

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Appeal No.27 of 2010
Reserved on 20.06.2026
Date of Decision: 01.07.2026**

Ashwani Kumar

.....Petitioner

Versus

State of Himachal Pradesh

... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. N.S. Chandel, Senior Advocate with Ms. Shwetima Dogra, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.1-State.

Sandeep Sharma, Judge

Instant criminal appeal filed under Section 374 of Code of Criminal Procedure, lays challenge to judgment dated 08.01.2010 passed by the learned Sessions Judge, Hamirpur, District Hamirpur, H.P. in Sessions Trial No.23 of 2009, whereby Court below, while holding the appellant-accused (in short the "**accused**") guilty of having committed offences punishable under Sections 307, 325, 323 & 506 of Indian Penal Code, convicted and sentenced him, as under:

Section	Sentence	Fine	Default sentence
307 IPC	Five years	Rs.	Simple imprisonment for two years

¹Whether the reporters of the local papers may be allowed to see the judgment?

	rigorous imprisonment	25,000/-	
325 IPC	Two years rigorous imprisonment	Rs. 5000/-	Simple imprisonment for six months
323 of IPC	Six months rigorous imprisonment	Rs. 1000/-	Simple imprisonment for two months
506 of IPC	Two years rigorous imprisonment	Rs.5,000/-	Simple imprisonment for six months

2. Precisely, case of the prosecution, as emerge from the pleadings as well as record of Court below, is that on 15.12.2008 at about 11:15 a.m., a telephone call was received at Police Station Sadar, Hamirpur, from Smt. Anita Devi (PW-4) that her husband had been given beatings on the previous night by the accused and her husband was referred to Dr. RPGMC, Tanda for further treatment. On the basis of aforesaid telephonic information, PW-12 HC Duni Chand proceeded to Regional Hospital, Hamirpur and recorded the statement of PW-1 Parkash Chand i.e. victim/injured under Section 154 Cr.P.C, wherein he alleged on 14.12.2008, he, after having heard abuses given by the accused to his wife, went to the courtyard of the accused and requested him not to use such abusive language, as number of ladies were residing in the vicinity. Complainant alleged that accused pushed him, as a result thereof, he fell on the ground and thereafter, accused gave him beatings with danda and also threatened him to kill him. He alleged that on hearing his cries, persons namely Manoj Kumar Chauhan, Harnam Singh Chauhan, Vivek Chauhan, Urmila Devi, Rainchu Devi and Promila Devi etc

reached on the spot and rescued him from the clutches of the accused. He also alleged that on account of beatings given to him, he suffered injuries on his back, throat and other parts of the body and as such, he may be got medically examined. On the basis of statement of the complainant recorded under Section 154 Cr.P.C Ext.PW-1/A, FIR Ext.PW-9/B came to be lodged at Police Station Hamirpur. During investigation, police found that immediately after the alleged incident, complainant was brought to the Community Health Centre, Tauni Devi, where he was medically examined by PW-5 Dr. S.Shard, who subsequently issued MLC Ext.PW-5/A. Perusal of afore MLC suggests that four injuries on the person of the complainant were found. From afore Community Health Centre, Tauni Devi, complainant was taken to Regional Hospital, Hamirpur, for treatment, from where he was further shifted to Dr. RPGMC, Tanda, where he was treated vide case summary Ext.PW-8/A. X-ray of the complainant are exhibited as Ext. PW-6/B to Ext. PW6/F and report thereof is Ext. PW-6/A. As per the report, fractures of the 6th, 7th, and 8th ribs on the left side were detected, and the injury was opined to be dangerous to life. During investigation, Investigating Officer took into possession the blood stained clothes of the complainant Ext. P-1 and Ext. P-2 on 16.12.2008 vide memo Ext. PW-1/B in the presence of witnesses namely Ravinder Singh, who was not examined and Anita Devi

(PW-4). Afore clothes were sealed in a parcel with Seal 'B' and its seal impressions were taken on a piece of cloth vide Ext. PW-12/C.

3. Accused, who was arrested during interrogation, produced weapon of offence i.e. Danda (Ext.P-3) to the Police vide memo Ext. PW-1/C, which was sealed with seal 'T' and its specimen seal impressions were taken on a piece of cloth (Ext. PW-13/A). Sketch of aforesaid danda was also prepared and placed on record as Ext. PW-1/D. The case property was thereafter deposited with the MHC, Police Station Hamirpur, vide rapat entries Ext. PW-9/C and Ext. PW-9/D. During investigation, SHO of the Police Station Sadar, Hamirpur, moved an application (Ext. PW-5/E) to PW-5 Dr.S. Shard, seeking therein his opinion as to whether the injuries in question could have been caused with danda Ext.P-3 or not, to which he opined in affirmative vide opinion Ext. PW-5/D. SHO again moved another application (Ext. PW-5/F) to the same Medical Officer, seeking therein his further clarification as to whether injury No.4 given in MLC (Ext. PW-5/A), was sufficient in the ordinary course of nature to cause death and whether the injuries mentioned in the MLC including injury No.4 were sufficient to cause death of the complainant Parkash Chand (PW-1). PW-5 rendered his opinion qua aforesaid query in affirmative. Investigating Officer visited the spot on 31.12.2008 and prepared the site plan (Ext. PW-12/B). Thereafter, after recording the statements of witnesses under Section 161 Cr.P.C., the Investigating

Officer prepared the challan and presented it before the learned Chief Judicial Magistrate, Hamirpur, Himachal Pradesh on 04.07.2009. The case was thereafter assigned to the committal court, which in turn committed it to the Court of the learned Sessions Judge, Hamirpur.

4. Learned Sessions Judge, Hamirpur, after being prima facie satisfied that case under Sections 307, 325, 323 & 506 of Indian Penal Code is made out against the accused, proceeded to charge them under aforesaid provisions of law, to which they pleaded not guilty and claimed trial.

5. Prosecution, with a view to prove its case, examined as many as 13 witnesses, whereas accused, in his statement recorded under Section 313 Cr.P.C., denied all the allegations levelled against him. However, despite sufficient opportunities, accused failed to lead evidence in defence.

6. Learned trial Court, on the basis of evidence collected on record by the prosecution, held the accused guilty of his having committed offences punishable under Sections 307, 325, 323 & 506 of the Indian Penal Code and accordingly, convicted and sentenced him as per the description given herein above. In the afore background, accused has approached this Court in the instant proceedings, praying therein for his acquittal after setting-aside the judgment of conviction and order of sentence recorded by the learned Court below.

7. I have heard learned counsel for the parties and gone through the record.

8. Precisely, the grouse of the accused, as has been highlighted in the appeal and further canvassed by Mr. N.S. Chandel, learned Senior Counsel representing the accused duly assisted by Ms. Shwetima Dogra, Advocate, is that Court below, while ascertaining the guilt of the accused, has failed to appreciate the evidence in its right perspective, as a result thereof, findings to the detriment of the accused, who has been falsely implicated, have come to the fore. While making this Court peruse evidence adduced on record by the prosecution, Mr. Chandel, learned Senior Counsel for the accused, vehemently argued that none of the material prosecution witnesses had an occasion to see the alleged incident with their eyes, rather they all reached on the spot, after having heard alleged cries of the complainant (PW-1). He further submitted that to prove the guilt of the accused, in the case at hand, no independent witness ever came to be associated by the Investigating Officer, despite there being availability of them in large number. He submitted that there are material contradictions and inconsistencies in the statements of material prosecution witnesses, which creates serious doubt with regard to correctness of the story put-forth by the prosecution. He submitted that accused successfully proved on record that complainant suffered injuries as depicted in the MLC on

account of his having fallen in his courtyard under the influence of liquor, but yet Court below for no justifiable reasons discarded such defence of the accused. He further invited attention of this Court to spot map (Ext. PW-12/B) to state that same belies the story of the prosecution that complainant was given beatings by the accused in his courtyard. He submitted that as per prosecution story, the entire alleged incident happened in the courtyard of the accused, but while preparing the spot map, place of occurrence has been shifted from the courtyard of the accused to the courtyard of the complainant. While referring to the statements made by the material prosecution witnesses, Mr. Chandel also attempted to argue that since there was complete darkness, coupled with the fact that complainant was under the influence of liquor, complainant, while coming towards the courtyard of the accused, fell in his courtyard after being collided with the protection wall given between the houses of the accused and the complainant. Lastly, Mr. Chandel contended that though there is no evidence to connect the accused with the injuries allegedly suffered by the complainant, but even otherwise, if it is presumed that injuries found on the body of the complainant were inflicted by the accused, same cannot be said to be sufficient to cause death in ordinary course because emphysema is a illness or disease, which cannot be caused by an injury. Mr. Chandel submitted that since very occurrence of the alleged incident is doubtful, coupled with the fact that no independent

witness ever came to be associated by the prosecution to prove the guilt of the accused, there was no occasion, if any, for the Court below to hold the accused guilty of his having committed offence punishable under Section 307 of Indian Penal Code. He further submitted that otherwise also, no evidence worth credence ever came to be led on record by the prosecution to prove intention and knowledge of the accused to cause death or grievous injury, which is sufficient to cause death and as such, Section 307 of Indian Penal Code otherwise could not have been attracted in the case at hand.

9. To the contrary, Mr. Anish Banshtu, learned Deputy Advocate General, while the supporting the impugned judgment of conviction and order of sentence recorded by the Court below, vehemently argued that prosecution proved its case beyond reasonable doubt that on the date of alleged incident, accused gave merciless beatings to the complainant, as a result thereof, he suffered grievous injuries, which could be sufficient to cause death in ordinary course. He submitted that bare perusal of the statements made by the material prosecution witnesses i.e. PW-1, PW-2, PW-3, PW-4 and PW-7 clearly proves that on the date of alleged incident, complainant was given beatings by the accused, as a result thereof, he suffered multiple injuries. Mr. Banshtu submitted that minor contradictions and inconsistencies, if any, in the statements of afore witnesses may not be sufficient to discard the foolproof case of the prosecution,

especially when their version, if read in unison, clearly establishes that on the date of alleged incident, accused gave beatings to the complainant. He further submitted that though there is enough material available on record suggestive of the fact that on the date of alleged incident, no male member was ever present as they all had gone to attend the funeral of Ranjit, but even otherwise version of interested witnesses cannot be brushed aside, rather it carries same evidentiary value as that of independent witnesses. While referring to the medical evidence adduced on record, Mr. Banshtu submitted that on account of infliction of injuries by the accused, complainant suffered grievous injury, which could be dangerous to his life and as such, no illegality can be said to have been committed by the learned trial Court, while holding the accused guilty of his having committed offence punishable under Section 307 of Indian Penal Code. He further submitted that intention and knowledge can be gathered from the conduct of the accused, who firstly pushed the complainant to the ground and thereafter, relentlessly inflicted injuries on his person with danda fully knowing that such injury may cause death.

10. Though in the case at hand, prosecution, with a view to prove its case, examined 13 witnesses, but statements of five witnesses i.e. PW-1, PW-2, PW-3, PW-4 and PW-7 would be relevant to ascertain the correctness of the story put-forth by the prosecution.

11. PW-1 deposed that on 14.12.2008 at about 07:30 p.m., while he was sitting in his courtyard, accused Ashwani Kumar, whose house is adjacent to his house, was hurling filthy abuses to his wife. He deposed that when he asked the accused to stop hurling abuses, he pushed him to the ground and started giving blows on his body with a danda. He deposed that accused threatened to kill him and asked him who is he to advise him. While stating that he sustained injuries due to beatings on his ribs, right thumb, chest, he deposed that incident was witnessed by Urmila Devi, Promila Devi, Anita Devi, Vivek and Rainchu Devi. At this stage, it is apparent to take note of the fact that in his statement recorded under Section 154 Cr.P.C., complainant stated that after hearing his cries, persons namely Manoj Kumar Chauhan, Harnam Singh Chauhan, Vivek Chauhan, Urmila Devi, Rainchu Devi and Promila Devi etc. had come on the spot to rescue him. However, persons namely Manoj Kumar Chauhan, Harnam Singh Chauhan, Vivek Chauhan never came to be examined, rather persons namely Urmila Devi, Rainchu Devi and Promila Devi, who are closely related to the complainant, came to be examined. In addition to afore witnesses, PW-4 Anita Devi, who happens to be wife of the complainant, was also examined. PW-1 also deposed that he was shifted to Government Hospital, Tauni Devi, from where he was further referred to Regional Hospital, Hamirpur. He deposed that doctors at Regional Hospital, Hamirpur, examined him and police also

reached the afore hospital, where his statement Ext.PW-1/A was recorded, which was signed by him. He deposed that Medical Officer, Regional Hospital, Hamirpur, referred him to Medical College, Tanda. Interestingly, Medical Officer, Regional Hospital, Hamirpur, who referred the accused to Medical College, Tanda, never came to be examined. He also deposed that he was firstly examined at Tauni Devi and MLC was also signed by him at Circle-A. While stating that he remained admitted at Medical College, Tanda from 15.12.2008 to 20.12.2008, he stated that police visited him on 16.12.2008 at Tanda Hospital and took into possession his blood stained shirt and Pyjama (trouser). He deposed that the aforesaid articles were sealed in a parcel and taken into possession vide seizure memo Ext. PW-1/B. He deposed that at the time of production of clothes, his son-in-law Ravinder Singh, who never came to be examined, and his wife PW-4 were present and they also signed the memo Ext.PW-1/B. He deposed that on 23.03.2009, police had come to his residence and verified the spot, where he was given beatings. He deposed that accused had produced one danda to the police, which had five knots and was made of bamboo. In his cross-examination, afore witness stated that while he was examined by the doctor at Tauni Devi hospital, he was fully conscious, but was unable to speak anything because of swelling in the throat, however, such version of him is not corroborated by the medical evidence adduced on record because

four injuries as shown in the MLC do not suggest that there was any kind of swelling in the throat of the complainant. While denying the suggestion put to him that vehicles used to ply day and night from Tauni Devi to Hamirpur, he stated that after 08:00 p.m. there was no bus facility from Tauni Devi to Hamirpur. While admitting that on 15.12.2009 at about 08:00 a.m., he was brought to Regional Hospital, Hamirpur, from Tauni Devi via Lugwan-Lambloo, he also admitted that Police Station, Hamirpur is situated at about 100 metres distance from Bhoti Chowk. While denying the suggestion put to him that courtyard of the accused is towards East and courtyard of his house is towards west, he stated that both are towards East. In his cross-examination, this witness stated that police was informed by his wife on the same day at 08:00 p.m., but such version of him appears to be contradictory to the version put-forth by PW-12 Investigating Officer, who deposed that information with regard to alleged incident was received on 15.12.2009. He also admitted that house of Pala Ram is situated adjacent to the house of the accused and his wife also resides with him in the same house. While denying the suggestions put to him that houses of Ishro, Jagdish, Champa, Jamuna and Kanshu Ram are situated adjoining to the house of the accused, he stated that those are situated on the upper side at some distance. While admitting that about 10-15 women had gathered on the spot, he stated that no male members were available in the village due to

death of Ranjit in the village, which version of him is in total contradiction to his initial statement given to the police under Section 154 Cr.P.C. (Ext. PW-1/A), wherein he himself stated that persons namely Manoj Kumar Chauhan, Harnam Singh and Vivek Chauhan had come on the spot to rescue him along with Urmila Devi, Rainchu Devi and Promila Devi. This witness, in his cross-examination, stated that quarrel took place for about 30 minutes, which version of him is contradicted by PW-4 i.e. wife, who stated that incident had happened for 15 minutes. He deposed that PW-2 Urmila Devi was the first to visit the spot, followed by PW-7 Promila Devi, PW-3 Rainchu Devi and Vivek. However, Vivek was not examined. He stated that when Urmila Devi (PW-2) reached the spot, he was lying on the ground, but such statement of him clearly reveals that by the time, Urmila Devi and other witnesses namely Rainchu Devi, Promila Devi had reached the spot, quarrel, if any, *inter se* accused and the complainant was over. Afore statement further reveals that the complainant stood shifted from the courtyard of the accused to the courtyard of his house. While stating that there is a supporting wall (bhee) in between the houses of the accused and Pala Ram, PW-1 stated that every house of the village has bhee. Aforesaid admission of him assumes significance for the reason that accused attempted to set up a defence that on the date of alleged incident, complainant, under the influence of liquor, attempted to cross over into his courtyard, but

while doing so, he fell on the ground and suffered injuries, as is recorded in the report Ext. PW-9/E lodged by the accused against the Manoj Kumar, Harnam Singh and Manohar Chauhan, who are the brothers of the complainant and were otherwise shown to have reached the spot at the time of the alleged incident, as stated by the complainant himself, while recording his statement under Section 154 Cr.P.C.

12. In afore report Ext. PW-9/E, accused alleged that afore persons, after having seen the complainant lying on the ground, accused him of giving beatings to the complainant, which allegation was denied, but yet he was given beatings by the afore persons, as a result thereof, he suffered injuries. Pursuant to afore report Ext. PW-9/E, accused was medically examined vide Ext. PW-11/C and his hand was found to be swollen. Complainant (PW-1) also admitted that Rainchu Devi (PW-3) is his aunt (chachi) and PW-2 Urmila Devi is the wife of his younger brother. Though complainant denied the suggestion put to him that it was complete dark between 06:00 to 06:30 p.m, but such assertion of him may not be relevant for the reason that as per his own version, alleged incident had happened after 07:30 p.m., by which time, admittedly in the month of December, there would be complete dark. Aforesaid fact has otherwise been admitted by PW-12 Investigating Officer. He also admitted that neither there was light in the house of the accused nor in the house of Pala

Ram and his new house is situated behind the house of the accused. He also denied that on 14.12.2008, he had consumed liquor and assaulted the accused in his house under the influence of liquor. He also denied that he had slipped due to darkness, fallen on the protection wall (bhee), and sustained injuries. He also denied the suggestion that accused had threatened to initiate legal proceedings against him and for that reason, he lodged false report against the accused. He also denied the suggestion put to him that accused was not abusing his wife and accused had lodged report against him with the police about the said incident.

13. PW-2 Urmila Devi, while stating that complainant is her *Jeth* (elder Brother of her husband), stated that her house is situated within the same campus as that of the complainant as well as the accused. She deposed that on 14.12.2008 at about 07:30 p.m., accused was abusing his wife in his house and complainant came to the courtyard of the accused to advise him not to do so, but accused pushed the complainant, as a result thereof, he fell down and sustained injuries including the injury on his lips. She deposed that accused was already armed with danda, when the complainant reached the spot to stop him from hurling abuses at his wife. While stating that accused gave merciless beatings to the complainant, she stated that she raised alarm, upon which her husband, Rainchu Devi, Promila Devi came there. She also deposed that her another *Jeth*

(elder brother of her husband Harnam Singh) also came there later on. She deposed that accused brought a Khukhri and threatened them. If cross-examination conducted upon afore witness is read in its entirety, version put-forth by her does not appear to be truthful, rather same is totally contradictory to the version put-forth by the complainant himself. This witness, in her cross-examination, clearly admitted that she had seen the complainant in the courtyard of the accused for the first time and it was not complete dark by that time. As per version of this witness, she along with other witnesses reached on the spot after having heard cries of the complainant. If aforesaid version put-forth by this witness is perused in its entirety, it clearly suggests that she had no occasion to see the incident with her eyes, rather she could at first instance see the complainant lying in injured condition on the ground. Interestingly, though this witness attempted to state that Khukhri (Ext.PW-1/D) was shown by the accused, but such version of her has been contradicted by PW-12 Investigating Officer. Though PW-12 and PW-13 have stated that Khukhri was found in the possession of the accused, but same was not used in the incident. PW-2, in her cross-examination, stated that electricity/ light of the house of the accused was on, but light in the courtyard was not on, which version of her is in total contradiction of the statement given by PW-1, where he stated that light of his as well as house of the accused was not on. In her cross-examination, she feigned

ignorance to the fact that whether complainant had consumed the liquor at that time, but alleged that accused had consumed the liquor. Most importantly, this witness stated that when she reached the spot, complainant was already shifted to his house.

14. PW-3 Smt. Rainchu Devi, who is aunt (*chachi*) of the complainant, also deposed that when she went to the spot on hearing noise, accused had given beatings to the complainant and he was lying down in the courtyard of the accused. This witness deposed that accused had been hurling filthy abuses to his wife and the complainant had gone to advise him because ladies were residing there. This version put-forth by the afore witness clearly reveals that she was also not present on the spot, rather she reached the spot after her having heard alleged cries of the complainant. In her cross-examination, she admitted that her house is situated two houses away from the house of the accused. She deposed that PW-2 Urmila Devi had reached the spot prior to her, meaning thereby, by the time, she reached the place of occurrence, the complainant had already been shifted to his house. If it is so, afore witness had no occasion to see the accused giving beatings to the complainant. Otherwise also, she admitted that when she reached the courtyard of the accused, the complainant was being shifted on the way to his old house and then she saw complainant lying on a bed in his house.

15. PW-4 Smt. Anita Devi, who is the wife of the complainant, deposed that while, she was present at Community Health Centre, Tauni Devi, due to illness of her daughter, she received a telephone call from her daughter-in-law about the incident. However, daughter-in-law of the complainant never came to be examined. As per afore witness, she, after having received telephonic call, went to home and telephoned the police, which version of her is in total contradiction to the statement given by PW-12 Investigating Officer, who categorically stated that information with regard to alleged incident was received for the first time on 15.12.2009, while complainant was admitted in Regional Hospital, Hamirpur. PW-4 deposed that Medical Officer at Regional Hospital, Hamirpur, also telephoned the police and she further claimed that she had already informed the police on 15.12.2008, which version of her appears to be an improvement. She deposed that police came to Regional Hospital, Hamirpur and recorded the statement of her husband. In her cross-examination, she stated that police recorded the statement of the complainant at Tanda. While stating that she was already present at Tauni Devi, which fact never came to be revealed by her in her statement recorded under Section 161 Cr.P.C (Ext.DB), with which she was duly confronted, she stated in such statement about her daughter-in-law informing her about the incident. She deposed that she had telephoned the Police at telephone number 100 at about 08:30 p.m.

and Police reached the Regional Hospital, Hamirpur, on 15.12.2008 at about 09:00 a.m. via Lugwan.

16. PW-7 Smt. Promila Devi deposed that when she went to the spot, she found that accused had given beatings to the complainant with a danda and complainant was lying down in the courtyard. In her cross-examination, she admitted that PW-2 Umrila Devi is the wife of her younger brother-in-law (*Devrani*). While denying that courtyard of the accused is not visible from her house, she admitted that PW-2 Urmila Devi had reached the spot prior to her and she had raised alarm. Afore admission of her clearly suggests that when she reached the spot, complainant was removed from the alleged spot of incident to his house. This witness admitted that there were no social terms with the accused. While admitting that new house of the complainant is situated in front of first floor of his old house, she stated that by the time, she reached the spot, complainant Parkash Chand was already shifted to his new house.

17. If the statements made by all the aforesaid material prosecution witnesses, who though attempted to prove that they had an occasion to see the alleged incident with their eyes, are read in conjunction juxtaposing statement of PW-1 recorded before the learned trial Court, this Court is persuaded to agree with Mr. N.S. Chandel, learned Senior Counsel for the accused, that there are material contradictions and inconsistencies with regard to their

presence, timing as well as alleged beatings given by the accused to the complainant. None of the so-called independent witnesses can be said to be present on the spot. If it is so, there was otherwise no occasion for them to see the alleged incident with their eyes. Though prosecution, while examining afore witnesses i.e. PW-2, PW-3, PW-4 and PW-7, attempted to prove that alleged incident of beatings given by the accused to the complainant was seen by these witnesses, but, as has been noticed hereinabove, none of these witnesses were present on the spot, rather they reached on the spot after having heard alleged cries of the complainant and alarm raised by the other villagers, but by the time, these witnesses reached on the spot, complainant (PW-1) stood shifted from the spot of alleged incident to his house.

18. PW-1 Parkash Chand, in his statement recorded under Section 154 Cr.P.C. (Ext.PW-1/A) at first instance, deposed that persons namely Manoj Kumar, who is not only his brother, but also the husband of PW-2 Urmila Devi and Harnam Singh and another person namely Vivek, reached the spot and rescued him from the clutches of the accused. However, none of these persons, who could be material prosecution witnesses, came to be examined, rather PW-1, while deposing before Court below, nowhere mentioned the names of these persons, rather stated that incident was witnessed by Urmila Devi, Promila Devi, Anita Devi, Vivek and Rainchu Devi.

Version put-forth by Urmila Devi, Promila Devi and Anita Devi nowhere suggests that they were present on the spot and had an occasion to see the incident with their eyes, whereas person namely Vivek never came to be examined.

19. PW-4 Anita Devi, who happens to be wife of the complainant, was not present on the spot as is evident from her version, rather at relevant time, she was present in Tauni Devi, Hospital on account of illness of her daughter and as such, she had otherwise no occasion to see the incident with her eyes. Interestingly, in the case at hand, it has come in evidence that large number of persons had gathered on the spot of alleged incident, but no attempt, if any, ever came to be made by the Investigating Officer to associate the independent witnesses, rather Investigating Officer examined Smt. Urmila Devi (PW-2), Rainchu Devi (PW-3), Anita Devi (PW-4) and Promila Devi (PW-7), who are closely related to the complainant, to prove the guilt of the accused, however, their version cannot be given much credence for the reason that they were not present on the spot and had reached on the spot after having heard alleged cries of the complainant, but by that time, accused stood removed from the alleged spot of the incident.

20. At this stage, it is important to take note of the fact that PW-2 Urmila Devi and PW-3 Rainchu Devi are the wives of Sh. Manoj Kumar and Sh. Harnam Singh, who allegedly had given beatings to

the accused on the same day as is evident from Ext. PW-9/E. Pattern of cross-examination conducted upon afore material prosecution witnesses clearly reveals that accused attempted to carve out a case that though on the date of alleged incident, complainant suffered injuries, but not on account of beatings, if any, given by the accused, rather complainant, while attempting to cross the protection wall given between the courtyard of houses of the accused and the complainant, fell on the ground and suffered injuries. However, after having seen injuries suffered by the complainant from his wall, persons namely Manoj Kumar, Manohar Chauhan and Harnam Singh started accusing the accused that he has caused injures to the complainant, who was related to them. Allegedly afore persons also gave beatings to the accused as is recorded in Ext.PW-9/E.

21. Very omission of the prosecution to examine persons namely Manoj Kumar Chauhan, Harnam Singh and Vivek, compel this Court to agree with the submission made by Mr. Chandel, learned Senior Counsel for the accused, that false story has been concocted by the complainant to falsely implicate the accused, who though was present on the spot at the time of alleged incident, but not gave beatings, rather injuries allegedly suffered by the complainant in the alleged incident came to be sustained by him on account of his fall. Though medical evidence adduced on record nowhere suggests that complainant was ever examined to determine whether he had

consumed liquor at the relevant time or not, but if the statement of PW-2 Urmila Devi is perused, she, in her cross-examination, did not specifically deny the question put to her that complainant was under intoxication, rather she feigned ignorance and claimed that accused was under the influence of liquor. Such version of afore witness compels this Court to agree with the contention raised at the behest of the accused that possibility of consumption of liquor at the time of alleged incident by the accused cannot be ruled out.

22. No doubt, version put-forth by the interested witnesses cannot be ignored, solely on account of their being closely related to the complainant, but certainly version put-forth by them is required to be taken into consideration with utmost care and caution, but once there is overwhelming evidence adduced on record suggestive of the fact that large number of independent witnesses were present on the spot and for no cogent and convincing reasons such of the persons, who could be eye witnesses, were not cited as prosecution witnesses. Learned trial Court, while ascertaining the guilt of the accused, could not have placed much reliance upon the version of interested witnesses. Interestingly, persons namely Manoj Kumar Chauhan, Harnam Singh and Ravinder Singh, who can be said to be witnesses to the alleged occurrence, in view of statement made by the complainant under Section 154 Cr.P.C, were given up. Though no cogent and convincing reason has been assigned for giving up these

witnesses, but after having perused report made by the accused with regard to incident (Ext. PW-9/E), this Court has reason to believe that such persons were not examined purposely so that they are not cross-examined by the accused qua the alleged incident of the beatings given to the accused by them on the date of alleged incident. Hence, adverse inference is required to be drawn against the prosecution.

23. Admittedly, incident happened on 14.12.2008, but at that juncture, no police report was ever made, rather complainant (PW-1) was taken to hospital Tauni Devi for treatment, where he remained admitted throughout the night. Though wife of the complainant i.e. Smt. Anita Devi (PW-4) was already present in hospital, Tauni Devi, but neither she nor hospital authorities informed police with regard to alleged incident. Since factum with regard to alleged incident came to be reported to the police at 11:15 a.m. on 15.12.2008, while complainant was admitted at Regional Hospital, Hamirpur, no plausible explanation has been rendered on record qua delay in lodging FIR. It has come in evidence that Police Station, Tauni Devi was situated merely 100 metres from the hospital. Though PW-4 Anita Devi i.e. wife of the complainant claimed that she had informed the police with regard to alleged incident on 14.12.2008, but such version of her has been contradicted to PW-12, who categorically

stated that information with regard to alleged incident was received on 15.12.2008.

24. Though Mr. Anish Banshtu, learned Deputy Advocate General, attempted to argue that there is no much delay in lodging FIR because same came to be lodged within 24 hours of the alleged incident, but this Court is of the view that delay in lodging FIR in the case at hand **gains** significance for the reason that prosecution has not been able to prove the alleged incident beyond reasonable doubt, rather very occurrence of the alleged incident is doubtful. Though prosecution attempted to prove that on the date of alleged incident, accused gave beatings to the complainant, as a result thereof, he suffered grievous injuries, but, as has been discussed hereinabove, none of the prosecution witnesses had an occasion to see the alleged incident with their eyes, rather all the witnesses arrived on the spot after having heard alleged cries of the complainant.

25. To the contrary, accused attempted to prove that though on the date of alleged incident, complainant had suffered injuries in his courtyard, but not on account of injuries inflicted by him, rather on account of his fall on the ground under intoxication, which version of him otherwise stands recorded in report Ext. PW9/E. Since non-examination of the persons namely Manoj Kumar Chauhan, Harnam Singh and Manohar, who, as per initial version given by the complainant, had come to rescue him from the clutches of the

accused, coupled with the fact that accused specifically alleged that he was given beatings by them, compels this Court to draw an inference that purposely on the date of alleged incident, FIR was not lodged, rather on that day, complainant was taken to CHC Tauni Devi, wherein he came to be medically examined by PW-5.

26. At this stage, it is also apt to take note of MLC (Ext.PW-5/A) given by PW-5. Perusal of aforesaid document suggests that at the time of medical examination, complainant was conscious and co-operative, but restless, however, he did not name the accused, rather he disclosed to the police that he was beaten by somebody. Once complainant was fully aware and he was given beatings by the accused, it is not understood that what stopped him from naming the accused at the time of his being medically examined by PW-5. Moreover, the presence of lacerated wound on left upper lip, lacerated wound on right thumb and multiple bruises on the back of chest establishes factum of alleged fall of the complainant.

27. Though at this stage, Mr. Anish Banshtu, learned Deputy Advocate General, invited attention of this Court to the statement made by PW-1 to state that at first instance, accused pushed the complainant, as a result thereof, he fell on the ground and suffered injuries. Though possibility of falling of the complainant on the ground and suffering injuries on account of being pushed by the accused cannot be ruled out, but since none of the witnesses had an occasion

to see the alleged incident of beatings, coupled with the fact that persons namely Manoj, Harnam and Manohar, who allegedly had come on the spot at first instance, never came to be examined, defence put up by the accused with regard to injuries suffered by the complainant after his having falling on protection wall gains significance. Interestingly, in aforesaid MLC (Ext.PW-5/A), there is no mention, if any, with regard to consumption of liquor or any kind of intoxication by the complainant, but, as has been taken note hereinabove, PW-2 Urmila Devi, in her cross-examination, while answering to suggestion put-forth with regard to consumption of liquor by the complainant, feigned ignorance with regard to consumption of liquor by the accused, but stated that accused was under intoxication and as such, possibility of consumption of liquor by the complainant at relevant time cannot be ruled out. Moreover, this Court is persuaded to agree with Mr. N.S.Chandel, learned Senior Counsel for the accused, that if the complainant had been pushed by the accused, he would not have fallen on his chest, rather at first instance, his back would have touched the ground. However, in the instant case, nature of injuries itself suggests that complainant fell from the chest side and suffered injuries, which can be said to have happened on account of his fall on the ground. Interestingly, in the case at hand, prosecution attempted to set up a case that entire alleged incident of beatings, if any, given by the accused happened in the courtyard of the accused,

but if the spot map (Ext.PW-12/B) is perused in its entirety, it clearly suggests that complainant was given beatings by the accused in the courtyard of the complainant. PW-12, in his statement, while proving the aforesaid document, attempted to prove that alleged incident had actually happened in the courtyard of the complainant, but such version of him is in total contradiction of version put-forth by PW-2, PW-3, PW-7 and PW-1 also, wherein they claimed that complainant was given beatings by the accused in his courtyard. In spot map Ext.PW-12/B, place of occurrence has been changed from point A to point B, which creates serious doubt with regard to story of prosecution.

28. Moreover, this Court finds that alleged incident had happened on 14.12.2008, whereas Investigating Officer visited the spot of incident on 31.12.2008, on which date, PW-12 proceeded to prepare the spot map that too on the basis of the information given by the complainant. Needless to say, Investigating Officer is supposed to prepare the spot map after having visited the spot and taking into consideration the position at the spot. In the instant case, as has been pointed hereinabove, spot of incident has been shifted from one spot to another. PW-12, in his statement, categorically admitted that while preparing spot map, he showed only houses, which were visible to him and he did not take note of other houses, which were on the upper side of the site of location. He also admitted that though large

number of persons were said to be present on the date of alleged incident, but he only recorded the statement of witnesses, as detailed hereinabove. No plausible explanation has been rendered on record by the afore Investigating Officer that what prevented him from recording the statements of independent witnesses, while they were available in plenty. There is also no explanation that why Investigating Officer chose to record the statement of remaining witnesses and why did he give up the material prosecution witnesses namely Manoj, Harnam, Manohar and Rajinder. Similarly, no evidence worth credence ever came to be rendered on record to prove that on the date of alleged incident, majority of men were unavailable on account of funeral of person namely Ranjit.

29. Leaving everything aside, aforesaid stand taken by the prosecution stands falsified on the basis of statement made by PW-1 under Section 154 Cr.P.C., which itself suggests that while he was allegedly giving beatings, persons namely Manoj, Harnam and Manohar were present on the spot. Other witnesses have also stated that person namely Vivek was also present, but he was not examined.

30. Having scanned the entire evidence, especially statement of material prosecution witnesses, this Court finds force in the submission of Mr. N.S. Chandel, learned Senior Counsel for the accused, that on account of material contradictions and inconsistencies in the statements of so-called independent/ eye

witnesses, accused could not have been held guilty of his having committed offences punishable under Sections 307, 325, 323 & 506 of Indian Penal Code, rather he ought to have been extended benefit of doubt.

31. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in ***C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645***, wherein it has been held as under:-

"45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:- (SCC p.704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so," hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistence in evidence amongst all the witnesses."

32. No doubt, prosecution, while placing on record medical evidence, has been able to establish that complainant suffered grievous injuries, which could be dangerous to his life, but once there is no concrete evidence adduced on record to connect the accused with the alleged commission of offence, same may not be of much relevance in the instant case. Record further reveals that opinion to the effect that injuries suffered by the complainant could be dangerous to life was obtained on 11.04.2009 i.e. almost after four months of the alleged incident, by which time complainant had not only recovered, but he was also discharged from the hospital.

33. Though for the reasons discussed in detail hereinabove, this Court is of the definite view that prosecution has not been able to prove beyond reasonable doubt that accused inflicted injuries on the body of the complainant on the date of alleged incident, but even otherwise having taken note of the statements made by the material prosecution witnesses, this Court has no hesitation to conclude that no case much less under Section 307 of Indian Penal Code is made out against the accused for the reason that none of the prosecution witnesses stated anything specific with regard to knowledge and intention of the accused to kill the complainant. As per own case of the prosecution, alleged incident had happened at the spur of the moment. While allegedly accused was hurling abuses at his wife,

complainant tried to stop the accused, whereafter allegedly accused pushed him and gave him beatings.

34. Though at this stage, Mr. Anish Banshu, learned Deputy Advocate General, attempted to argue that intention and knowledge of the accused can be gathered from his conduct. He submitted that since accused, after his having pushed the complainant, who fell on the ground kept on beatings with danda, it can be safely concluded that he had intention and knowledge to kill him, however, this Court is not persuaded to agree with Mr. Banshtu, learned Deputy Advocate General, for two reasons:- (a) accused cannot be said to have prior intimation, if any, of arrival of the complainant on the spot of alleged incident, who allegedly came on the spot after hearing abuses being given by the accused to his wife. As per version of the complainant, he came on the spot to advise the accused not to hurl abuses, who thereafter allegedly gave beatings to the complainant, (b) very correctness of the story put-forth by the prosecution with regard to infliction of the injuries on the person of the complainant by the accused is doubtful, as has been discussed hereinabove at length.

35. No doubt, in the case at hand, there is ample evidence suggestive of the fact that on the date of alleged incident, complainant suffered grievous injuries on his person, but prosecution has not been able to prove that such injuries were caused by the accused.

36. To the contrary, accused has been able to create doubt with regard to story of the prosecution by raising a plea that complainant suffered injuries, after his having fallen in his courtyard under intoxication, which possibility otherwise cannot be ruled out in the totality of evidence available on record.

37. In view of the above, it cannot be said that there are two views possible and in that situation, it is well-settled that view which favours the accused should be taken into consideration and benefit of the same must be extended to the accused.

38. Reliance is also placed on a judgment rendered by the Hon'ble Supreme Court in ***T. Subramanian vs. State of Tamil Nadu, (2006)1 SCC 401***, wherein it has been held that where two views are reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt. Relevant para of the judgment is reproduced herein below:

“10. The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs.1, 2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs. 200/- as illegal gratification. We are, therefore, of the considered view that the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same. 11. We, therefore, allow this appeal, set aside the order of the High Court and restore the order of the trial court, acquitting the appellant of the charge.

39. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present appeal and accordingly, the same is allowed. Impugned judgment of conviction and order of sentence dated 08.01.2010 recorded by the learned Sessions Judge, Hamirpur, Himachal Pradesh, passed in Sessions Trial No.23 of 2009, is set aside. Accused is acquitted of the charges framed against him. Bail bonds, if any, are discharged. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

July 01, 2026
(sunil)