Mohar Singh vs State Of H.P on 25 October, 2024

2024:HHC:10248 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Appeal Nos. 143 and 155 of 2008 Reserved on: 27.8.2024 Date of Decision: 25.10.2024 Cr. Appeal No. 143 of 2008 Mohar Singh ...Appellant.

Versus

State of H.P. ...Resp

Cr. Appeal No. 155 of 2008

Laiq Ram ...App

Versus

State of H.P. ...Resp

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes.

For the Appellant(s) : Mr. I.S. Chandel, Advocate, for the appellant in Cr. Appeal No. 143 of 2008 and Ms Sheetal Vyas, Advocate, for the appellant, in Cr. Appeal No. 155 of 2008.

For the Respondent : Mr. Lokender Kutlehria, Additional Advocate General, for the respondent/State, in both the appeals.

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

2024:HHC:10248 Rakesh Kainthla, Judge The present appeals are directed against the judgment of conviction dated 7.3.2008 and order of sentence dated 10.3.2008, passed by learned Sessions Judge, Kinnaur at Rampur Bushahr, H.P., (learned Trial Court), vide which the appellant Mohar Singh (accused before learned Trial Court) was convicted of the commission of offences punishable under Sections 323 and 427 of the Indian Penal Code (IPC) and appellant Laiq Ram (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 304-II of IPC, and they were sentenced as under:-

(a) Accused Mohar Singh

Under Section 427 of IPC. To suffer rigorous imprisonment

	for six months, pay a fine of 10,000/- and in default of payment of fine to further undergo simple imprisonment for three months.
Under Section 323 of IPC.	To suffer simple imprisonment for six months, pay a fine of 1,000/- and in default of payment of fine, to further undergo simple imprisonment for two months. Both the substantive sentences of imprisonment were ordered to run concurrently.

2024:HHC:10248

(b) Accused Laiq Ram

Under Section 304-II of IPC. To suffer rigorous imprisonment for seven years, pay a fine of 25,000/- and in default of payment of fine, to further undergo simple imprisonment for six months.

(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 appeals are that the police presented a challan before the learned Trial Court against the accused and other persons for the commission of offences punishable under Sections 302, 147, 148, 149, 427, 323 and 506 of IPC. It was asserted that the Birshi fair was being organized on 9.6.2005 in Village Khamari. Narotam Dass (deceased) had set up a Halwai shop at the fair. He also owned a vehicle bearing registration No. HP63-0612. Durga 2024:HHC:10248 Singh (not examined) was employed as a driver of the vehicle. Narotam Dass had transported his articles in this vehicle. Mohan Lal son of Narotam (PW5) had also gone to Khamari. Durga Singh was reversing the vehicle at 4.30 PM after the fair was over. Laiq Ram quarrelled with Durga Singh without any reason and started abusing and beating him. Mohan Lal rushed to his father to narrate the incident to him. Narotam Ram came to the spot to solve the dispute. Laiq Ram hit Narotam Ram on the head with a stick. Dalip, Rakesh, Vicky, Pradeep, Ramesh Chand, Vikrant, Rajiv and Mohar Singh beat Narotam Dass with kicks and fist blows. Narotam Ram fell. The accused continued to beat Narotam Ram. They also threatened to kill him. Laiq Ram gave beatings to Narotam with a stick. Narotam Ram became unconscious. The accused also gave beatings to Mohan Lal and Durga Singh. Gulab Singh-informant (PW4) rushed from the spot to save himself. This incident had taken place in front of the shop of Kedar Singh. Gulab Singh called Narotam Dass. The

call was picked up by Rama Nand (PW13), who informed Gulab Singh that Narotam was being taken to the hospital. Gulab Singh went to the hospital and found that Narotam had succumbed to his injuries. The police registered the FIR (Ex.PW4/A) based on the statement of 2024:HHC:10248 Gulab Singh. Inspector B.D. Bhatia (PW24) conducted the investigation. He went to the spot and took photographs of the spot (Ex.PW24/A1 to Ex.PW24/A16, whose negatives are Ex.PW24/A17 to Ex.PW24/A32). He prepared the site plan (Ex.PW24/B). He seized one pair of chappals (Ex. P1) vide memo (Ex.PW2/A) after putting it in a parcel and sealing the parcel with seal 'T'. He also seized blood-stained soil, blood-stained leaves and grass in a cloth parcel and sealed the parcel with seal 'T'. These were seized vide memo (Ex.PW2/A). Pieces of broken glass of the vehicle bearing Registration No. HP-63-0612 lying on the spot were picked up. These were put in a parcel and the parcel was sealed with seal 'K'. The parcel was seized vide memo (Ex.PW2/C). The stick (Ex. P2), stained with blood was found on the spot. It was put in a parcel and the parcel was sealed with seal 'K'. The parcel was seized vide memo (Ex.PW2/D). A torn piece of the arm of a T-shirt was also found on the spot which was stated to belong to deceased Narotam Dass. It was put in a parcel and the parcel was sealed with seal 'K'. It was seized vide memo (Ex.PW2/E). Mohan Lal produced one Jersey (Ex.P4) which the deceased was wearing at the time of the incident. Jersey was found to be blood-stained. It was sealed in a parcel and the 2024:HHC:10248 parcel was seized vide memo (Ex.PW5/A). Sample seal 'T' (Ex.PW2/C) and sample seal 'K' (PW24/D) were taken up on separate pieces of cloth. Seal 'T' was handed over to witness Ram Singh and Seal 'K' was handed over to witness Kahan Chand after the use. Statements of witnesses were recorded as per their version. An application (Ex.PW12/A) was filed by Ramesh Lal (PW22) for conducting the postmortem examination of the deceased. Ramesh Lal (PW22) also filled the inquest reports (Ex.PW22/A and Ex.PW22/B). Dr Bimal Negi (PW12) conducted postmortem examination of deceased Narotam Ram. He found a lacerated wound of 10 cm on the scalp. Serrous Fluid mixed with blood was coming out of the nostril and mouth. He found a fracture on the skull and meninges over the lacerated parietal region. In his opinion, the cause of death was trauma due to head injury leading to compression of brain matter and vital centres. The injury sustained by the deceased could have caused his death and such injury could have been caused with a stick (Ex. P2). He preserved the viscera and handed it over to the police official accompanying the dead body. He issued the postmortem report (Ex.PW12/B). Dr Nisha Sharma (PW19) examined Mohan Lal and found a simple injury which could have been caused within 24 2024:HHC:10248 hours of examination. She issued MLC (Ex.PW19/B). Dr Hemant Sharma (PW21) examined accused Laiq Ram and found a lacerated wound 1½ inches long, oblique on the right parietal region with ragged margins and clotted blood. The injury was simple and could have been caused by a blunt weapon. He issued the MLC (Ex.PW21/B). He examined Jawahar Lal and found that he had not sustained any external injury. He had pain and tenderness on his left upper arm and abrasions on the right lower arm reddish brown. The nature of the injury was simple which could have been caused by a blunt weapon within 48 hours of examination. He issued the MLC (Ex.PW21/D). He also examined Mohar Singh and found simple injuries that could have been caused within 24 hours of the examination. He issued the MLC (Ext. PW-21/F). Vidya Chand (PW-23) conducted further investigation. Accused Mohar Singh produced one blood-stained shirt, which was sealed in a parcel sealed with seal 'CW'. The seal impression (Ex.PW9/A) was taken on a separate piece of cloth. The parcel was sealed vide memo (Ex.PW7/B). Laiq Ram produced a blood-stained shirt (Ex. P8) which was put in a parcel and was sealed with seal CW. It was seized vide memo (Ex. CW17/C). He filed applications (Ex.PW21/A,

Ex.PW21/B and 2024:HHC:10248 Ex.PW21/C) for the medical examination of Laiq Ram, Jawahar Lal and Mohar Singh and obtained their MLCs. Laiq Ram and Mohar Singh made disclosure statements (Ex.PW3/A & Ex.PW3/B) stating that they could show the place of the incident. They also showed the place of the incident and a site plan (Ex.PW23/A) was prepared. The results of the analysis (Ex. PX to Ex. PZ) were issued by FSL, in which it was mentioned that the viscera did not contain any poison, the controlled sample and the sample lifted from the spot matched each other, blood of group 'B' was found on the basket, pyjama, T-shirt and chappal of Narotam Dass. Blood was also found on the kurta, underwear, blood-stained soil, grass, blood-stained leaves, sticks, and the windscreen of the vehicle. Blood-stained leaves were also collected but their group could not be classified. No blood was found on the torn arm of the T-shirt. Blood of group A was found on the shirt & jersey of Mohan Lal, and the shirt of Laiq Ram. The statements of witnesses were recorded as per their version and after completion of the investigation, the challan was prepared and presented before the Court of learned Sub Divisional Judicial Magistrate, Rampur, who committed it for trial to learned 2024:HHC:10248 Sessions Judge, Kinnaur, Sessions Division, Rampur (learned Trial Court).

3. The learned Trial Court found sufficient reasons to frame charges against the accused persons for the commission of offences punishable under Sections 147, 148, 323, 302, 427, and 506 read with Section 149 of IPC. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 24 witnesses to prove its case. Nok Ram (PW1), Kahan Chand (PW2) and Chain Ram (PW3) did not support the prosecution case. Gulab Singh (PW4) is the brother of the deceased and the informant. Mohan Lal (PW5) is the son of the deceased and an eyewitness. Ram Singh (PW6) and Prem Chand (PW7) are the witnesses to recovery. Surjit Singh (PW8) is the son of Rama Nand (PW13) and deposed about part of the incident. Leela Devi (PW9) witnessed part of the incident. Prem Bahadur (PW10) was the driver of another vehicle bearing registration HP-01A-3576 and he witnessed the initial incident. Raj Pal (PW11) and Rama Nand (PW13) witnessed the part of the incident. Dr. Bimal Negi (PW12) conducted the postmortem examination of the deceased. HHC Dalip Kumar (PW14) carried 2024:HHC:10248 the viscera and other articles from the Hospital to the Police Station. He also carried the case property from Police Station to FSL, Junga. HC Devi Singh (PW15) was posted as MHC with whom the case property was deposited. Constable Rakesh Kumar (PW16) and Constable Suresh Kumar (PW17) are the witnesses to recoveries. Constable Daulat Ram (PW18) proved the entries in the daily diary. Dr. Nisha Sharma (PW19) conducted the medical examination of Mohan Lal. Constable Kuldeep Singh (PW20) proved the entry in the daily diary. Dr Hemant Sharma (PW21) medically examined Laiq Ram, Jawahar Lal and Mohar Singh. Ramesh Lal (PW22) applied for postmortem examination of the deceased and conducted the inquest on the dead body. Vidya Chand (PW23) and Inspector B.D. Bhatia (PW24) conducted the investigation.

5. The accused Laiq Ram in his statement recorded under Section 313 of Cr.P.C. stated that the driver had attempted to run the vehicle over him but he did not receive any injury. Mohar Singh had sustained injuries. He admitted that the driver was reversing the vehicle. He denied the rest of the prosecution case. He stated that he was not aware of why the case was made against him. He did not know any of the informant party.

2024:HHC:10248 Narotam, Mohan, Jawahar and two other persons came and gave them beatings with a stick. He sustained injuries in the incident. Accused Mohar Singh also denied the prosecution case in its entirety.

6. The accused Laiq Ram and Mohar Singh filed a written statement under Section 233(2) of Cr.P.C. stating that they were present in village Khamari, where Narotam had a shop. Mohan Lal falsely complained against the accused to Narotam. Narotam and his son left the shop and attacked the accused. Narotam had a stick in his hand and he inflicted blows on the person of the accused. Laiq Ram received an injury on the head which was bleeding. Mohar Singh also sustained injuries on his right elbow and right knee. Laiq Ram was referred to MGH Khaneri where he was treated and the injury was plastered. They had a right of private defence as the stick yielded by Narotam would cause death or grievous injury. The deceased Narotam had sustained the injury from a fall. Mohan Lal and Jawahar Lal were also aggressors. The other accused did not give any beatings to the deceased. The deceased was an aggressor. The accused had no intention to kill the deceased. Pushpinder wanted to extract 2024:HHC:10248 money as ransom which was refused. The case of the prosecution is highly doubtful.

7. Since other accused are not before this Court, therefore, it is not necessary to notice the pleas taken by them.

8. Dr Mohammad Iftakhar Ahmad (DW1) and Surinder Singh (DW2) were examined in defence.

9. The learned Trial Court held that the incident was undisputed. The statements of Gulab Chand, Surjeet Singh, Rama Nand and Mohan Lal proved the prosecution's version. Dr. Vimal Negi conducted the postmortem examination of the deceased and found an injury on the head which could have been caused using a stick produced by the accused. The medical examination of Mohan Lal also corroborated his version. The injuries suffered by the accused were not serious enough to justify their explanation. The plea of private defence taken by the accused was not proved. The non-examination of the witness will not affect the prosecution case adversely. The possibility of sustaining injuries in a fall does not exist. The deceased had sustained one injury on the head. There was no enmity between the parties. The involvement of the other accused was not 2024:HHC:10248 established. Therefore, the learned Trial Court convicted and sentenced accused Laiq Ram and Mohar Singh, as aforesaid, and acquitted rest of the accused.

10. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused have filed the present appeals. It was asserted by accused Laiq Ram in his appeal that the learned Trial Court erred in convicting him for the commission of an offence punishable under Section 304 part 2 of IPC. The possibility of sustaining injuries by fall was duly established by the statement of Kahan Chand. His testimony was wrongly interpreted. The benefit of the Probation of the Offenders Act should have been granted to the accused. He was working as a mason in the IPH Department on daily wages. His family would starve in case of his imprisonment. The defence version that the relatives of the complainant wanted to extract money from the accused is highly probable. The injuries on the person of accused Laiq Ram and Mohar Singh were not explained by the prosecution. The injuries were grievous and could not be ignored. Therefore, it was prayed that the present

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

2024:HHC:10248

11. In an appeal filed by Mohar Singh, similar pleas were taken. It was asserted that the accused had a right of private defence and this right was ignored by the learned Trial Court. There was no evidence of the commission of mischief. The benefit of the Probation of Offenders Act should have been granted to the appellant/accused Mohar Singh. He is a beldar having one son and one daughter who are undergoing studies. Learned Trial Court had acquitted six persons out of eight persons named by the prosecution which means that the prosecution case is doubtful and the benefit of this doubt should have been extended to the accused. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

12. I have heard Mr I.S. Chandel, learned counsel for the appellant/accused Mohar Singh, Ms Sheetal Vyas, learned counsel for the appellant/accused Laiq Ram and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

13. Mr. I.S. Chandel, learned counsel for the appellant/accused Mohar Singh submitted that the prosecution 2024:HHC:10248 case is full of contradictions. Six accused out of eight named by the prosecution were acquitted by the learned Trial Court. There were major contradictions in the testimonies of eyewitnesses. The driver of the vehicle and other persons on the spot were not examined. The prosecution relied upon the testimonies of related witnesses. The defence version that the accused acted in their right to private defence was highly probable. The injuries on the person of the accused were not explained. The benefit of the Probation of Offenders Act should have been granted and no reason was assigned for not extending this benefit. He prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

14. Ms Sheetal Vyas, learned counsel for the appellant/accused Laiq Ram submitted that Laiq Ram had sustained an injury on the head which could have resulted in his death. The prosecution witnesses were under obligation to explain the injury and the failure to do so will make the prosecution case suspect. She relied upon the judgment of the Hon'ble Supreme Court in Nand Lal Vs. State of Chhattisgarh (2023) 10 SCC 470 in support of her submission.

2024:HHC:10248

15. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State supported the judgment and the order passed by the learned Trial Court. He submitted that the medical evidence corroborated the testimonies of the prosecution witnesses. The accused had sustained minor injuries which could have been caused in a scuffle. The learned Trial Court rightly negated the plea of right to private defence. He prayed that the appeal be dismissed.

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

17. The incident started when the driver of the vehicle bearing registration No. HP-63-0612 tried to reverse the vehicle. Prem Bahadur (PW10) stated that he was the driver of the vehicle bearing registration HP-01A-3576. He reached Khamari on 9.6.2005 at 5.00 PM. Babu Ram (owner of the vehicle) was also present in the vehicle. A Tempo Trax bearing registration No. HP-63-0612 came from the opposite direction. The road was congested. The driver of Tempo Trax bearing registration No. HP-63-0612 reversed the vehicle and asked Prem Bahadur to stop the vehicle on the side of the road. Prem Bahadur saw the 2024:HHC:10248 persons beating the driver of the Tempo Trax bearing registration No. HP-63-0612. They were saying that the driver had almost killed their father. One person gave a fist blow on the windshield of the vehicle bearing registration No. HP-63-0612 and the windshield cracked. Subsequently, he came to know that the name of one person was Mohar Singh and the name of the other person was Laiq Ram. He stated in his cross-examination that the engines of both vehicles were running. Various people were walking on the road. He did not hear the conversation between those persons with the driver of the vehicle bearing registration No. HP-63-0612. He could not find the cause of the quarrel between them. He had not seen both the persons before or after the incident and he could not identify them in the Court.

18. Mohan Lal (PW5) stated that he was giving a pass to another vehicle when accused Laiq Ram and Mohar Singh came and picked up a quarrel with him. They damaged the windshield of the vehicle and started beating him. Gulab Singh was also present on the spot. Gulab Singh went to the shop of Narotam and told him about the incident. Narotam came to the spot and he tried to pacify the accused. Accused Laiq Ram inflicted a stick 2024:HHC:10248 blow on the head of Narotam. Mohar Singh also gave beatings to Narotam with a fist and kick blows. Mohar Singh sustained injuries while damaging the windshield. Blood came out of his hand and blood stains fell on the jersey of Mohan Lal. All the accused persons gave beatings to Narotam with fists and kick blows. They took the deceased towards the field beneath the road. He sustained injuries on his back. Narotam became unconscious due to the beatings given to him by the accused. They brought Narotam to the road. Narotam was taken to Nankhari for treatment. He was taken to Rampur but was declared brought dead by the Doctor at Rampur. He identified the stick and the chappal.

19. He stated in his cross-examination that 100-150 persons were present at the time of the incident. He and Gulab Singh had not run away from the spot. The stick blow was given by Laiq Ram to Narotam on the road. The persons were standing at a distance of 10 ft. from the spot. The deceased was brought from the field to the hospital. The field is situated at a distance of 30-35 ft. below the road. He was not present with Gulab Singh at the time of the registration of FIR. He had not visited the hospital along with his father. He visited the Police Station the next 2024:HHC:10248 evening. He did not know where the danda (Ex.P2) was lying after the incident. He had not informed Kahan Chand about the incident or that his father had fallen. His father was running a sweets shop for five years before the incident. He was not aware that the accused except Laiq Ram and Mohar Singh were students on the date of the incident. He denied that he demanded money from each of the accused.

20. The accused had not disputed the presence of Mohan Lal on the spot. It was stated in the written statement filed by them under Section 232 of Cr.P.C. that Mohan Lal (PW5) falsely complained against them to Narotam. Narotam came and attacked them. He hit Laiq Ram on the head and also

gave beatings to Mohar Singh. Accused Laiq Ram also stated in his statement recorded under Section 313 of Cr.P.C. that the driver had run the utility van over them. Thus, the prosecution's version that the incident started when the driver tried to reverse the vehicle is duly corroborated by the statement of the accused recorded under Section 313 of Cr.PC and the written statement filed by the accused. The presence of Mohan Lal is undisputed and his testimony is entitled to a great weight. It was laid down by the Hon'ble Supreme Court in State of U.P Versus Smt. Noorie 2024:HHC:10248 Alias Noor Jahan and Others, (1996) 9 SCC 104, that while assessing the evidence of an eye witness, the Court must adhere to two principles namely whether in the circumstances of the case, the eye witness could be present and whether there is anything inherently improbable or unreliable. It was observed:-

> "7. The High Court having acquitted the accused persons on appreciation of the evidence, we have ourselves scrutinised the evidence of PWs. 1, 2 and 3. The conclusion is irresistible that their evidence on material particulars has been brushed aside by the High Court by entering into the realm of conjecture and fanciful speculation without even discussing the evidence more particularly the evidence relating to the basic prosecution case. While assessing and evaluating the evidence of eyewitnesses the Court must adhere to two principles, namely whether in the circumstances of the case, it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable. The High Court in our opinion has failed to observe the aforesaid principles and in fact, had misappreciated the evidence which has caused a gross miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is created by his evidence taken insofar as the context of the case and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3 we find they are consistent with one another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-examination to impeach their testimony. The aforesaid oral evidence fully corroborates the medical evidence. In that view of the matter, we 2024:HHC:10248 unhesitatingly come to the conclusion that the prosecution has been able to establish the charge against the accused persons and the High Court committed an error in acquitting the three respondents namely Inder Dutt, Raghu Raj and Bikram." (emphasis supplied)

21. It was laid down by the Hon'ble Supreme Court in State of Punjab vs. Hari Singh 1974 (3) SCR 725 that a person speaking on oath should be presumed to be a truthful witness unless there is something inherently improbable in his testimony. It was observed:

> "The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly

> deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility for the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them."

22. Dr. Nisha Sharma (PW19) conducted the medical examination of Mohan Lal. She found that Mohan Lal had sustained simple injuries which could have been caused by fist blows within 24 hours of his examination. She admitted that injuries sustained by Mohan Lal could have been caused by way of a fall but stated that corresponding injuries should have also 2024:HHC:10248 been sustained in other parts of the body. Her statement shows that the injuries sustained by Mohan Lal were not caused by the fall but by the fist blows because of the absence of corresponding injuries. The injuries sustained by Mohan Lal show his presence on the spot. It was laid down by the Hon'ble Supreme Court in Bhajan Singh @ Harbhajan Singh & Ors. Versus State of Haryana (2011) 7 SCC 421, that the evidence of the stamped witness must be given due weightage as his presence on the spot cannot be doubted. It was observed: -

> "36. The evidence of the stamped witness must be given due weightage as his presence at the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra, (2011) 1 SCC 793; Durbal v.
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> 2024:HHC:10248 State of Uttar Pradesh, (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., (2011) 4 SCC 324).

23. The accused stated in their statement of defence that this witness went to Narotam and told him something after which Narotam came with a stick and attacked them. Significantly, this part of the defence case was not put to him. It was not suggested to him that he had gone to Narotam and informed him about the incident. It was laid down by the Hon'ble Supreme Court in Ravinder Kumar Sharma Vs. State of Assam (1999) 7 SCC 435 that generally speaking while cross-examining a witness so much of the case as concerns the witness should be put to him. It was observed: -

> 29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised or illegal. Illegality does

> not by itself lead to such a conclusion. Further, there is no truth in the appellant's case that on 1-10-1977 at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-

examined. As pointed out by Sarkar on Evidence (15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act, 2024:HHC:10248 "Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share."

24. This position was reiterated in Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268: 2016 SCC OnLine SC 435, wherein it was observed at page 294: -

> "15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed, PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906]. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. The party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440]
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> 16. In Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60], it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings 2024:HHC:10248 or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359] has laid down that the party is obliged to put his case in cross- examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other

> side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

25. Thus, the fact that the defence had not put their case that this witness had gone to Narotam and informed him makes it difficult to rely upon this version propounded for the first time while filing the statement of defence.

2024:HHC:10248

26. Gulab Singh (PW4) stated that Narotam was his brother. Narotam was running a sweets shop at Khamari on 9.6.2015. Narotam was the owner of the vehicle bearing registration HP-63-0612. Durga Singh was the driver of the vehicle. Mohan Lal was also with Narotam. He was also present at village Khamari on 9.6.2005 at a village fair. Durga Singh was giving a pass to another vehicle on 9.6.2005 at 4.30 PM. Accused Laiq Ram and Mohar Singh came near the vehicle and started abusing Durga Singh and Mohan Lal. Mohan Lal informed Narotam and Narotam went to the spot. Narotam apologized to Laiq Ram and Mohar Singh, however, Laiq Ram gave him a stick blow on his head. The other accused gathered on the spot and gave fist and kick blows to Narotam. Narotam became unconscious. The accused also gave beatings to Mohan Lal. Mohan Lal threatened to do away with the lives of the persons present. He (Gulab Singh) ran away from the spot due to the fear. The deceased was brought to Nankhari for treatment from where he was taken to Rampur. The doctor declared Narotam dead in the hospital. He stated in his cross-examination that he had seen the stick lying on the spot. He admitted that a path goes to Nankhari from the place of the occurrence. The quarrel took 2024:HHC:10248 place on a motorable road. The blow of the stick was given on the road. He admitted that the dhara of Mohan Lal was located beneath the road and a hand pump existed on the road. He could not tell whether the blow was given on the left or right side of the hand pump. The danda blow was given to the deceased on the right side of the house of Kahan Chand at a distance of 30-40 ft. He admitted that there were fields beneath the road at the place of the incident. He was not aware of the name of the owner of these fields. No path leads to the fields from the road. He volunteered to say that the path leads to the field from the road. He was standing on the road when the stick blow was given to the deceased. 10-12 persons had seen Laiq Ram giving stick blows to the deceased. He left for village Kalera located at a distance of 5-6 km. from the place of occurrence. Village Oni, Majhori, Tipper and Kothi fell on the way. He had not informed any villagers about the murder of his brother Narotam Dass. He reached village Karera at 8-8:30 pm because he had hidden in the jungle, however, he did not disclose this fact to the police. He disclosed the incident to Ramanand via telephone at 9.00 PM. 40-50 persons were present at the place of occurrence. He had not informed any person on the spot that his brother was killed.

2024:HHC:10248 Narotam was dragged towards the path of the village by the accused persons, however, he did not disclose this fact to the police. It takes about 2½ hours to reach village Karera on foot. Vehicle bearing registration No. HP-63-0612 was parked near the house of Kedar Singh. They reached Rampur at about 12- 12.30 AM. He went to the hospital first. Thereafter, he went to the Police Station at 3-4 AM. No person accompanied him to lodge the FIR. He had not seen Kahan Chand or Nokh Ram at the place of occurrence. He denied that he was not present on the spot and he was making a false statement.

27. It was submitted that the conduct of this witness is not satisfactory. He ran away from the spot even though there was no threat to him. He did not tell any person about the murder of his brother Narotam. He also did not make any effort to take his brother to the hospital. This conduct will make it difficult to place reliance on his testimony. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in State of Punjab v. Hardam Singh, (2003) 12 SCC 679: 2005 SCC (Cri) 834: 2003 SCC OnLine SC 1048, that there is no rule of natural reaction and the reaction of a witness cannot be predicted. It was observed:-

> 2024:HHC:10248 "4....Before we advert further, we may at this stage point out that by now it is a well-settled principle of law that there is no set rule of natural reaction. Everyone reacts in his own special way and in what way the witness should react cannot be predicted. In Rana Partap v. State of Haryana [(1983) 3 SCC 327: 1983 SCC (Cri) 601] in paragraph 6 it was pointed out as under: (SCC p. 330) "6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot.

Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way." This Court in Bachittar Singh v. State of Punjab [(2002) 8 SCC 125: 2003 SCC (Cri) 233] on human behaviour, held as under:

> (SCC p. 135, para 12) "12. Human behaviour varies from man to man. Different people behave and react differently in different situations.

Human behaviour depends upon the facts and circumstances of each given case. How a man would behave in a particular situation, can never be predicted. In the given circumstances, the behaviour of Joginder Singh, PW 3 sleeping on the roof of the house of Sukhwant Singh, after seeing the accused armed with weapons and hearing the firing, jumping from the roof and running towards his Village Mastewala to inform his father and family members instead of loitering around in the Village Dholewala and informing somebody risking his life, is 2024:HHC:10248 quite natural. One should

not forget that the incident had happened at 1.00 a.m. and that at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk."

28. It was held in Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129 : (2022) 1 SCC (Cri) 401: 2021 SCC OnLine SC 1021 that different persons react differently to circumstances and uniform behaviour should not be expected. It was observed at page 150:

> 32. The Single Judge has termed a person who decided to commit suicide a "weakling" and has also made observations on how the behaviour of the deceased before he committed suicide was not that of a person who is depressed and suffering from mental health issues.

Behavioural scientists have initiated the discourse on the heterogeneity of every individual and have challenged the traditional notion of "all humans behave alike". Individual personality differences manifest as a variation in the behaviour of people. Therefore, how an individual copes up with a threat--both physical and emotional, expressing (or refraining to express) love, loss, sorrow and happiness, varies greatly in view of the multi-faceted nature of the human mind and emotions. Thus, the observations describing the manner in which a depressed person ought to have behaved deeply diminishes the gravity of mental health issues.

29. It was laid down by the Hon'ble Supreme Court in Sk. Bilal v. State of Maharashtra, 2023 SCC OnLine SC 1319 that testimony of a person cannot be discarded on the ground that he had failed to react in a particular manner. It was observed:

> 2024:HHC:10248
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> 11. In Shivasharanappa v. State of Karnataka, (2013) 5 SCC 705, this Court relying on the following judgments observed as follows:
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> "19. In Gopal Singh v. State of M.P. [(2010) 6 SCC 407: (2010) 3 SCC (Cri) 150] this Court did not agree with the High Court which had accepted the statement of an alleged eyewitness as his conduct was unnatural and while so holding, it observed as follows: (SCC p. 413, para 25) "25. We also find that the High Court has accepted the statement of Feran Singh, PW 5 as the eyewitness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety."

20. In Rana Partap v. State of Haryana [(1983) 3 SCC 327: 1983 SCC (Cri) 601], while dealing with the behaviour of the witnesses, this Court has opined thus : (SCC p. 330, para 6) "6. ... Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run

away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

21. In State of H.P. v. Mast Ram [(2004) 8 SCC 660: (2010) 1 SCC (Cri) 1165] it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Every one reacts in his 2024:HHC:10248 own way and, hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. A similar view has been reiterated in Lahu Kamlakar Patil v. State of Maharashtra [(2013) 6 SCC 417: (2012) 12 Scale 710].

22. Thus, the behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. The expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether, in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance."

30. Thus, the submission that the statement of Gulab Singh is to be discarded because he had chosen to run away from the spot rather than take his brother to the hospital is not acceptable.

31. It was submitted that he had no reason to run away from the spot. No person attacked him or even abused him. This submission cannot be accepted. His brother Narotam and his nephew Mohan Lal were beaten by the accused in the presence of the public. Therefore, it was natural for him to feel apprehensive about his safety and his reaction of running away from the spot cannot be said to be unreasonable.

2024:HHC:10248

32. It was submitted that this witness had not told any person about the murder of his brother even though he met many villagers on the way. This submission is not acceptable. As per him, Narotam was being beaten on the spot and he ran away. He came to know of the death of Narotam subsequently and he could not have informed any person about the death of Narotam.

33. Rama Nand (PW13) stated that he was present in the shop of Narotam at 5.00 PM. One person came to the shop and told Narotam about the scuffle. Narotam went towards the road. The accused Dalip and Laiq Ram came to the shop of Narotam and caught hold of him (Rama Nand) from his neck. They asked Rama Nand whether the vehicle parked on the road belonged to him. He (Rama Nand) replied that the owner of the vehicle had gone towards the roadside. The accused Laiq Ram attempted to give a danda blow to him (Rama Nand) but Surjeet caught hold of the danda. Accused Laiq Ram slapped Surjeet. Both the accused left towards the road. Ishwar Dass informed him after

about half an hour that Narotam was lying on the road in an injured condition. He proceeded towards the road along with Ishwar and some other persons. He found Narotam in an injured condition and blood was oozing from his head. They took him to the 2024:HHC:10248 hospital at Nankhari from where he was referred to Rampur Hospital. The Doctor declared Narotam as brought dead. He stated in his cross-examination that he was working with Narotam at his shop for 4-5 years. The deceased was running a sweets shop. It was the last day of the fair on 9.6.2005. He did not know the name of the person who had informed him about the scuffle. He and his son Surjeet were present when Narotam was told of the incident. Narotam did not come back to the shop after he was called to the spot. He was not aware who was driving the Jeep of Narotam on that day. Durga Dass was kept as a driver. He brought Narotam to the hospital at Nankhari. They remained in the hospital for about half an hour. He, Gian and Narotam travelled in the vehicle. The distance between Khamari and Nankhari Hospital is around 20 kilometres. One policeman, he, Gian Chand and Narotam went to Rampur from Nankhari. They reached at Rampur at about 1-2 AM. They stopped near the Police Station, Rampur from where one policeman accompanied them up to the hospital. They did not stop anywhere between Nankhari and Rampur and they did not talk to any person. One side of the face of Laiq Ram was stained with blood. He knew Laiq Ram and Mohar Singh before the incident. Laiq Ram told him 2024:HHC:10248 that he was beaten by the sons of deceased Narotam. He denied that Narotam had taken a danda and a ladle with him. He did not know that Narotam and his associate had given beatings to Laiq Ram and Mohar Singh on the road due to which Mohar Singh sustained fracture on his elbow and knee. Various persons had gathered on the spot. He admitted that the father of Narotam was present in the Court and met him outside the Court. He denied that he was making a false statement at the instance of the father of Narotam.

34. His testimony is corroborated by Surjeet (PW8). He stated that he was present at the fair in June 2005. His father was sitting in the shop. Dalip came and caught hold of his father and asked him about Narotam. Laiq Ram also came to the shop with a danda. He intervened and Laiq Ram slapped him. He carried the goods of the shop from the spot to the house of Ram Singh. He stated in his cross-examination that the stick remained with Laiq Ram. He had simply held the same. His father and deceased Narotam did not have any talk. His father did not talk to Laiq Ram. His father was sitting in the shop and Laiq Ram was outside the shop at a distance of 2-3 ft. There was no enmity between Laiq Ram, Rama Nand and Narotam. Narotam was related to him 2024:HHC:10248 as an uncle. He denied that he was making a false statement as he was related to the deceased.

35. His statement substantially corroborates the testimony of Rama Nand regarding the arrival of the accused looking for the owner of the vehicle.

36. It was submitted that the prosecution has relied upon the testimonies of related and interested witnesses. No reliance could have been placed upon their testimonies. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in Laltu Ghosh v. State of W.B., (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2 that there is a distinction between an interested witness and related witness. The interested witness is the one who derives some benefits from the litigation. It was observed:

> "12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested"

witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other 2024:HHC:10248 reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593]; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] and Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]).

13. Recently, this difference was reiterated in Ganapathi v. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], SCC p. 555, para 14) "14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"...."

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465], wherein this Court observed : (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from 2024:HHC:10248 sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State (UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966] : (SCC p. 213, para 23) "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely

related to the victim."

37. In the present case, nothing was shown in the statements of the witnesses that they were interested in getting the accused convicted and the submissions that the testimonies of prosecution witnesses are to be rejected because they are interested is not acceptable.

2024:HHC:10248

38. It was laid down by the Hon'ble Supreme Court in Thoti Manohar vs State of Andhra Pradesh (2012) 7 SCC 723 that the court cannot discard the testimony of a witness on the ground of a relationship. It was observed:

> "31. In this context, we may refer with profit the decision of this Court in Dalip Singh v. State of Punjab AIR 1953 SC 364, wherein Vivian Bose, J., speaking for the Court, observed as follows: -
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> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye- witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)."

32. In the said case, it was further observed that:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such criticism 2024:HHC:10248 and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

33. In Masalti v. State of U.P. AIR 1965 SC 202, it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

34. In Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can be

laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

35. In Kartik Malhar v. State of Bihar (1996) 1 SCC 614, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or some other reason.

36. In Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh AIR 2006 SC 3010, while dealing with the liability of interested witnesses who are relatives, a two- judge Bench observed that:

> "it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased if it is otherwise found to be trustworthy and credible."

2024:HHC:10248 The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon.

> "If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

39. This position was reiterated in Rajesh Yadav vs. State of Bihar 2022 Cr.L.J. 2986 (SC) as under:

> "28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstands the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose.
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> 29. When the court is convinced with the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591:

> "32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were 2024:HHC:10248 interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, Vivian Bose, J. for the Bench observed the law as under (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

33. In Masalti v. State of U.P., (1964) 8 SCR 133: AIR 1965 SC 202: (1965) 1 Cri LJ 226], a five-judge Bench of this Court has categorically observed as under

> (AIR pp. 209-210, para 14) "14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it 2024:HHC:10248 has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine;

whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to the failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. The judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

34. In Darya Singh v. State of Punjab [(1964) 3 SCR 397: AIR 1965 SC 328: (1965) 1 Cri LJ 350], this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised but no corroboration is necessary for acceptance of his evidence. In Harbans Kaur v. State of Haryana [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199], this Court observed that: (SCC p. 227, para 6) "6. There is no proposition in law that relatives are to be treated as

untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield 2024:HHC:10248 the actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves with is Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773], wherein this Court after observing previous precedents has summarised the law in the following manner: : (SCC p. 164, para 38) "38. ... it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the "sole" testimony of such witness. A close relationship of the witness with the deceased or the victim is no grounds to reject his evidence. On the contrary, a close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remains the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves 2024:HHC:10248 his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case."

30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court."

40. Similar is the judgment in M Nageswara Reddy vs. State of Andhra Pradesh 2022 (5) SCC 791 wherein it was observed:

> "10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the

> witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7."

2024:HHC:10248

41. It was laid down by the Hon'ble Supreme Court in Mohd. Jabbar Ali v. State of Assam, 2022 SCC OnLine SC 1440, that merely because the witnesses are related to each other is no reason to discard their testimonies. The Court is required to see their testimonies with due care and caution. It was observed:

> 55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-

settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of GangadharBehera v. State of Orissa, (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

56. In Raju alias Balachandran v. State of Tamil Nadu, (2012) 12 SCC 701, this Court observed:

> "29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and 2024:HHC:10248 the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words:
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> (Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10) "10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

57. Further delving into the same issue, it is noted that in the case of Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

42. Raj Pal (PW11) also corroborated the version of Ram Nand. He stated that Laiq Ram and Dalip Kumar went to the shop of Narotam. Rama Nand (PW13) was present in his shop. They asked Rama Nand about Narotam. Rama Nand replied that Narotam had gone towards the road side. Laiq Ram attempted to give a danda blow to Rama Nand but in the meantime, Surjeet came and caught Danda. Laiq Ram slapped Surjeet. He stated in 2024:HHC:10248 his cross-examination that Surjeet was his friend and class fellow. There were about 500 people at the fair. Rama Nand was working with Narotam in a sweets shop. Surjeet was accompanying him. They were standing in front of the shop for about half an hour before the occurrence. He denied that he was making a false statement at the instance of the father of Narotam.

43. The statement of this witness is in accordance with the statement of Rama Nand and Surjeet and has to be accepted as correct. There is nothing in his cross-examination to show that he was making a statement or had any motive to depose falsely against the accused and the learned Trial Court had rightly accepted his testimony.

44. Leela Devi (PW9) stated that on 9.6.2005, at about 5- 6 PM, she was present in her shop when she heard some noise. She went outside and saw a vehicle on the road. Mohar Singh was saying to the driver of the vehicle that he was about to drive the vehicle on them. Mohar Singh gave 2-3 slaps to the driver of the vehicle. Laiq Ram was also present. The driver reversed the vehicle. She stated in her cross-examination that she had been 2024:HHC:10248 running a karyana shop for 10-12 years. She knew Narotam. She was also present at the fair; however, she had not seen Gulab Singh, the brother of the deceased, at the fair. She came to know that Mohan Lal was the son of the deceased. People were saying that Narotam died due to a fall.

45. A heavy reliance was placed upon the statement of this witness (in cross-examination that she had heard from the people that Narotam had died due to a fall) to submit that the statement probablises the defence version that Narotam had sustained injuries by way of a fall. This submission is not acceptable. The statement made by her in her cross-examination regarding what she had heard from the people to prove the truth of the statement would amount to hearsay and the same is inadmissible. Section 60 of the Indian Evidence Act reads that oral evidence must be direct that is if it refers to a fact that could be seen it must be the evidence of a witness who says he saw it. The fact that Narotam sustained injuries by fall is capable of being seen and the statement of only the person who had seen Narotam falling is admissible in evidence because of Section 60 of the Indian Evidence Act. Thus, no reliance can be placed upon 2024:HHC:10248 the cross-examination of this witness to prove the defence version that Narotam had suffered injuries from a fall.

46. She (PW9) has corroborated the statements of Mohan Lal and Prem Bahadur that the incident started when the vehicle was being reversed. This is as per the defence version also and corroborates the prosecution version in material particulars.

47. This part of the prosecution case is also corroborated by Inspector B.D. Bhatia (PW24) who had visited the spot and found pieces of broken glass of the vehicle bearing registration No. HP-63-0612 lying on the spot which were sealed by him in a parcel. This part of his testimony was not challenged and is deemed to have been accepted.

48. Dr. Hemant Sharma (PW21) examined Mohar Singh on 9.6.2005 at 6.30 PM and found abrasions over the bridge of the nose, pain and tenderness over the right elbow joint, and abrasion over the left side of the abdomen. The injuries could have been caused by a scuffle. The fact that Mohar Singh had sustained injuries was not challenged in the cross-examination and was rather admitted by accused Mohar Singh and Laiq Ram 2024:HHC:10248 in the statements recorded under Section 313 of Cr.P.C. Thus, the presence of Mohar Singh on the spot is duly established.

49. Nok Ram (PW1) did not support the prosecution case. He stated that he did not see any quarrel and no person gave beatings to Narotam in his presence. He was permitted to be cross-examined. He denied in his cross-examination that Laiq Ram inflicted stick blows on the head and shoulder of Narotam and the other accused gave beatings to him. He denied his previous statement recorded by the police. He stated in his cross-examination that Narotam was his relative. Gulab Singh was not present on the spot. Gulab Singh gathered information about the scuffle on the telephone. Narotam and Laiq Ram fell in the field during the scuffle. The field had stones. He corrected to say that he had seen Laiq Ram and Narotam going towards opposite direction of the field. A person could fall from the field.

50. The statement of this witness has been thoroughly discredited with reference to his previous statement recorded by the police. The credit of this witness has been impeached completely and no reliance can be placed on the same (please see Dilo Begum vs. State of H.P. 2024: HHC:1519 para 24 to 34).

2024:HHC:10248

51. Kahan Chand (PW2) stated that a fair was held in the village Khamari on 9.6.2005. Narotam was running a sweets shop. He was informed on 9.6.2005 at 6.30 PM, that one person was lying in the field. He reached the road and found Narotam lying on the road. He was covered with a blanket. He informed the Police Post Nankhari and sent the deceased Narotam to PHC Nankhari. Narotam was referred to Rampur but he succumbed to his injuries. He was permitted to be cross-examined. He denied that police had effected recoveries in his presence. He admitted that the recovery memo bars his signatures. He denied the previous statement recorded by the police. He stated that he was matriculate and had not read the documents. He could not give any reason for not reading the documents. He stated in cross- examination by learned counsel for the accused that Gulab Singh was the real brother of the deceased. Gulab Singh constructed his house at Kalera. He was running his shop in the village Majivati. It takes four hours to cover the distance from Kalera to the place of the incident and 2½ hours to reach Rampur from Kalera on a bus. Gulab Singh was not present at Khamari on the date of the incident. He admitted that Mohan Singh, Durga Singh and Jawahar came to him at 6.30-7.00 PM and told him that Narotam 2024:HHC:10248 had fallen in the field. He went to the spot and found Narotam Dass lying on the spot.

52. This witness was cross-examined with reference to his previous statement and denied the same. He had put his signatures on the recovery memo but disowned the recovery in the Court. He claimed to have informed the Police Post about the incident but no corresponding entry was brought on record. All these circumstances make it difficult to rely on his testimony.

53. None of the eyewitnesses has deposed about the deceased carrying a stick in his hand and giving beatings to Laiq Ram. Rama Nand categorically denied that the deceased was carrying a stick and ladle in his hand. Therefore, the oral evidence does not support the defence version regarding the right of private defence.

54. It was submitted that Laiq Ram had sustained injuries on his leg. Mohar Singh had sustained a fracture which is apparent from the statement of Dr. Mohammad Iftakhar Ahmad (DW1). These injuries have not been explained by the prosecution and the prosecution case is to be discarded due to the non-

2024:HHC:10248 explanation of the injuries. Reliance was also placed upon Nand Lal (supra).

55. In Nand Lal (supra), the accused had sustained 11 injuries as is apparent from para 21 of the report. It was held by the Hon'ble Supreme Court that the injuries were not minor or superficial. There was previous enmity between the two families. The accused had informed the police about the assault and this fact was concealed. Taking into consideration this aspect and the non-explanation of the injuries, the benefit of the doubt was extended to the accused.

56. In the present case, accused Laiq Ram had sustained only one injury on the parietal region. Accused Mohar Singh had sustained abrasion over the bridge of the nose, pain and tenderness over the right elbow joint and abrasion on the left side of the abdomen. The nature of both the injuries was simple and could have been caused by a scuffle.

57. The learned Trial Court had rightly held that considering the nature of the injuries and the manner of their infliction, the prosecution is not bound to explain these injuries.

2024:HHC:10248 Reliance was also placed upon Sucha Singh Vs. State of Punjab 2003 Cr.L.J. 3876 by the learned Trial Court.

58. As already stated, no person has deposed about any weapon in the hand of Narotam. Hence, the defence version that Narotam was armed with a stick which he used to attack Laiq Ram, has not been proved on record, therefore, there was no right of private defence and a mere non-explanation of the injuries is not sufficient to discard the prosecution case. It was laid down by the Hon'ble Supreme Court in Sucha Singh v. State of Punjab, (2003) 7 SCC 643: 2003 SCC (Cri) 1697: 2003 SCC OnLine SC 794 that non-explanation of the injuries by the prosecution will not affect the prosecution case where the injuries sustained by the accused are superficial or minor. It was observed at page 655:

> "24. One of the pleas is that the prosecution has not explained the injuries on the accused. The issue is, if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where the prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In Mohar Rai v. State of Bihar [AIR 1968 SC 1281 : (1968) 3 SCR 525: 1968 Cri LJ 1479] it was observed : (AIR p. 1284, para 6) "In our judgment, the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the 2024:HHC:10248 incident is not true or at any rate not wholly true. Further, those injuries probabilise the plea taken by the appellants."

In another important case Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394: 1976 SCC (Cri) 671] after referring to the ratio laid down in Mohar Rai case [AIR 1968 SC 1281:

> (1968) 3 SCR 525: 1968 Cri LJ 1479] this Court observed:
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> (SCC p. 401, para 12) "[W]here the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants." It was further observed that: (SCC p. 401, para 12) "[I]n a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
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> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
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> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on the most material point and therefore their evidence is unreliable;
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> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

2024:HHC:10248

25. In Mohar Rai case [AIR 1968 SC 1281: (1968) 3 SCR 525:

> 1968 Cri LJ 1479] it is made clear that the failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate, not wholly true. Likewise in Lakshmi Singh's case [(1976) 4 SCC 394:
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> 1976 SCC (Cri) 671] it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently, the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijayee Singh v. State of U.P. [(1990) 3 SCC 190: 1990 SCC (Cri) 378: AIR 1990 SC 1459]

26. Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. As observed by this Court in Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881:

> 1973 SCC (Cri) 563: AIR 1972 SC 2593] the prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries on the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare Krishna Singh v. State of Bihar [(1988) 2 SCC 95: 1988 SCC (Cri) 279:
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> AIR 1988 SC 863] it was observed that the obligation of the prosecution to explain the injuries sustained by the 2024:HHC:10248 accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond a reasonable doubt, the question of the obligation of the prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on the accused are of little assistance to them to throw doubt on the veracity of the prosecution case, particularly, when the accused who claimed to have sustained injuries has been acquitted.

> 59. It was held in Thoti Manohar v. State of A.P., (2012) 7 SCC 723: (2012) 3 SCC (Cri) 721: 2012 SCC OnLine SC 449 that non-

explanation of injuries is not always fatal to the prosecution case. It was observed at page 731:

> 29. Quite apart from the above, the non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully refer to Shriram v. State of M.P. [(2004) 9 SCC 292: 2004 SCC (Cri) 1453] wherein it has been held that mere non-

explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested and so probable, consistent and creditworthy that it far outweighs the effect of the 2024:HHC:10248 omission on the part of the prosecution to explain the injuries. Hence, we repel the said submission of the learned counsel for the appellants.

60. It was submitted that all the witnesses to the incident were not examined which would make the prosecution case doubtful. This submission cannot be accepted. It was held in Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490: 2000 SCC (Cri) 1416: 2000 SCC OnLine SC 1311 that the Public Prosecutor is not obliged to examine the witness who will not support the prosecution. It was observed at page 495:

> "13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the 2024:HHC:10248 Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.
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> 14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other

> consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that anyone among that category would not support the prosecution version, he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.
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> 15. A four-judge Bench of this Court had stated the above legal position thirty-five years ago in Masalti v. State of U.P. [AIR 1965 SC 202: (1965) 1 Cri LJ 226] It is contextually apposite to extract the following observation of the Bench:
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> "It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court."

16. The said decision was followed in Bava Hajee Hamsa v. State of Kerala [(1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902]. In Shivaji Sahabrao Bobade v. State of 2024:HHC:10248 Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033] Krishna Iyer J., speaking for a three-judge Bench had struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses he should be fair to the court and the truth. This Court reiterated the same position in Dalbir Kaur v. State of Punjab [(1976) 4 SCC 158:

> 1976 SCC (Cri) 527].
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> 61. It was laid down by Hon'ble Supreme Court in Pohlu v.

State of Haryana, (2005) 10 SCC 196, that the intrinsic worth of the testimony of witnesses has to be assessed by the Court and if the testimony of the witnesses appears to be truthful, the non-examination of other witnesses will not make the testimony doubtful. It was observed: -

> "[10] It was then submitted that some of the material witnesses were not examined and, in this connection, it was argued that two of the eye-witnesses named in the FIR, namely, Chander and Sita Ram were not examined by the prosecution. Dharamvir, son of Sukhdei was also not examined by the prosecution though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei PW 2. It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the

> intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eye witnesses namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of 2024:HHC:10248 which the conviction of the appellants can be sustained. "

62. This position was reiterated in Rohtash vs. State of Haryana 2013 (14) SCC 434 and it was held that the prosecution is not bound to examine all the cited witnesses and it can drop witnesses to avoid multiplicity or plurality of witnesses. It was observed:

> 14. A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses is, whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in Abdul Gani & Ors. v. State of Madhya Pradesh, AIR 1954 SC 31, has examined the aforesaid issue and held, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to and no doubt would take into consideration the absence of witnesses whose testimony would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.
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> 15. In Sardul Singh v. State of Bombay, AIR 1957 SC 747, a similar view has been reiterated, observing that a court cannot normally compel the prosecution to examine a witness which the prosecution does not choose to examine and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are 2024:HHC:10248 necessary for the purpose of disclosing the story of the prosecution with all its essentials.
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> 16. In Masalti v. the State of U.P., AIR 1965 SC 202, this Court held that it would be unsound to lay down as a general rule, that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised.

In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 540 Cr.P.C. (See also: Bir Singh & Ors. vs. State of U.P., (1977 (4) SCC

420)

17. In Darya Singh & Ors. v. State of Punjab, AIR 1965 SC 328, this Court reiterated a similar view and held that if the eye-witness(s) is deliberately kept back, the Court may draw an inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

18. In Raghubir Singh v. State of U.P., AIR 1971 SC 2156, this Court held as under:

> "10. ... Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. The appellant's counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally, we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version....."

2024:HHC:10248

19. In Harpal Singh v. Devinder Singh & Ann, AIR 1997 SC 2914], this Court reiterated a similar view and further observed:

> "24. ... Illustration (g) in Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse inference merely on the strength of non-examination of a witness even if it is a material witness....."

20. In Mohanlal Shamji Soni v. Union of India &Anr., AIR 1991 SC 1346, this Court held:

> "10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless, if either of the parties withholds any evidence which could be produced and which, if produced, be unfavourable to the party withholding such evidence, the Court can draw a presumption under illustration (g) to Section 114 of the Evidence Act.
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> .. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or another proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-

> examine any person in attendance though not 2024:HHC:10248 summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

21. In Banti @ Guddu v. State of M.P. AIR 2004 SC 261, this Court held:

> "12. In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1973 enjoins him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused.....If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for the prosecution.
>
> 13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution"

and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the presences cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects.....This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort 2024:HHC:10248 possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

14. It is open to the defence to cite him and examine him as a defence witness."

22. The said issue was also considered by this Court in R. Shaji (supra), and the Court, after placing reliance upon its judgments in Vadivelu Thevar v. State of Madras; AIR 1957 SC 614; and Kishan Chand v. State of Haryana JT 2013 (1) SC 222, held as under:

> "22. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence, that is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus, the quality and not quantity, which determines the

> adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this, does not carry any weight."

23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be 2024:HHC:10248 shown that the prosecution has been influenced by some oblique motive." In an extraordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. The evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.

63. This position was reiterated in Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 SCC OnLine SC 150, wherein it was observed at page 224: -

> Non-examination of witness
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> 34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice.

Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

35. The aforesaid settled principle of law has been laid down in Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]: (SCC pp. 377-78, para 13) 2024:HHC:10248 "13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the "pakodewalla", hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal

position. The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that 2024:HHC:10248 at the time when the deceased was assaulted a large crowd had gathered and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness in a murder or any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes." (emphasis supplied)

36. This Court has reiterated the aforesaid principle in Gulam Sarbar v. State of Bihar [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401: (2014) 2 SCC (Cri) 195]: (SCC pp. 410-11, para 19) "19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible trustworthy or otherwise. The legal system has laid emphasis on the value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination 2024:HHC:10248 of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCR 981: AIR 1957 SC 614], Kunju v. State of T.N. [Kunju v. State of T.N., (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], Mahesh v. State of M.P. [Mahesh v. State of M.P., (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singh v. State of Punjab [Prithipal Singh v. State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and Kishan Chand v. State of

Haryana [Kishan Chand v. State of Haryana, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807] ."

64. Thus, no adverse inference can be drawn for not examining all the prosecution witnesses.

65. It was submitted that the learned Trial Court had acquitted six accused out of eight arrayed by the prosecution which makes the prosecution case doubtful. This submission is not acceptable. Learned Trial Court held that the incident had taken place all of a sudden and the accused cannot be fastened with liability by invoking Section 149 of IPC. Learned Trial Court only convicted the persons who had caused actual injuries which were corroborated by the medical evidence. The statement that kicks and sticks blows were given to the deceased was found to be too general to be relied upon. Hence, the other accused were 2024:HHC:10248 acquitted. It is apparent from the findings recorded by the learned Trial Court that the learned Trial Court had not held that the statements of witnesses were false. The accused were acquitted because the common object could not be established.

Hence, the accused cannot claim the benefit of the acquittal of the other accused and the case against them cannot be discarded simply because the other co-accused were acquitted by the learned Trial Court.

66. Defence witnesses were examined to prove that Mohar Singh had suffered a fracture. Learned Trial Court had rightly pointed out that Dr Mohammad Iftakhar Ahmad (DW1) stated that the injuries could be older than the time mentioned in the prescription slip, which shows that the injury suffered by Mohar Singh could not be attributed to the incident. Further, Dr. Mohammad Iftakhar Ahmad also admitted that the injury could have been caused by way of a fall; thus, he has not ruled out the alternative hypothesis and his testimony is not sufficient to discard the prosecution case.

67. Surinder Singh (DW2) stated that Mohar Singh was lodged in judicial custody on 15.6.2005 and was released on bail 2024:HHC:10248 on 10.8.2005. Mohan Singh complained about the pain in his leg 5-6 days after he was lodged in the Jail. This statement shows that the pain developed not on the date of lodging of the accused but 5-6 days after the accused was lodged in the Jail. He was lodged in the Jail on 15.6.2005, six days after the incident and his testimony is not sufficient to establish that Mohar Singh had sustained injuries in the incident.

68. Thus, the learned Trial Court had rightly convicted the accused Mohar Singh and Laiq Ram.

69. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused and learned Trial Court erred in denying this benefit. This submission is not acceptable One person lost his life in the incident which shows

the gravity of the offence committed by the accused. Keeping in view the gravity of the offence, the learned Trial Court had rightly declined the benefit of the Probation of Offenders Act to the accused. Hence, the prayer that the benefit of the Probation of Offenders Act be granted to the accused is not acceptable.

70. No other point was urged.

2024:HHC:10248

71. Hence, the judgment and order passed by the learned Trial Court is fully sustainable. Consequently, the present appeals fail and the same are dismissed.

72. The record of the learned Trial Court be returned forthwith.

(Rakesh Kainthla) Judge 25th October, 2024 (Chander)