

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 290 of 2014****Reserved on: 25.02.2026****Date of Decision: 20.03.2026**

State of H.P.

...Appellant

Versus

Rakesh Kumar & Ors.

...Respondents

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No***For the Appellant/State : Mr Ajit Sharma, Deputy Advocate
General, Advocate.

For the Respondents : Mr P.P. Chauhan, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 30.04.2014 passed by learned Judicial Magistrate First Class, 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 147, 148, 323, and 325, read with Section 149 of the Indian Penal Code (IPC). (*Parties shall hereinafter be referred to in the same*

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

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 filed a charge sheet against the accused persons for the commission of offences punishable under Sections 147, 148, 323 and 325 read with Section 149 of the IPC. It was asserted that the informant, Rajnish Kumar, was running a shop. He and his brother Sajneesh Kumar (PW2) were closing the shop on 14.02.2009 at about 8:30 PM. Rakesh Kumar @ Rinku and Pankaj @ Pinku came to the shop and started abusing them. Rakesh Kumar inflicted a blow on the informant's head by means of a brick. Rakesh and Pankaj gave beatings to the informant and Sajneesh Kumar (PW2). Prakash Chand, Shareshta Devi and Mona Devi also came to the spot. They also gave beatings to the informant and his brother. The matter was reported to the police. An entry (Ext.PW8/A) was recorded in the police station. An application (Ext.PW-10/E) was filed for medical examination of the injured. Dr Inder Mohan (PW9) examined Rajnish Kumar (PW1) and found that he had sustained multiple injuries. He referred Rajnish Kumar (PW1) to the Dental Surgeon for expert opinion. Dr Randeep Kumar (PW6) examined Rajnish Kumar

(PW1) and found that one tooth was missing. He issued the report (Ext.PW6/A). Dr Inder Mohan (PW9) issued a final opinion stating that the nature of the injury was grievous, which could have been caused within six hours of the examination. He issued the MLC (Ext.PW9/A). Dr Inder Mohan (PW9) examined Sajneesh Kumar (PW2) and found that he had sustained multiple injuries, which could have been caused by means of a blunt weapon. He issued the report (Ext.PW9/B). The police registered the FIR (Ext.PW10/F) after the receipt of the medical opinion. ASI Dalip Singh (PW10) investigated the matter. He visited the spot and prepared the site plan (Ext.PW10/A). Rajnish Kumar (PW1) produced three pieces of bricks (Ext.P1 to Ext.P3) which were put in a cloth parcel, the parcel was sealed with four impressions of seal 'M', and it was seized vide memo (Ext.PW1/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.

3. Learned Trial Court found sufficient reasons to summon the accused persons. When the accused persons appeared, they were charged with the commission of offences punishable under Sections 147, 148, 323 and 325, read with Section

149 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven witnesses to prove its case. Informant Rajnish Kumar (PW1) and the victim Sajneesh Kumar (PW2) narrated the incident. Baldev Kumar (PW3) and Naresh Kumar (PW7) are eyewitnesses. Budhi Singh (PW4) witnessed the recovery. Ashwani Kumar (PW5) did not support the prosecution's case. Dr Randeep Kumar (PW6), Dental Surgeon, examined Rajnish. HC Arjun Pal (PW8) proved the entry in the daily diary. Dr Inder Mohan (PW9) medically examined the victim. ASI Dalip Singh (PW10) investigated the matter. Inspector Bahadur Singh (PW11) signed the FIR and prepared the challan.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. They claimed that the witnesses were the informant's relatives, and they made false statements against the accused because of the land dispute. They tendered documents in evidence.

6. Learned Trial Court held that the relationship between the parties was strained because of the land dispute. The informant admitted that other persons were present in the shop;

however, no such person was examined. The FIR was registered on 17.02.2009, whereas the incident had occurred on 14.02.2009. The FIR was not sent to the learned Magistrate within time and was sent on 19.02.2009. This made the prosecution's case suspect. Hence, 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 appreciate the evidence in a proper perspective. The statements of prosecution witnesses were discarded without any cogent reason. Sajneesh Kumar (PW2), Baldev Kumar (PW3) and Naresh Kumar (PW7) had corroborated the informant's version. Baldev Kumar (PW3) and Naresh Kumar (PW7) were independent witnesses and had no reason to support the informant. Their testimonies were duly corroborated by the statements of the Medical Officers. The matter was reported to the police on the same day, and an entry was recorded in the Police Station. This entry was ignored by the learned Trial Court. 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 Ajit Sharma, learned Deputy Advocate General for the appellant/State and Mr P.P. Chauhan, learned counsel for the respondents/accused.

9. Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State, submitted that the learned Trial Court failed to properly appreciate the material on record. The matter was reported to the police on the same day, and an entry in the daily diary was recorded. The FIR was registered after the medical examination. This was ignored by the learned Trial Court. Enmity is a double-edged weapon and cannot be used to discard the prosecution's case. Learned Trial Court had taken an unreasonable view of the matter. He prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr P.P. Chauhan, learned counsel for the respondents/accused, submitted that the relationship between the parties was strained over the land. The FIR was sent belatedly to the learned Magistrate, and the learned Trial Court had rightly drawn an adverse inference against the prosecution for doing so. Learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial

Court while deciding the appeal against an 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 *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 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*.”

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

15. Rajnish Kumar (PW1) stated that he had reported the matter to the police on the same day, and he was taken to the hospital for medical examination. This is duly corroborated by the statement of HC Arjun Pal (PW8), who stated that Rajnish Kumar and Sajneesh Kumar (PW2) had visited the Police Station on 14.02.2009 and reported the matter to him. An entry No. 26(A) (Ext.PW8/A) was registered in the Police Station, and the injured were taken to the hospital for their medical examination.

16. The entry (Ext.PW8/A) mentions that Rakesh Kumar and Pankaj Kumar had inflicted injuries on the informant and his brother in their shop. Rakesh inflicted a blow by means of a brick upon the head of the informant. Parkash Chand, Shareshta Devi

and Mona Devi also came to the spot, and they gave beatings to the victim. This version was subsequently incorporated into the FIR.

17. Learned Trial Court held that the police should have registered the FIR, and the registration of the FIR on 17.02.2009 made the prosecution's case suspect. This finding cannot be sustained. The police had referred the victims for their medical examination, and the dental surgeon had issued his opinion on 17.02.2009 at 11:30 AM stating that a fracture was detected. Thereafter, the police registered the FIR at 4:45 PM. The informant had narrated the incident to the police, and if the police had only recorded an entry in the daily diary instead of registering the FIR, the informant could not be faulted; hence, the findings recorded by the learned Trial Court that the FIR was lodged belatedly, which made the prosecution's case suspect, cannot be sustained.

18. The informant, Rajnish Kumar (PW1), admitted in his cross-examination that his sister Shareshta and her family members were residing on the land of his parents. He admitted that his father had executed a gift deed of 10 marla of land in favour of Prakash Chand, and the possession was delivered to him.

He volunteered to say that Prakash Chand has encroached upon more than 10 biswa of the land. Sajneesh Kumar (PW2) also stated in his cross-examination that Shareshta and her family members were residing on the land of his parents. He admitted that a gift deed was executed by his father in favour of the accused. He admitted that, as per him, Prakash has encroached upon more land than was gifted to him. He admitted that the accused were in possession of the area in front of the shops.

19. These admissions show that the relationship between the parties is strained over the land occupied by Prakash Chand, and the learned Trial Court was justified in seeking the corroboration of the statements of the informant and his brother.

20. Dr Randeep Kumar (PW6) examined Rajnish Kumar and found chronic destructive periodontitis, calculus, generalised gingival recession, and one missing tooth. The socket was empty. No corresponding soft tissue injury was present. The injury could have been caused by means of fist blows or striking of any hard object, like a piece of brick, within 2-3 days of the examination. He stated in his cross-examination that three teeth of the patient were missing and 13 teeth were mobile. The fresh missing tooth was uprooted in a natural way, as the other teeth were also mobile.

21. The statement in the cross-examination that the teeth had been uprooted naturally, and the other teeth were also mobile, makes the prosecution's case suspect.

22. Dr Inder Mohan (PW9) examined Rajnish Kumar (PW1) and found that he was smelling of alcohol. Rajnish Kumar (PW1) admitted in his cross-examination that he and his brother had consumed alcohol on the date of the incident. He volunteered to say that a birthday was being celebrated on the date of the incident. Rajnish Kumar (PW1) denied that he had consumed alcohol on 14.02.2009. He volunteered to say that he had consumed Beer. Thus, the medical evidence, the admission of the informant and the witness show that the informant and the victim had consumed alcohol. This would assume significance because Dr Randeep Kumar (PW6) stated that the injury noticed by him could have been caused by way of fall. Dr Inder Mohan (PW9) also stated in his cross-examination that the injury noticed by him could have been caused by a fall under the influence of alcohol.

23. Rajnish Kumar (PW1) stated that he and his brother were closing the shop. Rakesh and Pankaj came to the shop and started abusing him. He enquired as to why they were hurling the abuses. The accused started beating him and his brother. They

picked up a piece of brick lying near the shop and inflicted injury on the head and the face. They gave beatings to his brother with kicks and fist blows. They also bit him (the informant) with their teeth. Prakash, Shareshtha and Mona Devi also came to the spot, and they gave beatings. Pradeep and Naresh came to the spot and rescued them.

24. The statement made by the informant in the Court that the accused had bitten the informant with teeth is an improvement because this fact has not been mentioned in the FIR, and the Medical Officer had not noticed any bite marks. This improvement shows the informant's desperation to secure the conviction at any cost.

25. Sajnish Kumar (PW2) stated that he and his brother were closing the shop. Rakesh and Pankaj came to the spot and started abusing them. When the informant asked them not to hurl abuses, they picked up the pieces of brick and inflicted injuries on his head and face. The accused gave him beatings with kicks and fist blows. Parkash and Shareshtha came to the spot, and they gave him beatings. Baldev and Naresh rescued him.

26. This witness has not mentioned Mona Devi as the assailant, who was named by the informant and was also mentioned in the FIR. Thus, he has contradicted the informant's statement regarding the assailants.

27. Baldev Kumar (PW3) stated that he was going to his home on foot. He reached the shop of Rajnish Kumar (PW1) and found that a quarrel was going on. Rajnish Kumar (PW1) and his brother were being beaten by his brother-in-law and nephew. Rajnish Kumar (PW1) had sustained an injury on the face.

28. This witness has only named the brother-in-law and the informant as the assailants. He has left Shareshta and Mona Devi.

29. Baldev Kumar (PW3) stated in his cross-examination that he used to purchase articles from the shop of Rajnish Kumar (PW1). He admitted that Rajnish and Sajneesh had taken him to the Police Station on 16.02.2009, when his statement was recorded. He admitted that he had consumed alcohol, but could not see whether Rajnish Kumar (PW1) and Sajneesh Kumar (PW2) had also consumed alcohol.

30. He is a resident of a different village. He claimed that he was going to his home on foot. He admitted in his cross-examination that it takes about 15 minutes to cover the distance in a bus, but he volunteered to say that he used to travel on foot. He is known to Rajnish Kumar (PW1) as he used to purchase articles from him. The bus is a convenient method of transportation, but he did not opt for it. He is a chance witness. It was laid down by the Hon'ble Supreme Court in *Harbeer Singh v. Sheeshpal*, (2016) 16 SCC 418: (2017) 4 SCC (Cri) 503: 2016 SCC OnLine SC 1164 that the chance witnesses have a habit of appearing suddenly at the place of the incident and thereafter disappearing. Their testimonies should be seen with due care and caution. It was observed at page 427:

23. The defining attributes of a "chance witness" were explained by Mahajan, J., in *Puran v. State of Punjab*, (1952) 2 SCC 454: AIR 1953 SC 459: 1953 Cri LJ 1925. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In *Mousam Singha Roy v. State of W.B.*, (2003) 12 SCC 377: 2004 SCC (Cri) Supp 429, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632: 2005 SCC (Cri) 579

and *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719: (2010) 1 SCC (Cri) 107 are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court, we hold that PW 5 and PW 6 were chance witnesses and their statements have been rightly discarded.

31. It was laid down by the Hon'ble Supreme Court, *Rajesh Yadav v. State of U.P.*, (2022) 12 SCC 200: 2022 SCC OnLine SC 150 that the testimony of a chance witness is to be seen with due care and caution and his presence on the spot should be satisfactorily established. It was observed:

“Chance witness

29. A chance witness is one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed, though a little more scrutiny may be required at times. This again is an aspect that is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in *State of A.P. v. K. Srinivasulu Reddy* [*State of A.P. v. K. Srinivasulu Reddy*, (2003) 12 SCC 660: 2005 SCC (Cri) 817]: (SCC pp. 665-66, paras 12-13)

“12. Criticism was levelled against the evidence of PWs 4 and 9, who are independent witnesses, by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained how they happened to be at

the spot of occurrence, and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial, by describing the independent witnesses as “chance witnesses”, it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If a murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witness” is borrowed from countries where every man's home is considered his castle, and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country where people are less formal and more casual, at any rate in the matter of explaining their presence.”

30. The principle was reiterated by this Court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719: (2010) 1 SCC (Cri) 107: (SCC p. 725, paras 21-23)

“21. In *Sachchey Lal Tiwari v. State of U.P.*, (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105, this Court, while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passer-by had deposed that he had witnessed the incident, observed as under:

If the offence is committed in a street, only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere

chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression “chance witness” is borrowed from countries where every man's home is considered his castle, and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country like India, where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh*, (1997) 4 SCC 192: 1997 SCC (Cri) 538, *Harjinder Singh v. State of Punjab*, (2004) 11 SCC 253: 2004 SCC (Cri) Supp 28, *Acharaparambath Pradeepan v. State of Kerala*, (2006) 13 SCC 643 : (2008) 1 SCC (Cri) 241 and *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188). Deposition of a chance witness whose presence at the place of the incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632: 2005 SCC (Cri) 579).

23. Conduct of the chance witness, subsequent to the incident, may also be taken into consideration, particularly as to whether he has informed anyone else in the village about the incident (vide *Thangaiya v. State of T.N.*, (2005) 9 SCC 650: 2005 SCC (Cri) 1284). Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR, and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) or Darshan Singh (PW 4). The fact of a conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue, has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution's case relating to conspiracy. However, in the fact situation of the present case, the acquittal of the said two co-accused

has no bearing, so far as the present appeal is concerned.”

32. Baldev Kumar (PW3) stated that he had tried to rescue the informant but did not sustain any injuries in the incident. He omitted the names of Shareshta and Mona Devi, who were present on the spot as per the prosecution. All these circumstances make it difficult to place reliance on his testimony.

33. Naresh Kumar (PW7) stated that he was going to his home on 14.02.2009 at about 9 PM and saw that the relatives of Rajnish Kumar (PW1) and his nephew were quarrelling with Rajnish Kumar (PW1). They inflicted injuries to Rajnish Kumar with bricks, kicks and fist blows. The accused left the spot.

34. This witness has not named any particular accused but has used the generalised term ‘accused present in the Court’. He did not state that injuries were caused to Sajneesh Kumar (PW2) in his presence. He claimed that the informant Rajnish had sustained injuries on his back and on his face. Nobody stated that informant Rajnish had also sustained injuries on his back. He stated that many people were present on the spot who had rescued the informant from the accused. It was nobody's case that many people were present on the spot; rather, the prosecution version is

that he and Baldev Kumar (PW3) were present on the spot. Therefore, his testimony is not reliable and was rightly rejected by the learned Trial Court.

35. Thus, the statements of the prosecution witnesses were not credible. Learned Trial Court had taken a reasonable view while doubting these testimonies, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

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

37. 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.

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

(Rakesh Kainthla)
Judge

20th March, 2026
(Nikita)