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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 132 of 2013
Reserved on: 16.05.2026
Date of Decision: 25.06.2026

State of H.P. ...Appellant

Versus

Davinder Kumar & Ors ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant : Mr Ajit Sharma, Deputy Advocate General.

For the Respondents : Mr Rajesh Mandhotra, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.09.2012 passed by learned Additional Sessions Judge-I Kangra at Dharamshala (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 29.04.2011 passed by learned Judicial Magistrate First Class, Indora, District Kangra, H.P. (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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

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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 325, 323, 341, and 506, read with Section 34 of the Indian Penal Code (IPC). It was asserted that the informant Neeraj Thakur (PW4) was going to his home on 07.09.2005 at about 6:00 P.M. with Naveen Kumar (PW5) on a motorcycle. When they reached near the informant's house, Satish, Sharma, Devinder Sharma and Ashok Sharma stopped and abused them. They also had a scuffle with the informant. The informant shouted for help. Ajay Pal Singh (PW1) reached the spot. The accused also gave beatings to Ajay Pal Singh. Accused Devender Sharma inflicted a blow on the head of Ajay Pal Singh with the stick. He fell, and the injury started bleeding. The matter was reported to the police by means of a written application (Ext.PW4/A). FIR (Ext.PW6/A) was registered in the Police Station. ASI Bir Singh (PW6) investigated the matter. He filed an application (Ext.PW6/C). Doctor Sandeep Sharma (PW2) examined the injured and found the injuries on his person. He described the injury as potentially grievous. He advised the CT scan, and the report was found to be normal. Hence, the nature of the injury was

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stated to be simple, which could have been caused by means of a stick. He issued the MLC (Ext.PW2/A). ASI Bir Singh (PW6) visited the spot and prepared the site plan (Ext.PW6/D). Ajay Pal Singh (PW1) produced one shirt (Ext.P1) and one stick (Ext.P2), which were seized vide memo (Ext.PW1/A). The shirt was put in a cloth parcel, and the parcel was sealed with seal 'R'. Seal impression (Ext.PW6/E) 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. 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 341, 323, 325 and 506 read with Section 34 of the IPC, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. Ajay Pal Singh (PW1) is the victim. Doctor Sandeep Sharma (PW2) medically examined the victim. Raj Kumar (PW3) and Naveen Kumar (PW5) are eyewitnesses. Neeraj Kumar (PW4) is the informant. ASI Bir Singh (PW6) investigated the matter.

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5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution's case in its entirety. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of eye witnesses were consistent and they corroborated each other. The medical evidence also proved that Ajay Pal Singh had sustained injuries which could have been caused by means of a stick (Ext.P2). The relationship between the parties was strained, but that is not sufficient to discard the prosecution's case. Enmity is a double-edged weapon and can be a motive for the commission of a crime. Hence, the learned Trial Court convicted and sentenced the accused Devender Kumar, Satish Kumar and Ashok Kumar as follows:

Sections	*Sentences*
Section 341 of the IPC read with Section 34 of the Indian Penal Code	The accused was sentenced to pay a fine of ₹500/-, each and, in default of payment of fine, to undergo further imprisonment for 10 days each.
Section 325 of the IPC read with Section 34 of the Indian Penal	The accused was sentenced to undergo simple imprisonment for one year, pay a fine of ₹3,500/-, each and, in default of payment of fine, to undergo further simple imprisonment

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Code	for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Kangra, at Dharamshala (learned Appellate Court). The Appellate Court held that two FIRs were registered regarding the same incident. Both the FIRs should have been investigated and tried together. The relationship between the parties was strained, and the statements of the prosecution's witnesses were required to be seen with due care and caution. There were material contradictions in the statements of the witnesses, which made them doubtful. The Learned Trial Court erred in convicting and sentencing the accused. Therefore, the judgment and order passed by the learned Trial Court were set aside, and the accused were acquitted.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court erred in acquitting the accused. The statements of prosecution witnesses were discarded without any cogent reason. The statements of prosecution witnesses corroborated each other. The medical evidence also corroborated

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the testimonies of the eyewitnesses. Learned Appellate Court erred in discarding the prosecution's case. Hence, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State and Mr Rajesh Mandhotra, learned counsel for the respondents/accused.

10. Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court. The Appellate Court only reproduced the evidence of the witnesses and concluded that there were material contradictions in the statements. However, the contradictions were not highlighted. Learned Trial Court had rightly held that enmity is a double-edged weapon: while it furnishes the motive for false implication, it also furnishes a motive for the commission of the crime. Therefore, the accused could not have been acquitted merely because of enmity between them and the informant party. Hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

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11. Mr Rajesh Mandhotra, learned counsel for the respondents/accused, submitted that there are major contradictions in the statements of the prosecution witnesses, which made them highly doubtful. Learned Appellate Court had rightly relied upon the contradictions to hold that the prosecution's version was not proved beyond a reasonable doubt. The learned Appellate Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Appellate Court. Hence, he prayed that the present 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 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.

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. 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."

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

17. The application for the medical examination of Ajay Pal Singh (PW1) (Ext.PW6/C) reads that a complaint was made by Ajay Pal at about 6:15 p.m. that he was beaten by Satish and Ravinder, the sons of Nanak Chand. Therefore, his examination was required to be conducted. This application makes the prosecution's case

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highly suspect because the prosecution never asserted that Ajay Pal Singh had visited the Police Station and had made the complaint against Satish and Ravinder; rather, the prosecution asserted that Neeraj Thakur (PW4) had filed a written application (Ext. PW4/A) on which the FIR was registered. This means that the police have concealed the initial version projected by Ajay Pal Singh and projected a different version, which would make the prosecution's case highly suspect.

18. ASI Bir Singh (PW6) admitted in his cross-examination that he had not investigated FIR No. 187/2005, which was registered against Neeraj Kumar (PW4), Naveen Kumar (PW5), Ajay Pal Singh (PW1), etc. Learned Appellate Court had rightly held that when two versions of the same incident were reported by both parties, the same should have been investigated and tried together. The law relating to the investigation of the cross cases was discussed by the Hon'ble Karnataka High Court in ***State of Karnataka Vs. Balappa Bhau Vadagave 1984 I.L.R. (Karnataka) 21,*** wherein it was held that a case and a counter-case are not two independent cases but two versions of the same incident. The truthfulness of the complaint and counter-complaint has to be verified by the same Investigating Officer, and he has to form an

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opinion as to which of the persons had committed the case and to file the charge-sheet against him. It was observed:

> There cannot be any two opinions that the case and the counter case arising out of the same incident, though registered in separate crime numbers, are not two independent cases but two versions of the same incident. For the purpose of investigation, both the complaint and the counter-complaint are registered separately but the truth or otherwise of the complaint and the counter-complaint shall have to be verified by the same Investigating Officer, investigating both the crimes impartially and diligently and after completing the investigation, assess the material collected in both the crimes, form an opinion as to which of the persons in the complaint or the counter-complaint, as the case may be, have committed the offence and place the charge-sheet against such persons and refer the case in which he found no offence is made out, so that the concerned party may prosecute his complaint in a court of law. However, we may emphasise that in appropriate cases, though such cases seldom occur, the Investigating Officer may file charge-sheets against both parties as illustrated in the "Gundi Giriyappa" case (supra) to which a reference has been made earlier.

19. This judgment was followed by a Full Bench of the Karnataka High Court in ***State of Karnataka by Circle Inspector of Police Vs. Hosakeri Ningappa 2011 Law Suit (Karnataka) 2249*** wherein it was held: -

> "6. It is also relevant to note that the investigation is to be conducted by the same Investigating Officer, and the prosecution should be conducted by two different Public Prosecutors. The Government of Karnataka has issued the law Circular dated 24.9.1982 bearing No. 4836 and the law Circular dated 12.11. 1982 bearing No. 4839, stipulating that

> the same Investigation Officer shall investigate the case and counter-case.

20. Similar is the judgment in ***State of M.P vs Mishrilal 2003 (9) SCC 426,*** wherein it was observed:

> 8. In the instant case, it is undisputed that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. ..... In the instant case, the investigating officer submitted the challan against both parties. Both complaints cannot be said to be right. Either of them must be false. In such a situation, a legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in a grave miscarriage of justice.

21. Similarly, it was held in ***Kuldeep Yadav vs. State 2011(5) SCC 324*** that I.O. is under an obligation to bring the cross-case to the notice of the Court. It was observed:

> 19. In view of the above factual details coupled with the statements made by prosecution witnesses and in the light of the principles enunciated by this Court, the Investigating Officer ought to have brought to the notice of the trial Judge about the two FIRs arising out of the same incident to avoid gross injustice to the parties concerned.

22. In the present case, this duty was not fulfilled, and the learned Appellate Court was justified in doubting the prosecution's case.

23. Neeraj Kumar (PW4) stated that he was returning to his home with Naveen Kumar (PW5) on a motorcycle. When they

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reached near his home, Satish Kumar, Devender Kumar and Ashok Kumar restrained him. They abused and beat him. When he shouted, Ajay Pal Singh came to the spot, and the accused gave beatings to Ajay Pal Singh (PW1). Ajay Pal Singh, on the other hand, stated that he was at a distance of about 100 metres from his home when he came to know that Neeraj Kumar (PW4) was restrained by Devender Kumar, Ashok Kumar and Satish Kumar. He went to the spot and tried to bring back Neeraj. Devender inflicted a blow by means of a stick, and he sustained injuries.

24. The statements of these two witnesses do not corroborate each other. Ajay Pal Singh never stated that he had heard the noise, and he went to the spot; rather, he stated that he came to know that Neeraj Kumar was restrained. Ajay Pal has also not deposed that the informant, Neeraj Kumar (PW4) was riding the motorcycle with Naveen Kumar (PW5), and they were restrained. Ajay Pal Singh stated that the injury was inflicted near the gate of the house, whereas Neeraj Kumar (PW4) stated that the injuries were inflicted where the motorcycle was restrained.

25. Ajay Pal Singh (PW1) stated in his cross-examination that he had not reported the matter to the police, and Neeraj Kumar (PW4) had reported the matter to the police. This is

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contrary to the application filed for his medical examination, in which it was specifically mentioned that he had reported the matter to the police.

26. Ajay Pal (PW1) admitted in his cross-examination that the civil suits are pending between him and the informant party. Raj Kumar (PW3) and Neeraj Kumar (PW4) also admitted the pendency of civil litigation between them and the informant in their cross-examination. Therefore, the relationship between the parties was proven to be strained.

27. Learned Trial Court had rightly held that the enmity is a double-edged weapon; while it furnishes a motive for the commission of a crime, it also furnishes a motive for false implication. Therefore, the evidence was required to be seen with due care and caution to rule out the possibility of false implication in the present case.

28. Neeraj Kumar (PW4) stated that Ajay Pal Singh sustained a bleeding injury on his head. Doctor Sandeep Sharma (PW2) also noticed in the MLC (Ext.PW2/A) that heavy bleeding was present. ASI Bir Singh (PW6) stated in his cross-examination that he was not aware whether any blood stains were lying on the ground. He had not seized any blood-stained stone or the soil

during the investigation. He was an Investigating Officer and would not have missed the significance of blood-stained soil and stones. Therefore, the fact that he had not noticed any blood stains on the spot would make it difficult to determine that the incident had taken place at a place described by the informant party. This also assumes significance because of the cross-case filed by the accused and the strained relationship between the parties.

29. Therefore, the prosecution had failed to prove its case beyond a reasonable doubt, and the learned Appellate Court had taken a reasonable view while acquitting the accused. This Court will not interfere with the reasonable view of the Court, 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, and so are the pending miscellaneous applications, if any.

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/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.

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

(Rakesh Kainthla)
Judge

25th June, 2026
(Chander)