Reserved On: 16.10.2024 vs State Of H.P on 25 October, 2024

2024:HHC:10298 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Criminal Revison No. 110 of 2013 Reserved on: 16.10.2024 Date of Decision: 25.10. 2024.

Palak Ram ....Petitioner Versus State of H.P. ....Respondent Coram Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting? Yes.

For the petitioner : Mr. Karan Singh Kanwar, Advocate.

For the Respondent/ State :	Mr. Jitender Additional General.	Sharma, Advocate

Rakesh Kainthla, Judge.

The present revision is directed against the judgment dated 30.04.2013 passed by learned Sessions Judge, Sirmaur, District at Nahan (learned Appellate court) vide which the judgment dated 24.06.2011 and order dated 29.06.2011 passed by learned Judicial Magistrate First Class, _____ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2024:HHC:10298 Nahan, District Sirmaur (learned Trial Court) were affirmed.

(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 revision are that the police presented a challan before the learned Trial Court against the accused for the commission of the offences punishable under Sections 279 and 304-A of the Indian Penal Code (in short 'IPC') and Section 187 of the Motor Vehicles Act (in short 'M.V. Act). It was asserted that some unknown person intimated the police station on 19.06.2010 at about 5:00 pm that an accident had taken place at Kakog and one person had sustained grievous injuries. The intimation was reduced to writing and entry No.16A (Ext.

PW7/C) was recorded. SI/SHO-Shyam Chand (PW7) went to the spot to verify the correctness of this information.

Informant Jagar Singh (PW1) made a statement before SI/SHO that he was going to his home on 19.06.2010. He reached Kakog at 4:45 pm. Surinder Singh, nephew of the informant, arrived on the spot on his motorcycle. Surinder Singh stopped 2024:HHC:10298 his motorcycle after seeing the informant. A tipper bearing registration No. HP-71-0414 came from Renukaji. Surinder Singh signalled the driver of the truck to stop it; however, the driver of the tipper hit Surinder and crushed him under the rear tyre of the tipper. The driver sped away towards Barog.

The informant shouted for help. Many people gathered at the spot. Surinder died on the spot. The truck was being driven by Palak Ram present accused. The accident had taken place due to the high speed and negligence of the accused. The statement of Jagar Singh (Ext. PW1/A) was reduced into writing and sent to the police station where FIR (Ext. PW7/A) was registered. Shyam Chand (PW7) conducted the investigation. He took the photographs (Ext. P1 and P2) and prepared the site plan (Ext. PW7/D). He filed an application (Ext. PW7/E) for the post-mortem examination of deceased Surinder Kumar. Dr Parmesh Dogra (PW4) conducted the post-mortem examination and found that the death occurred due to a head injury caused by a road traffic accident. He issued the post mortem report (Ext. PW4/A). Constable Suresh Chand (PW5) conducted the mechanical examination of the vehicle. He found that there was no mechanical defect 2024:HHC:10298 in the vehicle, which could have led to the accident. He issued the report (Ext. PW5/A). Tipper bearing registration No. HP-

71-0414 was seized along with the documents vide memo (Ext. PW6/A). Palak Ram produced the driving licence, which was seized vide memo (Ext. PW3/A). Statements of the witnesses were recorded as per their versions and after the completion of the investigation, the challan was prepared and presented before the Court.

3. Learned Trial Court put the notice of accusation to the accused for the commission of offences punishable under Sections 279 and 304 of IPC and Section 187 of the Motor Vehicles Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. Jagar Singh (PW1) is the informant. Rajinder Kumar (PW2) is an eyewitness but he did not support the prosecution case. Roshan Lal (PW3) is the witness to the recovery of the driving licence. Dr. Parmesh Dogra (PW4) conducted the post-mortem examination of the deceased.

Constable Suresh Chand (PW5) conducted the mechanical 2024:HHC:10298 examination of the vehicle. Raman Kumar (PW6) is the owner of the vehicle. SI-Shayam Chand (PW7) conducted the investigation.

5. The accused in his statement recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. He stated that he was innocent and was falsely implicated. No defence was sought to be adduced by the accused.

6. The learned Trial Court held that the testimony of the informant was satisfactory. The accused had put contradictory suggestions to the informant. Mere failure to pick up the blood from the spot by the Investigating Officer is not fatal to the prosecution because, at worst, it would be a case of defective investigation, which would not be sufficient to discard the prosecution case. The statements of the witnesses clearly show that the accused was driving the vehicle in a rash and negligent manner and the accused failed to stop the vehicle despite the deceased giving a signal to him.

The accused did not take the injured to the hospital after the accident; hence, the accused was convicted of the 2024:HHC:10298 commission of offences punishable under Section 279, 304A of

the IPC and Section 187 of the Motor Vehicle Act and sentenced under:

Sl. No. Section Sentence

1. 279 of IPC Simple imprisonment of four months and to pay a fine of 500/- and in default of payment of fine to further undergo 15 days simple imprisonment.

2. 304-A of Simple imprisonment of one year and to pay a IPC fine of 1000/- and in default of payment of fine to further undergo two-month simple imprisonment.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Sirmaur, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statement of the informant was sufficient to prove the rashness and negligence of the accused. The accused had made contradictory suggestions to the informant and the cross-examination of the informant was insufficient to discard his testimony. The learned Trial Court had imposed a sentence of one year for the commission of an offence 2024:HHC:10298 punishable under Section 304A of IPC, which was excessive;

hence, the sentence was reduced to six months.

8. Being aggrieved from the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below failed to properly appreciate the material on record. The prosecution had failed to prove rashness or negligence of the accused. No witness had stated that the accused was driving that vehicle in a rash and negligent manner. The testimony of the informant is not satisfactory. He was not even present at the spot and had not witnessed any incident. He deposed falsely to establish the case for the grant of compensation.

The deceased wanted to board the running truck. He fell on the road on the conductor's side. The accused could not have seen the deceased trying to board the running tipper on the extreme left side of the tipper. The deceased was intoxicated at the time of the incident and this led to the accident.

Learned Courts below had imposed excessive sentence upon the petitioner/accused, therefore, it was prayed that the 2024:HHC:10298 present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr. Karan Singh Kanwar, learned counsel for the petitioner and Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State.

10. Mr. Karan Singh Kanwar, learned counsel for the petitioner submitted that the testimony of the informant was not satisfactory. Rajinder Kumar (PW2) did not support the prosecution case. The statement of Ishwar Chand was recorded under Section 161 of Cr. P.C. but he was not cited as a witness; therefore, an adverse inference should have been drawn against the prosecution. The learned Appellate Court did not discuss the evidence led before the learned Trial Court and the

learned Appellate Court failed to exercise the jurisdiction vested in it. He relied upon the judgment of the Hon'ble Supreme Court in Majjal versus State of Haryana, 2013 (6) SCC 798, Dinesh Lal versus State of Uttrakhand, 2016 (12) SCC 590 and Kanu Bhai Bhagwan Bhai Nayak versus State of Gujarat, 2019 (2) SCC 596 in support of his submission.

2024:HHC:10298

11. Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State submitted that witness-

Rajinder Kumar (PW2) was declared hostile and cross-

examined with reference to his previous statement. His credit was impeached and his testimony was not sufficient to discard the prosecution case. The testimony of the informant was satisfactory and the learned Courts below had rightly pointed out that the defence taken by the accused was highly contradictory. There is no infirmity in the judgments and order passed by learned Courts below; therefore, he prayed that the present petition be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204:

> (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that the revisional court is not an appellate Court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -
>
> 2024:HHC:10298 "10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in State of Gujarat v.

Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294 wherein it was observed:

> "13. The power and jurisdiction of the Higher Court under Section 397 Cr. P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460 where the scope of Section 2024:HHC:10298 397 has been considered and succinctly explained as under:
>
> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.
>
> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories 2024:HHC:10298 aforestated. Even framing of charge is a much- advanced stage in the proceedings under the CrPC."

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

16. The informant-Jagar Singh (PW1) stated that Surinder came from the Dadahu on 19.06.2010 on his motorcycle. He (Jagar Singh) was going to his home on foot. A tipper came from Dadahu at 4:45 pm. Surinder was standing on the road. He signalled the driver of the tipper to stop it, however, the driver did not stop the tipper and hit Surinder, who was crushed under the wheels of the tipper. The driver of the tipper did not stop it and sped towards Barog. Many people gathered on the spot. The police also reached the spot.

The accused was driving the vehicle at the time of the accident. The police recorded the informant's statement (Ext.

PW1/A), took the photographs and took the dead body of the deceased to the hospital.

17. He stated in his cross-examination that he was present with Surinder at the spot at the time of the accident.

Surinder was going to Rajana on his motorcycle. He had 2024:HHC:10298 mentioned to the police that Surinder was going to Rajana and many people had gathered on the spot. He was confronted with his previous statement (Ext. PW1/A) wherein this fact was not mentioned. He had mentioned to the police that Surinder was driving the motorcycle, however, this fact was not mentioned in the statement (Ext. PW1/A). He denied that Surinder Kumar fell while attempting to board the truck.

He admitted that Surinder had a driving license to drive the motorcycle and he was wearing a helmet. He admitted that police carried out the investigations at police station Sangrah.

Surinder was related to him being his cousin. Surinder used to take liquor. He admitted that in case any person is crushed under the tyre, his intestines would come out and he would bleed. There was blood on the spot but the police had not picked it up. Rajinder is the real brother of Surinder. He denied that the deceased died due to the accident involving the motorcycle. He was not aware that the family of the deceased had filed a petition before learned MACT-I Nahan for claiming compensation. He denied that the death of Surinder Kumar was caused due to the high speed of the motorcycle and a false case was made against the accused to 2024:HHC:10298 get the compensation. He admitted that the registration number of the motorcycle was issued from Punjab and probably it was PB-01-9800.

18. Learned Courts below had rightly pointed out that the accused had taken a contradictory stand while cross-

examining this witness. On the one hand, it was stated that the deceased fell from the motorcycle while driving it, it was also suggested that the accused fell while attempting to board the truck. These suggestions were denied by the informant. It was suggested to this witness that he was deposing falsely to enable the family of the deceased to get compensation but this suggestion was denied by the informant. A denied suggestion does not amount to any proof and these suggestions are not sufficient to discard the testimony of the informant.

19. It was submitted that the credit of informant has been impeached as he had narrated many facts in the Court which were not narrated by him to the police. This submission will not help the accused. The witness has not been properly cross-examined. He was asked about what was 2024:HHC:10298 told by him to the police. In this regard, it is to be noticed that the statement recorded under Section 161 of Cr.PC is not a substantive piece of evidence and the statement made to the police cannot be used for any purpose except to contradict the prosecution witness as per Section 162 of Cr. PC. Therefore, it is not permissible to ask a witness as to what was told by him to

the police and prove the statement recorded by the police.

In Tahsildar Singh v. State of U.P., 1959 Supp (2) SCR 875: AIR 1959 SC 1012: 1959 Cri LJ 1231 (six-judges bench) learned Counsel for the defence asked the following questions from the witness during his cross-examination:

> 1. "Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh, and scrutinise them and did you tell him that the face of Asa Ram resembled that of the deceased Bharat Singh?"
>
> 2. "Did you state to the investigating officer about the presence of the gas lantern?"

20. Learned Sessions Judge disallowed the questions holding that omission does not amount to contradiction and cannot be put under section 161 of Cr.P.C. He held:

> "Therefore, if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter cannot be used at all. If a witness deposes in court that a certain fact existed but had 2024:HHC:10298 stated under Section 161 CrPC either that that fact had not existed or that the reverse and irreconcilable fact had existed, it is a case of conflict between the deposition in the court and the statement under Section 161 CrPC and the latter can be used to contradict the former. But if he had not stated under Section 161 anything about the fact, there is no conflict and the statement cannot be used to contradict him. In some cases, an omission in the statement under Section 161 may amount to contradiction of the deposition in court; they are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence."

21. A question arose before the Hon'ble Supreme Court whether the questions were wrongly disallowed. It was held that the form of the questions was defective as they elicited from the witness what he had told the police and were properly disallowed. It was observed:

> 13.. ..... The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence 2024:HHC:10298 Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed.

To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked "Did you say before the police officer that you saw a gas light?" and he answers "Yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an 2024:HHC:10298 answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.

xxxxxxxxx

51. It must not be overlooked that the cross- examination must be directed to bringing out a contradiction between the statements and must not subserve any other purpose. If the cross-examination does anything else, it will be barred under Section 162 which permits the use of the earlier statement for contradicting a witness and nothing else. Taking the example given above, we do not see why cross- examination may not be like this:

> Q. I put it to you that when you arrived on the scene X was already running away and you did not actually see him stab D as you have deposed today? A. No. I saw both events.
>
> Q. If that is so, why is your statement to the police silent as to stabbing?
>
> A. 1 stated both the facts to the police. The witness can then be contradicted with his previous statement. We need hardly point out that in the illustration given by us, the evidence of the witness in court is direct evidence as opposed to testimony to a fact suggesting guilt. The statement before the police can only be called circumstantial evidence of complicity and not direct evidence in the strict sense. Of course, if the questions framed were:

Q. What did you state to the police? or Q. Did you state to the police that D stabbed X? they may be ruled out as infringing Section 162 of the Code of Criminal Procedure because they do not set up a contradiction but attempt to get a fresh version from the 2024:HHC:10298 witnesses with a view to contradicting him. How the cross-examination can be made must obviously vary from case to case, counsel to counsel and statement to statement. No single rule can be laid down and the propriety of the question in the light of the two sections can be found only when the facts and questions are before the court. But we are of the opinion that relevant and material omissions amount to vital contradictions, which can be established by cross-examination and confronting the witness with his previous statement.

xxxxxxxx

59. This brings us to the consideration of the questions, which were asked and disallowed. These were put during the cross-examination of Bankey, PW

30. They are:

Q. Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh and scrutinized them, and did you tell him that the face of Asa Ram resembled that of the deceased Bharat Singh?

Q. Did you state to the investigating officer about the presence of the gas lantern?

These questions were defective, to start with. They did not set up a contradiction but attempted to obtain from the witness a version of what he stated to the police, which is then contradicted. What is needed is to take the statement of the police as it is, and establish a contradiction between that statement and the evidence in court. To do otherwise is to transgress the bounds set by Section 162 which, by its absolute prohibition, limits even cross-examination to contradictions and no more. The cross-examination cannot even indirectly subserve any other purpose. In the questions with which we illustrated our meaning, the witness was not asked what he stated to the police but was told what he had stated to the police and asked to explain the omission. It is to be borne in mind that the 2024:HHC:10298 statement made to the police is "duly proved" either earlier or even later to establish what the witness had then stated."

xxxxxxxxx

60. In our opinion, the two questions were defective for the reasons given here and were properly ruled out, even though all the reasons given by the court may not stand scrutiny. The matter was not followed up with proper questions, and it seems that similar questions on these and other points were not put to the witness out of deference (as it is now suggested) to the ruling of the court. The accused can only

> blame themselves if they did not." (Emphasis supplied)
>
> 22. Thus, no advantage can be derived by the defence from the cross-examination of the informant.
>
> 23. Proviso to Section 162 of Cr.P.C. permits the use of the statement recorded by the police to contradict a witness.

It reads:

> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
>
> 2024:HHC:10298
>
> 24. Thus, it is apparent that the defence can use the statement to contradict a witness if the statement is proved.

It was laid down by the Bombay High Court about a century ago in Emperor vs. Vithu Balu Kharat (1924) 26 Bom. L.R. 965 that the previous statement has to be proved before it can be used. It was observed:

> "The words "if duly proved" in my opinion, clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness; and the provisions of Section 67 of the Indian Evidence Act apply to this case, as well as to any other similar ease. Of course, I do not mean to say that, if the particular police officer who recorded the statement is not available, other means of proving the statement may not be availed of, e.g., evidence that the statement is in the handwriting of that particular officer."

25. It was laid down by Hon'ble Supreme Court in Muthu Naicker and Others etc Versus State of T.N. (1978) 4 SCC 385, that if the witness affirms the previous statement, no proof is necessary, but if the witness denies or says that he did not remember the previous statement, the Investigating Officer should be asked about the same. It was observed: -

> 2024:HHC:10298 "52. This is the most objectionable manner of using the police statement and we must record our emphatic disapproval of the same. The question should have been framed in a manner to point out that from amongst those accused mentioned in examination-in-

chief there were some whose names were not mentioned in the police statement and if the witness affirms this no further proof is necessary and if the witness denies or says that she does not remember, the investigation officer should have been questioned about it."

26. The Gauhati High Court held in Md. Badaruddin Ahmed v. State of Assam, 1989 SCC OnLine Gau 35: 1989 Cri LJ 1876 that if the witness denies having made the statement, the portion marked by the defence should be put to the Investigating Officer and his version should be elicited regarding the same. It was observed at page 1880: -

> "13. The learned defence counsel has drawn our attention to the above statement of the Investigating Officer and submits that P.W. 4 never made his above statement before the police and that the same being his improved version cannot be relied upon. With the utmost respect to the learned defence counsel, we are unable to accept his above contention. Because, unless the particular matter or point in the previous statement sought to be contradicted is placed before the witness for explanation, the previous statement cannot be used in evidence. In other words, drawing the attention of the witness to his previous statement sought to be contradicted and giving all opportunities to him for explanation are compulsory. If any authority is to be cited on this point, we may 2024:HHC:10298 conveniently refer to the case of Pangi Jogi Naik v. State reported in AIR 1965 Orissa 205: (1965 (2) Cri LJ 661). Further in the case of Tahsildar Singh v. State of U.P., reported in AIR 1959 SC 1012: (1959 Cri LJ 1231) it was also held that the statement not reduced to writing cannot be contradicted and, therefore, in order to show that the statement sought to be contradicted: was recorded by the police, it should be marked and exhibited. However, in the case at hand, there is nothing on the record to show that the previous statement of the witness was placed before him and that the witness was given the chance for explanation. Again, his previous statement was not marked and exhibited. Therefore, his previous statement before the police cannot be used, Hence, his evidence that when he turned back, he saw the accused Badaruddin lowering, the gun from the chest is to be taken as his correct version.
>
> 14. The learned defence counsel has attempted to persuade us not to rely on the evidence of this witness on the ground that his evidence before the trial Court is contradicted by his previous statement made before the police. However, in view of the decisions made in the said cases we have been persuaded irresistibly to hold that the correct procedure to be followed which would be in conformity with S. 145 of the Evidence Act to contradict the evidence given by the prosecution witness at the trial with a statement made by him before the police during the investigation will be to draw the attention of the witness to that part of the contradictory statement which he

> made before the police, and questioned him whether he did, in fact, make that statement. If the witness admits having made the particular statement to the police, that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the accused as establishing the contradiction. However, if, on the other hand, the witness denies to 2024:HHC:10298 have made such a statement before the police, the particular portions of the statement recorded should be provisionally marked for identification as B-1 to B- 1, B-2 to B-2 etc. (any identification mark) and when the investigating officer who had actually recorded the statements in question comes into the witness box, he should be questioned as to whether these particular statements had been made to him during the investigation by the particular witness, and obviously after refreshing his memory from the case diary the investigating officer would make his answer in the affirmative. The answer of the Investigating Officer would prove the statements B-1 to B-1, B-2 to B-2 which are then exhibited as Ext. D. 1, Ext. D. 2 etc. (exhibition mark) in the case and will go into evidence, and may, thereafter, be relied on by the accused as contradictions. In the case in hand, as was discussed in above, the above procedure was not followed while cross-examining the witness to his previous statements, and, therefore, we have no alternative but to accept the statement given by this witness before the trial Court that he saw the accused Badaruddin lowering the gun from his chest to be his correct version.

27. Andhra Pradesh High Court held in Shaik Subhani v. State of A.P., 1999 SCC OnLine AP 413: (1999) 5 ALD 284: 2000 Cri LJ 321: (1999) 2 ALT (Cri) 208 that putting a suggestion to the witness and the witness denying the same does not amount to putting the contradiction to the witness. The attention of the witness has to be drawn to the previous statement and if he denies the same, the same is to be got 2024:HHC:10298 proved by the Investigating Officer. It was observed at page 290: -

> "24... As far as contradictions put by the defence is concerned, we would like to say that the defence Counsel did not put the contradictions in the manner in which it ought to have been put. By putting suggestions to the witness and the witness denying the same will not amount to putting contradiction to the witness. The contradiction has to be put to the witness as contemplated under Section 145 of the Evidence Act. If a contradiction is put to the witness and it is denied by him, then his attention has to be drawn to the statement made by such witness before the Police or any other previous statement and he must be given a reasonable opportunity to explain as to why such contradiction appears and he may give any answer if the statement made by him is shown to him and if he confronted with such a statement and thereafter the said contradiction must be proved through the Investigation Officer. Then only it amounts to putting the contradiction to the witness and getting it proved through the Investigation Officer."

28. The Calcutta High Court took a similar view in Anjan Ganguly v. State of West Bengal, 2013 SCC OnLine Cal 22948: (2013) 2 Cal LJ 144: (2013) 3 Cal LT 193: (2013) 128 AIC 546: (2014) 2 RCR

(Cri) 970: (2013) 3 DMC 760 and held at page 151: -

> "21. It was held in State of Karnataka v. Bhaskar Kushali Kothakar, reported as (2004) 7 SCC 487 that if any statement of the witness is contrary to the previous 2024:HHC:10298 statement recorded under Section 161, Cr.P.C. or suffers from omission of certain material particulars, then the previous statement can be proved by examining the Investigating Officer who had recorded the same. Thus, there is no doubt that for proving the previous statement Investigating Officer ought to be examined, and the statement of the witness recorded by him, can only be proved by him and he has to depose to the extent that he had correctly recorded the statement, without adding or omitting, as to what was stated by the witness.
>
> 23. Proviso to Section 162(1), Cr.P.C. states in clear terms that the statement of the witness ought to be duly proved. The words if duly proved, cast a duty upon the accused who wants to highlight the contradictions by confronting the witness to prove the previous statement of a witness through the police officer who has recorded the same in the ordinary way. If the witness in the cross-examination admits contradictions, then there is no need to prove the statement. But if the witness denies a contradiction and the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be proved by the police officer. In case the prosecution fails to call the police officer in a given situation Court can call this witness or the accused can call the police officer to give evidence in defence. There is no doubt that unless the statement as per proviso to sub-section (1) of Section 162, Cr.P.C. is duly proved, the contradiction in terms of Section 145 of the Indian Evidence Act cannot be taken into consideration by the Court.
>
> 24. To elaborate on this further, it will be necessary to reproduce Section 145 of the Indian Evidence Act. "S. 145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in 2024:HHC:10298 question, without such writing being shown to him, or being proved; but, if it intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

25. Therefore, it is appropriate that before the previous statement or statement under Section, 161, Cr.P.C. is proved, the attention of the witness must be drawn to the portion in the statement recorded by the Investigating Officer to bring to light the contradiction, a process called confrontation.

26. Let us first understand what is proper procedure. A witness may have stated in the statement under Section 161, Cr.P.C. that 'X murdered Y'. In Court witness state 'Z murdered Y'. This is a contradiction. Defence Counsel or Court and even prosecution if the witness is declared hostile having resiled from previous statement, is to be confronted to bring contradiction on record. The attention of the witness must be drawn to the previous statement or statement under Section 161,

Cr.P.C. where it was stated that 'X murdered Y'. Since Section 145 of the Indian Evidence Act uses the word being proved, therefore, in the course of examination of the witness, previous statement or statement under Section 161, Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion contradicted will be specified. The trial Court in the event of contradiction has to record as under.

27. The attention of the witness has been drawn to portions A to A of statement marked as 1, and confronted with the portion where it is recorded that 'X murdered Y'. In this manner by way of confrontation contradiction is brought on record. Later, when the Investigating Officer is examined, the prosecution or defence may prove the statement, after the Investigating Officer testifies that the statement assigned mark was correctly recorded by him at that 2024:HHC:10298 stage statement will be exhibited by the Court. Then contradiction will be proved by the Investigating Officer by stating that the witness had informed or told him that 'X murdered Y' and he had correctly recorded this fact.

28. Now a reference to the explanation to Section 162, Cr.P.C. which says that an omission to state a fact or circumstance may amount to contradiction. Say for instance if a witness omits to state in Court that 'X murdered Y', what he had stated in a statement under Section 161, Cr.P.C. will be materia? contradiction, for the Public Prosecutor, as the witness has resiled from the previous statement, or if he has been sent for trial for the charge of murder, omission to state 'X murdered Y' will be a material omission, and amount to contradiction so far defence of 'W is concerned. At that stage also attention of the witness will also be drawn to a significant portion of the statement recorded under Section 161, Cr.P.C. which the witness had omitted to state and note shall be given that attention of the witness was drawn to the portion A to A wherein it is recorded that 'X murdered Y'. In this way, the omission is brought on record. The rest of the procedure stated earlier qua confrontation shall be followed to prove the statement of the witness and the fact stated by the witness.

29. Therefore, to prove the statement for the purpose of contradiction it is necessary that the contradiction or omission must be brought to the notice of the witness. His or her attention must be drawn to the portion of the previous statement (in the present case statement under Section 161, Cr.P.C.)

29. A similar view was taken in Alauddin v. State of Assam, 2024 SCC OnLine SC 760 wherein it was observed:

> 2024:HHC:10298 "7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission.

There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

> "145. Cross-examination as to previous statements in writing.--A witness may be cross- examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

2024:HHC:10298 The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross- examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to 2024:HHC:10298 be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness

by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

> "155. Impeaching credit of witness. -- The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him--
>
> (1) ..... (2) ..... (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or 2024:HHC:10298 omission depending upon the facts of each case? Whether an omission is a contradiction also depends on the facts of each individual case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of Tahsildar Singh v. State of U.P.1959 Supp (2) SCR 875 Paragraph 13 of the said decision reads thus:

> "13. The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention, reliance is placed upon the judgment of this Court in Shyam Singh v. State of Punjab [(1952) 1 SCC 514: 1952 SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:
>
> Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and

similar 2024:HHC:10298 decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross- examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross- examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, 2024:HHC:10298 no further proof is necessary; if he does not admit it, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked "Did you say before the police officer that you saw a gas light?"

> and he answers "yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure."

2024:HHC:10298 (emphasis added) This decision is a locus classicus, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination."

30. It was laid down by the Hon'ble Supreme Court in Matadin v. State of U.P., 1980 Supp SCC 157: 1979 SCC (Cri) 627 that the statement under Section 161 Cr.PC is not detailed and is meant to be brief. It does not contain all the details. It was observed at page 158:

> "3. The learned Sessions Judge had rejected the evidence of the eyewitnesses on wrong, unconvincing and unsound reasons. The Sessions Judge appears to have been swayed by some insignificant omissions made by some of the witnesses in their statement before the police and on the basis of these omissions dubbed the witnesses as liars. The Sessions Judge did not realise that the statements given by the witnesses before the police were meant to be brief statements and could not take the place of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a court that the witnesses concerned are self-contained liars. We have carefully perused the judgment of the Sessions Judge and we are unable to agree that the reasons that he has given for disbelieving the witnesses are good or sound reasons. The High Court was, therefore, fully justified in reversing the judgment passed by the trial court. We are satisfied that this is a case where the judgment of the Sessions Judge was manifestly wrong and perverse and was rightly set aside by the High Court. It was 2024:HHC:10298 urged by Mr Mehta that as other appellants except Matadin and Dulare do not appear to have assaulted the deceased, so they should be acquitted of the charge under Section 149. We, however, find that all the appellants were members of the unlawful assembly. Their names find a place in the FIR. For these reasons, we are unable to find any ground to distinguish the case of those appellants from that of Matadin and Dulare. The argument of the learned counsel is overruled. The result is that the appeal fails and is accordingly dismissed. The appellants who are on bail, will now surrender to serve out the remaining portion of their sentence."

31. Similar is the judgment in Esher Singh v. State of A.P., (2004) 11 SCC 585: 2004 SCC OnLine SC 320 wherein it was held at page 601:

> "23. So far as the appeal filed by accused Esher Singh is concerned, the basic question is that even if the confessional statement purported to have been made by A-5 is kept out of consideration, whether residuary material is sufficient to find him guilty. Though it is true as contended by learned counsel for the accused- appellant Esher Singh that some statements were made for the first time in court and not during the investigation, it has to be seen as to what extent they diluted the testimony of Balbeer Singh and Dayal Singh (PWs 16 and 32) used to bring home the accusations. A mere elaboration cannot be termed as a discrepancy. When the basic features are stated, unless the elaboration is of such a nature that it creates a different contour or colour

> of the evidence, the same cannot be said to have totally changed the complexion of the case. It is to be noted that in addition to the evidence of PWs 16 and 32, the evidence of S. Narayan Singh (PW 21) provides the necessary 2024:HHC:10298 links and strengthens the prosecution version. We also find substance in the plea taken by learned counsel for the State that evidence of Amar Singh Bungai (PW 24) was not tainted in any way, and should not have been discarded and disbelieved only on surmises. Balbir Singh (PW 3), the son of the deceased has also stated about the provocative statements in his evidence. Darshan Singh (PW 14) has spoken about the speeches of the accused Esher Singh highlighting the Khalistan movement. We find that the trial court had not given importance to the evidence of some of the witnesses on the ground that they were relatives of the deceased. The approach is wrong. The mere relationship does not discredit the testimony of a witness. What is required is careful scrutiny of the evidence. If after careful scrutiny the evidence is found to be credible and cogent, it can be acted upon. In the instant case, the trial court did not indicate any specific reason to cast doubt on the veracity of the evidence of the witnesses whom it had described to be the relatives of the deceased. PW 24 has categorically stated about the provocative speeches by A-1. No definite cross-examination on the provocative nature of speech regarding the Khalistan movement was made, so far as this witness is concerned."

32. This position was reiterated in Shamim v. State (NCT of Delhi), (2018) 10 SCC 509: (2019) 1 SCC (Cri) 319: 2018 SCC OnLine SC 1559 where it was held at page 513:

> "12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and 2024:HHC:10298 evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, a hypertechnical approach by taking sentences torn out of context here or there from the evidence, and attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take the place of evidence in the court. Small/trivial omissions would not justify a finding by the court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtained in the evidence. In the latter, however, no such benefit may be available to it."

33. Similar is the judgment in Kalabhai Hamirbhai Kachhot v. State of Gujarat, (2021) 19 SCC 555: 2021 SCC OnLine SC 347wherein it was observed at page 564:

> "22. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs 18 and 19. The contradictions which are sought to be projected are minor contradictions which cannot be the basis for discarding their evidence. The judgment of this Court in Mohar [Mohar v. State of U.P., (2002) 7 SCC 606: 2003 2024:HHC:10298 SCC (Cri) 121] relied on by the learned counsel for the respondent State supports the case of the prosecution. In the aforesaid judgment, this Court has held that convincing evidence is required, to discredit an injured witness. Para 11 of the judgment reads as under: (SCC p. 611) "11. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution case materially cannot create any infirmity. In the instant case, the discrepancy in the name of PW 4 appearing in the FIR and the cross-examination of PW 1 has been amply clarified. In cross- examination, PW 1 clarified that his brother Ram Awadh had three sons: (1) Jagdish, PW 4, (2) Jagarnath, and (3) Suresh. This witness, however, stated that Jagarjit had only one name. PW 2 Vibhuti, however, stated that at the time of occurrence, the son of Ram Awadh, Jagjit alias Jagarjit was milching a cow and he was also called as Jagdish. Balli (PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish."

23. The learned counsel for the respondent State has also relied on the judgment of this Court in Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324:

> (2011) 2 SCC (Cri) 216]. In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paras 27 and 30 of the judgment which are relevant, read as under: (SCC pp. 333-34) 2024:HHC:10298 "27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order 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 during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence.

Thus, the evidence of the 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

Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], Balraje v. State of Maharashtra [Balraje v. State of Maharashtra, (2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262]) ***

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental dispositions such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, 2024:HHC:10298 inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. '9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version when the entire evidence is put in a crucible for being tested on the touchstone of credibility.' [Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186, p. 192, para 9: 2004 SCC (Cri) 1435] Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. (Vide State v. Saravanan [State v. Saravanan, (2008) 17 SCC 587 :

(2010) 4 SCC (Cri) 580], Arumugam v.

State [Arumugam v. State, (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], Mahendra Pratap Singh v. State of U.P. [Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] and Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375]"

> 24. Further, in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457:
>
> 2000 SCC (Cri) 1546], this Court has considered the 2024:HHC:10298 effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in a criminal trial. In the aforesaid judgment, it is held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under: (SCC p. 483) "42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case

> of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2.

Even if there is a contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

34. It was laid down by the Hon'ble Supreme Court in Achchar Singh vs. State of H.P. AIR 2021 SC 3426 that the testimony of a witness cannot be discarded due to exaggeration alone. It was observed:

> "24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines "exaggeration" as "the fact of making something larger, more 2024:HHC:10298 important, better or worse than it is". Merriam- Webster defines the term "exaggerate" as to "enlarge beyond bounds or the truth". The Concise Oxford Dictionary defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an 'exaggerated statement' lies in a fact, to which fictitious additions are made to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, the Advance Law Lexicon defines "false" as "erroneous, untrue; opposite of correct, or true".

Oxford Concise Dictionary states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differential between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. [Sucha Singh v. State of Punjab, (2003) 7 SCC 643, 18.]

25. Learned State counsel has rightly relied on Gangadhar Behera (Supra) to contend that even in cases where a major portion of the evidence is found deficient if the residue is sufficient to prove the guilt of the accused, a conviction can be based on it. This Court in Hari Chand v. State of Delhi, (1996) 9 SCC 112 held that:

> 2024:HHC:10298 "24. ...So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when

> a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of the evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon..."

26. There is no gainsaid that homicidal deaths cannot be left to judicium dei. The Court in their quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of the doubt is extended.

27. An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version."

35. It was laid down by the Hon'ble Supreme Court in Arvind Kumar @ Nemichand and others Versus State of 2024:HHC:10298 Rajasthan, 2022 Cri. L.J. 374, that the testimony of a witness cannot be discarded because he had made a wrong statement regarding some aspect. The principle that when a witness deposes falsehood his entire statement is to be discarded does not apply to India. It was observed: -

> "48. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have a strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of the discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

36. In the present case the improvements brought out in the cross-examination are minor in nature. They are elucidations of the facts already stated by the informant to the police and will not fall within the definition of an improvement. Therefore, the testimony of the informant 2024:HHC:10298 cannot be discarded because he was confronted with his previous statement recorded by the police.

37. Rajinder Kumar (PW2) did not support the prosecution case. He stated that the accident had not taken place in his presence. He was permitted to be cross-examined by the learned APP. He denied that he was present at Kakog Bus Stand on 19.06.2010 and the truck hit Surinder Singh, who was

crushed under the tyres. He denied that the accused was driving the vehicle and the accident occurred due to his negligence. He denied the previous statement recorded by the police.

38. SI-Shayam Chand (PW7) specifically stated that he had recorded the statement of Rajinder Kumar (PW2) as per his version. This part of his testimony was not challenged in the cross-examination and a general suggestion was given to him that the statement of witnesses were written in connivance with the informant to benefit him. He denied this suggestion. A denied suggestion does not amount to any proof and is not sufficient to discard the testimony of Shyam Chand that he had recorded the statement of Rajinder Kumar 2024:HHC:10298 as per his version. Moreover, nothing was shown in the cross-examination of Shyam Chand to show that he was deposing falsely or had any motive to depose against the accused. Therefore, the witness Rajinder Kumar is shown to have made two inconsistent statements; one before the police and the other before the Court, which cannot stand together.

Hence, his credit has been impeached under Section 155(3) of the Indian Evidence Act and no reliance can be placed on his testimony. (please see Dilo Begum vs. State of H.P. 2024:

> HHC:1519 para 24 to 34). Hence, the submission that his testimony was sufficient to discard the prosecution case cannot be accepted.

39. It was submitted that the police had recorded the statement of Ishwar Chand under Section 161 of Cr.P.C., however, he was not cited as a witness, therefore, an adverse inference should be drawn against him. This submission is not acceptable. The prosecution is at liberty to cite the witnesses deemed proper by it and if the accused has any grievance, the accused is free to summon the witness as a defence witness. It was laid down by Hon'ble Supreme Court 2024:HHC:10298 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 which the conviction of the appellants can be sustained. "

40. This position was reiterated in Rohtash vs. State of Haryana 2013 (14) SCC 434 and it was held that the 2024:HHC:10298 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.
>
> 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 necessary for the purpose of disclosing the story of the prosecution with all its essentials.
>
> 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 2024:HHC:10298 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:10298

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.

.. 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 2024:HHC:10298 as a witness or recall or re-examine any person in attendance though not 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 2024:HHC:10298 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 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 2024:HHC:10298 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 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.

41. 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
>
> 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 2024:HHC:10298 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) "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 2024:HHC:10298 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 witness after witness 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 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 2024:HHC:10298 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 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].)"
>
> 42. In the present case, the accused had not summoned Ishwar Chand and the prosecution case cannot be doubted due to the non-examination of Ishwar Chand.
>
> 2024:HHC:10298
>
> 43. It was submitted in the memorandum of revision petition that the deceased had tried to board a moving truck and he fell in the process. Thus, the deceased was negligent and learned Courts below erred in holding that the petitioner/accused was negligent. This submission is not acceptable. There is no evidence on record to show that the deceased had tried to board the moving truck. Jagar Singh (PW1) denied this suggestion in the cross-examination. The accused has also not stated in his statement recorded under Section 313 of Cr.P.C. that the deceased had tried to board a moving truck and he fell in the process. Reference was made to the statement of Ishwar Chand recorded under Section 161 of Cr.P.C., however, the statement under Section 161 of Cr.P.C.

is not a substantive piece of evidence and cannot be used to discard the prosecution case. In the absence of any evidence, the plea that the deceased had tried to board the moving truck and had fallen in the process cannot be accepted.

44. The statement of Jagar Singh (PW1) shows that the deceased had signalled the accused to stop the truck.

However, the accused did not stop the truck and hit him and 2024:HHC:10298 the deceased was crushed under the tyres of the truck. The site plan (Ext. PW7/D) shows that the dead body of the deceased was found lying at point 'B'. This place is shown towards the right side of the road for a vehicle coming from Renuka and going towards Sangrah. Rule 2 of the Rules of Road Regulation 1989 provides that a driver of a motorcycle shall drive the vehicle as close to the left side of the road as may be expedient and shall allow all the traffic, which is proceeding in the opposite direction to pass on his right side, therefore, the driver of a motor vehicle is supposed to drive the vehicle towards the left side of the road. In the present case, the accused had breached this duty by driving the vehicle towards the right side of the road, which shows his negligence. It was laid down in Fagu Moharana vs. State AIR 1961 Orissa 71 that driving the vehicle on the wrong side of the road amounts to negligence. It was observed:

> "The car was on the left side of the road, leaving a space of nearly 10 feet on its right side. The bus, however, was on the right side of the road leaving a gap of nearly 10

> feet on its left side. There is thus no doubt that the car was coming on the proper side whereas the bus was coming from the opposite direction on the wrong side. The width of the bus is only 7 feet 6 inches and as there was a space of more 2024:HHC:10298 than 10 feet on the left side the bus could easily have avoided the accident if it had travelled on the left side of the road."

45. Similarly, it was held in State of H.P. Vs. Dinesh Kumar 2008 H.L.J. 399 that where the vehicle was taken towards the right side of the road, the driver was negligent. It was observed:

> "The spot map Ext. P.W. 10/A would show that at point 'A on the right side of the road were blood stain marks and a V-shape slipper of deceased Anu. Point 'E' is the place where P.W. 1 Chuni Lal was standing at the time of the accident and point 'G' is the place where P.W. 3 Anil Kumar was standing. The jeep was going from Hamirpur to Nadaun. The point 'A' in spot map Ext. P.W. 10/A is almost on the extreme right side of the road."

46. This position was reiterated in State of H.P. vs. Niti Raj 2009 Cr.L.J. 1922 and it was held:

> "16. The evidence in the present case has to be examined in light of the aforesaid law laid down by the Apex Court. In the present case, some factors stand out clearly. The width of the pucca portion of the road was 10 ft. 6 inches. On the left side while going from Dangri to Kangoo there was a 7 ft. kacha portion and on the other side, there is an 11 ft. of kacha portion. The total width of the road was about 28 ft. The injured was coming from the Dangri side and was walking on the left side of the road. This has been stated both by the injured as well as by PW-6. This fact is apparent also from the fact that after he was hit the injured fell into the drain. A drain is always on the edge of the road. The learned Sessions Judge held, and it has also been argued before me, that nobody has stated that the 2024:HHC:10298 motorcycle was on its wrong side. This fact is apparent from the statement of the witnesses who state that they were on the extreme left side and the motorcycle which was coming from the opposite side hit them. It does not need the genius to conclude that the motorcycle was on the extreme right side of the road and therefore on the wrong side."

47. Therefore, the accused was clearly negligent in driving the vehicle toward the right side of the road and his negligence was the proximate cause of the accident. Thus, the learned Trial Court had rightly held the accused guilty of the commission of an offence punishable under Section 279 of IPC.

48. Dr Parmesh Dogra (PW4) conducted the post-

mortem examination of the deceased and he found a fracture of the skull on the left side with a laceration of the left cerebral hemisphere of the brain. In his opinion, the death occurred due to a head injury that could have been caused by a road traffic accident. He admitted in his cross-examination that the injury mentioned in the post-mortem report could also be caused by a fall on the hard surface. However, this admission is merely a hypothetical alternative possibility and

will not discard the prosecution case. The statement of the 2024:HHC:10298 Medical Officer that the injuries were caused on the head, which could have been caused in a motor vehicle accident corroborates the version of the informant Jagar Singh (PW1) and learned Courts below had rightly held that the medical evidence corroborated the prosecution version.

49. Therefore, it was duly proved on record that the accused was driving the vehicle towards the wrong side of the road and hit the deceased despite signalling the truck to stop.

The accident resulted in the death of Surinder Singh and the accused had failed to stop the vehicle and carry the injured to the hospital. Therefore, the learned Trial Court had rightly convicted him of the commission of offences punishable under Sections 279 and 304A of IPC and Section 187 of the Motor Vehicles Act.

50. It was submitted that the learned First Appellate Court had not discussed the evidence of all the witnesses.

This submission is not correct. Learned First Appellate Court had referred to the testimony of Jagar Singh-informant, who was the material witness in the present case. Learned Trial Court had also referred to the arguments advanced on behalf 2024:HHC:10298 of the defence. It was not necessary to reproduce the evidence of the other witnesses when their testimonies were not relevant to the determination of the rashness or negligence of the accused. Hence, the judgments cited on behalf of the defence that the judgment of the learned First Appellate Court is to be set aside and the matter has to be remanded when the evidence was not properly appreciated by the learned First Appellate Court do apply to the present case.

51. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused.

This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in Dalbir Singh Versus State of Haryana (2000) 5 SCC 82 that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of the commission of offences punishable under Sections 279, 304-A of IPC. It was observed:

> "11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two 2024:HHC:10298 decades ago that "more people die of road accidents than by most diseases, so much so the Indian highway are among the top killers of the country" the saturation of accidents toll was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision thus :
>
> "Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence,

> must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."

12. In State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538 this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304- A, I.P.C. to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences of visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that rash driving need not necessarily cause an accident, or 2024:HHC:10298 even if any accident occurs it need not necessarily result in the death of any human being, or even if such death ensues he might not be convicted of the offence, and lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in mind the fear psyche that if he is convicted of the offence of causing the death of a human being due to his callous driving of a vehicle, he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to the callous driving of automobiles."

52. A similar view was taken in Thakur Singh v. State of Punjab, (2003) 9 SCC 208, wherein it was observed: -

> 6. Learned counsel lastly made an alternative plea that the Probation of Offenders Act may be applied to secure his job. This Court has held in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82] that the Probation of Offenders Act cannot be invoked in cases involving rash or negligent driving of the bus resulting in death of human beings."

53. In State of Punjab v. Balwinder Singh, (2012) 2 SCC 182, it was held: -

> 13. It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the 2024:HHC:10298 benevolent provisions of Section 4 of the Probation

> of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh [(2000) 5 SCC 82: 2004 SCC (Cri) 1208].

54. Therefore, in view of these binding precedents, it is not permissible to grant the benefit of the Probation of Offenders Act in an offence involving rash and negligent driving.

55. This Court held in State of H. P. Versus Sushil Kumar 2010(1) HLJ 298 that no leniency should be shown to a person convicting or for driving a vehicle in a rash or negligent manner. It was observed:

> "21. In so far as the sentence part is concerned, in my considered opinion, the learned trial Court has lost sight of the fact that there has been a spiralling increase in motor vehicular accidents in recent years. Thousands of valuable lives are being lost by a sheer act of rash and negligent driving, which is more than the loss of lives in any war between countries.
>
> 22. The Supreme Court in Dalbir Singh v. State of Haryana (2000) 5 SCC 82 on the question of sentence in a case of an identical nature stated:-
>
> "13. While considering the question of a sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of an automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and 2024:HHC:10298 should not take a chance thinking that rash driving need not necessarily cause an accident; or even if any accident occurs, it need not necessarily result in the death of any human being; or even if such death ensues, he might not be convicted of the offence and lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in mind the fear psyche that if is convicted of the offence for causing the death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents, due to callous driving of automobiles."

23. Hon'ble Shri Justice K.G. Balakrishnan, as he then was, while speaking for the Court, in State of Karnataka v. Sharanappa Basnagouda Aregoudar AIR 2002 Supreme Court 1529, where the accused was held guilty for causing the death of four persons and the High Court took a lenient view in sentencing the accused, observed:-

> "We are of the view that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the Court, below. It may create and set an unhealthy precedent and send wrong signals to the subordinate Courts which have to

> deal with several such accident cases. If the accused are found guilty of rash and negligent driving, Courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the Courts should have a deterrent effect on potential wrongdoers and it should be commensurate with the seriousness of the offence. Of course, the Courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to the larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system."

2024:HHC:10298

24. Therefore, on the examination of the matter in the above circumstances and on facts, I think no word is sufficient to criticize the conduct and prudence of the learned trial Magistrate dealing with the point of sentence in a shockingly reckless manner. Looking at the gravity of the offence, the sentence imposed by the learned trial Court is wholly inadequate. The learned trial court has inflicted a fleabite sentence on the respondent who has not atoned adequately for his misadventure."

56. In the present case, one precious life was lost and the learned Appellate Court had dealt with the accused lightly by sentencing him to undergo simple imprisonment for six months. No further leniency can be shown in view of the judgments of this Court and the Hon'ble Supreme Court.

57. No other point was urged.

58. Consequently, the present revision fails and the same is dismissed.

59. Registry is directed to send down the records of the case to the learned Courts below forthwith.

(Rakesh Kainthla) Judge 25th October, 2024.

(saurav pathania)