Kamal Singh And Ors vs State Of H.P on 26 September, 2024

Neutral Citation No. (2024:HHC:9135) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Revision No. 104 of 2009 a/w .

Cr. Revision No. 19 of 2017 Reserved on: 01.08.2024 Date of Decision: 26.09.2024

1. Cr. Revision No. 104 of 2009 Kamal Singh and ors. ...Petitioners Versus State of H.P. ...Respondent _____

2. Cr. Revision NO. 19 of 2017 Rakesh Kumar ..Petitioner Versus State of H.P. ...Respondent Coram Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes For the Petitioner(s) : Mr. N.K. Thakur, Sr. Advocate, with Mr. Karan Veer Singh, Advocate, in both the petitions.

For the Respondent : Mr. Jitender Sharma, Additional Advocate General, in both the petitions.

Rakesh Kainthla, Judge The present revision are directed against the judgment dated 14.07.2009 and order of sentence dated 16.07.2009 passed by learned Sessions Judge, Una (learned Appellate Court) vide which Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. (2024:HHC:9135) the appeals filed by the respondent/State were allowed and judgment dated 29.09.2007 passed by learned Additional Chief .

Judicial Magistrate, Court No.1, Una (learned Trial Court) was set aside, accused-Kamal Singh and Kuldeep Singh were convicted of the commission of offences punishable under Sections 326 and 341 read with Section 34 of Indian Penal Code (in short 'IPC') and accused-Bhagat Ram and accused-Rakesh Kumar were convicted of the commission of an offence punishable under Section 341 of IPC and the order dated 16.07.2009, vide which accused Kamal Singh and Kuldeep Singh were sentenced to undergo rigorous imprisonment for two years and pay a fine of 10,000/- each and in default of payment of fine to further undergo simple imprisonment for a period of six months each for the commission of offence punishable under Section 326 read with Section 34 of IPC and to pay a fine of 500/- each for the commission of offence punishable under section 341 of IPC and accused No.1-Bhagat Ram and accused No.3-Rakesh Kumar were also sentenced to pay a fine of 500/-

each for the commission of an offence punishable under Section 341 of IPC and in default of payment of fine to further undergo simple imprisonment for a period of one month each. (The parties Neutral Citation No. (2024:HHC:9135) shall hereinafter 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 revisions are that the police presented a challan before the learned Trial Court for the commission of offences punishable under Sections 324, 341, 506 and 34 of IPC. It was asserted that informant-Satish Kumar (PW1) is a resident of village Haroli. His father had purchased a tractor bearing registration No.PNH-7572 for him, which was being driven by him. Accused Bhagat Ram is related to him as his uncle. The land of the informant and Bhagat Ram are located adjacent to each other. Bhagat Ram has encroached upon the Government's land near the informant's land.

The informant had parked his tractor at his home. The informant was told by Hans Raj to transport the cow dung from his house to his land. Informant-Satish Kumar was driving through the Government land near the land of Bhagat Ram on 27.09.1997 at about 6:15 pm. Bhagat Ram and his sons Kuldeep, Kamal and Rakesh Kumar were standing on the road. They started abusing the informant and threatened to kill him. They said that they would not allow his tractor to go through the land. The informant replied that it was a common passage and that he had taken a tractor through Neutral Citation No. (2024:HHC:9135) the government land earlier. Kamal Singh and Kuldeep Singh were armed with pick-axes (Ext. P11 and Ext. P12). They hit the .

informant on his head. Rakesh Kumar and Bhagat Ram gave beatings to the informant with kicks and fist blows. The informant shouted for help, on which his father Kishan Singh (PW2) and his mother Maya Devi reached the spot and rescued him. He reported the matter to the police. An entry (Ext. PW1/A) was recorded in the Police Station in the daily diary. An application (Ext. PW8/B) was filed for the medical examination of the victim. Dr. G.S. Dhindra (PW9) conducted the medical examination of Satish Kumar and found that he had sustained bleeding injuries. He advised X-ray.

The injuries could have been caused by a sharp-edged weapon. He issued the MLC (Ext. PW9/A). The casualty Medical Officer mentioned that the nature of the injury was grievous. The investigation was conducted by Onkar Singh (PW8), who seized the blood-stained parna of the injured vide memo (Ext. PW1/D). He visited the spot and prepared the site plan (Ext. PW8/C). Kishan Chand produced the blood-stained clothes which were worn by the informant at the time of the incident. These were put in a cloth parcel and the parcel was sealed with seal 'A'. These were seized vide memo (Ext. PW1/B). Blood-stained stone and the leaves were Neutral Citation No. (2024:HHC:9135) recovered from the spot vide memo (Ext. PW1/C). The pick axes were seized vide memo (Ext. PW1/E). The sketches of the pick axe .

(Ext. PW8/D and Ext. PW8/E) were prepared. These were put in a cloth parcel and the parcel was sealed with seal 'A'. The case property was deposited with Ramesh Chand (PW6) who deposited them in Malkhana and handed them over to Baldev Raj (PW7) with a direction to carry them to FSL Junga for analysis. The result of the analysis (Ext. PW8/F) was issued, in which it was shown that the parna, T-shirt, undervest and shirt had human blood but it was not sufficient for its classification. The blood-stained stone, leaves and pick axes had the human blood of the group 'AB'. The statements of the witnesses were recorded as per their version and after the completion of the investigation, the challan was prepared and it was presented before the Court.

3. The learned Trial Court charged the accused with the commission of offences punishable under Sections 326, 341, 324, and 506 read with Section 34 of IPC. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case.

Satish Kumar (PW1) is the informant. Kishan Singh (PW2) is the Neutral Citation No. (2024:HHC:9135) father of the informant, who reached the spot on hearing the cries.

Kashmir Singh (PW3) and Manoj Kumar (PW4) are the eye-

.

witnesses. Parkash Chand (PW5) is the witness to recovery. HHC-

Ramesh Chand (PW6) was working as MHC with whom the case property was deposited. Baldev Raj (PW7) carried the case property to FSL, Junga. ASI-Kuldeep Kumar (PW7) proved the entry in the daily diary. Onkar Singh (PW8) conducted the investigation. Dr. G.S. Dhindra (PW9) conducted the medical examination of the victim.

Bidhi Chand (PW10) obtained the record from Dayanand Medical College and recorded the statements of the witnesses.

5. The accused in their statements recorded under Sections 313 of Cr.P.C. denied the prosecution case in its entirety. They stated that the witnesses deposed falsely against them due to enmity.

There was a land dispute and a stay was granted against Satish Kumar and others. The statement of Ramesh Parsad, helper was recorded in defence.

6. The learned Trial Court held that the prosecution case was full of suspicion. Satish Kumar, the informant, was referred for further examination to the hospital at Una. He went to Dayanand Medical College on his own. The record issued by Dayanand Medical Neutral Citation No. (2024:HHC:9135) College was suspicious. The person who issued the record was not examined and the record was not proved as per the law. No X-ray .

report or film was produced on record to show that the nature of the injury was grievous. The parties had a land dispute and the possibility of false implication could not be ruled out. The presence of Kashmir Singh was not established satisfactorily. His conduct falsified his presence on the spot. The testimony of Manoj Kumar (PW4) was not reliable. The witnesses to the recovery-Jai Kishan and Pradhan of the Gram Panchayat were not produced and an adverse inference was to be drawn against the prosecution. The weapons produced by the prosecution were not sharp-edged.

Therefore, the accused were acquitted.

7. Being aggrieved from the judgment passed by the learned Trial Court, the State filed two separate appeals which were taken up for consideration together by learned Sessions Judge, Una (learned Appellate Court). The learned Appellate Court held that the learned Trial Court erred in rejecting the testimonies of the prosecution witnesses. The weapons were used as agricultural implements and had sharp edges. The learned Trial Court erred in holding otherwise. The presence of the prosecution witnesses was duly established on the record. The Medical Officer had found a Neutral Citation No. (2024:HHC:9135) palpable fracture and the finding recorded by the learned Trial Court that no grievous injury was caused to the victim was not .

sustainable. Minor contradictions in the testimonies are not sufficient to discard the prosecution case. Hence, the accused were convicted and sentenced as aforesaid.

8. Being aggrieved from the judgment and order passed by the learned Appellate Court, the petitioners have filed the present revisions asserting that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court and holding that the prosecution case was not proved beyond reasonable doubt. The presence of the independent witnesses was not established satisfactorily and learned Trial Court had rightly held it to be so. This finding should not have been reversed while exercising the jurisdiction in an appeal against acquittal. The learned Trial Court had noticed the weapon of offence and recorded the finding that the injury sustained by the victim/informant could not have been caused by the weapons and the learned Appellate Court erred in reversing this finding without any basis. Therefore, it was prayed that the present revisions be allowed and the judgment and order passed by the learned Appellate Court be set aside.

Neutral Citation No. (2024:HHC:9135)

9. I have heard Mr. N.K. Thakur learned Senior Counsel assisted by Mr Karan Veer Singh, learned counsel for the .

petitioners/accused and Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State.

10. Mr. N.K. Thakur, learned Senior Counsel for the petitioners/accused submitted that the learned Trial Court had rightly acquitted the accused. The learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court. The presence of the independent witnesses was not established on the spot. The informant admitted in his cross-

examination that he had sustained injuries by falling from the tractor which falsified the prosecution case. The possession of the informant was not established and the informant was an aggressor as he deliberately tried to create a path through the land of the respondents. Learned Appellate Court had not appreciated this aspect; hence, he prayed that the present revisions be allowed and the judgment and order passed by the learned Appellate Court be set aside. He relied upon AIR 1956 SC 218 (sic), Kanbi Nanji Virji v.

State of Gujarat, (1970) 3 SCC 103, ILR 1974 HP 575 (sic), 1977 CrLJ 147 (sic) and Hem Raj v. State of Haryana, (2005) 10 SCC 614 in support of his submission.

Neutral Citation No. (2024:HHC:9135)

11. Mr. Jitender Sharma, learned Additional Advocate General for the respondent/State supported the judgment and .

order passed by the learned Appellate Court and submitted that no interference is required with the same.

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 jurisdiction and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -

> "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 Neutral Citation No. (2024:HHC:9135) 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 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.

Neutral Citation No. (2024:HHC:9135)

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 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-Satish Kumar stated that Bhagat Ram is his uncle. Their land is situated adjacent to each other. Bhagat Ram had encroached upon the Government's land. He (the informant) was taking the tractor on 27.09.1997. When he reached at a distance of 20 to 25 meters from his home at 6:15 pm, the accused stopped his tractor and stated that they would not allow him to take the tractor. They asked him to get down the tractor. The accused abused the informant. Kamal and Kuldeep attacked him with the pick axes. He sustained injuries on his head. Bhagat Ram and Ramesh gave him beatings with kicks and fist blows. His parents reached the spot and he reported the matter to the police. He denied in his cross-examination that he had plied the tractor in Neutral Citation No. (2024:HHC:9135) Haroli Baba Balak Nath Market. He denied that the tractor turned turtle when he was working in Baba Balak Nath Temple. He .

admitted that he was working at Subohan and the tractor got down the road. He admitted that he had sustained injuries.

17. Much was made out of this admission to submit that the informant had sustained injuries in an accident involving the tractor at Subohan and he had falsely implicated the accused. This submission cannot be accepted. It was not suggested that the accident stated to have taken place at Subohan had occurred around the date of the incident. It was a general admission regarding some accident that had taken place on some day that was not specified;

therefore, in the absence of any evidence that the accident had occurred in the proximity of the date of the incident, no advantage can be derived from this admission.

18. Dr. G.S. Dhindra (PW9) conducted the medical examination of the victim. He found that the victim had sustained one clean incised wound over the left side of the scalp bone tissue deep and a clean incised wound almost star-shaped bone tissue deep over the right occipital parietal eminence that is the right side of the back of the head. Brain tissue was coming out of it. Bone Neutral Citation No. (2024:HHC:9135) tissue deep fracture was eminently palpable. The injuries were clinically grievous caused by the sharp weapon. Such injuries were .

possible by the pick axe (Ext. P1) shown to him in the Court. He stated in his cross-examination that the possibility of causing injury No.2 by way of a fall could not be ruled out. He has nowhere stated that both the injuries noticed by him could have been caused in a motor vehicle accident as was suggested to the informant, therefore, the medical evidence does not support the version that the injuries sustained by the victim could have been caused in an accident; rather, the medical evidence shows that the injuries noticed by a doctor could have been caused by a sharp-edged weapon.

19. The informant stated in his cross-examination that he claimed that the land was Government land but Bhagat Ram etc. used to say that the land belonged to him. It was submitted based on this statement that there is a factual dispute regarding the ownership of the land. The informant party claimed that the land belonged to the Government, whereas the accused claimed that the land was owned by them. In the absence of any evidence regarding the land being Government land, the complainant party would have to be treated as aggressors. This submission cannot be accepted. It Neutral Citation No. (2024:HHC:9135) was suggested to the informant in the cross-examination that it was a common path and the villagers used to pass over the same.

.

This suggestion has to be read with the examination-in-chief of the witness, wherein he stated that he used to take the tractor from the land from where it was being taken on the earlier occasion as well. These two statements read together can only lead to an inference that the place of the incident was a public path and not the land of Bhagat Ram.

20. The Investigating Officer visited the spot and prepared the site plan (Ext. PW8/C). He showed the path as point 'A' starting from the house of informant Satish Kumar and going behind the

cowshed of Jagat Ram. Point 'D' was shown to be the place, where the incident had taken place. This point is shown on the path leading from the house of the informant. This site plan also shows that the place of the incident was on a path and not on the land of Bhagat Ram.

21. The place from where the blood-stained leaves were picked up has been shown at point 'F' in the site plan (Ext. PW8/C).

It is described to be the field of Bhagat Ram. It was submitted that the blood was found in the field of Bhagat Ram, which shows that Neutral Citation No. (2024:HHC:9135) the incident had taken place not on the path but on the field of Bhagat Ram. This suggests that the informant party was an .

aggressor and had tried to trespass upon the land of the accused-

Bhagat Ram. This submission cannot be accepted. The informant was driving the tractor. He was asked to get down the tractor and thereafter, he was beaten and dragged for some distance; hence, the fact that the blood stains were found in the field will not show that the incident had taken place in the field. It would have been a different matter altogether if the marks of the tyres of the tractor were found in the field of Bhagat Ram which would have established that the informant had tried to trespass upon the land of Bhagat Ram and he was the aggressor.

22. The informant stated in his cross-examination that Bhagat Ram is in possession of 68 kanals of land, where he is cultivating maize and wheat. It was submitted that this admission shows the possession of Bhagat Ram. This submission will not help the defence as it has not been established that the incident had taken place on land measuring 68 kanals, which was owned by Bhagat Ram.

Neutral Citation No. (2024:HHC:9135)

23. The informant admitted in his cross-examination that they wanted to create a passage over the land of Bhagat Ram but he .

was not aware of this fact. This statement does not make any sense.

First, it is not shown whether the informant party wanted to create a passage on the land of Bhagat Ram or not or this witness was not aware of the fact that the informant party wanted to create a passage over the land of Bhagat Ram. Even if it is accepted that the statement can be read to mean that the informant party wanted to create a passage over the land of Bhagat Ram, it does not lead to an inference that the incident had taken place in the land of Bhagat Ram and no advantage can be derived from this admission made by the witness.

24. Kishan Singh (PW2) supported the prosecution version.

He stated that he was at home when he heard some noise from the Shamlat land. He, his wife and daughter-in-law went towards the spot and saw Bhagat Ram and his son Ramesh had caught hold of the informant. Kamal and Kuldeep attacked the informant. He rescued the informant. The accused

ran away from the spot. The informant was taken to the police station. He stated in his cross-

examination that he had signed the document (Ext. D1). He denied that a compromise was effected between the parties vide Exhibit D1 Neutral Citation No. (2024:HHC:9135) that they would not encroach on the land of Bhagat Ram. He admitted that he had filed a case against Madan Lal, Ram Lal and .

Ram Pal, in which they were acquitted. He had not shouted from his home. He admitted that the land of Bhagat Ram is located towards the western side of his house. He denied that the accused were not present at the time of his arrival on the spot. He denied that Bhagat Ram was in possession of the land for 30-35 years. He volunteered to say that Bhagat Ram was in possession for 10-12 years. He admitted that he claimed that the land was owned by the Government. He admitted that the tractor had turned turtle in the Dera of Baba Kartar Singh.

25. There is nothing in his cross-examination to show that he was making a false statement. He had also admitted that the tractor had turned turtle but in the absence of any date, no inference can be drawn that the accident had occurred in the proximity of the date of the incident. He also stated about the dispute about the ownership but in the absence of any evidence that the place where the incident had taken place was in possession of Bhagat Ram, not much advantage can be derived from the admission.

Neutral Citation No. (2024:HHC:9135)

26. It was submitted that he (PW2) is the father of the informant and he will fall within the definition of an interested .

person. This submission cannot be accepted. Learned Appellate Court had rightly held that the interested person is the one, who is interested in securing the conviction of the accused and a person cannot be called to be interested merely because he is related to the victim. It was laid down by the Hon'ble Supreme Court in Laltu Ghosh v. State of W.B., (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2 that there is a distinction between an interested witness and related witness. The interested witness is the one who derives some benefits from the litigation. It was observed:

> 12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593]; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] and Gangabhavani v. Rayapati Venkat

> Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]).

Neutral Citation No. (2024:HHC:9135)

13. Recently, this difference was reiterated in Ganapathi v. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], in the .

following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593] :

> (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], SCC p. 555, para 14)

"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"...."

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

15. In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and Neutral Citation No. (2024:HHC:9135) needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State .

(UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966] :

> (SCC p. 213, para 23) "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a

witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

27. In the present case, nothing was shown in the statement of this witness that he was interested in getting the accused convicted and the submissions that his testimony is to be rejected because he is an interested witnesses cannot be accepted. It was laid down by the Hon'ble Supreme Court in Thoti Manohar vs State of Andhra Pradesh (2012) 7 SCC 723 that the court cannot discard the testimony of a witness on the ground of a relationship. It was observed:

31. In this context, we may refer with profit the decision of this Court in Dalip Singh v. State of Punjab AIR 1953 SC 364, Neutral Citation No. (2024:HHC:9135) wherein Vivian Bose, J., speaking for the Court, observed as follows: -

"We are unable to agree with the learned Judges of the .

High Court that the testimony of the two eye-

witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)."

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

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

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

34. In Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable Neutral Citation

No. (2024:HHC:9135) evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can be laid down as an invariable rule that interested evidence can never .

form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

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

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

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

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

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

Neutral Citation No. (2024:HHC:9135)

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

> .
>
> 28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstands the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating

the accused in rendering a conviction, on purpose.

29. When the court is convinced with the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591:

"32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, Vivian Bose, J. for the Bench observed the law as under (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative Neutral Citation No. (2024:HHC:9135) would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is a personal .

cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited r to and be governed by its own facts."

33. In Masalti v. State of U.P., (1964) 8 SCR 133: AIR 1965 SC 202: (1965) 1 Cri LJ 226], a five-judge Bench of this Court has categorically observed as under (AIR pp. 209-210, para 14) "14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence.

Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the Neutral Citation No. (2024:HHC:9135) sole ground that it is partisan would invariably lead to the failure of justice. No hard-and-fast rule can be laid down as to how much evidence .

should be appreciated. The judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

34. In Darya Singh v. State of Punjab [(1964) 3 SCR 397:

> AIR 1965 SC 328: (1965) 1 Cri LJ 350], this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised but no corroboration is necessary for acceptance of his evidence. In Harbans Kaur v. State of Haryana [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199], this Court observed that: (SCC p. 227, para 6) "6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves with is Namdeo v. State of Maharashtra [(2007) 14 SCC 150 :

> (2009) 1 SCC (Cri) 773], wherein this Court after observing previous precedents has summarised the law in the following manner: : (SCC p. 164, para 38) "38. ... it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the "sole" testimony of such witness. A close relationship of the witness with the deceased or the victim is no grounds to reject his evidence. On the contrary, a Neutral Citation No. (2024:HHC:9135) close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

.

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

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

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

> Neutral Citation No. (2024:HHC:9135)
>
> 10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions .

in the deposition of the eye-witnesses and injured eye-

witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7.

30. It was laid down by the Hon'ble Supreme Court in Mohd.

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

> 55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies Neutral Citation No. (2024:HHC:9135) cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case .

of GangadharBehera v. State of Orissa, (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

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

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

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

Neutral Citation No. (2024:HHC:9135)

31. The incident had taken place at some distance from his house; therefore, he was a natural witness and his presence on the .

spot could not have been doubted.

32. Kashmir Singh (PW3) stated that he had gone to the temple of Baba Sonmath on 27.09.1997. He heard some noise at 6:15 pm. He went to the spot and saw that four persons had surrounded a tractor and were abusing the driver. They dragged the driver of the tractor and started beating him. Two persons were armed with pick axes. They attacked the driver with the pick axes.

Bhagat Ram was asking the other persons to kill the driver. Some women came to the spot and rescued the driver. The head of the driver was bleeding. He went to the temple thereafter. He stated in his cross-examination that he is a resident of Aleta which is located at a distance from Haroli. He was working as a Pump Fitter in the Railway Department. He did not have any relatives in the village of Haroli. He came to know the name of the driver as Satish after some time. The police arrived on the same evening. He denied that there was no temple and he had not visited any temple on that day. He admitted that the passage had the abadi of the accused and there was a fence towards the other side. He denied that he had not seen the accused attacking the informant with the

pick-axes. He denied Neutral Citation No. (2024:HHC:9135) that a passage was being created forcibly and no passage existed on the spot. He denied that he was making a false statement because .

he was a friend of the sons of Somnath.

33. There is nothing in his cross-examination to show that he was making a false statement. Learned Trial Court had rejected his testimony on the ground that his presence was not established on the spot. Learned Appellate Court had rightly held that this conclusion was not correct. He categorically denied that he had not visited the temple on that day or that no temple existed on the spot.

A denied suggestion does not amount to any proof and cannot be used for discarding his testimony. He also denied that the children of Somnath were his friends. No material was produced to establish this fact; therefore, his credit was not impeached and he is to be treated as an independent person. His testimony could not have been discarded without any basis and learned Appellate Court had rightly accepted his testimony.

34. Manoj Kumar (PW4) stated that he heard some noise on 27.09.1997 at 6:15 pm. He went to the spot and saw that the accused had stopped the tractor. The younger son of Bhagat Ram dragged Satish Kumar from the tractor, who was driving the tractor. A blow Neutral Citation No. (2024:HHC:9135) was inflicted using a pick-axe on the head of Satish Kumar. Satish Kumar sustained injuries on his head. Subsequently, two to four .

women came to the spot and rescued the informant from the accused. He stated in his cross-examination that he had purchased the property at Barotiwala in the year 1982. He admitted that the informant was posted in the police earlier but he did not know the place of his posting. He admitted that the land of Bhagat Ram is located adjacent to the house of Somnath. He was not aware that Somnath wanted to create a passage forcibly through the land of Bhagat Ram and the civil suits are pending between the parties. He denied that the tractor could not have crossed the passage. He admitted that the path to the temple is from the other side. He admitted that Bhagat Ram had constructed a barbed wire fence to protect his land. He denied that Satish had not sustained any injury.

Tarsem, Kashmir Singh etc. had reached the spot. His statement was recorded by the police in the police station. He and Somnath belonged to the different castes.

35. There is nothing in his cross-examination to suggest that he was making a false statement. He denied the defence version that he and the informant belonged to the same caste.

Thus, he had no reason to support the prosecution and learned Neutral Citation No. (2024:HHC:9135) Appellate Court had rightly relied upon the testimony of this witness.

.

36. The testimonies of these witnesses are corroborating each other in material aspects. The informant's version is also corroborated by the medical evidence in which two incised wounds were found on the head of the victim. It was laid down by the Hon'ble Supreme Court in State of U.P Versus Smt. Noorie Alias Noor Jahan and Others, (1996) 9 SCC 104, that while assessing the evidence of an eye witness, the Court must adhere to two principles, namely, whether in the circumstances of the case, the eye witness could be present and whether there is anything inherently improbable or unreliable. It was observed:-

> "7. The High Court having acquitted the accused persons on appreciation of the evidence, we have ourselves scrutinised the evidence of PWs. 1, 2 and 3. The conclusion is irresistible that their evidence on material particulars has been brushed aside by the High Court by entering into the realm of conjecture and fanciful speculation without even discussing the evidence more particularly the evidence relating to the basic prosecution case. While assessing and evaluating the evidence of eyewitnesses the Court must adhere to two principles, namely whether in the circumstances of the case, it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable. The High Court in our opinion has failed to observe the aforesaid principles and in fact, had misappreciated the evidence which has caused a gross Neutral Citation No. (2024:HHC:9135) miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is .
>
> created by his evidence taken insofar as the context of the case and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3 we find they are consistent with one another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-
>
> examination to impeach their testimony. The aforesaid oral evidence fully corroborates the medical evidence. In that view of the matter, we unhesitatingly come to the conclusion that the prosecution has been able to establish the charge against the accused persons and the High Court committed an error in acquitting the three respondents namely Inder Dutt, Raghu Raj and Bikram."

37. In the present case the informant had suffered multiple injuries and his presence on the spot is established. It was laid down by the Hon'ble Supreme Court in Bhajan Singh @ Harbhajan Singh & Ors. Versus State of Haryana (2011) 7 SCC 421, that the evidence of the stamped witness must be given due weightage as his presence on the spot cannot be doubted. It was observed: -

> "36. The evidence of the stamped witness must be given due weightage as his presence at the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant

> 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 at the time of occurrence. Thus, the testimony of Neutral Citation No. (2024:HHC:9135) an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual .
>
> assailant(s) in order to falsely implicate someone.
>
> "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra, (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., (2011) 4 SCC
>
> 324).

38. It was held by the Hon'ble Supreme Court in Neeraj Sharma v. State of Chhattisgarh, (2024) 3 SCC 125: 2024 SCC OnLine SC 13 that the testimony of the injured witness has to be accepted as correct unless there are compelling circumstances to doubt such statement. It was observed:

> "22. The importance of an injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as extremely valuable evidence in a criminal trial.
>
> 23. In Balu Sudam Khalde v. State of Maharashtra [Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365:
>
> 2023 SCC OnLine SC 355] this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows: (SCC para 26) "26. When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
>
> Neutral Citation No. (2024:HHC:9135) 26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his .

deposition.

26.2. Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of the injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

r to 26.4. The evidence of the injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions. 26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with the passage of time should be discarded."

(emphasis supplied)

39. The testimony of the informant is also supported by the FIR (Ext. PW7/A), which was lodged in the police station within 20 minutes of the incident. It was laid down by the Hon'ble Supreme Court in Girish Yadav v. State of M.P., (1996) 8 SCC 186: 1996 SCC (Cri) 552 that a promptly lodged FIR corroborates the eyewitness's version. It was observed:

> Neutral Citation No. (2024:HHC:9135) "10. Once it is found that the FIR was promptly lodged after the incident by witness PW 2 Indu Tiwari, and that set in motion the police machinery which started an investigation .

on the spot immediately thereafter, it must be held that the contents of the FIR would reflect the first-hand account of what had actually happened on the spot and who was responsible for the offence in question. In this connection learned counsel for the respondent rightly invited our attention to a decision of this Court in the case of State of Punjab v. Surja Ram [1995 Supp (3) SCC 419: 1995 SCC (Cri) 937:

> AIR 1995 SC 2413] wherein M.K. Mukherjee, J., speaking for this Court observed that the FIR which was promptly lodged and which contained detailed outline of the prosecution case, clearly corroborates eyewitness account."

> 40. It was held in Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577: 2003 SCC OnLine SC 756 that a promptly lodged FIR rules out the possibility of false implication. It was observed:

> "17. The fact that the first information report was given almost immediately, rules out any possibility of deliberation to falsely implicate any person. All the material particulars implicating the four appellants were given...."

41. It was held in Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468: 2012 SCC OnLine SC 259 that a promptly lodged FIR gives assurance regarding the prosecution's case. It was observed:

> 11. Admittedly, the FIR had been lodged promptly within a period of two hours from the time of the incident at midnight. Promptness in filing the FIR gives certain assurance of the veracity of the version given by the informant/complainant.

Neutral Citation No. (2024:HHC:9135)

12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be a substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in .

respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of a coloured version, exaggerated account or concocted story as a result of a large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding the truth of the informant's version. A promptly lodged FIR reflects the first-hand account of what has actually happened, and who was responsible for the offence in question. (Vide Thulia Kali v. State of T.N. [(1972) 3 SCC 393:

> 1972 SCC (Cri) 543: AIR 1973 SC 501], State of Punjab v. Surja Ram [1995 Supp (3) SCC 419: 1995 SCC (Cri) 937: AIR 1995 SC 2413], Girish Yadav v. State of M.P. [(1996) 8 SCC 186: 1996 SCC (Cri) 552] and Takdir Samsuddin Sheikh v. State of Gujarat [(2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218: AIR 2012 SC 37] .)
>
> 42. A similar view was taken in State of Punjab v. Gurpreet Singh, (2024) 4 SCC 469: 2024 SCC OnLine SC 209 wherein it was observed:
>
> 30. Most importantly, Gursewak Singh (PW 2) narrated the entire occurrence on a call made to the Police Control Room within ten minutes of the occurrence. There could not be, in all probabilities, any meeting of the minds within a few minutes after the occurrence, so as to create a false narrative only to implicate Gurpreet Singh. The unfiltered version of the complainant, in our considered opinion, conclusively establishes the veracity of his subsequent deposition. This Court in Nand Lal v. State of Chhattisgarh [Nand Lal v. State of Neutral Citation No. (2024:HHC:9135) Chhattisgarh, (2023) 10 SCC 470: (2024) 1 SCC (Cri) 105], has categorically held that the prompt lodging of an FIR helps dispel suspicions related to the potential exaggeration of the .

involvement of individuals and adds credibility to the prosecution's argument. A promptly lodged FIR reflects the first-hand account of what happened and who was responsible for the offence in

question. (See also: Thulia Kali v. State of T.N. [Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543], State of Punjab v. Surja Ram [State of Punjab v. Surja Ram, 1995 Supp (3) SCC 419: 1995 SCC (Cri) 937], Girish Yadav v. State of M.P. [Girish Yadav v. State of M.P., (1996) 8 SCC 186: 1996 SCC (Cri) 552] and Takdir Samsuddin Sheikh v. State of Gujarat [Takdir Samsuddin Sheikh v. State of Gujarat, (2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218] .)

43. The learned Trial Court held that the weapon of offence was not sharp-edged. It was laid down by the Hon'ble Supreme Court in Kailash Versus State of M.P. (2006) 11 SCC 420, that a wound in the region of the head, forehead, eyebrow, cheek and lower jaw produced by a blunt instrument may simulate appearances of an incised wound. It was observed: -

> "21. The place of injury was on the parietal region. In certain situations, the wounds produced by a blunt instrument may simulate the appearance of an incised wound. It was so stated in Glaister and Rentoul's Medical Jurisprudence and Toxicology in the following terms:
>
> "Under certain circumstances, and in certain situations on the body, wounds produced by a blunt instrument may simulate the appearance of an incised wound. These wounds are usually found over the bone which is thinly covered with tissue, in the regions of the head, forehead, eyebrow, cheek, and lower jaw, among others. When such a wound exposes hair bulbs Neutral Citation No. (2024:HHC:9135) at its edges, it is possible by examining these carefully to decide whether they have been cut or crushed and thus establish whether the wound was caused by a .
>
> sharp or blunt instrument. As a rule, especially in the living subject, a wound produced by a blunt instrument will disclose some degree of bruising and swelling of the edges and the deeper tissues will be less cleanly severed than when divided by a sharp-cutting instrument."

22. In Shankaria v. State of Rajasthan (1978) 4 SCC 453 this Court opined: (SCC pp. 461-62, para 38) "38. After a careful examination of the statements of the doctors, the learned Judges of the High Court came to the conclusion that the injuries found on Swaran Singh and Jarnail Singh could be caused by the Ghota (Article 1). The injuries on the victims were located on the head. The scalp over the head is taut. Even an injury caused by a blunt weapon on the head ordinarily produces a gaping wound, the edges of which if not carefully examined under a magnifying lens, can be mistaken for those of an 'incised' wound. This was the mistake committed by Dr Jaswant Singh and he had the courage enough to admit and correct it in further examination before the High Court. Thus considered, there was no contradiction between the confessional statement and the medical testimony in regard to the nature of the inflicting weapon. Rather, the medical evidence taken as a whole, including the statement of Dr Jaswant Singh before the High Court, lends valuable support to the confession (Ext. P-39) inasmuch as it is stated therein that the injuries to the victims were caused by the Ghota (Article 1)."

44. Therefore, merely because the edges of the pick axe were not found to be clear-cut sharp cannot lead to an inference that the injury could not have been caused using the pick axe. Dr. Neutral Citation No. (2024:HHC:9135) G.S. Dhindra, categorically stated that the injuries noticed by him could have been caused by a pick axe shown to him in the Court. He .

was the best person to depose about the fact whether the weapon recovered by the prosecution could have caused the injuries or not and it was not permissible for the learned Trial Court to ignore his opinion and to substitute his own opinion. Hence, the learned Appellate Court had rightly interfered with this finding of the learned Trial Court.

45. Learned Trial Court held that Jai Kishan pradhan second witness to the recovery was not examined and an adverse inference has to be drawn against the prosecution. Learned Appellate Court had rightly reversed this finding. It was held in Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490 : 2000 SCC (Cri) 1416: 2000 SCC OnLine SC 1311 that the Public Prosecutor is not obliged to examine the witness who will not support the prosecution. It was observed at page 495:

> "13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution".

It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to Neutral Citation No. (2024:HHC:9135) be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be .

saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the 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. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that anyone among that category would not support the prosecution version, he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him

as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

15. A four-judge Bench of this Court had stated the above legal position thirty-five years ago in Masalti v. State of U.P. [AIR 1965 SC 202: (1965) 1 Cri LJ 226] It is contextually apposite to extract the following observation of the Bench:

> Neutral Citation No. (2024:HHC:9135) "It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or .
>
> win over prosecution witnesses and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court."

16. The said decision was followed in Bava Hajee Hamsa v. State of Kerala [(1974) 4 SCC 479: 1974 SCC (Cri) 515:

> AIR 1974 SC 902]. In Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033] Krishna Iyer J., speaking for a three-judge Bench had struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses he should be fair to the court and the truth. This Court reiterated the same position in Dalbir Kaur v. State of Punjab [(1976) 4 SCC 158: 1976 SCC (Cri) 527].
>
> 46. This position was reiterated in Rohtash vs. State of Haryana 2013 (14) SCC 434 and it was held that the prosecution is not bound to examine all the cited witnesses and it can drop witnesses to avoid multiplicity or plurality of witnesses. It was observed:
>
> 14. A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses is, whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in Abdul Gani & Ors. v. State of Madhya Pradesh, AIR 1954 SC 31, has examined the aforesaid issue and held, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and Neutral Citation No. (2024:HHC:9135) 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 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:

> Neutral Citation No. (2024:HHC:9135) "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....."

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.

Neutral Citation No. (2024:HHC:9135) .. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) .

are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or another proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not 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 on 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 presence cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to Neutral Citation No. (2024:HHC:9135) choose two or some among them alone so that the

> time of the Court can be saved from repetitious depositions on the same factual aspects.....This will help not only .
>
> the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort 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, which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order 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 and 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 Neutral Citation No. (2024:HHC:9135) multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor .

to tender the witnesses to prove the case of the prosecution and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be 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. In fact, 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.

47. 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 its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

Neutral Citation No. (2024:HHC:9135)

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 adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters.

Neutral Citation No. (2024:HHC:9135) 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 in 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, yet there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes."

(emphasis supplied)

36. This Court has reiterated the aforesaid principle in Gulam Sarbar v. State of Bihar [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401: (2014) 2 SCC (Cri) 195]: (SCC pp. 410-11, para 19) "19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and 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 Neutral Citation No. (2024:HHC:9135) 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] .)"

48. Thus, no adverse inference can be drawn for giving up Jai Kishan Pradhan.

49. The prosecution examined Parkash Chand (PW5), one of the witnesses to the recovery. He stated that Kishan Singh handed over a parna to the police, which was seized vide memo (Ext.

PW1/B). Kamal and Pardeep had handed over two pick axes to the police, which were seized by the police. His signatures and the signatures of Jai Kishan were obtained. The clothes were also produced which were taken into possession by the police. He duly identified the material objects produced before the Court. He stated in his cross-examination that he knew the accused. The disputed Neutral Citation No. (2024:HHC:9135) land was 65 Kanal, which had a passage over it. Kashmir Lal had filed an application to dispossess Bhagat Ram from his land. He .

denied that articles were seized by the police at the police station.

He denied that no pick axes were produced in his presence and his signatures were obtained at the Police Station.

50. Nothing was suggested to this witness in his cross-

examination to establish that he has any motive to depose falsely against the accused. He stated that he knew the accused which shows that his affinity is towards the accused and not towards the informant party, therefore, he cannot be called to be an interested person and his testimony was sufficient to establish the recovery of the weapons of offence; hence, the adverse inference could not have been drawn for withholding Jai Kishan, Pradhan.

51. The accused examined Ram Prasad, helper (DW1), who stated that Kuldeep Singh was on duty on 27.09.1997. He had brought the abstract of the attendance register. He admitted in his cross-examination that PP is marked regarding the morning and evening attendance. He volunteered to say that only one-time attendance was marked on Saturday because Saturday is a half-

working day. The employees worked till 1:20 pm and thereafter Neutral Citation No. (2024:HHC:9135) they left for their home. He admitted that the train leaves Jallandhar at 3:00 pm and the employees take that train. He .

admitted that the attendance of Darshan Singh was marked as 'P' on 25.10.1997. He could not say whether Kuldeep was present on the duty or not.

52. The testimony of this witness does not disprove the prosecution case. He categorically stated that only one 'P' was marked on Saturday because it was half day. The employees leave at 1:20 pm on Saturday. It means that the accused Kuldeep could have left at 1:20 pm and reached his home at 6:00 pm. It was laid down by the Hon'ble Supreme Court in Kamal Prasad v. State of Chhattisgarh, (2023) 10 SCC 172: (2024) 1 SCC (Cri) 40: 2023 SCC OnLine SC 1300 that the accused is required to exclude the possibility of his presence at the scene of the crime. It was observed at page 178:

> 23. Another defence taken by the appellant convicts is that of the plea of alibi. This Court in Binay Kumar Singh v. State of Bihar [Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283:

> 1997 SCC (Cri) 333] has noted the principle as : (SCC p. 293, para 23) "23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place, he was so far away from the place of occurrence Neutral Citation No. (2024:HHC:9135) that it is extremely improbable that he would have participated in the crime."
>
> 24. The principles regarding the plea of alibi, as can be .

appreciated from the various decisions [Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283: 1997 SCC (Cri) 333; Jitender Kumar v. State of Haryana, (2012) 6 SCC 204 : (2012) 3 SCC (Cri) 67; Vijay Pal v. State (NCT of Delhi), (2015) 4 SCC 749 : (2015) 2 SCC (Cri) 733; Darshan Singh v. State of Punjab, (2016) 3 SCC 37 : (2016) 1 SCC (Cri) 702; Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673; Pappu Tiwary v. State of Jharkhand, (2022) 17 SCC 664: 2022 SCC OnLine SC 109] of this Court, are:

> 24.1. It is not part of the General Exceptions under IPC and is instead a rule of evidence under Section 11 of the Evidence Act, 1872.
>
> 24.2. This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.
>
> 24.3. Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.
>
> 24.4. The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.
>
> 24.5. It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of "strict scrutiny" is required when such a plea is taken.
>
> 53. The learned Appellate Court had rightly pointed out that no suggestion was given to the informant that Kuldeep was not present and he was discharging his duties. Hence, the plea of the defence regarding alibi was not proved.

Neutral Citation No. (2024:HHC:9135)

54. It was submitted that the informant was referred to the hospital at Una, however, instead of going to the hospital at Una, he .

preferred to visit Dayanand Medical College and Hospital. Learned Appellate Court had rightly held that a person is entitled to take the best treatment as is permissible within his means and he cannot be faulted for going to Dayanand Medical College.

55. It was submitted that the learned Trial Court held that the record of Dayanand Medical College was not proved as per the law and the learned Appellate Court erred in relying upon an unproved record. This submission is not acceptable. Dr. G.S. Dhindra, categorically stated that injury of bone tissue fracture was eminently palpable and injuries No.1 and 2 were declared to be clinically grievous caused by a sharp weapon. X-ray was advised for the injuries. This statement shows that he had found a fracture of the skull bone but he had advised the X-ray for confirmation.

Merely because the X-Ray was not proved does not mean that his clinical opinion regarding the presence of a fracture has to be ignored. He is a Medical Officer and capable of detecting the fractures if they were palpable; hence, leaned Appellate Court had rightly relied upon his testimony to hold that the injury was grievous.

Neutral Citation No. (2024:HHC:9135)

56. It was submitted that the prosecution was required to prove its case beyond reasonable doubt and the learned Appellate .

Court could not have reversed the judgment of learned Trial Court while hearing an appeal against acquittal. This submission cannot be accepted. The learned Trial Court had not given the cogent reasons for acquitting the accused. The learned Appellate Court dealt with each reason assigned by the learned Trial Court and gave plausible reasons for reversing those reasons. The reasons given by the learned Trial Court are not sustainable as found out above, therefore, the learned Appellate Court was bound to interfere with an order of acquittal and no fault can be found with the judgment of the learned Appellate Court reversing the judgment of learned Trial Court.

57 The medical evidence clearly proved that the informant had sustained grievous injuries, which were caused by a pick axe. It would fall within the definition of a dangerous weapon under Section 326 of IPC. Learned Appellate Court had rightly held that the weapon was used for cutting the bushes, roots, shrubs and digging. Hence, such a weapon was likely to cause death and was squarely covered under Section 326 of IPC.

Neutral Citation No. (2024:HHC:9135)

58. The judgment in Kanbi Nanji Virji (supra) does not apply to the present case, because in that case, the accused had gone to .

enforce their right of way, which is not the case here. In the present case, the accused had restrained the informant from proceeding further when the accused party was armed with the pick axes and the common intention to cause hurt was writ large. Hence, no advantage can be derived from the cited judgment.

59. In Hem Raj (supra) the truthfulness and falsehood were mixed and it was not possible to separate the grain from chaff, which is not the case here.

60. Some other judgments were cited on behalf of the accused but their citations were incorrect and it is not possible to say anything about them.

61. Accused Kamal and Kuldeep Singh had inflicted injuries by a pick axe on the head of the informant. Both of them had restrained the informant from proceeding further and caused him a fracture with pick axe, therefore, the learned Appellate Court had rightly convicted accused-Kamal Singh and Kuldeep of the commission of offences punishable under Sections 326 and 341 read with Section 34 of IPC and accused Bhagat Ram and Rakesh Neutral Citation No. (2024:HHC:9135) Kumar of the commission of an offence punishable under Section 341 of IPC.

.

62. The learned Appellate Court had sentenced accused Kamal Singh and Kuldeep Singh to undergo rigorous imprisonment for two years. The offence punishable under Section 326 is punishable with imprisonment for life or with imprisonment of either description which may extend to 10 years. The manner in which the injuries were caused and the fact that the injuries were caused on the vital part of the body showed the gravity of the offence and the learned Appellate Court had lightly dealt with the accused to sentence them to undergo rigorous imprisonment for two years and no interference is required with the order passed by learned Appellate Court.

63. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused and learned Appellate Court erred in denying this benefit. This submission cannot be accepted. The offence under Section 326 of IPC is punishable with life imprisonment and the benefit of the Probation of Offenders Act cannot be granted in such a case. It was laid down by the Hon'ble Supreme Court in Jagdev Singh v. State of Punjab, Neutral Citation No. (2024:HHC:9135) (1974) 3 SCC 412: 1973 SCC (Cri) 977 that the benefit of probation cannot be granted to a person convicted of the commission of an .

offence punishable under Section 326 of IPC. It was observed at page 414:

> "4. Now, both Sections 4 and 6 of the Act clearly provide that the benefit of these sections is not available to persons found guilty of an offence punishable with imprisonment for life.
>
> This Act is intended to carry out the object of keeping away from the unhealthy atmosphere of jail life where normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offences by providing for dealing with them more leniently with a view to their reformation, under Sections 3, 4 or 6 of the Act as the case may be. An offence punishable under Section 326, IPC or under Sections 326/34, IPC is indisputably punishable with imprisonment for life. The benefit of the Act on the plain language of Sections 4 and 6 is thus not available to the present appellants."

64. This position was reiterated in Goverdhan Dass v.

Chaman Lal, (2021) 14 SCC 757: 2019 SCC OnLine SC 1927 wherein it was observed at page 760:

> "13. There is no dispute that an offence under Section 326IPC which carries a sentence of life imprisonment cannot be compounded either under Section 360CrPC or under Section 4 of the Act. In view of the observations made by this Court when the matter was remitted back, the High Court ought not to have applied the Act in view of the settled law."

65. Thus, there is no infirmity in not extending the benefit of probation to the accused.

66. No other point was urged.

Neutral Citation No. (2024:HHC:9135)

67. Thus, there is no infirmity in the judgment and order passed by the learned Appellate Court. Consequently, the present .

revisions fail and the same are dismissed.

(Rakesh Kainthla)

Judge

26th September, 2024
(saurav pathania)

r to