

IN THE COURT OF NITIN RAJ
ADDITIONAL SESSIONS JUDGE, NARNAUL UID NO. HR-0287

Criminal Appeal No. : 153 of 2018

Date of Institution : 02.08.2018

Date of Decision : 09.07.2026

CIS No. : CRA/153/2018

CNR No. : HRNR01-005393-2018

Devender Kumar son of Sh. Om Parkash, resident of Mohalla Mahal,
Misharwara, Tehsil Narnaul, District Mahendergarh.

.....Appellant-complainant

Versus

1. Yadvender @ Rinku son of Sh. Narender Kumar resident of Mohalla
Gastiwara, Narnaul Tehsil Narnaul District Mahendergarh.

....Respondent-accused

2. State of Haryana.

....Proforma respondent

Appeal against the judgment dated 13.07.2018

Present: Shri Oshank Shandilya, Advocate for appellant
Shri. Rakesh Kaushik, Advocate for respondent no.1
Shri Dilawer Singh APP for the State/ respondent no.2

Nitin Raj
ASJ,Narnaul, 08.07.2026

JUDGMENT

This is an appeal against the judgment dated 13.07.2018, passed by the court of Sh. Anil Kumar, the then learned JMIC, Narnaul in criminal case no. 153-2015-2016 vide which, the respondent/accused had been acquitted from the charges levelled against him; with a prayer for setting aside the impugned judgment by way of acceptance of the present appeal. Hereinafter parties are referred as per original nomenclature.

2. The brief facts of the case are that the instant case was registered on the basis of complaint filed by Devender Kumar son of Om Parkash stating therein that he is working in Government Hospital, Narnaul as 4th Class Employee on contract basis. That on 18.1.2015, after completing his job, at about 7.00 p.m., he went to a shop situated in the locality for purchasing some articles. In the way, he met with accused who first demanded his bike and thereafter money. That when complainant refused to give the same, accused started abusing him with caste related words and twisted his finger as well. Thereafter, he went to his house. It is further alleged that when complainant again visited the shop to purchase items, Kailash and Subhash Soni were sitting on the shop, the house of accused is also situated nearby. That on seeing complainant, accused started abusing him and took an Axe from his house and hit the said axe on his head. That he raising hue and cry, Subhash Soni rescued him from the accused. That on receiving information, his brother Ravinder also came at the spot and complainant was taken to Government Hospital,

where he was given first aid and was referred to PGI, Rohtak, However, he took treatment from Naithani Hospital, Rewari.

On the basis of complaint, DDR No. 7 dated 24.1.2015 was registered. Investigation was carried out. MLR of injured was obtained. On reporting fracture on Ct. Lt. Temporal, FIR under sections 323, 325 IPC was registered. Subsequently, in pursuance of investigation rough site plan of the place of occurrence was prepared after inspecting the spot, accused was arrested and the statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, the final report under Section 173 Cr.P.C. was presented in the Court.

3. Accordingly the copy of documents were supplied to accused in consonance with the mandate of Section 207 Cr.P.C, vide order dated 24.08.2015.

4. On finding a prima facie case against the accused, he was charge-sheeted for commission of offences punishable under section 323 and 325 of IPC, vide order dated 24.08.2015, to which he did not plead guilty and claimed trial.

5. In order to substantiate its case, the prosecution has examined Devender as PW1, Ravinder as PW2, Kailash Chander as PW3, Subhash Saini as PW4, EASI Ved Parkash as PW5, Narender Kumar as PW6, Dr. Rakesh Nathani as PW7, Sajjan Singh as PW8, Banwari Lal as PW9 and Bharat Singh as PW10. Thereafter, evidence of the prosecution was closed by learned APP for the State vide statement dated 19.02.2018.

6. Statement of the accused under section 313 of Cr.P.C was recorded, wherein all the incriminating evidence was put to him, but the same was denied by him, and he pleaded innocence and false implication in the present case.

7. After hearing the arguments advanced by learned APP for the State and learned defence counsel, accused had been acquitted from the charges levelled against him.

8. Feeling aggrieved with the impugned judgment, present appeal has been preferred by the State. Trial court record has been requisitioned.

9. It has been argued by learned counsel for the complainant that the learned trial Court passed the judgment dated 13.07.2018 without properly appreciating the facts and evidence available on the record. It has been contended that the prosecution successfully established its case beyond reasonable doubt and proved that the accused had caused injuries to the complainant with an axe. It has further been argued that the learned trial Court attached undue importance to minor discrepancies in the prosecution evidence, which did not go to the root of the matter. On these premises, it has been prayed that the impugned judgment be set aside and the accused be convicted.

10. Per contra, learned counsel for the accused has argued that the learned trial Court, after due appreciation of the entire oral as well as documentary evidence, rightly recorded the order of acquittal. It has

further been contended that the prosecution failed to establish its case beyond reasonable doubt therefore, the accused was rightly extended the benefit of doubt. It has accordingly been prayed that the present appeal be dismissed being devoid of merit.

11. I have Id. APP for the State and learned counsel for the defence and have gone through the case file.

12. The case of the prosecution is that on 18.01.2015, at about 7:00 p.m., the complainant had gone to a shop situated in the vicinity of his house to purchase certain articles. There, he allegedly met the accused, who demanded that he hand over his motorcycle and money. When the complainant refused to accede to the said demand, the accused allegedly started abusing him. Thereafter, the complainant returned to his house. It is further the case of the prosecution that after some time, the complainant again visited the same shop to purchase certain items. At that time, Kailash and Subhash Soni were present at the shop. On noticing the complainant, the accused allegedly came from his nearby house, again started abusing him and assaulted him with an axe, causing an injury on his head. Upon raising an alarm, Subash Soni intervened and rescued him. Shortly thereafter, the complainant's brother, Ravinder, also reached the spot.

13. The complainant, while appearing in the witness box as PW-1, fully supported the prosecution case and narrated the entire occurrence

in a cogent and consistent manner. His testimony finds due corroboration from the depositions of PW-2, PW-3 and PW-4, who have also consistently deposed regarding the manner in which the occurrence unfolded. These witnesses categorically stated that the accused came from his house carrying an axe and assaulted the complainant on the head with the blunt side of the weapon. All the prosecution witnesses were subjected to lengthy and searching cross-examination by the learned defence counsel. However, nothing material could be elicited from their cross-examination so as to impeach their credibility or to render the prosecution version doubtful.

14. The ocular version of the prosecution also stands duly corroborated by the medical evidence on record. The MLR, Ex. PW10/B ; the discharge summaries ,Ex. PW7/B to Ex. PW7/K, duly proved by PW-10 and PW-7 respectively. The medical opinion Ex.PW7/A read with aforesaid medical record , further clearly establish that the complainant had sustained fracture on left temporal region which is capable of causing bleeding from left ear and the injury is grievous in nature, consistent with the prosecution version. Further, the fact that Ex. D1, being the Bed Head Ticket issued by PGIMS, Rohtak, records that no fracture was detected on the X-ray does not, by itself, create any doubt regarding the prosecution case, particularly in the light of the subsequent medical opinion ,Ex. PW7/A, having been duly proved by PW7. On the other hand defence has made no effort to prove the Bed Head Ticket so that prosecution would

have opportunity to cross examine the doctor regarding the same. Therefore benefit of doubt cannot be extended to the accused.

15. Learned counsel for the defence has argued that the injuries sustained by the complainant were not the result of any assault but were caused as the complainant, being under the influence of alcohol, fell on a hard surface. In support of the said contention, reliance has been placed upon the testimony of PW-10, Dr. Bharat Singh, as well as the MLR, Ex. PW10/B, wherein it has been recorded that smell of alcohol was present and that the complainant refused to give his blood and urine samples. The said contention does not merit acceptance. Except for the suggestions put to the prosecution witnesses during their cross-examination, no independent evidence has been adduced by the defence to establish that the complainant was so heavily intoxicated that he accidentally fell on a hard surface and sustained the injuries in question. Mere presence of the smell of alcohol or the refusal to provide blood and urine samples cannot, by themselves, lead to the inference that the injuries were self-suffered on account of an accidental fall.

16. It is also significant to note that the aforesaid MLR specifically records that the patient was conscious, cooperative and oriented at the time of his examination. Had the complainant been in such an inebriated condition as suggested by the defence, the MLR would

have reflected the same, however no such observation finds mention in the MLR.

17. It has also been argued by learned counsel for the defence that there was an inordinate delay in the registration of the FIR, in as much as the occurrence took place on 18.01.2015 whereas the FIR came to be registered on 09.02.2015. According to the learned counsel, such delay creates a serious doubt regarding the veracity of the prosecution case. The said contention, however, is devoid of merit. The delay in registration of the FIR stands satisfactorily explained by the evidence available on record. The complainant, while appearing as PW-1, categorically deposed that immediately after the occurrence he was admitted to Nathani Hospital, Rewari, where he remained admitted till 21.01.2015. He further stated that his statement was recorded by the Investigating Officer on 24.01.2015. The said fact stands duly corroborated by the testimony of PW-9, the Investigating Officer. It is also pertinent to note that PW-10, Dr. Bharat Singh, had promptly intimated the police regarding the admission of the injured by sending a medical ruqqa, Ex. PW10/A immediately after the complainant was brought to the Government hospital, Narnaul on the day of occurrence itself i.e on 18/01/2015. Thus, the machinery of investigation had already been set in motion without any delay.

18. Further once the statement of the complainant had been recorded on 24.01.2015, the subsequent delay in the formal registration of the FIR on 09.02.2015 cannot be attributed to the complainant. Any delay occurring thereafter was entirely on the part of the investigating agency and cannot be permitted to prejudice the prosecution case. It is a settled principle of law that a lapse or delay on the part of the investigating agency, by itself, does not constitute a ground to discard an otherwise reliable prosecution.

19. The weapon of offence, namely the axe, was duly recovered during the course of investigation and was produced before the Court during the deposition of PW9, which is exhibited as Ex. PW9/G, lending further corroboration to the prosecution case.

20. Learned counsel for the defence has contended that the recovery of the axe is liable to be discarded as no independent witness was associated with the recovery proceedings and no specific mark has been put on the said axe. The said contention is not tenable. The recovery memo Ex.PW8/A reveals that the accused himself produced the weapon of offence before the Investigating Officer, whereupon the same was taken into possession in accordance with law. In such circumstances, the absence of an independent witness at the time of recovery is not by itself sufficient to render the recovery doubtful.

21. There can be no quarrel with the settled proposition of law that, in an appeal against acquittal, the appellate Court exercises its jurisdiction with due circumspection. Where two views are reasonably possible on the basis of the evidence available on record, the view favourable to the accused ordinarily deserves to be adopted and the order of acquittal should not be interfered with merely because another view is possible. The principles governing interference with an order of acquittal have been succinctly reiterated by the Hon'ble Supreme Court in *H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581, as well as by the Division Bench of the Punjab and Haryana High Court in *State of Haryana v. Ankit*, Law Finder Doc Id # 226517.

However, the aforesaid principle has no application where the judgment of acquittal suffers from manifest illegality or is based on an erroneous appreciation of evidence or where material evidence has been ignored, resulting in a miscarriage of justice. In such circumstances, the appellate Court is not only empowered but is duty-bound to reappraise the evidence and interfere with the order of acquittal.

22. In the present case, the Court is of the considered view that the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt through reliable ocular as well as medical evidence. The learned trial Court, while recording the order of acquittal, has failed to appreciate the evidence in its proper perspective and has

attached undue importance to minor discrepancies and insignificant contradictions, which neither affect the core of the prosecution case nor dent the credibility of the eyewitnesses. Therefore, respondent/accused is held guilty under sections 323 and 325 IPC. Now to come up after lunch break for arguments on quantum of sentence.

Announced in open court:

Dated:09.07.2026
Meena Stenographer Gr-I

Nitin Raj
Addl. Sessions Judge
Narnaul, UID No. HR-0287

Present: Shri Oshank Shandilya, Advocate for appellant
 Shri. Rakesh Kaushik, Advocate for respondent no.1
 Shri Dilawer Singh APP for the State/ respondent no.2

Judgment pronounced. Vide my separate judgment of even date, the present appeal is hereby allowed. Therefore, respondent/accused is held guilty under sections 323 and 325 IPC. Now to come up after lunch break for arguments on quantum of sentence.

Announced in open court:

Dated:09.07.2026
Meena Stenographer Gr-I

Nitin Raj
Addl. Sessions Judge
Narnaul, UID No. HR-0287