

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Criminal Appeal No.146 of 2014
Date of Decision: 30.07.2026**

State of H.P

.....Appellant

Versus

Sanjay Kumar

.....Respondent

Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?**

For the appellant: Mr. Anish Banshtu, Deputy Advocate General.

For the respondent: Mr. Rajesh Mandhotra, Advocate .

Sandeep Sharma, J. (Oral)

Instant criminal appeal filed under Section 378 of the Code of Criminal Procedure lays challenge to the judgment dated 06.11.2013 passed by the learned Chief Judicial Magistrate, Kangra at Dharamshala, Distt. Kangra, H.P in Criminal Case No.26-II/2009, whereby the learned Court below acquitted the respondent/accused (hereinafter accused) for his allegedly having committed offences punishable under Sections 323 and 325 of the IPC.

2. Precisely, the grouse of the appellant as has been highlighted in the petition as well as further canvassed by Mr. Anish Banshtu, learned Deputy Advocate General is that learned Court below while acquitting the accused failed to appreciate the evidence in its right perspective. He submitted that though prosecution adduced the relevant evidence so as to the fact that on

the alleged date of alleged incident, accused gave merciless beatings to complainant but the learned Court below proceeded to acquit the accused on the ground that version put forth by interested witnesses cannot be given much weightage especially on account of material contradictions and inconsistencies in their statements.

3. While making this Court peruse the evidence led on record, Mr. Anish Banshtu, learned Deputy Advocate General further argued that all the witnesses have stated that on the date of alleged incident, accused quarreled with the petitioner and thereafter gave him beatings, as a result thereof, he suffered simple as well as grievous injuries. Lastly, Mr. Anish Banshtu, learned Deputy Advocate General submitted that version put forth by the interested witnesses cannot be brushed aside solely on account of relationship with the victim/complainant. While making this Court peruse the medical evidence adduced on record, Mr. Bansthu submitted that prosecution has successfully proved on record beyond reasonable doubt that on the date of alleged incident, complainant was given beatings by the accused, as such, there was no occasion for the learned court below to acquit the accused under the relevant provisions of law.

4. To the contrary, Mr. Rajesh Mandhotra, learned counsel appearing for the respondent supported the impugned judgment of

acquittal passed by the learned court below. He submitted that bare perusal of the statements made by the complainant as well as material prosecution witnesses, who otherwise happen to be the real brothers of the complainant, clearly reveals that an attempt was made to falsely implicate the respondent. He submitted that there is no explanation rendered on record that despite availability of independent witnesses in abundance, why no steps were taken by the investigating officer to associate the independent witnesses. He submitted that though, version put forth by the interested witnesses cannot be brushed aside solely on the ground of relationship but version put forth by them is required to be taken into consideration with utmost caution. He submitted that on account of their relationship with the complainant, both independent witnesses have falsely deposed against the respondent.

5. Having heard learned counsel representing the parties and perused the material available on record viz-a-viz reasons assigned in the judgment of acquittal recorded by the learned Court below, this Court is not persuaded to agree with the learned Deputy Advocate General that the court below has failed to appreciate the evidence in its right perspective rather, this Court finds that the court below has rightly appreciated the evidence and there is no scope of interference.

6. In nutshell, case of the prosecution as emerges from the pleadings adduced on record is that on 08.09.2008, while the complainant Vikas Kumar was present in his shop at Slate Godown, accused under the influence of liquor appeared on the spot and asked for credit. Since complainant refused to oblige the accused, he started using filthy language against the complainant and left the spot. Again at 10:30 p.m, while complainant was returning back to his home, accused who allegedly had hidden himself in the nearby bushes appeared on the spot and inflicted a blow of stone, as a result thereof, he suffered injuries on his right eye. Allegedly, the complainant was rescued by his brothers Anil Kumar and Om Prakash but accused ran away from the spot. Police after having completed necessary codal formalities lodged FIR and after completion of investigation, presented challan in the competent Court of law, which being satisfied that prima facie case under Sections 323 & 325 of IPC exists against the accused, proceeded to frame charge against him under the aforesaid provisions of law, to which, he pleaded not guilty and claimed trial.

7. Prosecution in order to prove its case examined as many as nine witnesses, whereas, the accused in his statement recorded under Section 313 Cr.PC denied the case of the prosecution in its entirety. Though, the accused was offered opportunity to lead evidence but he failed to avail the same. In the instant case, though

the prosecution examined nine witnesses but statements of PW-1, PW-3, PW-4, PW-5 and PW-9 are relevant for adjudication of the case at hand.

8. PW-3 Vikas Kumar deposed that on 08.09.2008 at about 9:30 pm, accused came in his shop and started using filthy language. He deposed that at about 10:00 pm, while he was returning back to his home, accused came in his shop and started using filthy language. Accused inflicted a blow of stone, which caused injury on his right eye. In his cross-examination, he stated that house of Anil Kumar and Santosh Kumar, who are his brothers, are situated nearby his house. He stated that in case, one has to come to Yol via slate godown, the entry is from the out gate. He deposed that they reached the police station at about 10:45 PM. He further stated that police arrived on spot on the next day of occurrence and the stone was taken into custody on the next day. He also stated that statements of witnesses were recorded on next day.

9. PW-4, Om Prakash, who was cited as a spot witness, stated that when he arrived on spot, he found that blood was oozing out from the right side of face of the complainant. While stating that he saw the accused while running, this witness stated that he was narrated the incident by the complainant. In his cross-examination,

he brought certain contradictions regarding running away of the accused from the spot and handing over of the stone to the police.

10. PW-5, Anil Kumar, who is another spot witness, deposed that on 8.9.2008, at about 10:15 PM, he found the injuries on the person of the complainant. While stating that accused was giving beating to the complainant mercilessly, this witness deposed that he along with Om Prakash rescued the complainant. In his cross-examination, he deposed that police arrived on the next day. He also stated it to be correct that houses of Amru, Santosh, Manohar and Anil, are situated on the spot.

11. If the statements made by these witnesses, are read in conjunction, they suggest that on the date of alleged incident, accused besides using filthy language, also gave beatings to the complainant with the blow of stone, as a result thereof, head injury was caused, but there are material contradictions and inconsistencies with regard to mode and manner in which allegedly accused gave beatings to the complainant.

12. Careful perusal of statements made by PW-4 and PW-5, namely Om Prakash and Anil Kumar, clearly reveals that at the time of alleged occurrence, they were not present on spot, rather had come later on. Though they saw blood oozing out from the person of complainant, but certainly they had no occasion to see the scene of fight, if any, inter-se complainant and accused named in the FIR.

13. PW-9, Dr. Praveen Kumar, who medically attended upon the complainant, found small abrasion on nasal bridge. This witness deposed that injuries, cut lacerated wound on right and lower eyelid are grievous in nature. In his cross-examination, he deposed that injuries as suffered by the complainant are possible if someone falls on a stony surface. He also stated it to be correct that possibility of fracture cannot be ruled out if a person is given blow with stone (Ex.P1).

14. PW-1, Dr. Raman Puri, deposed that he medically examined the complainant and found that there was lacerated wound on right upper lid as well as right lower lid. He stated that injuries, as mentioned hereinabove, are possible with stone. In his cross-examination, he stated that he found no fracture in the X-ray examination. He also stated it to be correct that if injured was hit with force, then possibility of fracture cannot be ruled out.

15. Investigating Officer, Head Constable Sukesh Kumar (PW-8), admitted in cross-examination that he associated Amro, Santosh Kumar, Manohar, and Anil, but there is no explanation that why these independent persons were not cited as witnesses to the alleged occurrence.

16. From a careful examination of oral as well as documentary evidence led on record, this Court finds that though prosecution attempted to prove that on 08.9.2008, at about 10:30

PM, accused caused simple as well as grievous hurt to the complainant with stones, who subsequently sustained injuries on right lower eyelid.

17. With a view to prove its case, prosecution relied upon the testimony of complainant Shri Vikas Kumar (PW-3), eye witness Shri Om Prakash (PW-4) and Shri Anil Kumar (PW-5). It is not in dispute that both Om Prakash and Anil Kumar are related to the complainant on account of their being real brothers of the complainant. PW-4 is the first cousin of complainant. True, it is that version put forth by the interested witnesses cannot be brushed aside, rather it required to be given same weightage as is given to independent witness, but by now, it is well settled that version put forth by the interested witnesses should be taken into consideration with utmost care and caution while ascertaining guilt of the accused, because possibility of false implication in such like cases cannot be ruled out. Interested witnesses shall always remain interested to prove the case of complainant and for that purpose, they can also make false depositions.

18. If the testimony of Shri Vikas Kumar (PW-3), Shri Om Prakash (PW-4), and Shri Anil Kumar (PW-5) is tested on the touchstone of reliability, this Court is persuaded to agree with the finding returned by learned court below that testimony of these witnesses does not inspire judicial confidence so as to sustain

conviction upon the accused. As per story of prosecution, accused, who hid himself in the nearby bushes, pelted stone which hit the right lower eyelid of the complainant, resulting into simple as well as grievous hurt on his person, but if the testimony of Shri Vikas Kumar (PW-3), Shri Om Prakash (PW-4) and Shri Anil Kumar (PW-5) is perused, there appear to be material contradictions, exaggerations, interpolations and inconsistencies appearing on record. As per the seizure memo (Ex. PW-1/B), complainant had kept the stone (Ex.P1), in a safe custody and handed over the same to the Investigating Officer on his arrival on the spot on 20.9.2008. However, the complainant (PW-3), while appearing in the witness box, deposed that Investigating Officer himself recovered the said stone from the spot. He also deposed that police arrived at spot on the next day i.e. on 09.09.2008, whereas occurrence had allegedly taken place on 08.09.2008. Moreover, record reveals that Investigating Officer arrived at the spot for the first time on 20.9.2008. As per complainant (PW-3), it was pitch dark outside, whereas Om Prakash (PW-4), deposed that he had seen the accused while running away from the spot. This witness further deposed that he was narrated the entire incident by the complainant. Complainant nowhere stated that he was being given merciless beatings by the complainant, whereas PW-4, with a view to prove the case of the complainant,

deposed that he along with PW-5 had rescued the complainant from the clutches of accused.

19. If the versions put forth by PW-3 Vikas Kumar, PW-4 Om Prakash and PW-5 Anil Kumar, are read in conjunction, same do not inspire confidence and rightly came to be discarded by learned court below while establishing guilt of the accused. Leaving everything aside, this Court finds that Medical Officer i.e. Dr. Raman Puri, Eye Surgeon (PW-1) and Dr. Praveen Kumar (PW-9), on critical analysis of MLC, stated that there were two cut lacerated wounds on the right upper and lower eyelid and an abrasion over nasal bridge. Complainant was referred to eye specialist, who opined that there was no fracture seen. Eye Surgeon further opined that injury No.2 i.e. cut lacerated wound on lower right eyelid, is a grievous one.

20. Though complainant claimed that on account of injuries inflicted on his eyes, severe damage was caused to his eyes, but as per version put forth by the doctor, vision of both the eyes was found to be six by six. During his cross-examination, eye specialist clearly stated that he was not shown stone at the time of X-ray examination. He also stated that he has seen the weapon of offence i.e. stone, for the first time in court. He admitted that if the injured was hit with force with stone Ex.P1, then possibility of fracture cannot be ruled out. Dr. Praveen Kumar (PW-9), stated that if

someone falls on hard surface, or if someone is hit with the stone, possibility of fracture cannot be ruled out.

21. No doubt, version put forth by the independent witnesses cannot be discarded, rather required to be given some weightage as is given to independent witnesses, but at the same time, it is also well settled that version put by the interested witnesses is required to be taken into consideration with utmost care and caution. In the case at hand, Investigating Officer categorically admitted that number of houses were there in and around the place of incident, but yet no attempt ever came to be made by him to associate independent witnesses.

22. PW8 HC Sukesh Kumar, in his cross-examination, though denied his having associated Amro, Santosh Kumar, Manohar and Anil, but if the version put forth by Anil Kumar, PW-5, is perused in its entirety, he clearly stated that there were houses of Amro, Santosh, Manohar and Anil situated on the spot, but yet no attempt or effort was ever made by the Investigating Officer to associate independent witnesses as named hereinabove, who in the event of their examination, would have disclosed true facts to the court. Since there are material contradictions in the statements made by prosecution witnesses, learned court below rightly did not place reliance upon same. Reliance is placed on Judgment passed by the

Hon'ble Apex Court in *C. Magesh and Ors. v. State of Karnataka* (2010) 5 SCC 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 emphasise, 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 *Suraj Singh v. State of U.P.*, 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 credibility. 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 situations 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 consistency in evidence amongst all the witnesses."

23. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court sees no reason to differ with the well reasoned judgment passed by the learned court below which appears to be based upon proper

appreciation of evidence adduced on record and the same is accordingly upheld. Accordingly, the appeal is dismissed being devoid of any merit. Bail bonds, if any, furnished by respondent are hereby discharged. Record, if received, be sent back forthwith.

July 30, 2026
(meera)

**(Sandeep Sharma),
Judge**