



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 459 of 2015

Reserved on: 27.08.2025

Decided on: 10.10.2025

Dalip Singh

.....Appellant

Versus

State of Himachal Pradesh

.....Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

**For the Appellant : Mr Ashil Bhushan Rehalia,
Advocate, vice Mr Javed Khan,
Advocate.**

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

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 06.11.2015 passed by learned Additional Sessions Judge-I, Mandi, District Mandi, H.P. (learned Appellate Court) vide which the judgment of conviction dated 18.01.2014 and order of sentence dated 13.03.2014 passed by the learned Judicial Magistrate, First Class, Karsog, District Mandi

¹ Whether the reporters of the local papers may be allowed to see the Judgment? Yes.

(learned Trial Court) were upheld. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 353 and 332 of the Indian Penal Code (IPC) and Section 3 of the Prevention of Damage to Public Property Act, 1984 (PDP Act). It was asserted that Bhuvnu Ram (PW1) was posted as Secretary in the Gram Panchayat, Jaral. He was discharging his duties on 26.04.2012. The accused Dalip Singh came to his office at about 4:15 P.M. in a state of intoxication. The accused picked up a quarrel with the informant without any reason and obstructed him in the discharge of his official duties. Kanshi Ram, Deema Ram (PW2) and Ex-Pradhan Shyam Lal were also present in the office, who pacified the accused. The accused went outside and returned after some time, holding his hands behind his back. He came near the victim and told him, 'Bhai Sahib Kya Vichar Hai' (brother, what are your thoughts). The accused was holding a stone in his hand. He inflicted an injury with the stone on the informant's left eye and ran away from the spot. The informant

reported the matter to the police through an application (Ex.PW1/A), and the police registered an F.I.R. (Ex.PW5/A). ASI Jhabe Ram (PW5) investigated the matter. He filed an application (Ex. PW5/C) for conducting the medical examination of the victim/informant. Dr Rakesh Gupta (PW9) conducted the medical examination of the victim/informant and found that he had sustained simple injuries which could have been caused by means of a blunt weapon, like a stone. He issued MLC (Ex. PW9/A). ASI Jhabe Ram went to the spot and prepared a site plan (Ex. PW5/D). He found blood stains on the spot. He scratched them with a blade and put them in a paper packet. He put the paper packet in a glass vial and sealed the vial in a parcel with seal 'A'. He seized the blood stains vide memo (Ex.PW5/E). The victim produced one stone (Ex. P4), which was seized vide memo (Ex.PW1/B). The victim also produced the official calculator (Ex. P3), which was damaged in the incident. It was also put in a cloth parcel, and the parcel was sealed with four impressions of seal 'A'. Seal impressions (Exs.PW5/F & PW5/G) were taken on separate pieces of cloth. ASI Jhabe Ram took the photographs (Ext. PW5/H to Ext. PW5/M). Jagdish Sharma (PW3) produced the appointment order (Ex.PW3/A) of the victim. Subhash Chand (PW4) produced the copy of the

proceedings register (Ex.PW4/A). The case property was sent to RFSL, Mandi. Report of analysis (Ex.PW5/N) was issued stating that human blood was found on the blood lifted from the spot. Statements of prosecution witnesses were recorded as per their version, and after completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 353 and 332 of the IPC and Section 3 of the PDP Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Bhuvnu Ram (PW1) is the informant/victim. Deema Ram (PW2) is an eyewitness. Jagdish Sharma (PW3) and Subhash Chand (PW4) produced the record. ASI Jhabe Ram (PW5) investigated the matter. Constable Sumita Devi (PW6) was working as 'malkhana mohrrir' with whom the case property was deposited. Constable Khem Singh (PW7) carried the case property from Police Post Pangna to Police Station, Karsog. ASI Sohan Lal (PW8) partly investigated the matter and

seized the documents. Dr Rakesh Gupta (PW9) medically examined the victim.

5. The accused, in his statement recorded under Section 313 of the Criminal Procedure Code (Cr.P.C), admitted that Bhuvnu Ram was posted as Secretary in Gram Panchayat, Jaral on 26.04.2012. He denied the rest of the prosecution’s case. He stated that Bhuvnu Ram had consumed liquor on the date of the incident and sustained injuries by way of a fall. The office was closed on the date of the incident. The witnesses are the informant’s friends. He was falsely implicated. He stated that he wanted to lead defence evidence, but subsequently, his counsel made a statement that no evidence was to be led.

6. Learned Trial Court held that the informant’s statement was duly corroborated by Deema Ram (PW2). There was nothing on record to show that the prosecution’s witnesses made false statements. The prosecution’s case was proved beyond a reasonable doubt. Therefore, the accused was convicted for the commission of offences punishable under Sections 353 and 332 of the IPC and Section 3 of the PDP Act and sentenced as under: -

Section(s)	Sentence(s)
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Section 332 of the IPC	The convict was ordered to undergo simple imprisonment for six months and pay a fine of ₹1,000/-.
Section 353 of the IPC	The convict was ordered to undergo simple imprisonment for six months and pay a fine of ₹1,000/-.
Section 3 of the PDP Act	The convict was ordered to undergo simple imprisonment for two months and pay a fine of ₹ 500/-.
In default of making the payment of fine, the convict was ordered to undergo further simple imprisonment for one month for the aforesaid offences. All substantive sentences of imprisonment awarded to the convict were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Mandi, District Mandi, H.P. (learned Appellate Court). Learned Appellate Court held that the victim's statement was duly corroborated by the statement of Deema Ram and the medical evidence. Minor contradictions in the statements were not sufficient to doubt the prosecution's case. It was proved by the prosecution's evidence that the informant/victim was working as the Panchyat Secretary, the accused obstructed him from discharging his duties and caused simple hurt to him. The

accused had also damaged the calculator. The learned Trial Court had rightly convicted and sentenced the accused. Consequently, the appeal filed by the accused was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed the present revision asserting that the learned Courts below failed to properly appreciate the material on record. The benefit of the Probation of Offenders Act was not granted to the accused. The prosecution's version is inherently improbable. Therefore, it was prayed that the present revision be allowed and judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Ashil Bhushan Rehalia, Advocate vice Mr Javed Khan, Advocate, for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

10. Mr Ashil Bhushan Rehalia, Advocate, representing the petitioner/accused, submitted that the petitioner/accused is innocent and he was falsely implicated. The learned Courts below failed to properly appreciate the evidence on record. The defence version that the informant was intoxicated on the date of the incident was highly improbable. There was a delay in

reporting the matter to the police, which was not properly explained. The benefit of the Probation of Offenders Act was not granted to the accused. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the victim's testimony was duly corroborated by the statement of Deema Ram and the medical evidence. There was nothing inherently improbable in their testimonies. The learned Courts below had rightly accepted the testimonies of prosecution witnesses. This Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Therefore, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional court is not an appellate court and it can only rectify

the patent defect, errors of jurisdiction or the law. It was observed at page 207:-

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

14. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander [Amit Kapoor*

v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories

aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275], while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of

justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not

interfere with the decision in exercise of their revisional jurisdiction.”

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar***, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH***, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

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

18. The informant Bhunvu Ram stated that he was present in his office on 26.04.2012 at about 4:15 P.M. when the accused came to his office in a state of intoxication. The accused argued with him without any reason and obstructed him in the discharge of his official duties. Deema Ram, Shyam Lal and Kanshi Ram were present in the office who counselled the accused. The accused went out of the office and returned. He

asked the informant 'Kya vichar hai' (What are your thoughts?) and inflicted injury by means of a stone. He sustained a bleeding injury near his left eye. He reported the matter to the police by means of an application (Ex. PW1/A). The police came to the spot and picked up blood stains. The accused had also damaged an official calculator, which was seized by the police. He identified the stone and the calculator. He admitted in his cross-examination that Shyam Lal is running a hotel near Old Panchyat Ghar. He admitted that villagers visit the office of Panchyat till 5:00 P.M. He denied that Shyam Lal, etc., had sacrificed a goat or that he had sustained injuries by a fall in a state of intoxication.

19. There is nothing in his cross-examination to show that he was making a false statement. It was suggested to him that he was not having a cordial relationship with the accused, and he denied it. The accused also did not state any such fact in his statement recorded under Section 313 of Cr.P.C. Therefore, a denied suggestion was not sufficient to doubt his testimony.

20. Dr. Rakesh Gupta (PW9) medically examined the victim and found that he had sustained simple injuries which could have been caused by means of a blunt weapon like a stone

(Ex. P4). He stated in his cross-examination that the injuries noticed by him could have been caused by a fall on a hard surface. However, that is an alternative hypothesis and is not supported by any material on record. It was laid down by the Hon'ble Supreme Court in *Ramakant Rai v. Madan Rai*, (2003) 12 SCC 395: 2003 SCC OnLine SC 1086 that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative possibilities is not sufficient to discard the prosecution's case. It was observed at page 404:

22. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the "credit" of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

21. Therefore, the prosecution's case cannot be rejected due to alternative possibilities in the medical evidence.

22. Deema Ram (PW2) stated that he and Bhuvnu Ram were present in the Panchyat Ghar, Jaral. The accused came to the Panchyat Ghar in a state of intoxication. He (accused) had arguments with the complainant. The accused was taken out of the Panchyat Ghar by Shyam Lal, however, the accused returned after some time with the stone. He inflicted injury on Bhuvnu Ram. The calculator kept on the table was also damaged. The accused ran away from the spot. The matter was reported to the police. The police reached the spot and picked up blood stains from the spot. He stated in his cross-examination that he had accompanied Bhuvnu Ram on the date of the incident. He denied that he was not on talking terms with the accused. He admitted that Shyam Lal had sacrificed a goat outside the Panchyat Ghar and Bhuvnu Ram had consumed liquor. He admitted that Shyam Lal was running a tea shop outside the Panchyat Ghar. He denied that the victim had sustained injuries by way of a fall, and he was not present at the spot.

23. Statement made by Deema Ram (PW2) in the cross-examination that Shyam Lal had sacrificed a goat, and the victim, Bhuvnu Ram, had consumed liquor will not make the prosecution's case suspect. He categorically denied that Bhuvnu Ram had sustained injuries by way of a fall. These admissions

show that he is a truthful witness and has not concealed the consumption of liquor by the victim. Therefore, his testimony in the examination-in-chief that the accused entered the Panchyat Ghar and inflicted injury to the informant by stone was rightly accepted by the learned Trial Court.

24. It was submitted that the victim denied in his cross-examination that he had consumed liquor and Shyam Lal had sacrificed a goat, which is contrary to the statement of Deema Ram (PW2). Hence, the prosecution's case is highly suspect. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728: 1983 SCC OnLine SC 152* that a witness though truthful can be overawed by the Court atmosphere and fill up the details from imagination to avoid being looking foolish. It was observed:

“(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him. Perhaps it is a sort of psychological defence mechanism activated on the spur of the moment.”

25. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952***, that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies.

It was observed: -

“32. The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize 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 given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When an eye-witness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that

it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

IX. By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.

XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.

*XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness.” [See **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** (1983) 3 SCC 217: 1983 Cri LJ 1096 : (AIR 1983 SC 753) **Leela Ram v. State of Haryana** (1999) 9 SCC 525: AIR 1999 SC 3717 and **Tahsildar Singh v. State of UP** (AIR 1959 SC 1012)]*

26. In the present case, the victim's testimony has a ring of truth and the prosecution's case cannot be discarded because of the discrepancy in the victim's testimony regarding the consumption of the liquor and sacrifice of the goat.

27. It was submitted that Shyam Lal and Kishori Lal were not produced before the Court, and this would make the prosecution's case suspect. This submission is not acceptable. It was held in *Hukam Singh v. State of Rajasthan*, (2000) 7 SCC 490: 2000 SCC (Cri) 1416: 2000 SCC OnLine SC 1311 that the Public Prosecutor can give up a witness to avoid repetition. It was observed at page 495:-

“13...If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly in those courts crammed with cases, but without impairing the cause of justice.”

28. It was laid down by the Hon'ble Supreme Court in *Pohlu v. State of Haryana, (2005) 10 SCC 196*, that the intrinsic worth of the testimony of witnesses has to be assessed by the Court, and if the testimony of the witnesses appears to be truthful, the non-examination of other witnesses will not make the testimony doubtful. It was observed: -

“[10] It was then submitted that some of the material witnesses were not examined and, in this connection, it was argued that two of the eye-witnesses named in the FIR, namely, Chander and Sita Ram, were not examined by the prosecution. Dharamvir, son of Sukhdei, was also not examined by the prosecution, though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eye witnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained.”

29. This position was reiterated in *Rohtash vs. State of Haryana 2013 (14) SCC 434*, and it was held that the prosecution is not bound to examine all the cited witnesses, and it can drop

witnesses to avoid multiplicity or plurality of witnesses. It was observed:

14. A common issue that may arise in such cases, where some of the witnesses have not been examined, though the same may be material witnesses, is whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in *Abdul Gani & Ors. v. State of Madhya Pradesh*, AIR 1954 SC 31, has examined the aforesaid issue and held, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to and no doubt would take into consideration the absence of witnesses whose testimony would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.

15. In *Sardul Singh v. State of Bombay*, AIR 1957 SC 747, a similar view has been reiterated, observing that a court cannot normally compel the prosecution to examine a witness which the prosecution does not choose to examine and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are necessary for the purpose of disclosing the story of the prosecution with all its essentials.

16. In *Masalti v. the State of U.P.*, AIR 1965 SC 202, this Court held that it would be unsound to lay down as a general rule, that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness, has either been won over or terrorised. In

such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 540 Cr. P.C.

(See also: *Bir Singh & Ors. vs. State of U.P.*, (1977 (4) SCC 420)

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

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

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

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

"24. ... Illustration (g) in Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the

adverse inference merely on the strength of non-examination of a witness even if it is a material witness....."

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

"10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence, and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. Nonetheless, if either of the parties withholds any evidence which could be produced and which, if produced, would be unfavourable to the party withholding such evidence, the Court can draw a presumption under illustration (g) to Section 114 of the Evidence Act.

.. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or another proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

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

"12. In trials before a Court of Session, the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1973, enjoins him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused.....If that version is not in support of the prosecution's case, it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for the prosecution.

13. When the case reaches the stage envisaged in Section 231 of the Code, the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution's case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the presences cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects.....This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

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

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

"22. In the matter of the appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence, that is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus the quality and not quantity which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this does not carry any weight."

23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined, witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution, and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive." In an extraordinary situation, if the court comes to the conclusion that a material witness

has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness if it is so warranted in the interests of justice. The evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.

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

Non-examination of the witness

34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials, sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the part of party who alleges that a witness has not been produced deliberately to prove it.

35. The aforesaid settled principle of law has been laid down in ***Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]***: (SCC pp. 377-78, para 13)

“13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness

of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the “pakodewalla”, hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. *The onus of proving the prosecution's case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecution's case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that*

matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted, a large crowd had gathered, and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country, there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness to a murder or any serious offence if they can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes.” (emphasis supplied)

36. This Court has reiterated the aforesaid principle in ***Gulam Sarbar v. State of Bihar* [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401: (2014) 2 SCC (Cri) 195]**: (SCC pp. 410-11, para 19)

“19. In the matter of the appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy or otherwise. The legal system has

laid emphasis on the value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness if the same inspires confidence. (Vide *Vadivelu Thevar v. State of Madras* [*Vadivelu Thevar v. State of Madras*, 1957 SCR 981: AIR 1957 SC 614], *Kunju v. State of T.N.* [*Kunju v. State of T.N.*, (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], *Bipin Kumar Mondal v. State of W.B.* [*Bipin Kumar Mondal v. State of W.B.*, (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], *Mahesh v. State of M.P.* [*Mahesh v. State of M.P.*, (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], *Prithipal Singh v. State of Punjab* [*Prithipal Singh v. State of Punjab*, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and *Kishan Chand v. State of Haryana* [*Kishan Chand v. State of Haryana*, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807].)”

31. Thus, no adverse inference can be drawn against the prosecution for not examining Shyam Lal and Kishori Lal.

32. It was submitted that there was a delay in reporting the matter to the police. This submission is not correct. The incident occurred on 26.04.2012 at 4:12 P.M. The application (Ex. PW1/A) bears the endorsement of In-charge, Police Post, Pangna and mentions the date 26.04.2012 and time 23:11. The F.I.R. was lodged on 27.04.2012 at 2:30 A.M. The medical

examination was conducted on 26.04.2012 at 11:45 P.M., which also rules out any interpolation in the date and time. The place of the incident is shown to be seventy-five kilometers from the police station. It would take some time to visit the police station, and it cannot be said that there was any delay in reporting the matter to the police.

33. Statements of witnesses show that Bhuvnu Ram was discharging his duties. The accused came to the Panchyat Ghar and inflicted injury by means of a stone. He had also damaged a calculator, which was public property. Therefore, he was rightly convicted of the commission of offences punishable under Sections 353 and 332 of the IPC and Section 3 of the PDP Act.

34. It was submitted that the learned Trial Court erred in not extending the benefit of the Probation of Offenders Act. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Siyasaran v. State of M.P., 1994 SCC OnLine SC 4: 1995 Cri LJ 2126* that the benefit of the Probation of Offenders Act cannot be granted to a person for using force on a government servant. Therefore, the benefit of the Probation of Offenders Act could not have been granted to the

accused, and there is no error in not extending the benefit of the Probation of Offenders Act to the accused.

35. Learned Trial Court imposed a sentence of six months each for the commission of offences punishable under Sections 353 and 332 of IPC, with a fine and default sentence. This cannot be said to be excessive because a public servant was injured while discharging his official duties, and such acts are to be viewed seriously. A deterrent sentence has to be awarded to dissuade the threat to public servant while discharging their duties. Keeping in view this consideration, the sentence imposed by the learned Trial Court cannot be said to be excessive.

36. No other point was urged.

37. In view of the above, there is no infirmity in the judgments and order passed by the learned Courts below. Hence, the present petition fails, and the same is dismissed. Pending applications, if any, also stand disposed of.

38. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)

Judge

10 October, 2025.

(yogesh)