitting the accused, and no interference is required with the reasonable view of the learned Trial Court, even if another view is possible.

24. No other point was urged.

25. In view of the above, the present appeal fails, and it is dismissed, and so are the pending miscellaneous applications, if any.

26. 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.

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

(Rakesh Kainthla)
Judge

15th July, 2026
(Chander)