

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 330 of 2015****Reserved on: 25.2.2026****Date of Decision: 23.3.2026.**

State of H.P. ...Appellant

Versus

Onkar Chand ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : Mr Lokender Kutlehria, Additional
Advocate General.

For the Respondent : Mr. Ankur Dass Sood, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 16.2.2015, passed by learned Special Judge, Bilaspur, District Bilaspur, H.P. (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the charged offences. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 341, 352 and 506 of the Indian Penal Code (IPC) and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC&ST Act). It was asserted that the informant, Gulab Dass, was present in the shop of Ravi Dutt to buy some articles on 23.8.2010, at about 5.45 PM. The accused Omkar Soni came to the shop and caught the informant by his neck. He told the informant that he (the informant) had made a complaint regarding the sale of water. The informant asked the accused to leave his neck and told him that he had not made any complaint. The accused threatened the informant and abused him in the name of his caste. The incident was witnessed by Ravi Dutt and Prakash Chand. The informant reported the matter to the police. An FIR (Ex.PW1/A) was registered. Sanjay Sharma (PW7) investigated the matter. He visited the spot and prepared the spot map (Ex.PW7/A). He filed the applications (Ex.PW5/A and Ex.PW4/A) and obtained the pedigree table of the accused (Ex.PW7/D) and the informant (Ex.PW4/B) from Halqua Patwari.

He recorded the statements of witnesses as per their version. After the completion of the investigation, a challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, the learned Trial Court charged the accused with the commission of offences punishable under Sections 341, 352, 506 of IPC and Section 3(1) (x) of SC&ST Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Gulab Dass (PW1) is the informant/victim. Thakur Dass (PW2), Rattan Lal (PW3) and Ravi Dutt (PW6) are the eyewitnesses. Basu Dev (PW4) prepared the informant's pedigree table. Subhash Chand (PW5) prepared the pedigree table of the accused. Sanjay Sharma (PW7) investigated the matter. SI Ram Dass (PW8) partly investigated the matter. SI Ludar Chand (PW9) signed the FIR.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He

claimed that he was falsely implicated. He did not produce any evidence in defence.

6. Learned Trial Court held that the incident occurred on 23.8.2010 at 5.45 PM and the matter was reported to the police on 24.8.2010 at 3.45 PM. The informant stated that he had gone to the Police Station, but his report was not registered. This explanation was not proved. The presence of Thakur Dass (PW2) and Rattan Lal (PW3) on the spot was doubtful. Thakur Dass (PW2) was on good terms with the informant and was inimical to the accused. Rattan Lal was not named in the FIR, and no reason was assigned for the omission. The sequence of events narrated by the witnesses did not tally. Ravi Dutt did not support the prosecution's case. The notification to prove that the informant belonged to the scheduled caste was not produced. All these circumstances made the prosecution's case doubtful. Hence, the learned Trial Court acquitted the accused of the charged offences.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal, asserting that the learned Trial Court erred in acquitting the

accused. The delay was properly explained. Learned Trial Court wrongly rejected the statements of Thakur Dass and Rattan Lal. Ravi Dutt was a shopkeeper, and he favoured the accused because the accused was his customer. The notification was produced on record to show that the informant belonged to the scheduled caste. Learned Trial Court erred in rejecting this notification. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set-aside.

8. I have heard Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Mr. Ankur Dass Sood, learned counsel for the respondent/ accused.

9. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. The informant had specifically stated that the accused had abused and threatened him. This was corroborated by Thakur Dass and Prakash Chand. The statements of witnesses were consistent. Learned Trial Court erred in rejecting the statements of the prosecution's witnesses. Therefore, he prayed that the present appeal be

allowed and the judgment passed by the learned Trial Court be set-aside.

10. Mr. Ankur Dass Sood, learned counsel for the respondent/accused, submitted that the prosecution had relied upon the interested witnesses and the learned Trial Court was justified in rejecting their testimonies. Learned Trial Court had taken a reasonable view which could have been taken based on the material placed before it, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, 2025 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a

conclusion which no reasonable person could have reached. It was observed at page 440:

“12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

13. This position was reiterated in *P. Somaraju v. State of A.P.*, 2025 SCC OnLine SC 2291, wherein it was observed:-

“12. To summarise, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or ‘double’ presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, *inter alia*, *Mallappav. State of Karnataka 2024 INSC 104*, *Ballu @ Balram @ Balmukund v. State of Madhya Pradesh 2024 INSC 258*, *Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 INSC 320*, and *Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114.*”

14. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The incident occurred on 23.8.2010 at about 5.45 PM. The FIR (Ex.PW1/A) was registered on 24.8.2010 at 3.45 PM. The distance between the place of the incident and the Police Station is shown to be 4 kilometres in Column No. 5(a) of the FIR. It was mentioned that there was no delay in reporting the matter by the informant, which is not correct because there was a delay of about one day.

16. The victim stated in his examination-in-chief that he had made a complaint to the police on 23.8.2010. He went to the Police Station on the date of the incident, but the SHO did not write his complaint and told him that he would call him later. He again went to the Police Station on 24.8.2010 at 9:30 AM, but the FIR was lodged till 3.45 PM.

17. This explanation was not proved on record. SI Ludar Singh (PW9) registered the FIR. He has nowhere stated that the victim had visited the Police Station on 23.8.2010 or in the morning of 24.8.2010. Thus, the explanation provided by the victim was not proved on record. It was laid down in *Mehraj*

Singh v. State of U.P. (1994) 5 SCC 188 that the delay in lodging FIR leads to embellishments, concoction and fabrication and the court should see the prosecution case with utmost care and caution in case of delay. It was observed:

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence to appreciate the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of the delay, the FIR not only gets bereft of the advantage of spontaneity, but danger also creeps in with the introduction of a coloured version or exaggerated story. With a view to determining whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of a copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. The prosecution has presented no evidence at all in this case. The second external check, equally important, is the sending of a copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution's case, the details of the FIR and the gist of statements recorded during inquest

proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution's story was still in an embryonic state and had not been given any shape, and that the FIR came to be recorded later on, after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity, and it appears to us that the same has been ante-dated and had not been recorded till the inquest proceedings were over at the spot by PW 8."

18. This position was reiterated in *P Rajagopal vs State of Tamil Nadu 2019 (5) SCC 40*, wherein it was observed: -

"12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of a concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on the merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See *Apren Joseph v. State of Kerala, (1973) 3 SCC 114*; *Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1*]."

19. A similar view was taken in *Sekaran v. State of T.N., (2024) 2 SCC 176: (2024) 1 SCC (Cri) 548: 2023 SCC OnLine SC 1653*, wherein it was observed on page 182:

"14. We start with the FIR, to which exception has been taken by the appellant, urging that there has been no satisfactory explanation for its belated registration. It is

trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution's version.

15. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.”

20. Therefore, the learned Trial Court was justified in doubting the prosecution's case because of the delay.

21. The victim, Gulab Singh, specifically stated in his examination-in-chief that the accused was inimical to him because he and his family had not supported the accused in the Panchayat election. Thus, the relationship between the parties was inimical, and the learned Trial Court was justified in insisting upon the corroboration of the victim's testimony.

22. The victim stated that the accused caught hold of his shirt and dragged him towards the road. He requested the accused to leave the collar. The accused said that he (the informant) had made a complaint regarding the sale of water. The informant explained that he had not made any such complaint. The accused abused the informant in the name of his caste. Thus, as per the victim, the words were uttered after the accused had told the informant about the complaint.

23. Thakur Dass (PW2) stated that he had seen the accused Omkar Chand holding the informant's collar and calling him (the informant) by the name of his caste. The accused told the informant that he was proud of something and that he would set him right. The informant asked the accused to leave the collar and talk to him peacefully. The accused left the informant and threatened him.

24. The statement of this witness does not corroborate the informant's version. He stated that the accused had abused the informant before catching him by his collar. The informant stated that the accused had abused him after catching hold of his collar. Thakur Dass (PW2) stated that the accused told the

informant that he was proud of something and he would set him right, which fact was not narrated by the informant. The informant stated that the accused was asking why the informant had made a complaint about the sale of water, which fact was not mentioned by him. His name was not mentioned in the FIR, which makes his presence doubtful. Thakur Dass (PW2) admitted in his cross-examination that he is posted in the same school in which the informant's son-in-law is posted. He admitted that he had a dispute with the accused and the villagers. Thus, he was inimical to the accused and working with the informant's son-in-law. All these circumstances made his testimony doubtful.

25. Rattan Lal (PW3) stated that the accused was holding the informant from the collar of his shirt and abusing him in the name of caste. The accused left the informant's collar after seeing him and Thakur Dass.

26. The name of this witness was also not mentioned in the FIR. He had not stated that the informant had asked the accused to maintain peace, after which the accused had abused the informant in the name of his caste. He did not say that the

accused had asked the informant about the complaint made by him. He admitted in his cross-examination that his wife and the informant's wife were related to each other. Thus, he has not assigned any reason for the quarrel. His narration of facts is different from the prosecution's case. He is known to the informant, and his name was not mentioned in the FIR. All these circumstances made his testimony doubtful.

27. Ravi Dutt (PW6) stated that the accused and the informant had arguments, but he was not aware of the nature of the arguments. He denied that the accused had dragged the informant towards the road by catching his collar or had abused him in the name of his caste. Thus, he has not supported the prosecution's version regarding the incident.

28. Prakash Chand was named in the FIR, but he was not examined by the prosecution. Therefore, adverse inference was to be drawn against him and the learned Trial Court was justified in doubting the prosecution's case.

29. The victim stated that the accused had dragged him towards the road by holding his collar. He did not produce his shirt to corroborate this version. The victim was not medically

examined to prove that he had sustained any injury in the scuffle.

30. Thus, the learned Trial Court was justified in doubting the prosecution's case in these circumstances. Learned Trial Court had taken a reasonable view that could have been taken based on evidence led before it and no interference is required with the reasonable view of the learned Trial Court, even if another view is possible.

31. No other point was urged.

32. In view of the above, the present appeal fails, and it is dismissed.

33. Keeping in view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the respondent/accused is directed to furnish personal bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the

respondent/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

34. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith.

35. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

23rd March, 2026
(Chander)