

CIS CNR No.: HPM06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

FORM 'A'

IN THE COURT OF MEGHA SHARMA, JUDICIAL MAGISTRATE, FIRST CLASS, JOGINDERNAGAR, DISTRICT MANDI, (H.P.) [Date of the Judgment:25.09.2024] [Case No.: 19/2019] [FIR No. 192/2018, UNDER SECTIONS 341, 323 read with Section 34 of IPC , P.S., JOGINDERNAGAR]	
COMPLAINANT	STATE OF H.P.
REPRESENTED BY	SH. P.C. THAKUR, LD. APP.
ACCUSED	1. ARUN AWASTHI , S/O SHASHI KUMAR, R/O VILLAGE BALAKRUPI, P.O. & TEHSIL JOGINDERNAGAR, DISTRICT MANDI, H.P. 2. SHASHI KUMAR S/O JOG RAJ, R/O VILLAGE BALAKRUPI, P.O. & TEHSIL JOGINDERNAGAR, DISTRICT MANDI, H.P.
REPRESENTED BY	SH. M.S. RATHORE, ADVOCATE

FORM 'B'

Date of Offence	09.11.2018
Date of FIR	09.11.2018
Date of Chargesheet	31.01.2019
Date of Framing of Charges	20.03.2021
Date of commencement of evidence	06.07.2021
Date on which judgment is reserved	25.09.2024
Date of the judgment	25.09.2024

CIS CNR No.: HPM06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

Date of the sentencing order, if any.	
---------------------------------------	--

Accused Details:-

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during the trial for purpose of Section 428, Cr. P.C.
1.	Arun Awasthi	19.11.2018		Section 341, 323 read with Section 34, of IPC	Acquitted		

CIS CNR No.: HPMA06-000211-2019
 CIS Case Type: Police Challan
 CIS Case No.(Registration No.): 19/2019
 CIS Case Year: 02.12.2019

2.	Shashi Kumar	19.11.2018		Section 341, 323 read with Section 34, of IPC	Acquitted		

JUDGMENT:

The accused has been booked for the commission of offence punishable under Sections 341, 323 read with Section 34 of Indian Penal Code (**hereinafter referred as “IPC”**).

2. In brief the prosecution story is that on 09.11.2018 around 8:00 PM, complainant was riding his motorcycle bearing registration no. HP29A-6737, when he reached at Garoru Patrol Pump, light of the car coming from the opposite direction falls in his eyes, due to which his motorcycle dashed with the vehicle and fall on the road and received injuries. The accused Arun Awasthi and Shashi Kumar came out of the car and started altercating with him. Thereafter, FIR was lodged and investigation was set into motion. The accused was booked for the commission of offence

CIS CNR No.: HPMA06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

punishable under Section 341, 323 read with Section 34 of Indian Penal Code.

3. After the conclusion of the investigation and codal formalities charge-sheet was prepared and presented against the accused persons for the commission of offences punishable under Section 341, 323 read with Section 34 I.P.C.

4. Accused were summoned; on appearance compliance of Section 207 Cr.P.C was put into practice. On finding prima facie case, accused were charged under Section 341, 323 read with Section 34 I.P.C. to which they pleaded not guilty and claimed trial.

5. To prove its case, prosecution has examined as many as eleven witnesses whose testimonies are hereunder:-

6. PW-1 (Arvind/complainant) has stated that on 09.11.2018, when he was riding his motorcycle, at 08:00 PM when he reached at Garoru Patrol Pump, light of car coming from the opposite direction, falls on his eyes due to which both the vehicles collided and he had fallen on the road. Lot many people gathered at the spot, and buffet with him, whose name he doesn't know. Rest nothing happened. On being cross-examined by Ld. APP denied that when he stood up and proceeded towards Jogindernagar, the driver Arun whose name he came to know restrained him. He has denied that accused persons altercated with him. He has denied that as he compromised the matter with the accused person therefore, deposing falsely. He has admitted that he went to the hospital for his treatment where Police has

CIS CNR No.: HPM06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

recorded his statement. While in cross-examination by Ld. Counsel for the accused, admitted the cross case.

7. PW-2 (Abhinay) stated that on 09.11.2018 around 08:00 AM when he was going towards his house, at Garoru Patrol Pump, he found people arguing, thereafter, he went to his house. On being cross-examined by Ld. APP denied that when he reached at the spot he found that a car HP-29B-0184 was present on the left side of the road whereas the motorcycle HP-29A-6737 had fallen to the right side. Further denied that he witnessed that both the accused were beating the complainant. He has denied that complainant was rescued by him and Indira Rana. Further denied that Police has prepared spot map and clicked photographs in his presence.

8. PW-3 (Indira Rana) has stated that when she went to the shop of Sahil General Store, Garoru, she heard the noise of collision of the vehicles. She has stated that she doesn't know that vehicles belongs to whom as she was not present at the spot. Rest she knows nothing. On being cross-examined by Ld. APP denied that she witnessed that complainant with his motorcycle had fallen on the road and a car bearing registration no. HP-29-0184 is also present at the spot, from which Arun Awasthi and his sister Anamika came out who restrained the complainant and started beating him. Further denied that thereafter, another accused Shashi came at the spot who also gave beatings to the complainant and accused Arun and Shashi dragged the complainant to their Patrol Pump where accused Chandra Devi started arguing with the complainant and slapped him. She has

CIS CNR No.: HPMA06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

denied that Police came at the spot in her presence.

9. PW-4 (HC Manveer Singh/Investigating Officer) stated that vide rapat no.24 Ext.P-1/PW4 they were present at Garoru, near Patrol Pump, and received information that a rider of motorcycle is hospitalized at Civil Hospital, Jogindernagar, on which Police went to Civil Hospital, Jogindernagar and application Ext.P-2/PW4 was moved to the Medical Officer to procure the MLC of injured. The statement of complainant is recorded under Section 154 Cr.P.C. Ext.P-3/PW4 having his signature in red circle 'A' qua which endorsement is Ext.P-7/PW4, based on which FIR no. 192/2018 Ext.P-6/PW4 was registered. Similarly, the application Ext.P-4/PW4 and Ext.P-5/PW4 were also filed before the medical officer at Civil Hospital Jogindernagar to procure the MLC of accused persons. Spot map of the place of occurrence is Ext.P-8/PW4, whereas the photographs are from Ext.P-9/PW4 to Ext.P-11/PW4. The statements of Arvind, Abhinay and Indira Rani were recorded as per their version which are from Ext. P-12/PW4 and Ext.P-14/PW4. On being cross-examined by Ld. Counsel for the accused admitted that original MLC of complainant is not annexed in the case file. The photographs are not annexed with the CIPA certificate. Further admitted that in the photographs neither the complainant nor the accused and motorcycle and accidental car are seen. He has admitted that in the present case two FIR have been registered, one of the FIR is of accident which has been registered by accused Arun against complainant Arvind. He has shown his ignorance that in that FIR he is the Investigating Officer. Further admitted that on the day of incident

CIS CNR No.: HPMA06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

no independent witness was available.

10. PW-5 (Dr. Neeraj Sharma) has stated that on 09.11.2018 he has examined complainant/Arvind of which MLC is Ext.P-1/PW5, as per which injuries are simple in nature. Further deposed that as per RFSL report, 75.09% alcohol content was found in the in the blood of complainant. On the same day he has also examined accused Arun and Shashi Kumar who were not intoxicated and their MLC are Ext.P-2/PW5 and Ext.P-3/PW5. The injuries received by accused Shashi Kumar were found simple in nature.

11. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., wherein they denied having committed any offence and claimed to be innocent. The accused persons opted not to lead any evidence in their defence.

12. Learned APP has argued that the prosecution has proved its case beyond reasonable doubt and therefore accused person is liable to be convicted.

13. Per contra, Ld. Counsel for accused has contended that the prosecution has miserably failed to prove guilt of accused person beyond reasonable doubt.

14. I have heard Ld. A.P.P. for the State and Ld. Defence Counsel for accused and have gone through the entire material on case file carefully.

15. Following points arise for determination:

Point no. 1 Whether the prosecution has proved beyond all reasonable doubt that on 09.11.2018 about 8:00

CIS CNR No.: HPM06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

PM at place Garoru Patrol Pump, accused persons in furtherance of common intention wrongfully restrained complainant Arvind Kumar to proceed on a public way where he has right to proceed and thereby committed an offence punishable under Section 341 read with Section 34 of IPC, as alleged?

Point no. 2 Whether the prosecution has proved beyond all reasonable doubt that on the aforementioned date, time and place, accused persons in furtherance of common intention voluntarily caused simple hurt to complainant by beating him and thereby committed an offence punishable under Section 323 read with Section 34 of IPC, as alleged?

Final Order:-

16. For the reasons to be recorded hereinafter, while discussing aforesaid points, my findings on these points are as under:-

Point no.1 : No

Point no.2 : No

Final Order: The accused are “**acquitted**” for the commission of offence punishable under Sections 341, 323 read with Section 34 IPC as per operative part of the judgment.

CIS CNR No.: HPMA06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

REASONS IN SUPPORT OF FINDINGS.

Point No. 1 & 2

17. Both the points are taken up together so as to avoid the repetition of evidences.

18. The accused persons have been booked for the commission of offence punishable under Section 341, 323 read with 34 of Indian Penal Code. In order to prove the charge of Section 341 IPC the onus lies on the prosecution to prove that accused has wrongfully restrained the complainant to proceed in a direction in which he has right to proceed, whereas with respect to Section 323 the onus is to prove that accused persons had beaten the complainant and voluntarily caused simple hurt to him. It is to be noted that not only the eye witnesses but also the complainant has been proceeded hostile. Though the Ld. APP has tried to cross-examine the witnesses at length but nothing material extracted from their ocular evidence which can be used for Section 154 (2) of Indian Evidence act.

19. Complainant who stood as PW-1, being the witness as well as the sufferer of the accident has failed to recognize that by whom he was beaten. Whereas the other eye witness PW-2 has testified that when he reached at the spot he saw the gathering of the people who were arguing with each other and thereafter he went to his house. Likewise PW-3 has also deposed that she heard the noise of collision of vehicles, but she cannot depose that to whom those vehicles belonged as she was not present at the spot. As these witnesses have disputed the

CIS CNR No.: HPMA06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

presence of accused persons at the spot therefore, benefit of doubt is extended in their favour and accordingly, point no. 1 & 2 decided against prosecution and in favour of accused persons.

FINAL ORDER:-

20. As a result of my findings on point number 1 & 2 supra, accused are **acquitted** of the offences punishable under Sections 341, 323 read with Section 34 of Indian Penal Code. The personal bond furnished by them are cancelled and their surety discharged. However, the bonds furnished by them under Section 437-A of Cr.P.C shall remain in force in accordance with law. The case property (if any) be returned to its rightful owner after expiry of the period of limitation for filing appeal or in case of appeal same be dealt with as per direction of the Hon'ble Appellate Court. The file after due completion be consigned to the record room.

Note:- Criminal Ahlmad is directed to intimate the concerned Police about the status of acquittal of accused under Sections 341, 323 read with Section 34 of Indian Penal Code forthwith.

Announced in the open court today on this 25th day of September, 2024 in presence of Ld. APP of the State and the accused persons and their counsel.

**(Megha Sharma),
Judicial Magistrate First Class,
Joginder Nagar,
Distt. Mandi, H.P.**

CIS CNR No.: HPMA06-000211-2019
 CIS Case Type: Police Challan
 CIS Case No.(Registration No.): 19/2019
 CIS Case Year: 02.12.2019

FORM 'C'

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Arvind Kumar	Complainant
PW2	Abhinay	Witness of spot
PW3	Indira Rana	Witness of spot
PW4	HC Manveer Singh	I.O.
PW5	Dr. Neeraj Sharma	MLC

B. Defence Witnesses:

RANK	NAME	NATURE OF EVIDENCE
-	-	-

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Ext.P-6/PW4	FIR
2.	Ext.P-3/PW4	Complaint
3.	Ext.P-7/PW4	Endorsement
4.	Ext.P-1/PW4	Rapat no. 24
5.	Ext.P-2/PW4	Application
6.	Ext.P-1/PW5	MLC of complainant
7.	Ext.P-4/PW4	Application
8.	Ext.P-2/PW5	MLC of accused (Arun)
9.	Ext.P-5/PW4	Application
10.	Ext.P-3/PW4	MLC of accused (Shashi Kumar)

CIS CNR No.: HPM06-000211-2019
CIS Case Type: Police Challan
CIS Case No.(Registration No.): 19/2019
CIS Case Year: 02.12.2019

11.	Ext.P-8/PW4	Spot map
12.	Ext.P-9/PW4 to Ext.P11/PW4	Photographs
13.	Ext.P-12/PW4 to Ext.P14/PW4	Statements under Section 161 Cr.P.C.

B. Defence:

Sr. No.	Exhibit Number	Description
-	-	-

Particulars of accused persons under Section 437-A Cr. P.C.:-

1. ARUN AWASTHI S/O SHASHI KUMAR, R/O VILLAGE BALAKRUPI, P.O. & TEHSIL JOGINDERNAGAR, DISTRICT MANDI, H.P.
2. SHASHI KUMAR S/O JOG RAJ, R/O VILLAGE BALAKRUPI, P.O. & TEHSIL JOGINDERNAGAR, DISTRICT MANDI, H.P.

Particulars of surety under Section 437-A Cr. P.C.:-

1. SUBHASH KUMAR S/O LATE SH. BHOLA RAM, S/O RANCHU, R/O MUHAL AWAIR/392, TEHSIL JOGINDER NAGAR, DISTRICT MANDI, H.P.

(Megha Sharma),
Judicial Magistrate First Class,
Joginder Nagar,
Distt. Mandi, H.P.