

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 251 of 2013****Reserved on: 27.7.2026****Date of Decision: 04.08.2026.**

State of H.P.

...Appellant

Versus

Ajit Singh & another

...Respondents

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.****Whether approved for reporting?¹ No.*

For the Appellant : Mr Tarun Pathak, Deputy Advocate General.

For Respondent No.1 : Mr Sunny Dhatwalia, Advocate.

For Respondent No.2 : Proceedings abated vide order dated 25.11.2025

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.12.2012 passed by the learned Judicial Magistrate First Class, Court No. 1, Hamirpur (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of an offence punishable under Section 325 read with Section 34 of the Indian Penal Code (IPC).

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

(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 325 read with Section 34 of the IPC. It was asserted that the informant Mukhtyar Singh (PW1) made a complaint (Ex.PW1/A) to the police stating that his wife Pawna Devi (PW2) was cleaning the *khurli* on 16.05.2009 at about 06.30 p.m. The accused Bidhi Chand and Bimla Devi came to the spot and started abusing her. Bimla Devi hit Pawna Devi with a stone. The informant tried to intervene and save his wife; however, Ajeet Singh inflicted a blow by means of an iron pipe. Bimla Devi threatened to cut the informant to pieces. He reported the matter to the police by means of an application (Ex.PW1/A). An entry in the daily diary (Ex.PW6/A) was recorded in the Police Station. Dr Kamal Prakash (PW4) examined Mukhtyar Singh and found that he had sustained an injury on his left forearm. He advised an X-ray, and the nature of the injury was found to be grievous. He issued the MLC (Ex.PW4/A). An entry (Ex.PW7/A) was recorded, and an FIR (Ex.PW6/A) was registered in the

Police Station. Sukh Lal (PW6) investigated the matter. He visited the spot and prepared the site plan (Ex.PW6/C). Mukhtyar Singh produced an iron rod (Ex. P1) which was seized vide memo (Ex.PW1/B). He recorded the statements of witnesses as per their version, and after the completion of investigation the 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, they were charged with the commission of an offence punishable under Section 325 read with Section 34 of the IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined nine witnesses to prove its case. Mukhtyar Singh (PW1) is the informant/victim. Pawna Devi (PW2), Arjun Singh (PW3), and Kuldeep Chand (PW5) witnessed the accident. Dr Kamal Prakash (PW4) examined the victim. Sukh Lal (PW6) investigated the matter. HC Suresh Kumar (PW7) proved the entries in her daily diary. Rakesh Sharma (PW8), Radiologist, went through the X-ray and issued the report. Ramesh Thakur (PW9) prepared the challan.

5. The accused in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.PC), denied the prosecution case in its entirety. They stated that the informant, his wife and his son had given beatings to Bidhi Chand's mother on 16.05.2009. They went to protect her, and the informant lodged a false complaint against them. They examined Suresh Kumar (DW1) in their defence.

6. Learned Trial Court held that Arjun Singh (PW3) had an enmity with Ajit Singh. Kuldeep Chand (PW5) was in litigation with the mother of the accused. The Medical Officer admitted that the injuries could be caused by way of a fall. The prosecution had not examined the other independent witnesses, and the prosecution case could not be said to have been proved beyond reasonable doubt. Hence, the learned Trial Court acquitted the accused.

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 failed to appreciate the material on record. The testimony of Mukhtyar Singh was corroborated by Pawna Devi, Arjun Singh and Kuldeep Chand.

The minor contradictions in the statements were not sufficient to discard them. The medical evidence also proved that Mukhtyar Singh had sustained injuries which could have been caused by means of the iron rod produced by Mukhtyar Singh. The previous litigation was not sufficient to discard the statements of the prosecution witnesses. Hence, 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 Tarun Pathak, learned Deputy Advocate General for the appellant/State and Mr Sunny Dhatwalia, learned counsel for respondent No.1/accused.

9. Mr. Tarun Pathak, learned Deputy Advocate General for the appellant/State submitted that the learned Trial Court erred in appreciating the material on record. The testimonies of witnesses could not have been discarded because of the previous litigation between the parties. The informant's testimony was duly corroborated by the statements of other witnesses and the medical evidence. Enmity can furnish a motive for commission of the crime, and the prosecution's case cannot be discarded because of enmity. Therefore, he prayed that the present appeal

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

10. Mr. Sunny Dhatwalia, learned counsel for respondent No.1/accused submitted that the testimonies of the prosecution witnesses contradicted each other on material aspects. Learned Trial Court had rightly held that the testimonies could not be believed in the absence of corroboration from independent sources. The Medical Officer stated that injuries could have been caused by way of a fall, which made the prosecution's case doubtful. The learned Trial Court had taken a reasonable view while recording the acquittal. This Court should not interfere with the reasonable view of the learned Trial Court while deciding the present appeal. Hence, he prayed that the present appeal be dismissed.

11. I have given a 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) 5 SCC 433: 2025 SCC

OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

“24. 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 *State of M.P. v. Ramveer Singh*, 2025 SCC *OnLine SC 1743*, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the

cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

14. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

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

16. The incident had occurred on 16.05.2009 at about 06.30 p.m. The informant made a complaint to the police on 17.05.2009 at 12.40 P.M. The place of incident is shown to be 6 kilometres in the FIR (Ex.PW6/B). The FIR has a column about the reason for the delay in reporting the matter to the police. However, this column was left blank. The informant stated that he went to Panchayat Pradhan, Anjana Devi and filed an application (Ex.PW1/A), but she advised him to visit the Police Station. However, the statement of Anjana Devi was not recorded to corroborate this version. Therefore, there is no explanation for the delay in reporting the matter to the police. 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-dated 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."

17. 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]."

18. 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.”

19. Therefore, the prosecution case is required to be seen with due care and caution because of the delay in reporting the matter to the police.

20. Mukhtyar Singh (PW1) stated that Arjun Singh and Kuldeep were present on the spot. He admitted in his cross-examination that he had not mentioned their names in the complaint (Ex.PW1/A). Arjun Singh (PW3) admitted in his cross-examination that he and his son were arrested in the year 2004 for the commission of offences punishable under Sections 307 and 326 of IPC for causing injuries to Ajeet Singh. Similarly, Kuldeep Chand (PW5) denied that he had litigation with Prabhati and her son. The defence has produced the copy of the order (Ex

D6) which shows that Prabhati Devi, mother of accused Bidhi Chand, has filed a civil suit against Kuldeep Singh. Therefore, it was duly proved that Arjun Singh and Kuldeep Chand had litigation with the accused and his family members. The names of these persons were not mentioned in the complaint made to the police. They had no reason to be present on the spot at the time of the incident, and they were chance witnesses. It was laid down by the Hon'ble Supreme Court in *Harbeer Singh v. Sheeshpal*, (2016) 16 SCC 418: (2017) 4 SCC (Cri) 503: 2016 SCC OnLine SC 1164 that the chance witnesses have a habit of appearing suddenly at the place of the incident and thereafter disappearing. Their testimonies should be seen with due care and caution. It was observed at page 427:

23. The defining attributes of a "chance witness" were explained by Mahajan, J., in *Puran v. State of Punjab*, (1952) 2 SCC 454: AIR 1953 SC 459: 1953 Cri LJ 1925. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In *Mousam Singha Roy v. State of W.B.*, (2003) 12 SCC 377: 2004 SCC (Cri) Supp 429, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR have been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632: 2005

SCC (Cri) 579 and *Jarnail Singh v. State of Punjab, (2009) 9 SCC 719: (2010) 1 SCC (Cri) 107* are authorities for the proposition that deposition of a chance witness, whose presence at the place of the incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court, we hold that PW 5 and PW 6 were chance witnesses and their statements have been rightly discarded.

21. It was laid down by the Hon'ble Supreme Court, *Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 SCC OnLine SC 150* that the testimony of a chance witness is to be seen with due care and caution and his presence on the spot should be satisfactorily established. It was observed:

“Chance witness

29. A chance witness is one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed, though a little more scrutiny may be required at times. This again is an aspect that is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in *State of A.P. v. K. Srinivasulu Reddy [State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660: 2005 SCC (Cri) 817]*: (SCC pp. 665-66, paras 12-13)

“12. Criticism was levelled against the evidence of PWs 4 and 9, who are independent witnesses, by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained how they

happened to be at the spot of occurrence, and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial, by describing the independent witnesses as “chance witnesses”, it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If a murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witness” is borrowed from countries where every man's home is considered his castle, and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country where people are less formal and more casual, at any rate in the matter of explaining their presence.”

30. The principle was reiterated by this Court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719: (2010) 1 SCC (Cri) 107: (SCC p. 725, paras 21-23)

“21. In *Sachchey Lal Tiwari v. State of U.P.*, (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105, this Court, while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passer-by had deposed that he had witnessed the incident, observed as under:

If the offence is committed in a street, only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle, and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country like India, where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh*, (1997) 4 SCC 192: 1997 SCC (Cri) 538, *Harjinder Singh v. State of Punjab*, (2004) 11 SCC 253: 2004 SCC (Cri) Supp 28, *Acharaparambath Pradeepan v. State of Kerala*, (2006) 13 SCC 643 : (2008) 1 SCC (Cri) 241 and *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188). Deposition of a chance witness whose presence at the place of the incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632: 2005 SCC (Cri) 579).

23. Conduct of the chance witness, subsequent to the incident, may also be taken into consideration, particularly as to whether he has informed anyone else in the village about the incident (vide *Thangaiya v. State of T.N.*, (2005) 9 SCC 650: 2005 SCC (Cri) 1284). Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR, and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) or Darshan Singh (PW 4).

The fact of a conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue, has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution's case relating to conspiracy. However, in the fact situation of the present case, the acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned."

22. Therefore, the testimonies of these witnesses could not have been accepted on their face value.

23. The informant Mukhtyar Singh stated that he heard the noise of a quarrel. He went to the spot and saw that Ajeet and his wife Bimla were abusing each other. They started pelting stones. One stone hit Pawna Devi on her right leg. Ajeet had an iron pipe with which he inflicted a blow on his (the informant's) left arm. The accused restrained him (the informant) and his wife from going towards their home and gave them beatings. This incident was witnessed by Arjun and Kuldeep.

24. The statement of this witness is not as per the initial version projected before the police, because it was never stated in the complaint made to the police that the accused had restrained the informant and his wife from proceeding towards their home and given them beatings. Thus, his testimony was

required to be seen with due care and caution and could not have been accepted without corroboration.

25. Pawna Devi (PW2) stated that she was present in her cow shed on 16.05.2009 at about 06.30 p.m. The accused came and started abusing her. Bimla Devi pelted a stone at her, which hit her right leg. Her husband came, and Ajeet inflicted a blow on her husband with an iron pipe. The accused restrained her and her husband from going to their home and gave them beatings. The people were witnessing the incident. She had not got herself medically examined.

26. The statement of this witness shows that accused Bimla had pelted stones and accused Ajeet had inflicted a blow by means of an iron pipe, which is contrary to the statement of Mukhtyar Singh, who stated that the accused had pelted stones first and Ajeet inflicted a blow thereafter. Pawna Devi stated that many people had witnessed the incident, whereas Mukhtyar Singh stated that only Kuldeep and Arjun had witnessed the incident.

27. Arjun Singh (PW3) stated that he heard some noise and came out of the house. He saw Bimla Devi hitting Pawna

Devi with a stone. She shouted for help. Ajeet Singh inflicted a blow by means of a pipe on Mukhtyar Singh. Mukhtyar Singh showed him his arm, and he found that the arm had swollen.

28. This witness has not deposed about restraining the informant and his wife from proceeding towards the house. Hence, his testimony does not corroborate the testimonies of the informant and his wife.

29. Kuldeep Chand (PW5) stated that he heard some noise and saw that Mukhtyar Singh, Ajit Singh and their wives were abusing each other. Ajeet Singh inflicted a blow by means of an iron pipe on Mukhtiyar Singh. There was no other person present on the spot. Mukhtyar Singh and his wife went towards their home. Ajeet and his wife came to the courtyard and abused them. They also pelted stones at them.

30. His statement is not as per the prosecution version because nobody stated that the informant and the accused were abusing each other. He claimed that the accused had entered into the courtyard of the informant and abused them and pelted stones at the accused, which is not the version of any person.

31. There was no independent corroboration to the testimonies of these witnesses. The statements of the witnesses contradicted each other on material aspects and the learned Trial Court had rightly refused to disbelieve the prosecution version. This was a reasonable view that could have been taken based on the evidence led before the learned Trial Court, and no interference is required with it while deciding the appeal against acquittal.

32. No other point was urged.

33. In view of the above, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

34. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused Ajeet Singh is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the 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.

35. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

4th August, 2026
(Chander)