

State vs. Vijay Kumar

Cr. Appeal No.5/2026

**IN THE COURT OF KANTA VERMA, ADDITIONAL
SESSIONS JUDGE-II, UNA, DISTRICT UNA, HIMACHAL
PRADESH.**

Criminal Appeal No.: 5/2026
CNR No.HPUN-01-000255-2026
Date of Institution : 23.1.2026
Date of Decision : 29.7.2026

State of HP.

Versus

Vijay Kumar son of Sh. Durga Dass resident of village harma,
PO Nainwan, Tehsil & PS Garhshankar, Distt. Hoshiarpur,
Punjab.

.....Respondent.

Appeal under Section 419 of BNSS
against Judgment dated 30.10.2025
passed by learned Additional Chief
Judicial Magistrate, Court No.I,Una,
Distt. Una, HP in Crl. Case Reg.
No.192/2019 titled as State vs. Vijay
Kumar.

For the appellant/State : Ms. Pooja Dhiman, Ld.PP.

For the respondent : Sh.Parveen Chaudhary, Deputy Chief,
LADC.

JUDGMENT

The present appeal is directed against
Judgment dated 30.10.2025 passed by learned Additional Chief
Judicial Magistrate, Court No.I,Una, Distt. Una, HP in Crl. Case
Reg. No.192/2019 titled as State vs. Vijay Kumar. whereby

respondent/accused has been acquitted of the charge under Sections 457, 380 of Indian Penal Code. (The parties for the sake of convenience hereinafter are referred in the same manner wherein they were arrayed and referred to before the Learned Trial Court).

2. Briefly stated, the case of the prosecution is that on 22.10.2018 a telephonic intimation was received in the police station that locks of Government Primary School Lalhri, had been broken open. On the receipt of said intimation, the Investigating Officer ASI Rajinder Kumar (since deceased) vide rapat No.16 rushed to the spot. The complainant Sarabjit Singh, Centre head Teacher of the school (PW1) moved a complaint Ex.PW1/A to him that on 22.10.2018 around 8:00 AM when Water Carrier Suresh Kumari (PW3) opened the school, she found locks of two rooms broken open. On checking the rooms, LCD monitor of the computer was found missing. On the basis of complaint Ex.PW1/A, a formal FIR Ex.PW4/A came to be registered. Investigation commenced. During investigation, the Investigating Officer prepared rough site plan on the spot. Vijay Kumar (hereinafter referred as the accused) arrested in case FIR No.286/18 u/s 457, 380 IPC before SIT Una confessed to have committed many thefts at Una. During interrogation in case FIR No.100/19 dated 1.5.2019 u/s 457, 380 IPC PS Haroli, the accused disclosed to the Investigating Officer HC Jaswinder Singh (PW5) that he had also committed theft in Government Primary School Lalhri in the night of 21.10.2018. Custody of the accused thereupon was got transferred from case

FIR No.101/19 u/s 457, 380 IPC to Case FIR No.283/18. During the course of investigation, the disclosure statement of the accused Ex.PW1/C was recorded and the resultant recovery of stolen LCD monitor was effected vide memo Ex.PW1/B. Rough site plan of the place of recovery Ex.PW5/C was prepared. Statements of the witnesses were also recorded. On completion of the investigation and on being satisfied of the commission of offence punishable under Sections 457, 380 of the Indian Penal Code, by the accused challan thereunder against him was presented in the Court.

3. Notice of accusation under Sections 457, 380 of the Indian Penal Code was framed against the accused to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined as many as five witnesses.

5. In his statement under Section 313 of Cr.P.C., the accused denied the incriminating evidence led against him in toto and claimed innocence. No evidence in defence however was led by the accused.

6. Learned Trial Court, after appreciation of the evidence led by the prosecution, vide impugned judgment acquitted the accused inter alia observing as under:-

- The accused was admittedly in police remand in another FIR when the disclosure in this case was allegedly

made,

- the recovery was allegedly made at the instance of the accused, but no independent public witness except the complainant (PW1) was examined,
- the identity of the stolen property has not been established,
- there is absence of evidence of breaking open the school,
- the possibility of false implication cannot be ruled out as the Investigating Officer (PW5) has admitted that the accused was already in remand in another criminal case,

7. Feeling aggrieved and dissatisfied with the impugned judgment of acquittal passed by learned Trial Court, the appellant/State assailed the same on the grounds that the the impugned judgment is based on conjectures and surmises. Ld. Trial Court has not appreciated the facts, circumstance and evidence on the record in right perspective. For offence of theft possession of the property has to be proved and not the ownership. However Ld. Trial Court has gave weightage to the fact that there is no identification number of bill Ex.B1. Ld. Trial Court has failed to appreciate that the complainant (PW1) had identified the LCD monitor and bill thereof in the name of President SMC GPS Lalhri. Ld. Trial Court has failed to

appreciate the evidence of the complainant (PW1) in whose presence the accused made statement us 27 of Indian Evidence Act Ex.PW1/C and got the monitor recovered vide memo Ex.PW1/D. The complainant had moved the complaint in official capacity and was not an interested witness. The complainant (PW1), Avtar Singh (PW2) and Suresh Kumari (PW3) all supported the case of the prosecution and their evidence was duly corroborated by the Investigating Officer (PW5). Ld. Trial Court however has ignored all these facts. It thus has been prayed that appeal be accepted and the accused be convicted.

8. I have heard Ld.PP for appellant/State and learned counsel for the respondent/accused and have also gone through the record of the case carefully.

9. Following points arise for determination in the present appeal :-

1. Whether the impugned judgment/order are sustainable in law?
2. Final Order.

10. For the reasons to be recorded hereinafter, while discussing the aforesaid points for determination, my findings thereon are as under:-

Point No.1	:	Yes.
Final order	:	The appeal is dismissed as per operative part of the judgment.

REASONS FOR FINDINGS**POINT NO.1.**

11. The complainant (PW1) in his examination-in-chief has reiterated what has been alleged in the complaint. He has also stated that he produced bill of the stolen monitor to the police vide memo Ex.PW1/B. On 12.5.2019 the accused made disclosure statement Ex.PW1/C regarding stolen LCD monitor and thereafter get recovery thereof effected in his and Ward Panch Prem Chand's presence. He identified the LCD monitor. The police sealed the same in a cloth parcel. However he could not recollect the seal impression. Memo Ex. PW1/E was prepared in that regard. In his cross-examination he has denied that recovery was not effected in his presence. He has admitted that LCD monitors were/are easily available in the market.

12. Avtar Singh (PW2) has stated that he in the year 2018 was posted in the Primacy School Lalhri. On 22.10.2018 LCD monitor was stolen from their school. In his presence the complainant (PW1) produced bill of the LCD monitor to the police vide memo Ex.PW2/B. In his cross-examination he has denied to have not witnessed the alleged recovery.

13. Suresh Kumari (PW3) has stated that in the year 2018 she was posted as Water Carrier in Primary School Lalhri. In the morning of 22.10.2018 when she reached the school, she found locks of two rooms broke open and LCD monitor missing. She telephonically informed the same to the

complainant (PW1), who on reaching the school reported the matter to the police. In her cross-examination she has denied to have falsely deposed in the court.

14. MHC Subhash Chand (PW4) has proved FIR Ex.PW4/A on the record. He has also stated to have issued authenticity certificate u/s 65B of Indian Evidence Act Ex.PW4/B with respect thereto. Further he has stated about deposit of the case property along with sample seal in the malkhana on 12.5.2019 and his having made entry Ex.PW4/C to that effect in the malkhana register. In his cross-examination he has admitted that in certificate Ex./PW4/B, month and the date has been written with pen after taking printouts thereof.

15. The Investigating Officer (PW5) has stated that HC Vinod Kumar, who conducted initial investigation of the case has since died. He proved documents prepared by him being well acquainted with his handwriting on account of having worked with him. He has also stated the manner wherein he conducted the investigation. In his cross-examination he has admitted that the accused was on remand in another case. However he has denied that the present case was registered against him only because he was on remand in another case. He has admitted that number of LCD monitor has not been mentioned on bill Ex.B1. He has admitted that he could not confirm that the LCD monitor was the same which was stolen. Self stated that the complainant (PW1) had identified the LCD monitor. He has admitted that the LCD monitors were/are easily

available in the market. He has denied that the police could not trace the real culprit and planted a false case against the accused.

16. This is the entire evidence on the record.

17. The present appeal has been filed against the acquittal of the accused. The Hon'ble Apex Court in **CHANDRAPPA & ORS versus STATE OF KARNATAKA 2007 (4) SCC 415** after referring to a catena of decisions has laid down following general principles regarding powers of appellate Court while dealing with an appeal against the order of acquittal:-

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions',

'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not

disturb the finding of acquittal recorded by the trial court.

18. The present being the appeal against acquittal, the evidence led by the prosecution has to be scanned/re-appreciated in view of the law laid down by the Hon'ble Supreme Court in case supra.

19. In the case in hand, the accused in the intervening period of 20.10.2018 and 22.10.2018 is alleged to have committed theft of LCD monitor from Government Primacy School Lalhri.

20. None admittedly had seen the accused committing the alleged theft.

21. As per the prosecution, the accused in case FIR No.286/18 confessed before SIT Una about his involvement in many theft cases and during interrogation in case FIR NO.100/19 dated 1.5.2019 he disclosed to the Investigating Officer (PW5) having committed theft in Government Primacy School Lalhri in the night of 21.10.2018. Thereafter his custody is alleged to have been got transferred from case FIR No.101/19 to the present case FIR and during custodial interrogation he allegedly made disclosure statement and consequent thereto got the stolen LCD monitor recovered.

22. Thus to prove the involvement of the accused in the alleged theft, the prosecution has heavily relied upon alleged disclosure statement of the accused Ex.PW1/C and resultant

recovery of LCD monitor vide memo Ex.PW1/E.

23. The record reveals that the police on 12.5.2019 moved an application to Ld. JMFC-II Una looking after the urgent work of Ld. ACJM Court No.I Una, seeking transfer of custody of the accused from case FIR No.100/19 dated 1.5.2019 u/s 457, 380 IPC PS Haroli to the present case and his police remand. The said application was allowed and custody of the accused was transferred from said case FIR to the present case FIR on the same day i.e. 12.5.2019 and he was remanded to police custody till 13.5.2019, on which date he was ordered to be produced before Ld.ACJM-I Una or duty Magistrate at 10:00 AM sharp. Perusal of the record further demonstrates that after transfer of the custody of the accused to the present FIR on 12.5.2019, the accused made the alleged disclosure statement Ex.PW1/C and got the stolen LCD monitor recovered on that very day i.e. 12.5.2019.

24. Therefore the alleged chronological events of the case of the prosecution i.e.

- theft of LCD monitor from Government Primary School Lalhri in the intervening period of 20/22.10.2018;
- the alleged claim of the accused during interrogation in case FIR No.100/19 that he had committed theft in the said school
- the accused's having made the alleged

disclosure statement Ex.PW1/C and got the resultant recovery effected on the very day when his custody was transferred and he was remanded to police custody in the present case i.e. 12.5.2019,

itself make his involvement in the alleged theft committed more than six months back and the case of the prosecution doubtful.

25. Even otherwise the prosecution has not been able to prove the alleged necessary nexus in between the accused and the alleged offence on the strength of the alleged disclosure statement and resultant recovery. It is so because:-

- the complainant (PW1) has not stated at all as to who the other second witness to the alleged disclosure statement was nor has whispered as to whether he ever signed the alleged disclosure statement in his presence;
- the Investigating Officer (PW5) only has stated that on 12.5.2019 he along with HHG Tarsem Lal, the complainant (PW1) and the accused went to Bathri, where Prem Chand who was known of the complainant (PW1) met and stopped on seeing them, but nowhere has stated that

said Prem Chand ever was associated with the alleged recovery;

- no witness from liquor vend, dhaba(s) and toll tax barrier shown adjacent to the place of recovery in rough site plan Ex.PW5/C was associated with the alleged recovery nor any explanation therefor was put forth on the record;
- the alleged place of recovery being premises of a factory closed since long, was accessible to all and sundry and
- LCD monitors are commonly found and there is no allegation nor proof that the alleged recovered LCD monitor had the same unique identification number as the LCD monitor allegedly stolen by the accused.

26. Not only the case in hand suffers from aforesaid lacunas, but there are other flaws in the case as well, because:

- no CCTV footage of the school and/or adjoining area(s) has/have been collected and proved to establish the alleged presence of the accused in/surrounding the school and/or his taking away the alleged stolen LCD monitor at/around the

date/time/period of the alleged occurrence,

- the prosecution case is totally silent as to what object/tool was used to facilitate the commission of the alleged offence nor any such object/tool is alleged/stated to have been recovered and
- last but not least no forensic evidence in the form of fingerprints allegedly/statedly have been lifted from the spot nor even from the LCD monitor allegedly stolen by the accused to prove his alleged involvement of the offence,

which in turn makes the case of the prosecution all the more doubtful.

27. Resultantly it can safely be concluded that the prosecution has failed to prove its case against the accused beyond shadow of every reasonable doubt.

28. Learned trial court therefore has appreciated the evidence led by the prosecution in its right perspective. The conclusion arrived at by the learned Trial Court thus is neither wrong nor is based upon the erroneous view of law nor calls for any interference by this Court. The impugned judgment passed by learned trial Court therefore is sustainable in law. Consequently, this point is decided against the appellants and is answered accordingly.

FINAL ORDER

29. In view my findings returned on point No.1, the present appeal fails and is hereby dismissed.

30. File of the learned trial Court alongwith copy of this judgment be sent back and the file of this Court after due completion be consigned to the Record Room.

**Announced in the open Court today on this the
29th day of July, 2026.**

(Kanta Verma)
Additional Sessions Judge-II,
Una, Distt. Una, HP.

/ashok/

PARTICULARS REGARDING ACCUSED AND SURETY
TAKEN UNDER SECTION 481 BNSS (old 437-A Cr. P.C.)

Sr. No.	Name and address of Appellant/Accused	: Name and address of Surety
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| 1. | Vijay Kumar son of Sh. Durga Dass resident of village Harma, PO Nainwan, Tehsil & PS Garhshankar, Distt. Hoshiarpur, Punjab. | Kamal Jeet son of Sh. Guljari Ram, R/o Ward No.2, Village Abada Barana, Tehsil & Distt. Una, HP. |
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(Kanta Verma)
Additional Sessions Judge-II,
Una, Distt. Una, HP.