

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr. Appeal No.431 of 2008**

**Date of Decision: 30<sup>th</sup> June, 2017**

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**State of Himachal Pradesh**

**..... Petitioner.**

**Versus**

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**Ram Singh**

**.... Respondent.**

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**Coram:**

**The Hon'ble Mr. Justice Sandeep Sharma, Judge.**

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Petitioner : Mr. P.M.Negi, Additional Advocate General with Mr. Ramesh Thakur, Deputy Advocate General.**

**For the Respondents : Mr. Raman Jamalta, Advocate.**

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**Sandeep Sharma, Judge**

Instant Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, is directed against the impugned judgment of acquittal dated 10.3.2008, passed by learned Special Judge, Sirmaur, District at Nahan, in Sessions Trial No. 24-ST/7 of 2005, whereby respondent **(hereinafter referred to as 'accused')** has been acquitted of the charge framed against him under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Briefly stated facts as emerge from the record are that on the basis of complaint Ex.PW3/A, having been preferred by Smt. Kamla Devi (PW-3) wife of Sh. Sohan Singh, a formal FIR

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

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Ex.PW10/A came to be registered against the accused at police Station, Renuka Ji under Section 3(1)(x) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (***hereinafter referred to as SC and ST Act***) alleging therein that one Smt. Maina Devi (PW-7) wife of Budh Singh, was employed in Government Primary School, Deed Pannar for preparing and distributing mid-day meal to the students studying in the said school. Since Smt. Maina Devi was unable to attend her duties on 16.11.2004 and as such, after preparation of “Khichri”, she had assigned the duty to distribute the same to the complainant Smt. Kamla Devi. On 17.11.2004, accused visited the school premises and allegedly in the presence of teachers namely Sh. Sher Singh (PW-2), Smt. Archana and few of villagers namely Sh. Mast Ram (PW-6), Kaso Devi, Manga Ram (PW-8), Kalmu (PW-4) and Tika Ram residents of village Pannar, started hurling filthy abuses to the complainant Smt. Kamla Devi particularly by calling her with her caste. As per complainant, accused uttered following words “***TUM KULTI HO OR NEECH JAAT SE SAMBANDH RAKHTI HO TATHA TUMNE KAL HAMARE BACHHON KO KHICHRI BAANT KAR VA KHILA KAR BACHHON KO BHARASHT KAR DIYA VO KAHIN KE NA RAHE, AB HAMIN SARE BACHHON KO RENUKA JI MAIN SANAN KARA KAR PAVITRA KARANA PAREGA. AGAR AINDA TOONE AISA KIYA TO TERI JAAN KI KHAIR NAHIN.***” Since, the

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aforesaid words were derogatory on the face of it, complainant reported the matter to the School Headmaster with a request to take action against the accused, but since accused failed to turn up to explain his conduct in terms of the explanation called by the Headmaster and as such, Headmaster issued certificate Ex.PW3/B to the complainant advising her to take appropriate action in accordance with law.

3. In the aforesaid background, complainant reported the matter to the Superintendent of Police, Sirmaur at Nahan, which was subsequently forwarded to Police Station, Renuka Ji, on the basis of which, FIR, as mentioned above, came to be registered. Investigation in the instant case was conducted by Sh. Basher Singh (PW-10)), who happened to be Dy.S.P at the relevant time. The investigating Agency after completion of the investigation presented the challan in the competent Court of law.

4. The learned Trial Court after satisfying itself that a prima-facie case exist against the accused, framed the charge under Section 3(1)(x) of the SC & ST Act against the accused, to which he pleaded not guilty and claimed trial.

5. Subsequently, learned trial Court on the basis of the evidence adduced on record by the prosecution, acquitted the respondent-accused of the charge framed against him under

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Section 3(1)(x) of the SC and ST Act after extending benefit of doubt.

6. Feeling aggrieved and dissatisfied with the impugned judgment of acquittal recorded by the learned court below, present appellant-State has preferred instant appeal, seeking therein conviction of respondent-accused after setting aside the impugned judgment of acquittal recorded by the court below.

7. Mr. P.M.Negi, learned Additional Advocate General, duly assisted by Mr. Ramesh Thakur, Deputy Advocate General, while referring to the impugned judgment of acquittal passed by the learned Special Judge, Sirmaur, contended that same is not sustainable in the eyes of law and as such, same deserve to be quashed and set-aside. Mr. Negi, further contended that bare perusal of the impugned judgment, suggests that same is not based upon the correct appreciation of the evidence adduced on record by the prosecution, rather accused has been acquitted on flimsy grounds. While referring to the evidence led on record by the prosecution, Mr. Negi, contended that learned court below has not appreciated the evidence in its right perspective, as a result of which, erroneous findings have come on record and respondent-accused has been wrongly let off by extending benefit of doubt.

8. With a view to substantiate his aforesaid argument, Mr. Negi, made this Court to travel through the impugned

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judgment passed by the learned Special Judge to demonstrate that if the reasoning recorded by the court below is examined/analyzed in the light of the evidence adduced on record by the prosecution, it clearly emerge that reasoning assigned by the learned court below while acquitting the respondent-accused is manifestly unreasonable and there was no occasion for the trial Court to discard well reasoned and consistent testimony of the prosecution witnesses on material points. Mr. Negi, further contended that bare perusal of the evidence led on record by the prosecution suggest that all the material prosecution witnesses unequivocally stated that accused called the complainant by her caste and humiliated her in public. Mr. Negi, also contended that no reasons, whatsoever, was assigned by the court below while discarding the version of officials witnesses. There is nothing on record to suggest that there is animosity, if any, of respondent-accused with them.

9. While concluding his arguments, Mr. Negi, contended that learned trial Court has erred in holding that allegations contained in the complaint Ex.PW3/A have not been duly proved, as complainant Smt. Kamla Devi failed to state same wording allegedly used by the accused at the time of alleged incident. Mr. Negi, further contended that version put forth by complainant, Smt. Kamla Devi could not be brushed aside by the court below merely on the ground that complainant

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failed to state the wording allegedly used by the accused (as recorded in the complaint) before the Court because if the statement of complainant is read in its entirety, it clearly suggests that she was humiliated by the accused on the caste line. He further contended that version put forth by the complainant was duly corroborated by PW-2, Sher Singh and PW-8, Manga Ram, wherein they categorically stated that accused had objected for distribution of “ Khichari” by the complainant and insulted her by stating that she being the member of Scheduled caste community impurified the children by serving mid-day meal and at that time 20 people had gathered.

10. Mr. Negi, contended that learned trial has erred in holding that there is delay of 38 days in lodging the FIR because delay in lodging the report was duly explained by PW-3 by stating that on 25.11.2004 she had made written complaint to Center Head Teacher, who had called the accused to his office, but since he failed to turn up, she was advised to approach the concerned authorities and accordingly thereafter she made complaint to Superintendent of Police, Sirmaur at Nahan. With the aforesaid submissions, Mr. Negi, contended that impugned judgment of acquittal recorded by the court below is not sustainable and as such, same deserve to be quashed and set-aside and respondent-

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accused deserve to be convicted for the offence punishable under Section 3(1)(x) of the SC and ST Act.

11. Mr. Raman Jamalta, learned counsel representing the respondent-accused, supported the impugned judgment of acquittal. While refuting the aforesaid submissions having been made by learned Additional Advocate General, Mr. Jamalta, contended that there is no illegality and infirmity in the impugned judgment of acquittal recorded by the learned court below, rather same is based upon the correct appreciation of the evidence adduced on record and as such, same deserve to be upheld.

12. With a view to substantiate his aforesaid argument, Mr. Jamalta, made this court to travel through the evidence led on record by the prosecution to demonstrate that all the material witnesses had turned hostile and none of them stated that accused called the complainant by her caste and humiliated her in public. Mr. Jamalta, further contended that if the statements having been made by the prosecution witnesses are read in its entirety, it creates doubt about the presence of complainant at the spot of alleged incident and as such, learned court below has rightly acquitted the respondent-accused after extending benefit of doubt. Mr. Jamalta, further contended that in the instant case, FIR was lodged after 38 days of the incident and no explanation, worth the name, was rendered and as such, learned

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court below rightly decided the same against the complainant. While concluding his arguments, Mr. Jamalta, contended that as per story of the prosecution police station was at a distance of 8 Kms from Pannan i.e. site of alleged incident, but it is not understood why complainant instead of lodging complaint at Police Station Renuka Ji, lodged the complaint before the Superintendent of Police at Nahan which subsequently came to be forwarded to Dy.S.P. Renukaji for investigation and as such, learned court below has rightly concluded that averments contained in the FIR are second thought and as such, cannot be relied upon.

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

14. After having carefully perused the impugned judgment of acquittal viz-a-viz evidence adduced on record by the prosecution, this Court is not persuaded to agree with the contention having been made by learned Additional Advocate General, that learned court below has not read the evidence in its right perspective, as a result of which, erroneous findings have come on record. To the contrary, this court after having perused the record of court below, sees substantial force in the argument of learned counsel representing the respondent-accused that the prosecution has miserably failed to prove its case beyond reasonable doubt that respondent-accused humiliated/insulted



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the complainant in public by calling her by her caste. Similarly, this Court sees no explanation, which could be termed to be plausible explanation rendered by the prosecution with regard to delay in lodging the FIR.

15. Admittedly, in the instant case FIR came to be registered after 38 days of alleged occurrence, but there is no explanation on record for delay save and except that immediately after the incident complainant had lodged the complaint with Centre Head Teacher, who advised her to take appropriate action in accordance with law. It is not understood that once complainant was advised to take appropriate action, what prevented her to lodge complaint before the police Station Renuka Ji, which was at a distance of 8 Kms by road from the site of incident at Pannar. In the instant case, complainant chose to file complaint to Superintendent of Police Sirmaur, who subsequently forwarded the matter to Dy. S.P, Renuka Ji. As per own case of the prosecution, alleged incident took place at about 10:30 AM, meaning thereby complainant could report the matter on the same day to the police at Renuka Ji. But interestingly at the first instance she lodged the complaint to the Centre Head Teacher Sh. Surjit Singh on 25.11.2004, who allegedly called the accused to office to explain his conduct. Interestingly, in the instant case, prosecution failed to cite Surjit Singh i.e. centre Head teacher as witness to prove aforesaid factum of lodging

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complaint at first instance by the complainant, which itself raises serious doubt with regard to genuineness and correctness of the prosecution case.

16. PW-10, Dy.S.P. Sh. Basher Singh, though in his cross-examination admitted that it had come to his notice during investigation that application/complaint was given to Centre Head Teacher Surjit Singh by the complainant and same was taken into custody by the police, but he also stated that he had only taken into custody certificate Ex.PW3/B, meaning thereby application which was made by the complainant to the Centre Head Teacher at the first instance was never taken into custody by the police and as such, version put forth by the complainant with regard to lodging of complaint at first instance to Centre Head Teacher is itself doubtful. Otherwise also, if the matter is viewed from another angle, this Court sees substantial force in the argument of Mr. Raman Jamalta, learned counsel representing respondent-accused that in the absence of original application, which was allegedly filed by the complainant to the Centre Head Teacher, the only inference can be drawn that allegations, if any, in the application made to the Centre Head Teacher were contrary to the complaint made to the police on subsequent date. It is not known whether application allegedly made to Central Head Teacher contained allegations so as to invite the application under the provisions of SC and ST Act or

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not. Since prosecution failed to prove statement of application, if any, by complainant of alleged date of incident to Centre Head Teacher, delay of 38 days in filing the complaint to the police remained unexplained and as such, learned trial Court rightly held that since there is an unexplained delay about 38 days, it is itself fatal to the success of the prosecution case.

17.           Apart from above, this Court finds from the record that complainant in her cross-examination categorically admitted that after obtaining certificate /letter Ex.PW3/B from Centre Head Teacher and till the filing of the complaint, she had consulted respectable persons of the village including Panchayat Pradhan and even she had desired amicable settlement with the accused. Hence, it can be inferred that matter was subsequently reported to the police by complainant after due deliberation and consultation with other people and there is every possibility of presenting all together different version to the police with a view to implicate the accused.

18.           PW-10, Dy.S.P. Sh. Basher Singh in his cross-examination admitted that FIR in the instant case was registered on 5.1.2005 on the basis of aforesaid complaint Ex.PW3/A having been filed by the complaint, which was admittedly presented to Superintendent of Police, Sirmaur at Nahan on 24.12.2004. It is not understood that when the complaint, as referred above, was marked to SHO Police Station, Renuka Ji for

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necessary action as emerge from the note on the margin of the complaint, why FIR came to be registered on 5.1.2005 i.e. after 12 days. Similarly, there is no explanation that why information with respect to FIR in the case was sent to Magistrate only 6.1.2005, moreso when the complaint was received by the Superintendent of Police on 24.12.2004. Interestingly in the instant case, as per own case of the prosecution, immediately after the alleged incident complaint was lodged by the complainant to the Centre Head Teacher on 25.11.2004 but thereafter she approached the Superintendent of Police on 24.12.2004 i.e. approximately after one month.

19. This Court after having carefully perused the record of the case sees no reason to differ with the findings returned by the court below that unusual delay in lodging the matter to the police and the further delay in sending the copy of the FIR to the illqua Magistrate clearly goes to show that there is some hanky-panky and as such, no reliance on the allegations as contained in the FIR can be placed.

20. This Court also carefully perused the oral evidence led on record by the prosecution to prove the guilt of respondent-accused and in this regard prosecution examined as many as 11 witnesses, whereas accused in his statement recorded under Section 313 Cr.P.C. denied the case of the prosecution in toto by stating that he has been falsely implicated in the case by the

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then SHO police Station, Renuka Ji as he had complained against him at one point of time. Apart from above, accused claimed that he had simply complained that properly cooked meal is not being served to the children and it has led to the illness of the children studying in the said school. Before appreciating the depositions having been made by the witnesses on record, it may not be noticed that as per complaint Ex.PW3/A, names of persons who were present at the time of alleged incident are PW-2, Sher Singh, a JBT Teacher in the school, PW-4, Kalmu, PW-6, Mast Ram and PW-8 Manga Ram. Apart from other witnesses Smt. Archana, School teacher, Smt. Kaso Devi, Meet Singh and Tikka Ram, residents of village Pannar were also mentioned in the FIR, but interestingly, these witnesses have not been examined and only Smt. Kaso Devi has been examined.

21. Apart from above, prosecution examined PW-1, Budh Ram and PW-7, Smt. Maina Devi, who had actually engaged complainant to prepare mid-day meal at the school on the relevant date. PW-3, Smt. Kamla Devi, PW-5, Ram Sawarup, vice President of Gram Panchayat, Panner and PW-6, Mast Ram. As per the version given by aforesaid witnesses they were present at the time of alleged incident and as such, version put forth by them would be material to determine the actual controversy at hand. Statement of PW-3, Smt. Kamla Devi clearly suggests that she herself failed to mention/reproduce the words allegedly used

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by the accused at the time of alleged incident. She in her statement before the court below stated that accused humiliated her by calling “ Randi and Koli” in the presence of number of persons namely Smt. Leela Devi, Kanso Devi, Mast Ram, Kalmu Ram, Manga Ram, Ram Swarup, Phulla Devi etc. While mentioning aforesaid names, PW-3, Smt. Kamla Devi failed to mention the names of Sh. Sher Singh, Smt. Archana, Meet Singh and Tikka Ram as was reported by her in the complaint. Most importantly, there is nothing in her statement with regard to the allegations which she originally made in the complaint that accused had referred to the complainant as belonging to lower caste.

22. Since, complainant failed to specifically state allegations which she initially leveled in the complaint, learned court below rightly concluded that allegations so leveled in the complaint appears to be the master mind of the person, who had scribed the said complaint or else these allegations as contained in the complaint against the accused would have been specifically narrated by the complainant while deposing before the Court below. Leaving everything aside, this court finds from the record that all the material prosecution witnesses as examined by the prosecution have failed to utter these allegations as contained in the complaint and to further support the version put forth by the complainant with regard to alleged

humiliation suffered by her on account of being called by her caste.

23. PW-8, Sh. Manga Ram, though stated that accused had abused Kamla Devi by calling her “Kolti”, but he further stated that accused had told the complainant that she had impurified his wards by serving “Khichri” in the school and at that time 20 persons were present in the school. But interestingly, in cross-examination, this witness categorically admitted that he cannot state whether the accused had no intention to lower the image of the complainant, who belongs to the lower caste or that the accused had simply tried to highlight by protesting to the school authorities regarding the service of mid-day meal. It is quite evident from the record as well as statements having been made by various prosecution witnesses that on 17.11.2004, respondent-accused had visited the school with a view to lodge/protest against unhygienic food being served to the children, as a consequences whereof, his wards had fallen ill.

24. PW-2, Sher Singh, JBT Teacher posted at Primary School, Pannar categorically stated that accused had objected to the distribution of the “Khichri” ( by a member of lower caste), but at the same admitted that the accused visited the school to enquire about the serving of mid-day meal. PW-2, also admitted that on the previous day on account of serving of mid-day meal

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“Khichri” by the complainant, the school children had complained stomach problem and he had regretted to the accused by stating that some time mid day meal served to the children could not be properly cooked. There is nothing in the statements of PW-2 and PW-6 from where it can be inferred that alleged serving of mid-day meal by a member of scheduled caste community was objected to by the accused in the presence of complainant. PW-6, Mast Ram, in his examination-in-chief categorically stated that when accused had complained with regard to poor food being served to the children, complainant Smt. Kamla Devi was not present. After having carefully perused the statements of PW-2 and PW-6, this Court sees substantial force in the argument of learned counsel for the respondent-accused that very presence of complainant Kamla Devi at the time of alleged incident is also doubtful.

25. PW-1, Budh Ram and his wife PW-7, Smt. Maina Devi stated that complainant was simply deputed for a day to serve the “Khichri” in mid day meal at Primary School, Pannar, however they denied that accused had called the complainant by her caste or had used derogatory language against the said complainant. Though, aforesaid witnesses were declared hostile but otherwise cross-examination conducted on these witnesses by learned Public Prosecutor, nowhere suggest that prosecution



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was able to extract anything contrary what they stated in their examination-in-chief.

26. PW-4, Kamlu gave all together different version by stating that accused had asked Maina Devi (PW-7) not to serve mid-day meal to the children. He specifically stated that accused never used any other word in his presence against Smt. Kamla Devi and accordingly, this witness was also declared hostile, but his cross-examination also suggests that prosecution was not able to extract anything contrary what he stated in his examination-in-chief. It has also come in his statement that on 17.11.2004 i.e. alleged date of incident, complainant was not present in the school premises.

27. PW-5, Sh. Ram Sawroop, who happened to be Vice President of Gram Panchayat, Pannar at that relevant time and belonged to scheduled castes, stated that at the relevant time he was constructing a room of the school in the school premises at Pannar and he does not know if at all the accused had any altercation with the complainant. He was also declared hostile and prosecution was not able to extract anything material in his cross-examination. Rather this witness specifically denied that accused had allegedly called the complainant as "Kolti". PW-6, Mast Ram stated before the Court that after having noticed the gathering in the school premises, where PW-1, Budh Ram alongwith his wife Smt. Maina Devi(PW-7) was also present,

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he went to the spot and heard accused allegedly saying that mid-day meal should not be served by “Kolti” but at the same time he also stated that complainant Kamla Devi was not present there.

28. After having carefully perused the aforesaid statements having been made by material prosecution witnesses, this Court has no hesitation to conclude that very presence of complainant Kamla Devi in the school premises on the day of alleged incident on 17.11.2004 is doubtful. Apart from this, allegations as contained in the complaint have not been supported by the complainant herself as well as by prosecution witnesses because none of the prosecution witnesses stated specifically that respondent used derogatory language to the complainant by calling her by her caste.

29. This Court taking note of the defence taken by the respondent-accused in his statement recorded under Section 313 Cr.P.C., deems it fit to take note of cross-examination conducted on PW-4, Kalmu, wherein he specifically stated that accused was booked on his complaint and was beaten by the then SHO, PW-11. Sh. P.D.Modgil. Though, PW-11, Sh. P.D. Modgil denied beatings, if any, given by him, but version put forth by the respondent-accused in his statement recorded under Section 313 Cr.P.C., deserve some credence, especially in view of the admission having been made by PW-4 with regard to the beatings allegedly given by the then SHO, Sh. P.D. Modgil. Since, Sh. P.D.

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Modgil (SHO) had given beating to respondent-accused, he had lodged complaint against him and as such, there appears to be some force in the defence taken by the respondent-accused that SHO tried to implicate him in false case.

30. After perusing the statements of the prosecution witnesses as well exhibits placed on record, two views are possible in the present case and as such, the petitioner-accused is entitled to the benefit of doubt. The learned counsel for the petitioner-accused has placed reliance on the judgment passed by Hon'ble Apex Court reported in **State of UP versus Ghambhir Singh & others**, AIR 2005 (92) Supreme Court 2439, wherein the Hon'ble Apex Court has held that if on the same evidence, two views are reasonably possible, the one in favour of the accused must be preferred. The relevant paragraph is reproduced as under:-

***"6. So far as Hori Lal, PW-1 is concerned, he had been sent to fetch a basket from the village and it was only a matter of coincidence that while he was returning he witnessed the entire incident. The High Court did not consider it safe to rely on his testimony because his evidence clearly shows that he had an animus against the appellants. Moreover, his evidence was not corroborated by objective circumstances. Though it was his categorical case that all of them fired, no injury caused by rifle was found, and, only two wounds were found on the person of the deceased. Apart from this PW-3 did not mention the presence of either PW-1 or PW-2 at the time of occurrence. All these circumstances do create doubt about the truthfulness of the prosecution case. The presence of these three witnesses becomes doubtful if their evidence is critically scrutinized. May be it is also possible to take a view in favour of the prosecution, but since the High Court, on an appreciation of the***

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***evidence on record, has recorded a finding in favour of the accused, we do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.”***

31. The Hon’ble Division Bench of this Court vide judgment reported in **Pawan Kumar and Kamal Bhardwaj versus State of H.P.**, latest HLJ 2008 (HP) 1150 has also concluded here-in-below:-

***“25. Moreover, when the occurrence is admitted but there are two different versions of the incident, one put forth by the prosecution and the other by the defence and one of the two version is proved to be false, the second can safely be believed, unless the same is unnatural or inherently untrue.***

***26. In the present case, as noticed hereinabove, the manner of occurrence, as pleaded by the defence, is not true. The manner of the occurrence testified by PW-11 Sandeep Rana is not unnatural nor is it intrinsically untrue, therefore, it has to be believed.***

***27. Sandeep Rana could not be said to have been established, even if the prosecution version were taken on its face value. It was pleaded that no serious injury had been caused to PW-11 Sandeep Rana and that all the injuries, according to the testimony of PW-21 Dr. Raj Kumar, which he noticed on the person of Sandeep Rana, at the time of his medical examination, were simple in nature.***

32. Consequently, after bestowing my thoughtful consideration to the material adduced on record by the prosecution, this Court has no hesitation to conclude that the prosecution has miserably failed to prove its case beyond reasonable doubt and as such, rightly rejected by the learned court below. This Court sees no illegality and infirmity in the

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impugned judgment of acquittal recorded by the learned court below and as such, same deserve to be upheld.

Accordingly, present appeal is dismissed alongwith pending applications if any.

**30<sup>th</sup> June , 2017**  
(shankar)

**(Sandeep Sharma)**  
**Judge**