

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 225 of 2014****Reserved on: 11.9.2026****Date of Decision: 22.9.2026.**

State of H.P.

...Appellant

Versus

Virender Kumar @ Loku

...Respondent

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

For the Appellant : Mr Pawan Kumar Nadda, Additional Advocate General.

For the Respondent : Mr Hemant Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 25.2.2014, passed by the learned Judicial Magistrate First Class (1), Dharamshala, District Kangra (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of H.P. (*The parties shall hereinafter be referred to in the*

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

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 61(1)(a) of the Punjab Excise Act, as applicable to the State of H.P. It was asserted that ASI Daleep Singh (PW-6), ASI Kishori Lal, HC Jai Chand, HHC Surinder Kumar, and Constable Rajpal received secret information at Ladwara on 25.4.2010 at about 1:00 PM that Virender Kumar, a tenant of Smt. Vindro Devi (PW-4), had stacked a huge quantity of liquor which could be recovered by searching the room. The information was credible, and any delay in procuring the warrant would have led to the destruction of the liquor. Hence, a *ruqa* (Ext.PW-6/A) was prepared and sent to the Police Station, where FIR (Ext.PW-6/B) was registered.

3. ASI Daleep Singh went to the spot. He associated Om Prakash (PW-1) and Kishan Dass (PW-5) and went to the room where the accused was present. He recovered 24 boxes of IMFL bearing the mark "Zone XXX Rum for sale in Chandigarh". The

accused could not produce any permit for possessing the cartons. One bottle each was taken out of 10 boxes for analysis. Each bottle was sealed with seal 'M'. Seal impression (Ext.PW-6/C) was taken on a separate piece of cloth, and the seal was handed over to Yograj after use. The liquor was seized vide memo (Ext.PW-1/A).

4. ASI Daleep Singh investigated the matter. He prepared the site plan (Ext.PW-6/D) and recorded the statements of witnesses as per their version. ASI Daleep Singh handed over the case property to HC Khedi Ram (PW-7), who deposited them in the Malkhana and sent it to CTL Kandaghat for analysis through HHC Surinder Singh (PW-3) vide RC No. 60/21. HHC Surinder Singh deposited all the bottles at CTL Kandaghat and handed over the receipt to the MHC on his return. The results of the analysis (Ext.PW-6/K and Ext.PW-6/L) were issued, in which it was mentioned that the bottles of IMFL contained 70.2% proof alcohol each. Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the Court.

5. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 61(1) (a) of the Punjab Excise Act, as applicable to the State of H.P., to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined seven witnesses to prove its case. Om Prakash (PW-1), Yograj (PW-2), and Kishan Dass (PW-5) did not support the prosecution case. Surinder Singh (PW-3) carried the case property to CTL Kandaghat. Vindro Devi (PW-4) is the owner of the house. ASI Daleep Singh (PW-6) investigated the matter. HC Khedi Ram (PW-7) was working as MHC, with whom the case property was deposited.

7. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution case in its entirety. He claimed that he is innocent and was falsely implicated. He did not produce any evidence in his defence.

8. The learned Trial Court held that Om Prakash, Yograj, and Kishan Dass had not supported the prosecution case. Vindro Devi (PW-4) stated that she had rented one room to the accused

Virender Kumar. She admitted in her cross-examination that Sitaram was also residing in the building owned by her. She admitted that the room rented out to the accused was also used by Sitaram. This admission made it doubtful that the accused was in exclusive possession of the room from where the recovery was effected. The independent witnesses had not supported the prosecution case, which made the prosecution case suspect. Hence, the learned Trial Court acquitted the accused.

9. 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 statements of prosecution witnesses were not appreciated properly. Om Prakash stated that 24 cartons of liquor were recovered from the possession of the accused. The mere fact that independent witnesses had not supported the prosecution version cannot be used to discard it. The statement of the Investigating Officer could not have been discarded on the ground that he was an official witness. The learned Trial Court erred in holding that the possession of the accused was not proved. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. I have heard Mr Pawan Kumar Nadda, learned Additional Advocate General for the appellant-State, and Mr Hemant Thakur, learned counsel for the respondent/accused.

11. Mr Pawan Kumar Nadda, learned Additional Advocate General for the appellant-State, submitted that the learned Trial Court erred in acquitting the accused. The statements of prosecution witnesses proved that the accused was in possession of the room from where the recovery was effected. The accused had not produced any permit to possess the liquor. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

12. Mr Hemant Thakur, learned counsel for the respondent/accused, submitted that the statement of Vindro Devi made the possession of the room doubtful. Vindro Devi was not re-examined by the prosecution, and her statement was binding upon the prosecution. The learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court even if another view is possible. Therefore, he prayed that the present appeal be dismissed.

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

14. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Sanjay Kumar v. State of Bihar*, 2026 SCC OnLine SC 1373, that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal.

It was observed:

Scope of interference with an acquittal:

26. At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In *Kali Ram v. State of Himachal Pradesh* (1973) 2 SCC 808: 1973 SCC (Cri) 1048, this Court explained the golden thread running through criminal jurisprudence in the following words:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence

adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

28. The decision in *Kali Ram* (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not technical; it is a substantive safeguard flowing from the presumption of innocence.

29. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60, this Court reiterated the limited scope of interference with acquittals. This Court observed:

“75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable.”

30. The decision in *Ghurey Lal* (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in *Mrinal Das v. State of Tripura* (2011) 9 SCC 479, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

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

16. Vindro Devi (PW-4) stated that she had rented one room to the accused. She was not aware of the articles kept by the accused in his room. She stated in her cross-examination that she was not charging any rent for the room. She admitted that her family members also resided in the building. She admitted that Sitaram was also residing in the building. She admitted that Sitaram was also using the room which was stated to be rented to the accused.

17. The statement of this witness made the prosecution case suspect that the accused was in exclusive possession of the room. She categorically stated that Sitaram also shared the room which was rented to the accused. She was not re-examined by the prosecution. In similar circumstances, when a witness had supported the case of the defence, but was not re-examined by the prosecution to clarify his testimony, it was held in *Ramsewak*

v. State of M.P., (2004) 11 SCC 259: 2004 SCC OnLine SC 477 that the benefit of the discrepancy would go to the defence. It was observed at page 265:

“14.... Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has, in specific terms, taken a stand that the FIR came into being only after the dead body was recovered....”

18. It was held in *Javed Masood v. State of Rajasthan, (2010) 3 SCC 538; (2010) 2 SCC (Cri) 1176: 2010 SCC OnLine SC 347* that the defence can take advantage of any statement made in the cross-examination. It was observed at page 543:

“20. In the present case, the prosecution never declared PWs 6, 18, 29 and 30 “hostile”. Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence from relying on their evidence.

21. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi) [(2005) 5 SCC 258: 2005 SCC (Cri) 1037]* observed: (SCC pp. 270-71, paras 30-31)

“30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan[(2005) 5 SCC 272: 2005 SCC (Cri) 1050]*. In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared ‘hostile’. The High Court, however, convicted the accused. This Court held that it was open to the defence to

rely on the evidence of the doctor, and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police, in which the police had gone to the Bahai Temple and apprehended the accused. When Goel did not support that case, the accused could rely on that evidence.”

The proposition of law stated in the said judgment is equally applicable to the facts in hand.”

19. Thus, the learned Trial Court was justified in holding that the statement of this witness made the prosecution case suspect.

20. A heavy reliance was placed upon the statement of Om Prakash (PW-1). However, he was declared hostile and was cross-examined by the learned APP, which means that he was not considered worthy of credit. He stated in his cross-examination that he was not aware to whom the liquor belonged. His signatures were obtained in the shop of Yograj. The statement of this witness that he was not aware to whom the room belonged does not prove the possession of the accused.

21. Kishan Dass (PW-5) and Yograj (PW-2) did not support the prosecution case. They were declared hostile and denied their previous statements recorded by the police that the recovery was effected from the room of the accused. Therefore,

the testimonies of these witnesses did not prove the prosecution version.

22. The statement of ASI Daleep Singh is not sufficient to prove the possession because it is nobody's case that he had personal knowledge about the possession of the room from where the recovery is stated to have been effected.

23. Therefore, the learned Trial Court had taken a reasonable view by holding that the prosecution had failed to prove the exclusive possession of the accused. This Court will not interfere with the reasonable view of the learned Trial Court even if another view is possible while hearing an appeal against acquittal.

24. No other point was urged.

25. 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.

26. 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 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.

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

(Rakesh Kainthla)
Judge

22nd September, 2026
(Chander)