Piare Lal vs State Of H.P on 18 September, 2024

1Neutral Citation No. (2024:HHC:8731) THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Criminal Appeal No. 132 of 2008 Reserved on: 08.08.2024 .

Date of Decision: 18.09.2024 Piare Lal ....Appellant Versus State of H.P. ....Respondent Coram Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? Yes For the Appellant : Ms. Sheetal Vyas, Advocate.

For the Respondent : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge The appellant has filed the present appeal against the judgment dated 05.03.2008, passed by learned Additional Sessions Judge, Fast Track Court Solan, District Solan, Himachal Pradesh (learned Trial Court), vide which the appellants (accused before the learned Trial Court) were convicted of the commission of offences punishable under Sections 307, 324, 323 and 506 of Indian Penal Code (IPC) read with Section 34 of IPC and the order dated 07.03.2008, vide which they were sentenced to undergo Whether reporters of the local papers may be allowed to see the judgment?Yes 2Neutral Citation No. (2024:HHC:8731) rigorous imprisonment for three years each for the commission of an offence punishable under Section 307 of IPC read with Section .

34 of IPC, and to pay a fine of 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months each, to undergo rigorous imprisonment for six months each and to pay fine of 2,000/- each for the commission of an offence punishable under Section 324 of IPC read with Section 34 of IPC and in default of payment of fine to further undergo rigorous imprisonment for 20 days each, to undergo rigorous imprisonment of two months each and to pay a fine of 500/- each for the commission of an offence punishable under Section 323 of IPC read with Section 34 of IPC and in default of payment of fine to further undergo rigorous imprisonment for seven days each and to undergo rigorous imprisonment for one year each and to pay a fine of 1,000/- each for the commisision of an offence punishable under Section 506 of IPC read with Section 34 of IPC and in default of payment of fine to undergo rigorous imprisonment for fifteen days each. All the sentences were ordered to run concurrently. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

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2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned .

Trial Court for the commission of offences punishable under Sections 307, 324, 323 and 506 read with Section 34 of IPC. It was asserted that the informant Amar Singh (PW1) was laying the floor of his courtyard. He had engaged the mason and the labourers for this purpose. Piare Lal (accused) climbed on the roof of his uncle's house and told the informant to stop the work. He (Piare Lal) said that he would not allow the water of the informant's courtyard to pass through his land. The

informant said that he had constructed the retaining wall on his land and he would discharge the water from the existing drain. Piare Lal (accused) said that he would not allow the water to be discharged from the existing drain. The accused Piare Lal went to his home and sent his wife Trishana Devi with an iron bar. She started damaging the retaining wall with the iron bar. The informant went near the retaining wall and requested Trishana Devi not to damage the retaining wall. Rajinder Singh and his wife Sumiti Devi also came to the spot. Piare Lal was armed with an axe and Rajinder Singh was armed with a stick. Trishana Devi inflicted a 'Jhabbal' (iron bar) blow on the informant's head. Rajinder Singh 4Neutral Citation No. (2024:HHC:8731) took the iron bar from his mother and inflicted blows with the iron bar. Sumiti Devi also gave kicks and fist blows to .

complainant's son Narinder Singh. Narinder Singh sustained a bleeding injury from an iron bar. Balbir Singh and Roshan Lal (PW3) also reached the spot and rescued the informant and his son from the accused. The accused threatened to kill the informant party. The matter was reported to the police. The statement of Amar Singh (Ex-PA) was recorded which was sent to the police station where FIR (Ex-PW11/A) was registered. Sher Singh (PW11) conducted the investigation. He visited the spot and took the photographs (Ex-PW11/B & Ex-PW11/C), and negatives (Ex-PW11/D & Ex-PW11/E). He prepared the site plan (Ex-PW11/F) at the instance of Roshan Lal and Balbir Singh. He seized the underwear (Ex-P5) and undervest (Baniyan) (Ex-P4) of Amar Singh and Shirt (Ex-P6) and Pajama (Ex-P7) of Narinder Singh vide memo (Ex-PW2/A). He seized the axe (Ex-P3), iron bar (Ex-

P1) and stick (Ex-P2) vide memo (Ex-PW3/A). He prepared the sketch of the axe (Ex-PW11/G). An application was filed for conducting the medical examination of the injured. Dr. Kuldeep Jaswal (PW-5) examined Amar Singh and he found multiple injuries. He referred Amar Singh to the radiologist. Dr. M.R. Verma 5 Neutral Citation No. (2024:HHC:8731) (PW-4) conducted the x-rays of Amar Singh and found a fracture of the parietal bone scalp left side. He issued a report (Ex-PW4/A).

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Dr. Kuldeep Jaswal (PW-5) found the nature of the injuries grievous which could be endangering human life due to excessive bleeding. The injuries were caused by the sharp and blunt-edged weapon. He issued the MLC (Ex-PW5/A). He also examined Narinder Singh and found multiple injuries on his person. He advised an x-ray. An x-ray was taken under the supervision of Dr. M.R. Verma (PW-4) but no fracture was detected. The nature of the injury was stated to be simple which could have been caused by the sharp and blunt-edged weapon within one hour of examination. He issued MLC (Ex-PW5/B). The statements of remaining witnesses were recorded as per their version and after the completion of the investigation, a challan was prepared and presented before the learned Sub-Divisional Judicial Magistrate, Nalagarh who committed it for trial to the Court of learned Sessions Judge.

3. The learned Sessions Judge assigned the matter to the learned Additional Sessions Judge, Solan who charged the accused with the commission of offences punishable under Sections 307, 6Neutral Citation No. (2024:HHC:8731) 324, 323 and 506 of IPC read with Section 34 of IPC. The accused

pleaded not guilty and claimed to be tried.

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4. The prosecution examined 12 witnesses to prove its case. Amar Singh (PW1) and Narinder Singh (PW2) are the victims.

Roshan Lal (PW3) is an eyewitness. Dr M.R. Verma (PW4) issued the x-ray report. Dr Kuldeep (PW5) conducted the medical examination of the victims. Mangat Ram (PW6) and HC Dev Raj (PW10) proved the entries in the daily diaries. Budh Ram (PW7) took the axe to FSL. HC Prem Lal (PW8) recorded the statements of complainant and forwarded it to the Police Station for recording the FIR. Kamal Nain (PW9) was working as MHC with whom the case property was deposited. Sher Singh (PW11) conducted the investigation. Vijay Kumar (PW12) prepared the challan.

5. The accused in their statements recorded under Section 313 of Cr.PC denied the prosecution case in its entirety.

They stated that the victim was on leave on the date of the incident. The police visited the spot on the next day. The witnesses were interested, as they belong to the same family.

They filed a false case against the accused. The accused were 7 Neutral Citation No. (2024:HHC:8731) innocent. No defence was adduced by the accused, even though witnesses were summoned on their behalf.

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6. The learned Trial Court held that the testimonies of the witnesses corroborated each other and these were corroborated by the medical evidence. The injuries could have been caused by the weapons recovered from the accused. The incident was not disputed because the cross FIRs were lodged and police had filed two challans. However, the involvement of Sumiti Devi was not proved. Hence, the learned Trial Court acquitted her and convicted Piare Lal, Rajinder Singh and Trishana and sentenced them as aforesaid.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused have filed the present appeal asserting that the learned Trial Court erred in convicting and sentencing the accused. The Investigating Officer failed to record the first information on the receipt of the report regarding the commission of cognizable offence. He prepared the FIR after reaching the spot. The FIR was the result of vindictiveness. There are major contradictions in the FIR and the statement on oath.

The delay in reporting the matter to the police was not properly 8Neutral Citation No. (2024:HHC:8731) explained. The witnesses were related and had materially improved upon their version. The testimonies of eyewitnesses .

were not corroborated rather they were contradicted by the previous statements recorded by the police. The investigation was not fair. The injuries could not have been caused in the manner suggested by the prosecution. The common intention was not proved. The FSL reports were not proved as per law. The incriminating circumstances were not put to the accused while recording their statements under Section 313 of Cr. PC. Therefore, it was prayed that the present appeal be allowed and the judgment and the order passed by the learned Trial Court be set aside.

8. I have heard Ms Sheetal Vyas, learned counsel for the appellants/accused and Mr Lokender Kutlehria, learned Additional Advocate General, for respondent/State.

9. Ms Sheetal Vyas, learned counsel for the appellants/accused submitted that there are major contradictions in the testimonies of eyewitnesses. The injuries on the person of the accused were not explained which is fatal to the prosecution case. The prosecution had not examined independent witnesses.

Learned Trial Court failed to notice the infirmities in the 9 Neutral Citation No. (2024:HHC:8731) prosecution's evidence. She prayed that the present appeal be allowed and the judgment and order passed by the learned Trial .

Court be set aside. She relied upon the judgment of the Hon'ble Supreme Court in Sivamani & Anr. Vs. State Represented by Inspector of Police (2023) SCC Online SC 1581 in support of her submission.

10. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State submitted that the learned Trial Court had properly appreciated the evidence and there is no infirmity in the judgment and order passed by the learned Trial Court. The prosecution's witnesses corroborated each other's testimonies. Medical evidence also corroborated their testimonies. The incident was not in dispute, as a cross FIR was lodged by the accused persons. It was not proved that the informant party was the aggressor and the learned Trial Court had rightly convicted and sentenced the accused. Hence, he prayed that the present appeal be dismissed.

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

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12. Amar Singh (PW1) stated that he was employed as a driver with HRTC Depot, Nalagarh. He went to his native place on .

19.07.2002 after discharging his duty. He was supervising the work of laying of "bajri" and cement. He was present in the courtyard of his house when accused Piare Lal went to the roof of his uncle's house and told him that he (the accused) would not allow him (the informant) to pass water of the courtyard through his land. The informant told the accused that he would provide passage for the flow of water through the retaining wall. The accused threatened to uproot the retaining wall. He

(the informant) had constructed the retaining wall about 10-15 years before the incident. Trishana, the wife of the accused Piare Lal, started damaging the retaining wall with an iron bar (Jhabal). He (the informant) went to the retaining wall to stop her from damaging the wall. The accused Piare Lal, Rajinder and Sumiti Devi, wife of Rajinder Singh, also came to the spot. When the informant asked them not to damage the wall, the accused started quarrelling with the informant. Accused Trishana Devi gave a blow to the informant's head with the iron bar and blood started flowing from the wound. Rajinder Singh took the iron bar from his mother and gave a blow to the informant's head. Accused Piare Lal 11 Neutral Citation No. (2024:HHC:8731) gave two axe blows on the informant's head. Trishana and Sumiti Devi also gave kicks and fist blows to the informant. Narinder .

came on the spot to rescue him. Rajinder Singh also gave a blow with the iron bar to Narinder. The accused Piare Lal also inflicted a blow with an axe on Narinder's head. Balbir Singh and Roshan Lal came to the spot after hearing the noise. He reported the matter to the police.

13. He stated in his cross-examination that he was about to retire so he was given light duty. He was deputing buses from the workshop. He started to the village from Nalagarh at about 3- 3:15 PM. He was on casual leave on that day. He had told the police about this fact. He was confronted with the previous statement where this fact was not recorded. The house of Narain Singh, uncle of accused Piare Lal, was located adjacent to the informant's courtyard. The house of accused Piare Lal was adjacent to the house of Narain Singh. The fields of Piare Lal are situated adjacent to the informant's house. He denied that the water of his house passed adjoining to the house of Narain Singh and Piare Lal. He denied that he wanted to throw water from his house to the field of Piare Lal through a hole in the wall. He volunteered to say that he wanted to discharge water through a pipe into a government-

12Neutral Citation No. (2024:HHC:8731) owned kuhal. He had not obtained any permission from the government to discharge the water in the kuhal. There are 100- .

125 houses in village Jagatpur. The accused Trishana gave only one blow. He had mentioned the infliction of two blows by accused Piare Lal to the police. He was confronted with the previous statement, where only one blow was mentioned. The accused had given a blow to him with an axe. Accused Piare Lal had not used any other weapon. Rajinder Singh had a stick with him and he did not use any other weapon. No other person visited the spot. He volunteered to say that the houses were located at a considerable distance. He went to the dispensary and he was directed by the Doctor to visit the hospital. He was admitted to the hospital at Nalagarh for 5 days and thereafter, he was referred to PGI, Chandigarh. The accused Piare Lal had also got a case registered against him for the commission of an offence punishable under Section 323 of IPC in which he and his son were arrayed as accused. He denied that he and his son had attacked the informant party and they sustained injuries during the defence by the accused.

14. The cross-examination of this witness shows that the incident was not in dispute. It was suggested to him by the 13 Neutral Citation No. (2024:HHC:8731) defence that he had inflicted the injuries to the accused and he suffered injuries when the accused were defending themselves.

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This suggestion shows that the injuries sustained during the incident were undisputed. It was laid down by the Hon'ble Supreme Court in Balu Sudam Khalde v. State of Maharashtra, 2023 SCC OnLine SC 355 that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed: -

> "34. According to the learned counsel, such suggestions could be a part of the defence strategy to impeach the credibility of the witness. The proof of guilt required of the prosecution does not depend on the suggestion made to a witness.
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> 35. In Tarun Bora alias Alok Hazarika v. State of Assam reported in 2002 Cri. LJ 4076, a three-judge Bench of this Court was dealing with an appeal against the order passed by the Designated Court, Guwahati, in the TADA Sessions case wherein the appellant was convicted under Section 365 of the IPC read with Section 3(1) and 3(5) of the Terrorists and Disruptive Activities (Prevention) Act, 1987.
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> 36. In the aforesaid case, this Court, while considering the evidence on record took note of a suggestion which was put to one of the witnesses and considering the reply given by the witness to the suggestion put by the accused, arrived at the conclusion that the presence of the accused was admitted. We quote with profit the following observations made by this Court in paragraphs 15, 16 and 17 as under:
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> "15. The witness further stated that during the assault, the assailant accused him of giving 14Neutral Citation No. (2024:HHC:8731) information to the army about the United Liberation Front of Assam (ULFA). He further stated that on the third night, he was carried away blindfolded on a bicycle to a different place and when his eyes were .
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> unfolded, he could see his younger brother Kumud Kakati (P.W.-2) and his wife Smt. Prema Kakati (P.W.-3). The place was Duliapather, which is about 6-7 km. away from his village Sakrahi. The witness identified the appellant-Tarun Bora and stated that it was he who took him in an ambassador car from the residence of Nandeswar Bora on the date of the incident.
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> 16. In cross-examination the witness stated as under: "Accused-Tarun Bora did not blind my eyes nor he assaulted me."

17. This part of the cross-examination is suggestive of the presence of accused Tarun Bora in the whole episode. This will clearly suggest the presence of the accused-Tarun Bora as admitted. The only denial is the accused did not participate in blind-folding the eyes of the witness nor assaulted him."

37. In Rakesh Kumar alias Babli v. State of Haryana reported in (1987) 2 SCC 34, this Court was dealing with an appeal against the judgment of the High Court affirming the order of the Sessions Judge whereby the appellant and three other persons were convicted under Section 302 read with Section 34 of the IPC. While re-appreciating the evidence on record, this Court noticed that in the cross- examination of PW 4, Sube Singh, a suggestion was made with regard to the colour of the shirt worn by one of the accused persons at the time of the incident. This Court taking into consideration the nature of the suggestion put by the defence and the reply arrived at the conclusion that the presence of the accused namely Dharam Vir was established on the spot at the time of occurrence. We quote the following observations made by this Court in paragraphs 8 and 9 as under:

> 15 Neutral Citation No. (2024:HHC:8731) "8. PW 3, Bhagat Singh, stated in his examination-

in-chief that he had identified the accused at the time of occurrence. But curiously enough, he was not cross-examined as to how and in what manner he .

could identify the accused, as pointed out by the learned Sessions Judge. No suggestion was also given to him that the place was dark and that it was not possible to identify the assailants of the deceased.

9. In his cross-examination, PW 4, Sube Singh, stated that the accused Dharam Vir was wearing a shirt of white colour. It was suggested to him on behalf of the accused that Dharam Vir was wearing a shirt of cream colour. In answer to that suggestion, PW 4 said: "It is not correct that Dharam Vir accused was wearing a shirt of a cream colour and not a white colour at that time." The learned Sessions Judge has rightly observed that the above suggestion at least proves the presence of accused Dharam Vir, on the spot at the time of occurrence."

38. Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross- examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross- examination does not deserve any value or utility if it incriminates the accused in any manner."

15. He was confronted with the previous statements regarding the mentioning of one blow by Piare Lal and his being 16Neutral Citation No. (2024:HHC:8731) on casual leave. It was submitted that these are the material improvements in his statement and his statement cannot be relied .

upon because of these improvements. This submission cannot be accepted as the previous statement was not properly proved.

Proviso to section 162 of Cr.P.C. permits the use of the statement recorded by the police to contradict a witness. It reads:

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

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

> "The words "if duly proved" in my opinion, clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before whom the statement was made should ordinarily be examined as

17 Neutral Citation No. (2024:HHC:8731) to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness; and the provisions of Section 67 of the Indian Evidence Act apply to this case, as well as to .

any other similar ease. Of course, I do not mean to say that, if the particular police officer who recorded the statement is not available, other means of proving the statement may not be availed of, e.g., evidence that the statement is in the handwriting of that particular officer."

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

> "52. This is the most objectionable manner of using the police statement and we must record our emphatic disapproval of the same. The question should have been framed in a manner to point out that from amongst those accused mentioned in examination-in-chief there were some whose names were not mentioned in the police statement and if the witness affirms this no further proof is necessary and if the witness denies or says that she does not remember, the investigation officer should have been questioned about it."

18. Gauhati High Court held in Md. Badaruddin Ahmed v.

State of Assam, 1989 SCC OnLine Gau 35: 1989 Cri LJ 1876 that if the witness denies having made the statement, the portion marked by the defence should be put to the investigating officer and his 18Neutral Citation No. (2024:HHC:8731) version should be elicited regarding the same. It was observed at page 1880: -

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

19 Neutral Citation No. (2024:HHC:8731) view of the decisions made in the said cases we have been persuaded irresistibly to hold that the correct procedure to be followed which would be in conformity with S. 145 of the Evidence Act to contradict the evidence given by .

prosecution witness at the trial with a statement made by him before the police during the investigation will be to draw the attention of the witness to that part of the contradictory statement which he made before the police, and questioned him whether he did in fact made that statement. If the witness admits having made the particular statement to the police, that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the

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

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19. Andhra Pradesh High Court held in Shaik Subhani v.

State of A.P., 1999 SCC OnLine AP 413: (1999) 5 ALD 284: 2000 Cri LJ .

321: (1999) 2 ALT (Cri) 208 that putting a suggestion to the witness and the witness denying the same does not amount to putting the contradiction to the witness. The attention of the witness has to be drawn to the previous statement and if he denies the same, the same is to be got proved by the investigating officer. It was observed at page 290: -

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

20. Calcutta High Court took a similar view in Anjan Ganguly v. State of West Bengal, 2013 SCC OnLine Cal 22948: (2013) 2 21 Neutral Citation No. (2024:HHC:8731) Cal LJ 144: (2013) 3 Cal LT 193 : (2013) 128 AIC 546 : (2014) 2 RCR (Cri) 970 : (2013) 3 DMC 760 and held at page 151:-

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"21. It was held in State of Karnataka v. Bhaskar Kushali Kothakar, reported as (2004) 7 SCC 487 that if any statement of the witness is contrary to the previous statement recorded under Section 161, Cr.P.C. or suffers from omission of certain material particulars, then the previous statement can be proved by examining the Investigating Officer who had recorded the same. Thus, there is no doubt that for proving the previous statement Investigating Officer ought to be examined, and the statement of the witness recorded by him, can only be proved by him and he has to depose to the extent that he had correctly recorded the statement, without adding or omitting, as to what was stated by the witness.

23. Proviso to Section 162(1), Cr.P.C. states in clear terms that the statement of the witness ought to be duly proved. The words if duly proved, cast a duty upon the accused who wants to highlight the contradictions by confronting the witness to prove the previous statement of a witness through the police officer who has recorded the same in the ordinary way. If the witness in the cross-examination admits contradictions then there is no need to prove the statement. But if the witness denies a contradiction and the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be proved by the police officer. In case prosecution fails to call the police officer in a given situation Court can call this witness or the accused can call the police officer to give evidence in defence. There is no doubt that unless the statement as per proviso to sub- section (1) of Section 162, Cr.P.C. is duly proved, the contradiction in terms of Section 145 of the Indian Evidence Act cannot be taken into consideration by the Court.

24. To elaborate this further, it will be necessary to reproduce Section 145 of the Indian Evidence Act.

22Neutral Citation No. (2024:HHC:8731) "S. 145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it intended to .

contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

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

26. Let us first understand what is proper procedure. A witness may have stated in the statement under Section 161, Cr.P.C. that 'X murdered Y'. In Court witness state 'Z murdered Y'. This is a contradiction. Defence Counsel or Court and even prosecution if the witness is declared hostile having resiled from previous statement, is to be confronted to bring contradiction on record. The attention of the witness must be drawn to the previous statement or statement under Section 161, Cr.P.C. where it was stated that 'X murdered Y'. Since Section 145 of the Indian Evidence Act use the word being proved, therefore, in the course of examination of the witness, previous statement or statement under Section 161, Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion contradicted will be specified. The trial Court in the event of contradiction has to record as under.

27. Attention of the witness has been drawn to portion A to A of statement marked as 1, and confronted with the portion where it is recorded that 'X murdered Y'. In this manner by way of confrontation contradiction is brought on record. Later, when the Investigating Officer is examined, the prosecution or defence may prove the statement, after the Investigating Officer testify that statement assigned mark was correctly recorded by him at that stage statement will be exhibited by the Court. Then 23 Neutral Citation No. (2024:HHC:8731) contradiction will be proved by the Investigating Officer by stating that witness had informed or told him that 'X murdered Y' and he had correctly recorded this fact.

28. Now a reference to the explanation to Section 162, .

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

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

21. In the present case, the witness had mentioned these facts for the first time in his cross-examination and not in his examination-in-chief. The statement under Section 161 Cr.PC is not detailed and is meant to be brief. It does not contain all the details. This position was laid down in Matadin v. State of U.P., 24Neutral Citation No. (2024:HHC:8731) 1980 Supp SCC 157 : 1979 SCC (Cri) 627 wherein it was observed at page 158:

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

25 Neutral Citation No. (2024:HHC:8731)

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

page 601:

"23. So far as the appeal filed by accused Esher Singh is concerned, the basic question is that even if the confessional statement purported to have been made by A- 5 is kept out of consideration, whether residuary material is sufficient to find him guilty. Though it is true as contended by learned counsel for the accused-appellant Esher Singh that some statements were made for the first time in court and not during investigation, it has to be seen as to what extent they diluted the testimony of Balbeer Singh and Dayal Singh (PWs 16 and 32) used to bring home the accusations. A mere elaboration cannot be termed as discrepancy. When the basic features are stated, unless the elaboration is of such nature that it creates a different contour or colour of the evidence, the same cannot be said to have totally changed the complexion of the case. It is to be noted that in addition to the evidence of PWs 16 and 32, the evidence of S. Narayan Singh (PW 21) provides the necessary links and strengthens the prosecution version. We also find substance in the plea taken by learned counsel for the State that evidence of Amar Singh Bungai (PW 24) was not tainted in any way, and

should not have been discarded and disbelieved only on surmises. Balbir Singh (PW 3), the son of the deceased has also stated about the provocative statements in his evidence. Darshan Singh (PW

14) has spoken about the speeches of the accused Esher Singh highlighting the Khalistan movement. We find that the trial court had not given importance to the evidence of some of the witnesses on the ground that they were relatives of the deceased. The approach is wrong. Mere relationship does not discredit the testimony of a witness. What is required is careful scrutiny of the evidence. If after careful scrutiny the evidence is found to be credible and cogent, it can be acted upon. In the instant case, the trial 26Neutral Citation No. (2024:HHC:8731) court did not indicate any specific reason to cast doubt on the veracity of evidence of the witnesses whom it had described to be the relatives of the deceased. PW 24 has categorically stated about the provocative speeches by A-1.

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No definite cross-examination on provocative nature of speech regarding Khalistan movement was made, so far as this witness is concerned."

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

> "12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter 27 Neutral Citation No. (2024:HHC:8731) or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it."

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

> "22. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs 18 and 19. The contradictions which are sought to be projected are minor contradictions which cannot be the basis to discard their evidence. The judgment of this Court in Mohar [Mohar v. State of U.P., (2002) 7 SCC 606: 2003 SCC (Cri) 121] relied on by the learned counsel for the respondent State supports the case of the prosecution. In the aforesaid judgment, this Court has held that convincing evidence is required, to discredit an injured witness. Para 11 of the judgment reads as under: (SCC p. 611) "11. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and has seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution case materially cannot create any infirmity. In the instant case the discrepancy in the name of PW 4 appearing in the FIR and the cross-examination of PW 1 has been amply clarified. In cross-examination PW 1 had clarified that his brother Ram Awadh had three sons : (1) Jagdish, PW 4, (2) Jagarnath, and (3) Suresh. This witness, however, stated that Jagarjit had only one name. PW 2 Vibhuti, however, stated that at the time of occurrence the son of Ram Awadh, Jagjit alias Jagarjit 28Neutral Citation No. (2024:HHC:8731) was milching a cow and he was also called as Jagdish. Balli (PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish."

23. The learned counsel for the respondent State has .

also relied on the judgment of this Court in Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324: (2011) 2 SCC (Cri) 216] . In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paras 27 and 30 of the judgment which are relevant, read as under: (SCC pp. 333-

34) "27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 :

(2010) 1 SCC (Cri) 107] , Balraje v. State of Maharashtra [Balraje v. State of Maharashtra, (2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 :

(2010) 3 SCC (Cri) 1262]) *** 29 Neutral Citation No. (2024:HHC:8731)

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as .

shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

'9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.' [Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186, p. 192, para 9 : 2004 SCC (Cri) 1435] Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. (Vide State v. Saravanan [State v. Saravanan, (2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580], Arumugam v. State [Arumugam v. State, (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130] , Mahendra Pratap Singh v. State of U.P. [Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] and Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar 30Neutral Citation No. (2024:HHC:8731) Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375] .)"

24. Further, in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of .

Maharashtra, (2000) 8 SCC 457 : 2000 SCC (Cri) 1546] , this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in criminal trial. In the aforesaid judgment it is held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of para 42 of the judgment reads as under : (SCC p. 483) "42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the

> court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

25. Therefore, the omission is not sufficient to discard the prosecution case

26. Even if there is some exaggeration, the same is not sufficient to discard the testimony of this witness. It was laid 31 Neutral Citation No. (2024:HHC:8731) down by the Hon'ble Supreme Court in Achchar Singh vs. State of H.P. AIR 2021 SC 3426 that the testimony of a witness cannot be .

discarded due to exaggeration alone. It was observed:

> 24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false.

Cambridge Dictionary defines "exaggeration" as "the fact of making something larger, more important, better or worse than it is". Merriam-Webster defines the term "exaggerate" as to "enlarge beyond bounds or the truth".

The Concise Oxford Dictionary defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an 'exaggerated statement' lies in a fact, to which fictitious additions are made to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, the Advance Law Lexicon defines "false" as "erroneous, untrue; opposite of correct, or true". Oxford Concise Dictionary states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differential between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. [Sucha Singh v. State of Punjab, (2003) 7 SCC 643,

18.] 32Neutral Citation No. (2024:HHC:8731)

25. Learned State counsel has rightly relied on Gangadhar Behera (Supra) to contend that even in cases where a major portion of the evidence is found deficient if the residue is sufficient to prove the guilt of the accused, a conviction can .

be based on it. This Court in Hari Chand v. State of Delhi, (1996) 9 SCC 112 held that:

> "24. ...So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of the evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon..."

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

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

33 Neutral Citation No. (2024:HHC:8731)

27. It was laid down by the Hon'ble Supreme Court in Arvind Kumar @ Nemichand and others Versus State of Rajasthan, .

2022 Cri. L.J. 374, that the testimony of a witness cannot be discarded because he had made a wrong statement regarding some aspect. The principle that when a witness deposes falsehood his entire statement is to be discarded is not applicable to India. It was observed:-

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

28. It was laid down in Paramjit Singh @ Mithu Singh Versus State of Punjab through Secretary (Home) (2007) 13 SCC 530, that when a person is attacked by many persons, it is difficult for him to graphically describe the number of the injuries and spell out accurately the situs of the injuries. It was observed:-

> 34Neutral Citation No. (2024:HHC:8731) "21. It is true that Gurmail Singh (PW-4) had not been able to spell out accurately the situs of the injuries on the dead body but the same would not make his presence doubtful.

The victim was under attack from a group of persons armed .

with deadly weapons. He must have made attempts to save himself from the attack and in the process may have not remained static without moving one way or the other. One cannot expect that in such a situation the witness would graphically describe the nature of injuries and spell out accurately the situs of the injuries on the body of the victim. Their presence at the scene of offence is evident from the First Information Report itself, which was lodged by Amar Singh (PW-3) himself. The fact remains Harnek Singh had been waylaid by the four accused and thereafter inflicted several blows with the gandasas and dang."

29. Hence, the testimony of the informant cannot be discarded because of a discrepancy in the number of blows given to him.

30. Narinder Singh (PW2) is an eyewitness. He stated that he was working with his father in the courtyard of his house on 19.07.2002 at about 04:00 PM. Accused Piare Lal started abusing him from the roof of his uncle's house. Accused Piare Lal said that he would not allow the water to pass through the retaining wall.

He also threatened to damage the retaining wall. He sent his wife Trishana Devi to demolish the retaining wall with an iron bar (Jhabal). When the informant went to stop Trishana Devi, he (Narinder Singh) went inside and stopped the work. He heard the 35 Neutral Citation No. (2024:HHC:8731) noise and went to the backyard of his house and saw his father (Amar Singh) lying on the ground. Amar Singh was bleeding from .

his head. Accused Piare Lal had an axe, Rajinder Singh had an iron bar and Trishana had a stick. Piare Lal gave two blows with the axe on the informant's head. When he (Narinder) intervened then Rajinder Singh gave a blow with an iron rod on his head. Piare Lal also gave a blow with an axe. Balbir and Roshan Lal rescued him and the informant. They went to the hospital where they were medically examined.

31. He denied in his cross-examination that they were digging the retaining wall. The fight took place near the retaining wall. The retaining wall is situated on the rear side of the house.

The water of the house was flowing towards the house of Narain Singh. He denied that they intended to pass water through the field of the accused Piare Lal, which was located on the rear side

of their house. He suffered an injury with an iron bar and an injury with an axe. He also suffered an injury with the stick on his arm which was caused by Trishana Devi. Rajinder Singh did not have a stick. He had mentioned to the police that his father was lying on the ground. He was confronted with his previous statement wherein this fact was not recorded. He had also told the police 36Neutral Citation No. (2024:HHC:8731) about two blows by Piare Lal. He was confronted with his previous statement where this fact was not recorded. Balbir and Roshan Lal .

are the real brothers and they were standing about 50 yards away.

He had not mentioned to the police that they were going to Joghon as the police did not inquire about this fact from him. He remained in the hospital for 3-4 days. He admitted that Piare Lal etc had instituted a case against them. He denied that they forcibly discharged water in the field of the accused Piare Lal.

32. He is an injured witness and his presence on the spot is not disputed. He was arrayed as an accused in the cross-case filed by the accused. 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 37 Neutral Citation No. (2024:HHC:8731) discussing the evidence more particularly the evidence relating to the basic prosecution case. While assessing and evaluating the evidence of eyewitnesses the Court must adhere to two principles, namely whether in the .
>
> circumstances of the case, it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable. The High Court in our opinion has failed to observe the aforesaid principles and in fact, had misappreciated the evidence which has caused a gross miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-
>
> examination and what impression is created by his evidence taken insofar as the context of the case and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3 we find they are consistent with one another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-examination to impeach their testimony. The aforesaid oral evidence fully

> corroborates the medical evidence. In that view of the matter we 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."

33. In the present case the witnesses had suffered multiple injuries and their presence on the spot is undisputed. 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: -

> 38Neutral Citation No. (2024:HHC:8731) "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 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).

34. 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.
>
> 39 Neutral Citation No. (2024:HHC:8731)
>
> 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:

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. 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) 40Neutral Citation No. (2024:HHC:8731)

35. Roshan Lal (PW3) stated that he heard the noise coming from Amar Singh's house. He and his brother Balbir Singh .

went to the spot and noticed that arguments were being exchanged between Amar Singh and Trishana Devi. Trishana Devi started uprooting the retaining wall (Danga) with an iron bar.

Accused Trishana Devi gave a blow with the iron bar on the head of Amar Singh (PW1). Piare Lal, Rajinder Singh and Sumiti Devi also reached the spot. Piare Lal had an axe and Rajinder Singh had a stick. Rajinder Singh took the iron bar from Trishana Devi and inflicted a blow on the head of Amar Singh (PW1) and as a result, Amar Singh (PW1) fell. Piare Lal started giving blows with an axe on the head of Amar Singh (PW1). Narinder Singh reached the spot and the accused gave a beating to him. The accused said that the informant party would be finished on that day itself. The informant and his son (Narinder Singh) were bleeding profusely and they were taken to the hospital.

36. He stated in his cross-examination that he was unaware of the cause of the quarrel. He heard that it was due to the discharge of water. Amar Singh (PW1) was getting his courtyard metalled during that period. He was not aware that the water in the courtyard was not flowing towards the retaining wall.

41 Neutral Citation No. (2024:HHC:8731) The field of Piare Lal was located by the side of the retaining wall.

His house was located at a distance of 50 yards from the house of .

the informant. The house of Narain Singh was located adjoining the house of the informant. No one from the house of Narain Singh came to the spot. He did not see people working in the fields. He had also not seen Trishana Devi with an iron bar coming from her house. He denied that a hole was provided by the informant for the discharging of water towards the field of Piare Lal. The retaining wall was constructed when he was a small boy.

Piare Lal, Rajinder Singh and Sumiti Devi came to the spot after a blow was given to the informant. The retaining wall was damaged to the extent of three feet. Stones and soil were lying on the ground but these were not seized by the police. Trishana Devi gave only one blow with an iron rod on the head of Amar Singh (PW1) from the sharp side of the iron bar. Rajinder Singh inflicted several blows with an iron rod on the head of the informant.

Accused Piare Lal gave two blows with an axe on the informant's head. Amar Singh had fallen at that time and he was crying. He could not see whether Amar Singh (PW1) was conscious at that time or not. Sumiti Devi gave a fist blow to the upper front body of Amar Singh (PW1). The scuffle took place in the field near the 42Neutral Citation No. (2024:HHC:8731) retaining wall and the blood was also scattered in the field. The police seized the blood-stained soil. The blood had scattered on a .

small portion and the cloths were smeared with the blood. He had not told the police about the blood which had scattered on the spot. He could not say whether an iron rod and axe were lying in the courtyard at the time of the execution of the work. He denied that the accused had not inflicted injuries on the informant and he was deposing falsely.

37. The testimony of this witness corroborated the statement of the informant and his son. There is nothing in his cross-examination to show that he was deposing falsely and learned Trial Court had rightly relied upon his testimony.

38. The medical evidence also corroborated the prosecution's version. Dr. Kuldeep Jaswal (PW5) conducted the medical examination of the informant and his son. He found that they had sustained injuries that could have been caused by sharp edges of the weapons like an axe (Ex-P3) and iron bar (Ex-P1) and blunt injuries that could have been caused by the blunt side of the axe, iron bar and stick. He stated in his cross-examination that he had not given any opinion regarding injury No. 3 sustained by 43 Neutral Citation No. (2024:HHC:8731) Narinder. The informant had suffered an

injury on the vital part of the body and the incised wound could have been caused by the .

sharp-edged weapon. The injury could not be caused by the blunt side of the iron bar. This injury can also not be caused if the victim and attacker are in a standing position; however, the injury would be caused if the sharp-edged portion was used in a standing position. He admitted that injuries Nos. 1 and 2 could not be caused in the case of the informant by the simultaneous blow of the axe and the iron bar. He denied that the injuries could be caused by a fall. He had noticed the fracture of the underlined bone while examining the patient. He admitted that injuries No. 1 and 2 cannot be caused by the simultaneous use of Ex-P1 & Ex-P3 upon Narinder Singh. Injury No. 3 cannot be caused if the blow is given from the sharp side.

39. The medical evidence established that the incised wounds sustained by the informant and his son could have been caused by the sharp side of the iron bar and the axe recovered by the police. The suggestion that injuries cannot be caused if the axe and iron bar are used simultaneously at the same point will not help the defence, because it is not the case of the prosecution that both weapons were used simultaneously at one point.

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40. The incident had taken place at about 04:00 PM and the matter was reported to the police on the same day at 06:30 PM .

within 02.30 hours. The intimation was given to the police at 05:20 PM and entry No. 14 (Ex-PW10/A) was recorded in the police post that Amar Singh (PW1) and Narinder were brought to the police post. They were bleeding and unconscious. They were sent to CHC, Nalagarh and the police were informed. Entry No. 17 (Ex-PW6/A) was recorded by the Nalagarh Police and the Investigating Officer was sent to the hospital. The medical examination of the victim was conducted on 19.07.2002 at 06:00 PM. This shows that the matter was reported to the police immediately. 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:

> "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) 45 Neutral Citation No. (2024:HHC:8731) 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."

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41. 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...."

42. 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.
>
> 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 46Neutral Citation No. (2024:HHC:8731) 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] .)

43. 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 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) 47 Neutral Citation No. (2024:HHC:8731) 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] .)

44. It was submitted that the police erred in not recording the FIR when the commission of a cognizable offence was disclosed to the police. This submission cannot be accepted. Entry No. 14 (Ex-PW10/A) shows that two injured persons were brought to the police post who were unconscious. It was not mentioned in the entry who had caused the injuries and how they became unconscious. Therefore, the information given to the police did not disclose the commission of cognizable offence and the FIR could not have been registered at that time. It was laid down by the Hon'ble Supreme Court in Ramsinh Bavaji Jadeja v. State of Gujarat, (1994) 2 SCC 685: 1994 SCC (Cri) 609 that cryptic telephonic information given to the police does not constitute FIR.

It was observed at page 688: -

> 6. Now the question which has to be examined is as to whether the cryptic information given on telephone by Head Constable can be held to be the first information report of the occurrence. Section 154 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') requires an officer in charge of a police station to reduce to writing every information relating to the commission of a cognizable offence, if given orally to such officer. It further requires that such information, which has been reduced to 48Neutral Citation No. (2024:HHC:8731) writing shall be read over to the informant and the information reduced to writing or given in writing by the person concerned shall be signed by the person giving it.

Section 2(h) defines investigation to include all the .

proceedings under the Code for the collection of evidence conducted by a police officer or by any other person (other than a Magistrate), who is authorised by a Magistrate in this behalf.

7. From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information

of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including details about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of an investigation", covered by Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. This can be illustrated. In a busy market place, a murder is committed. Any person in the market, including one of the shop-owners, 49 Neutral Citation No. (2024:HHC:8731) telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the accused or the victim. On the basis of that information, the officer in charge, reaches the .

place where the offence is alleged to have been committed.

Can it be said that before leaving the police station, he has recorded the first information report? In some cases the information given may be that a person has been shot at or stabbed. It cannot be said that in such a situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence.

8. In the case of Tapinder Singh v. State of Punjab [(1970) 2 SCC 113 : 1970 SCC (Cri) 328 : AIR 1970 SC 1566] it was said by this Court, that anonymous telephone message at police station that firing had taken place at a taxi stand; does not by itself clothe it with character of first information report, merely because the said information was first in point of time and the said information had been recorded in the daily diary of the police station, by the police officer responding to the telephone call. Again in the case of Soma Bhai v. State of Gujarat [(1975) 4 SCC 257 : 1975 SCC (Cri) 515 :

> AIR 1975 SC 1453] in respect of an information given to the police station by telephone, it was held : (SCC p. 271, para
>
> 19) "The message given to the Surat Police Station was too cryptic to constitute a first information report within the meaning of Section 154 of the Code and was meant to be only for the purpose of getting further instructions.

Furthermore, the facts narrated to the P.S.I. Patel which was reduced into writing a few minutes later undoubtedly constituted the first information report in point of time made to the police in which necessary facts were given. In these circumstances, therefore, we are clearly of the opinion

that the telephonic message to the Police Station at Surat cannot constitute the FIR and the 50Neutral Citation No. (2024:HHC:8731) High Court was in error in treating the FIR lodged in the present case as inadmissible in evidence." Recently, in the case of Dhananjoy Chatterjee alias Dhana v. State of W.B. [(1994) 2 SCC 220 : JT (1994) 1 SC 33] it .

was said the cryptic telephonic message received at the police station from the father of the deceased had only made police agency run to the place of occurrence and to record the statement of the mother of the deceased; the investigation commenced thereafter.

45. This position was reiterated in Surajit Sarkar v. State of W.B., (2013) 2 SCC 146 : (2013) 1 SCC (Cri) 877: 2012 SCC OnLine SC 999 wherein it was observed at page 154:

> Discussion Whether a telephonic intimation is an FIR
>
> 33. As far as the first contention is concerned that the telephonic call should be treated as the FIR and not the complaint made by PW 1 Susanta Sarkar, we find no merit in the submission.
>
> 34. Section 154(1) CrPC which is relevant for our purpose reads as follows:
>
> "154.Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

A bare reading of this section makes it clear that even though oral information given to an officer in charge of a police station can be treated as an FIR, yet some procedural 51 Neutral Citation No. (2024:HHC:8731) formalities are required to be completed. They include reducing the information in writing and reading it over to the informant and obtaining his or her signature on the transcribed information.

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35. In the case of a telephonic conversation received from an unknown person, the question of reading over that information to the anonymous informant does not arise nor does the appending of a signature to the information, as recorded, arise.

36. However, we are not going into any technicalities on the subject, keeping in mind technological advances made in communication systems. All we need say is that it is now well settled by a series of decisions rendered by this Court that a cryptic telephonic information cannot be treated as an FIR. In this case, the telephonic information is rather cryptic and was recorded in the general diary as

follows:

> "Today in the marginally noted time I received an information over telephone from an unknown person from Gobindapur, PS Santipur, Nadia that today (21-3- 1992) night one unknown person was murdered at Arpara, PS Santipur, Nadia.

Accordingly I noted the fact in GD, and informed the matter to OC, Santipur PS (N).

sd/-

K.P. Majumdar, SI"

37. In Ramsinh Bavaji Jadeja [(1994) 2 SCC 685 : 1994 SCC (Cri) 609] this Court relied on Tapinder Singh [(1970) 2 SCC 113 : 1970 SCC (Cri) 328] and Soma Bhai [(1975) 4 SCC 257 :

> 1975 SCC (Cri) 515] and Dhananjoy Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] to hold that a cryptic message given on telephone cannot be treated as an FIR merely because that information was first in point of time and had been recorded in the daily diary of the police station. It was also held that the object and purpose of a telephonic message is not to lodge a first information 52Neutral Citation No. (2024:HHC:8731) report but a request to the officer in charge of the police station to reach the place of occurrence. This view was reiterated in Mundrika Mahto v. State of Bihar [(2002) 9 SCC 183 : 2003 SCC (Cri) 1163] , State of A.P. v. V.V. Panduranga .

Rao [(2009) 15 SCC 211 : (2010) 2 SCC (Cri) 394] and Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] . We see no reason to take a view different from the one consistently taken by this Court in all these cases.

We may only add that it is a matter of regret that despite the law on the subject being well settled, such an argument is raised once again.

46. The police had referred the injured to the hospital, which shows that the police were concerned with saving the lives of the injured. Therefore, the prosecution case cannot be doubted because the police did not register the FIR when the victims were brought to the police post.

47. It was submitted that the accused had also sustained injuries and there was no explanation for the same, which is fatal to the prosecution case. Reliance was placed upon the judgment of Sivmani & Anr. (supra). In the present case, the statement of the Medical Officer was not recorded to examine the nature of the injuries sustained by the accused. The prosecution is under an obligation to explain the injuries, which are grievous and not minor or superficial. It was laid down by the Hon'ble Supreme Court in Hari v. State of Maharashtra, (2009) 11 SCC 96: (2009) 3 SCC (Cri) 1254: 2009 SCC OnLine SC 606 that where the injury report 53 Neutral Citation No. (2024:HHC:8731) was not brought on record and the nature of injuries was not proved, the prosecution case cannot be

doubted due to non-

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explanation of injuries. It was observed at page 104:

> 30. On the other question, namely, non-explanation of injury on the accused persons, learned counsel for the appellant has cited a decision in Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394: 1976 SCC (Cri) 671] . In the said case, this Court while laying down the principle that the prosecution has a duty to explain the injuries on the person of an accused held that non-explanation assumes considerable importance where the evidence consists of interested witnesses and the defence gives a version which competes in probability with that of the prosecution case.
>
> 31. But while laying down the aforesaid principle, the learned Judges at SCC pp. 401-02, para 12 of Lakshmi Singh [(1976) 4 SCC 394: 1976 SCC (Cri) 671] held that there are cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This would "apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries".
>
> 32. Therefore, no general principles have been laid down that non-explanation of injury on an accused person shall in all cases vitiate the prosecution case. It depends on the facts and the case in hand falls within the exception mentioned in para 12 of Lakshmi Singh [(1976) 4 SCC 394 :
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> 1976 SCC (Cri) 671] .
>
> 33. In the instant case no defence plea has been put up.

Apart from that the High Court found that the defence did not bring on record the injury report and the nature of 54Neutral Citation No. (2024:HHC:8731) injuries was not made known to the Court. Therefore, the ratio in Lakshmi Singh [(1976) 4 SCC 394: 1976 SCC (Cri) 671] is not attracted in the instant case. In this context, this Court may refer to the decision of this Court in State of .

Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] which has been followed in Lakshmi [(1976) 4 SCC 394 : 1976 SCC (Cri) 671] .

34. In Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] , the learned Judges have laid down the following principle in para 17, which is quoted below: (SCC p. 13) "17. In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

> (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.
>
> (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
>
> (3) It does not affect the prosecution case at all."

In the opening words of the aforesaid para 17, the learned Judges were thinking of a case where private defence was pleaded. In the instant case, no plea of private defence was taken. So here and especially when the injury report is not on record, the third "result" pointed in Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] would apply.

35. On the aforesaid point, learned counsel for the appellant relied on a decision of this Court in State of Rajasthan v. Rajendra Singh [(2009) 11 SCC 106: 1998 SCC (Cri) 1605] . In that case, this Court was considering the State's appeal against an order of acquittal. It is well known that the considerations which weigh with this Court in deciding a State's appeal against an order of acquittal by the High Court are totally different from a case where there 55 Neutral Citation No. (2024:HHC:8731) are concurrent findings both by the trial court and the High Court about the guilt of the appellant.

48. It was held in Thoti Manohar v. State of A.P., (2012) 7 .

SCC 723: (2012) 3 SCC (Cri) 721: 2012 SCC OnLine SC 449 that non-

explanation of injuries is not always fatal to the prosecution case.

It was observed at page 731:

> 29. Quite apart from the above, non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully refer to Shriram v. State of M.P. [(2004) 9 SCC 292 : 2004 SCC (Cri) 1453] wherein it has been held that mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested and so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. Hence, we repel the said submission of the learned counsel for the appellants.

49. In the present case, the defence has not proved the injuries on the person of the accused and it cannot be said that there is a non-explanation of injuries.

50. The injuries were caused on the head with an iron bar and the axe. The head is the vital part of the body. The axe and the iron bar are dangerous weapons. The injuries were endangering the life as per the opinion of the Medical Officer. The weapon used by the accused and the part of the body where the injuries were 56Neutral Citation No. (2024:HHC:8731) caused can only lead to the inference that the intent was to cause the death of the informant and his son. It was laid down by the .

Hon'ble Supreme Court in State of M.P. v. Harjeet Singh, (2019) 20 SCC 524: (2020) 3 SCC (Cri) 868: 2019 SCC OnLine SC 231 that where the injury was caused on the temporal region, a vital part, that is sufficient to attract Section 307 of IPC. It was observed:

> 5.6.1. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.
>
> 5.6.2. This Court in R. Prakash v. State of Karnataka [R. Prakash v. State of Karnataka, (2004) 9 SCC 27: 2004 SCC (Cri) 1408], held that: (SCC p. 30, paras 8-9) "8. ... The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non-

vital parts, that does not take away the rigour of Section 307 IPC. ...

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in the execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section." (emphasis supplied) 57 Neutral Citation No. (2024:HHC:8731) 5.6.3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a "vital .

part" of the body, merely causing "hurt" is sufficient to attract Section 307 IPC. [State of M.P. v. Mohan, (2013) 14 SCC 116: (2014) 4 SCC (Cri) 119] 5.6.4. This Court in Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366: (2015) 4 SCC (Cri) 425] held that: (SCC p. 370, para 12) "12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit the murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that a fatal injury capable of causing death should have been caused. Although the nature of the injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused

is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, the motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc." (emphasis supplied) 5.6.5. This Court in the recent decision of State of M.P. v. Kanha [State of M.P. v. Kanha, (2019) 3 SCC 605:

> (2019) 2 SCC (Cri) 247] held that: (SCC p. 609, para 13) "13. The above judgments [Ed.: The reference is to State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28:
>
> 1983 SCC (Cri) 320; State of M.P. v. Saleem, (2005) 5 SCC 554: 2005 SCC (Cri) 1329; Jage Ram v. State of Haryana, 58Neutral Citation No. (2024:HHC:8731) (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] of this Court lead us to the conclusion that proof of grievous or life-

threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the .

accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent." (emphasis supplied)

51. Therefore, the accused were rightly convicted by the learned Trial Court for the commission of an offence punishable under Section 307 of IPC.

52. The accused were acting in concert, which shows that they shared a common intention. They had beaten the informant and his son while acting together. These circumstances are sufficient to show that all the accused shared a common intention.

The common intention was explained by the Hon'ble Supreme Court in Jasdeep Singh v. State of Punjab, (2022) 2 SCC 545 : (2022) 1 SCC (Cri) 526: 2022 SCC OnLine SC 20 as under at page 554:

> Section 34 IPC
>
> 17. We shall first go back into the history to understand Section 34 IPC as it stood at the inception and as it exists now.

Old Section 34 IPC	New Section 34 IPC
"34. Each of several persons liable for an act done by all, in like manner as if done by him alone.--	"34. Acts done by several persons in furtherance of common intention.--When a criminal act is done by several persons, in furtherance of the common intention of all,

> When a criminal act is each of such persons is liable for that act done by several persons, in the same manner as if it were done by each of such persons is him alone."

liable for that act in the .

(emphasis supplied) same manner as if the act were done by him alone"

> 18. On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Barnes Peacock, C.J. presiding over a Bench of the Calcutta High Court, while delivering its decision in R. v. Gorachand Gope [R. v. Gorachand Gope, 1866 SCC OnLine Cal 16] which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view : (SCC OnLine Cal) "It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by 60Neutral Citation No. (2024:HHC:8731) and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, .
>
> and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

19. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one. Therefore, in order to attract Sections 34 to 39 IPC, a series of acts done by several persons would be related to

a single act which constitutes a criminal offence. A similar meaning is also given to the word "omission", meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-

61 Neutral Citation No. (2024:HHC:8731) fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or .

saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant 62Neutral Citation No. (2024:HHC:8731) to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to .

analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.

28. The essence and scope of Section 34 IPC can be borne out of excerpts from the following judgments:

> 28.1.Suresh v. State of U.P. [Suresh v. State of U.P., (2001) 3 SCC 673 : 2001 SCC (Cri) 601] : (SCC pp. 682-83 & 686-87, paras 24 & 40) "24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt 63 Neutral Citation No. (2024:HHC:8731) act, even an illegal omission to do a certain act in a certain situation can amount to an act e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The .

co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the

accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC.

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40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in Satrughan Patar v. Emperor [Satrughan Patar v. Emperor, 1919 SCC OnLine Pat 4 : AIR 1919 Pat 111] held that it is only 64Neutral Citation No. (2024:HHC:8731) when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

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28.2.Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] : (SCC p. 277, para 22) "22. The above discussion in fine thus culminates to the effect that the requirement of statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot absolve the accused -- though the same however depends upon the fact situation of the matter under consideration and no rule steadfast can be laid down therefor." 28.3.Chhota Ahirwar v. State of M.P. [Chhota Ahirwar v. State of M.P., (2020) 4 SCC 126] : (SCC p. 133, para 24) "24. Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] . There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

28.4.Barendra Kumar Ghosh v. Emperor [Barendra Kumar Ghosh v. Emperor, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 :

> AIR 1925 PC 1] : (SCC OnLine PC) 65 Neutral Citation No. (2024:HHC:8731) "... the words of Section 34 are not to be eviscerated by reading them in this exceedingly limited sense. By Section 33 a criminal act in Section 34 includes a series of acts and, further, "act" includes omissions to act, for example, an .

omission to interfere in order to prevent a murder being done before one's very eyes. By Section 37, when any offence is committed by means of several acts whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait". By Section 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part, because they refer to it. Section 37 provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence. Section 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other."

28.5. Mahbub Shah v. Emperor [Mahbub Shah v. Emperor, 1945 SCC OnLine PC 5 : (1944-45) 72 IA 148 : AIR 1945 PC 118] :

> (SCC OnLine PC) 66Neutral Citation No. (2024:HHC:8731) "... Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all", nor does it say "an intention common to all." Under the section, the essence of that .
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> liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-
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> arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan."

28.6.Rambilas Singh v. State of Bihar [Rambilas Singh v. State of Bihar, (1989) 3 SCC 605 : 1989 SCC (Cri) 659] : (SCC pp. 609- 10, para 7) "7. ... It is true that in order to convict persons vicariously under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly." 28.7.Krishnan v. State of Kerala [Krishnan v. State of Kerala, (1996) 10 SCC 508 : 1996 SCC (Cri) 1375] : (SCC p. 515, para 15) "15. Question is whether it is obligatory on the part of the prosecution to establish commission of an overt act to press into service Section 34 of the Penal Code. It is no doubt true that court likes to know about an overt act to decide whether the person concerned had shared the 67 Neutral Citation No. (2024:HHC:8731) common intention in question. Question is whether an overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets .

attracted when "a criminal act is done by several persons in furtherance of the common intention of all". What has to be, therefore, established by the prosecution is that all the persons concerned had shared the common intention.

Court's mind regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention : res ipsa loquitur."

(emphasis in original) 28.8.Surendra Chauhan v. State of M.P. [Surendra Chauhan v. State of M.P., (2000) 4 SCC 110 : 2000 SCC (Cri) 772] : (SCC p. 117, para 11) "11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture."

28.9.Gopi Nath v. State of U.P. [Gopi Nath v. State of U.P., (2001) 6 SCC 620] : (SCC p. 625, para 8) "8. ... As for the challenge made to the conviction under Section 302 read with Section 34 IPC, it is necessary to advert to the salient principles to be kept into consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, 68Neutral Citation No. (2024:HHC:8731) render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action -- be it that it was not overt or was only a covert act or merely an omission constituting an illegal .

omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case."

28.10.Ramesh Singh v. State of A.P. [Ramesh Singh v. State of A.P., (2004) 11 SCC 305 : 2004 SCC (Cri) Supp 70] : (SCC p. 314, para 12) "12. ... As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention, then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration." 28.11.Nand Kishore v. State of M.P. [Nand Kishore v. State of M.P., (2011) 12 SCC 120 : (2012) 1 SCC (Cri) 378] : (SCC pp. 126- 27, paras 20-23) 69 Neutral Citation No. (2024:HHC:8731) "20. A bare reading of this section shows that the section could be dissected as follows:

(a) Criminal act is done by several persons;

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(b) Such act is done in furtherance of the common intention of all; and

(c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 IPC must be done by several persons. The emphasis in this part of the section is on the word "done". It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity.

21. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the 70Neutral Citation No. (2024:HHC:8731) one hand and "mens rea" as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former but they are distinct and .

different.

22. Section 34 also deals with constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. If the common intention leads to the commission of the criminal offence charged, each one of the persons sharing the common intention is constructively liable for the criminal act done by one of them. (Refer to Brathi v. State of Punjab [Brathi v. State of Punjab, (1991) 1 SCC 519 : 1991 SCC (Cri) 203] .)

23. Another aspect which the court has to keep in mind while dealing with such cases is that the common intention or state of mind and the physical act, both may be arrived at the spot and essentially may not be the result of any predetermined plan to commit such an offence. This will always depend on the facts and circumstances of the case, ..."

28.12.Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] : (SCC p. 682, para 87) "87. Upon analysis of the above judgments and in particular the judgment of this Court in Dharnidhar v. State of U.P. [Dharnidhar v. State of U.P., (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491] , it is clear that Section 34 IPC applies where two or more accused are present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 IPC, moreover, involves vicarious liability and therefore, if the intention is proved but no overt act was committed, the section can still be invoked. This provision carves out an exception from general law that a person is responsible for his own act, as 71 Neutral Citation No. (2024:HHC:8731) it provides that a person can also be held vicariously responsible for the act of others, if he had the common intention to commit the act. The phrase "common intention" means a pre-oriented plan and acting in .

pursuance to the plan, thus, common intention must exist prior to the commission of the act in a point of time. The common intention to give effect to a particular act may even develop on the spur of the moment between a number of persons with reference to the facts of a given case."

29. The aforesaid principle has also been dealt with in extenso by the Supreme Court in Virendra Singh v. State of M.P. [Virendra Singh v. State of M.P., (2010) 8 SCC 407 : (2010) 3 SCC (Cri) 893] through the following paragraphs : (SCC pp. 413 & 420-21, paras 15-17 & 36-42) "15. Ordinarily, a

person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. Under this section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime showing a prearranged plan and prior concert. The common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference. This has been clearly laid down by this Court in Amrik Singh v. State of Punjab [Amrik Singh v. State of Punjab, (1972) 4 SCC (N) 42 : 1972 Cri LJ 465] .

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16. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the .

intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

17. Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another under the provisions of this section, it must be established that there was common intention in the sense of a prearranged plan between the two and the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply.

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36. Referring to the facts of this case, the short question which arises for adjudication in this appeal is whether the appellant Virendra Singh can be convicted under Section 302 with the aid of Section 34 IPC. Under the Penal Code, the persons who are connected with the preparation of a crime are divided into two categories : (1) those who actually commit the crime i.e. principals in the first degree; and (2) those who aid in the actual commission i.e. principals in the second degree. The law does not make any distinction with regard to the punishment of such persons, all being liable to be punished alike.

37. Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object 73

Neutral Citation No. (2024:HHC:8731) of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

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38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

39. The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinised by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

41. The essence of Section 34 IPC is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. Russell in his celebrated book Russell on Crime, 12th Edn., Vol. 1 indicates some kind of aid or assistance producing an effect 74Neutral Citation No. (2024:HHC:8731) in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony. It was observed by Russell that any act of preparation for .

the commission of felony is done in furtherance of the act.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability.

Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done

by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34."

53. The accused had also threatened to kill the informant party. Thus, the learned Trial Court had rightly convicted the accused for the commission of offences punishable under Sections 307, 324, 323 and 506 of IPC read with Section 34 of IPC.

54. Learned Trial Court had sentenced the accused to undergo rigorous imprisonment for three years for the commission of an offence punishable under Section 307 of IPC, considering the weapon used and the part of the body where the 75 Neutral Citation No. (2024:HHC:8731) injury was caused, the punishment of three years of rigorous imprisonment is not excessive and no interference is required .

with the same.

55. No other point was urged.

56. Thus, there is no infirmity in the judgment and order passed by the learned Trial Court and no interference is required with the same. Hence, the present appeal fails and the same is dismissed.

57. The present appeal stands disposed of and so also the pending applications, if any.

58. The record of the learned trial Court be returned with a judgment of this Court.

(Rakesh Kainthla) Judge 18th September, 2024.

(Shamsh Tabrez)