



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 517 of 2024

Reserved on: 08.09.2025

Decided on: 15.10.2025

Lekh Ram and anotherPetitioners

Versus

State of H.P.Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?^{1 Yes}

For the Petitioners: Mr Vishal Singh Thakur, Advocate.

For the Respondent/State: Mr Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 3.7.2024 passed by learned Sessions Judge, Mandi, H.P. (learned Appellate Court) vide which the judgment of conviction dated 29.02.2024 and order of sentence dated 2.3.2024, passed by learned Judicial Magistrate First Class, Court No. II, Mandi (learned Trial Court) were upheld. (*Parties*

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

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 against the accused before the learned Trial Court for the commission of offences punishable under Sections 342 and 504 read with Section 34 of the Indian Penal Code (IPC). It was asserted that the victim, Reeta Kumari (PW2), had gone to her parental home with her husband, Dharam Singh (PW1), on 10.02.2015 at about 6:00 P.M. Dharam Singh went to Mandi on 11.02.2015 at about 9:00 A.M. The informant/victim returned to her home at about 4:20 P.M. She saw that wall constructed by the accused Lekh Ram had fallen. The tiles of the informant's house were damaged by the fall. The informant removed the tiles and swept the floor. She was sewing clothes in her home at about 4:40 pm when the accused, Lekh Ram and his wife Meena, came to the spot. The accused, Lekh Ram, told his wife to bring a lock and put the lock outside the room in which the informant was sitting. Meena Devi brought the lock and put it outside the informant's room. Both the accused started abusing the informant. Lekh Ram left the spot, whereas Meena Devi kept on sitting outside the room. The informant called her husband and

narrated the incident to him. She also called the police station. The police reached the spot and opened the door. The informant made a statement (Ex. PW2/A) which was sent to the Police Station, where F.I.R. (Ex. PW6/A) was registered. ASI Hoshiyar Singh (PW5) conducted the investigation. He took photographs of the accused Meena Devi opening the lock (Ext. PW5/B1 to Ext. PW5/B4), and prepared the site plan (Ex. PW5/C). Meena Kumari produced a lock (Ex. P2) and key (Ex. P3), which were put in a parcel (Ex. P1). The parcel was sealed with six impressions of seal 'T' and was seized vide memo (Ex. PW1/A). Seal impression (Ex. P4) was taken on a separate piece of cloth. ASI Hoshiyar Singh seized the Scooty bearing registration No. HP33A-5439, along with documents vide memo (Ex. PW5/J). Statements of witnesses were recorded as per their version, and after completion of the investigation, a 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, they were charged with the commission of offences punishable under Sections 342 and 504 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined eight witnesses to prove its case. Dharam Singh (PW1) is the informant's husband and an eyewitness. Reeta Kumari (PW2) is the informant. Rajinder Kumar (PW3) reached the spot after he was informed about the informant's confinement. Dinesh Kumar (PW4) did not support the prosecution's case. ASI Hoshiyar Singh (PW5) conducted the investigation. Chet Singh Bhangalia (PW6) signed the F.I.R. Sonu (PW7) did not support the prosecution's case. ASI Kamal Kant (PW8) witnessed the recovery of scooty.

5. The accused, in their statements recorded under Section 313 of Cr. P.C. denied the prosecution's case. The accused Lekh Ram admitted that the police had seized the Scooty. He stated that he is the owner of the joint land with the informant. Cases are pending between the parties, and false allegations were made against him. A similar statement was made by the accused Meena Kumari. No evidence was led in defence.

6. Learned Trial Court held that the informant's statement was corroborated by other witnesses. The informant stated that the accused abused and confined her in a room. The accused, Meena Kumari, produced the key of the lock, which corroborated the informant's version that the accused had

locked the room. The pendency of a civil suit did not confer any right upon the accused to take the law into their own hands. Therefore, the accused were convicted of the commission of offences punishable under Sections 342 and 504 read with Section 34 of the IPC and sentenced as under: -

Section(s)	Sentence(s)
Section 342 read with Section 34 of the IPC	The convicts were ordered to undergo simple imprisonment for six months each and pay a fine of ₹1,000/- each.
Section 504 read with Section 34 of the IPC	The convicts were ordered to undergo simple imprisonment for six months each and pay a fine of ₹ 2,000/- each.
In default of the payment of fine, the convicts were ordered to undergo further simple imprisonment for one month each for the aforesaid offences. The substantive sentences of imprisonment awarded to the convicts 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 Sessions Judge, Mandi (learned Appellate Court). Let Appellate Court concurred with the findings recorded by the learned Trial Court that the informant’s testimony was corroborated by the statements of official witnesses and the recovery of the key to the lock. Learned Trial Court had rightly convicted and sentenced the accused. Consequently, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below failed to appreciate the evidence in its right perspective. The prosecution had relied upon the statements of interested witnesses. The independent persons were present on the spot, but no independent person was examined. The statements of prosecution witnesses contradicted each other on material aspects. The informant had made a telephonic call to the police, complaining about the beatings being given to her by the accused. She changed her version subsequently and claimed that the accused had confined her to the room. There was no evidence of the accused locking the informant in the room. The wall was constructed by the accused on their own land. The victim and her husband damaged the wall and filed a false case to save themselves. The benefit of the Probation of Offenders Act was not extended to the accused. Therefore, it was prayed that the present revision be allowed and the judgments and orders passed by the learned Courts below be set aside.

9. I have heard Mr Vishal Singh Thakur, learned counsel for the petitioners and Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State.

10. Mr Vishal Singh Thakur, learned counsel for the petitioners, submitted that the petitioners are innocent and they were falsely implicated due to a land dispute between the parties. The statement made by the informant that the accused had abused her is not sufficient to attract the provisions of Section 504 of the IPC. No person had seen the accused locking the room. The learned Courts below erred in convicting and sentencing the accused for the commission of offences punishable under Sections 342 and 504 read with Section 34 of the IPC. Therefore, he prayed that the present revision be allowed and judgments and order passed by learned Courts below be set aside.

11. Mr Prashant Sen, learned Deputy Advocate General, for the respondent-State, supported the judgments and order passed by the learned Courts below and submitted that no interference is required with them.

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*, (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 victim/informant made a call to the police, and the police recorded an entry (Ex. PW5/A) in the daily diary, which reads that the victim Reeta Devi had informed police telephonically that Lekh Ram and his wife were beating her. It was submitted that this was the earliest version made to the police in which no complaint of wrongful confinement was made. Hence, the prosecution’s case is highly suspect. This

submission is not acceptable. The attention of the victim was not drawn to the contents of the daily diary to elicit her version, and it is impermissible to rely upon this entry to contradict the informant.

19. It was laid down by the Hon'ble Supreme Court in ***Binay Kumar Singh Versus State of Bihar, 1997 (1) SCC 283***, that if a witness is to be contradicted with his previous statement, his attention must be drawn towards it. It was observed: -

“11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court. This principle is delineated in S. 155 (3) of the Evidence Act, and it must be borne in mind when reading S. 145, which consists of two limbs. It is provided in the first limb of S.145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him but the second limb provides that "if it is intended to contradict him by the writing his attention must be drawn to the writing before the writing can be provided, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination, even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145.

12. In *Bhagwan Singh's case (AIR 1952 SC 214)*, Vivian Bose, J. pointed out in paragraph 25 that during the cross-examination of the witnesses concerned, the formalities prescribed by S. 145 are complied with. The cross-examination, in that case, indicated that every circumstance intended to be used as a contradiction was put to him point by point and passage by passage. Learned Judges were called upon to deal with an argument that witnesses' attention should have been specifically drawn to that passage in addition thereto. Their Lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with S. 145, and hence held that all that is required is that the witness must be treated fairly and must be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner. On the facts of that case, there is no dispute with the proposition laid therein.

13. So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-10 (Nawal Kishore Prasad), we are not persuaded to reject the evidence of PW-32 that he gave Ex. 14 statement at the venue of occurrence and that he had not given any other statement earlier thereto.”

20.

A similar view was taken in *Alauddin v. State of*

Assam, 2024 SCC OnLine SC 760, wherein it was observed:

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

Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

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

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

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict

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

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in

accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

“155. Impeaching the credibility of the witness. —
The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—

- (1)
- (2)
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.”

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

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

“13. The learned counsel's first argument is based upon the words “in the manner provided by Section 145 of the Indian Evidence Act, 1872” found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in ***Shyam Singh v. State of Punjab [(1952) 1 SCC 514: 1952 SCR 812]***. Bose, J. describes the procedure

to be followed to contradict a witness under Section 145 of the Evidence Act, thus at p. 819:

Resort to Section 145 would only be necessary if the witness *denies* that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts, which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made.”

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considered the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. *Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only*

enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement were allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it, subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers, "Yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the

appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.” (emphasis added)

This decision is a *locus classicus*, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination.”

21. It was held in ***Anees v. State (NCT of Delhi), 2024 SCC OnLine SC 757*** that the Courts cannot *suo motu* take cognisance of the contradiction and the same has to be brought on record as per the law. It was observed:

“64. The court cannot *suo motu* make use of statements to the police that have not been proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words ‘*if duly proved*’ used in Section 162 Cr. P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can it be looked into, but they must be duly proved for contradiction by eliciting admission from the witness during cross-examination

and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction, but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as follows:

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

66. Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for contradiction; it will then be proved in the deposition of

*the Investigating Officer, who, again, by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out the part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.” [See: **V.K. Mishra v. State of Uttarakhand: (2015) 9 SCC 588**]*

22. Therefore, it is impermissible to contradict the informant by the entry in the daily diary, when her attention was not drawn to it.

23. In any case, the entry does not rule out the informant's wrongful confinement to a room. A person can be beaten and thereafter confined to a room; hence, the fact that the informant had not mentioned her wrongful confinement will not make the prosecution's case suspect.

24. Informant Reeta Kumari stated that accused Lekh Ram and Meena came to her house and confined her to a room. Lekh Ram told her wife to bring the lock from the cowshed and confined 'sali' inside the room. Rajinder Singh (PW3) stated that Meena Devi hurled filthy abuses at Rita Devi. Lekh Ram also came to the spot, and he hurled filthy abuses.

25. Learned Trial Court held that use of the term 'sali' by the accused and hurling filthy abuses attracted the provisions of Section 504 of IPC because it amounted to intentionally insulting the victim. This finding cannot be sustained.

26. The ingredients of Section 504 of IPC were explained by the Hon'ble Supreme Court in *Mohd. Wajid v. State of U.P.*, (2023) 20 SCC 219: 2023 SCC OnLine SC 951 as under: -

"29. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self-control or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to

commit a breach of the peace, and not the particular conduct or temperament of the complainant.

30. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace or an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case, and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In ***King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78***, a Division Bench of the Bombay High Court pointed out that: —

“To constitute an offence under Section 504, I.P.C., it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.” (emphasis supplied)

31. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

32. In the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 of the IPC may probably be said to have been disclosed, but not under Section 504 of the IPC. The allegations with respect to the offence punishable under Section 504 of the IPC can also be looked at from a different perspective. In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly

was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to an intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present.”

27. It was laid down by the Hon^{ble} Supreme Court in ***Vikram Johar v. State of U.P.*, (2019) 14 SCC 207: (2019) 4 SCC (Cri) 795: 2019 SCC OnLine SC 609** that mere abuse is not sufficient to attract Section 504 of IPC. It was observed at page 217: -

21. Section 504 IPC came up for consideration before this Court in ***Fiona Shrikhandev. State of Maharashtra [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44: (2014) 1 SCC (Cri) 715]***. In the said case, this Court had the occasion to examine the ingredients of Section 504 IPC, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In para 11, the following principles have been laid down: (SCC pp. 48-49)

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards the issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate

is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused, and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only to consider the inherent probabilities apparent on the statement made in the complaint. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [*Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736: 1976 SCC (Cri) 507], this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.”

22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect: (*Fiona Shrikhande case* [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44: (2014) 1 SCC (Cri) 715], SCC p. 49)

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that it should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults, intending or

knowing it to be likely that it will give provocation to any other person and such provocation will cause to breach of the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult, and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

23. In another judgment, i.e. *Manik Taneja v. State of Karnataka* [*Manik Taneja v. State of Karnataka*, (2015) 7 SCC 423: (2015) 3 SCC (Cri) 132], this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, a case was registered for the offence under Sections 353 and 506 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down the following in paras 11 and 12 : (SCC pp. 427-28)

“11.***

A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”.

The threat must be with the intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent, causing obstruction in the discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public, and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

In the above case, the allegation was that the appellant had abused the complainant. The Court held that the mere fact that the allegation that the accused had abused the complainant does not satisfy the ingredients of Section 506 IPC.

24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant, with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him, and when some neighbours arrived there, the appellant and the other persons accompanying him fled the spot. The above allegation, taking on its face value, does not satisfy the ingredients of Sections 504 and 506 as have been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that it should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in *Fiona Shrikhande [Fiona*

Shrikhande v. State of Maharashtra, (2013) 14 SCC 44: (2014) 1 SCC (Cri) 715].

28. This position was reiterated in *B.V. Ram Kumar v. State of Telangana, 2025 SCC OnLine SC 275*, wherein it was observed:

“19. For appreciating the necessary ingredients required to substantiate a charge under Section 504, IPC, a reference in this regard may be made to the judgment of this Court in *Fiona Shrikhande v. State of Maharashtra (2013) 14 SCC 44*, wherein the Court discussed the essential ingredients of Section 504, IPC. The Court held as follows: —

“13. Section 504 IPC comprises of the following ingredients viz. (a) *intentional insult*, (b) *the insult must be such as to give provocation to the person insulted*, and (c) *the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence*. The intentional insult must be of such a degree that it should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults, intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to breach of the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. *One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult, and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.*”

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, *prima facie*, that there has been an

intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. *The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.*” (emphasis supplied)

20. Thus, upon reading the complaint as a whole, if the Magistrate comes to a conclusion, *prima facie*, that there has been an intentional insult made by the accused to the complainant so as to provoke the latter to break the public peace or to commit any other offence, then only the act complained of would fall within the ambit of Section 504, IPC. The law does not mandate that the complainant should verbatim reproduce each word or words capable of provoking him/her to commit a breach of peace or any other offence. The background facts, circumstances, the occasion, the manner in which the offending words are used, the person to whom they are addressed, the time, and the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504, IPC.

21. Further, this Court in the case of ***Mohammad Wajid v. State of U.P. 2023 SCC Online SC 951***, while discussing Section 504, IPC, propounded the test for considering the circumstances wherein an abusive language takes the form and shape of an intentional insult and held thus: —

“28. *Section 504 of the IPC contemplates intentionally insulting a person and thereby*

provoking such person to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self-control or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace, and not the particular conduct or temperament of the complainant.

29. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace.

Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case, and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant.” (emphasis supplied)

22. Needless to say, mere abuse, discourtesy, rudeness or insolence does not amount to an intentional insult within the meaning of Section 504, IPC. Furthermore, it would be immaterial that the person who has been insulted and provoked did not actually break the peace or commit any offence.

23. Section 504, IPC consists of two parts. Firstly, the *actus reus* being the intentional insult which gives rise to the provocation. Secondly, the *mens rea*, i.e., the intention or knowledge on the part of the accused that such intentional provocation is likely to cause the person insulted to break public peace or commit any other offence. The *animus nocendi* in Section 504, IPC is that the accused should ‘intentionally insult’ the other person with the intention or knowledge that the provocation caused by such insult is likely to result in the commission of a breach of public peace or any other offence by the person who has been so insulted. The offence is said to be complete once the accused person makes an ‘intentional insult’ with the aforesaid *mens rea*. Hence, intention or knowledge on the part of the accused person that his actions of making an ‘intentional insult’ have the potential to provoke the person insulted is *sine qua non* for the commission of the offence under Section 504, IPC.

24. The natural corollary of the above discussion is that if the accused does not intend to give provocation, the offence is not made out. An insult without an ‘intention to insult’ is not punishable under Section 504, IPC. Further, ‘intentional insult’ must be of such a degree that it has the potential to provoke a reasonable person to break the public peace or to commit any other offence.

25. It is trite that whether the person provoked further commits an illegal act or not is immaterial to draw the conclusion of culpability under Section 504, IPC. The 'intentional insult' and provocation must be so proximate and close that the accused has either the intention or the knowledge that the intentional insult made by him is likely to cause the provoked person to break public peace or commit some other offence. However, what would be the nature of 'intentional insult' causing provocation, to draw culpability under Section 504, IPC, would depend upon the facts and circumstances of each case. The test to be applied to determine if the intentional insult made by the accused is sufficient to cause provocation is that of a reasonable person, *i.e.*, if the insult is sufficient to provoke any reasonable person to break the peace or commit any other offence, only then the accused will be liable for the offence under Section 504, IPC."

29. In the present case, the use of the term 'sali' amounts to filthy abuse. The victim/informant did not state that this term or the filthy abuses induced her to commit breach of peace. Therefore, the essential ingredient that the insult should have induced the informant to commit breach of peace is missing, and the learned Trial Court erred in holding that the ingredients of Section 504 of the IPC were satisfied.

30. ASI Hoshiyar Singh (PW5) went to the spot for verification of the information. He stated that he reached the spot and found that the informant was locked in a room. The accused Meena Kumari was sitting in the field. She had the key to the lock. She was asked to open the lock, and she opened it.

The informant was taken out of the room. The photographs (Ex. PW5/B1 to Ex. PW5/B4) were taken. He denied in his cross-examination that Meena Kumari did not produce any key or that she did not open the door. He also denied that the husband of the informant had locked her, and he had made a false case against the accused in connivance with the police.

31. The accused did not state any reason as to why the police should have connived with the victim to falsely implicate the accused. No enmity with the police was shown. It was laid down by this Court in *Budh Ram Versus State of H.P. 2020 Cri.L.J.4254* that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

“11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. The rule of prudence may require more careful scrutiny of their evidence. Wherever the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution's case. No infirmity

attaches to the testimony of the police officers merely because they belong to the police force.”

32. Similar is the judgment in ***Karamjit Singh versus State, AIR 2003 S.C. 3011***, wherein it was held:

“The testimony of police personnel should be treated in the same manner as the testimony of any other witness, and there is no principle of law that, without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons, and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case, and no principle of general application can be laid down.” (Emphasis supplied)

33. This position was reiterated in ***Sathyan v. State of Kerala, 2023 SCC OnLine SC 986***, wherein it was observed:

22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy, then basing the conviction thereupon cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar v. State (Govt. of NCT of Delhi) 2013 (6) SCC 588*** after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48]***, ***State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows its disinclination to come forward to become witnesses. If the testimony of the police officer is found

to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the police Department of Police should be viewed with distrust. This is also based on the principle that the quality of the evidence outweighs the quantity of evidence.

23. Referring to *State (Govt. of NCT of Delhi) v. Sunil 2001 (1) SCC 652*, in *Kulwinder Singh v. State of Punjab (2015) 6 SCC 674*, this court held that: —

“23. ... That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence.”

24. We must note that in the former it was observed: —

“21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of

independent persons in the documents made contemporaneous with such actions.”

25. Recently, this Court in *Mohd. Naushad v. State (NCT of Delhi) 2023 SCC OnLine 784* had observed that the testimonies of police witnesses, as well as pointing out memos, do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can may be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on “any good reason”, which, quite apparently, is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW-1 and PW-2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police witnesses as undertaken by the trial court and confirmed by the High Court vide the impugned judgment, cannot be faulted with.”

34. Therefore, the learned Trial Court had rightly relied upon the statement of ASI Hoshiair Singh.

35. Dharam Singh (PW1) stated that the police arrived at the spot. The police asked him to open the lock, but he stated that the lock could be opened by a person who had put it. Meena Devi opened the lock. He was cross-examined regarding the dispute pending between the parties over the land. He stated that the lock was not put in his presence. He denied that he had asked the informant to go inside the room, and he bolted the room or that he made a false case to save himself.

36. Learned Trial Court had rightly pointed out that the testimony of this witness could not be discarded because of the pendency of the civil dispute between the parties. The enmity is a double-edged weapon; while it furnishes a motive for the false implication, it also furnishes a motive for the commission of the crime. Therefore, not much advantage can be derived from the pendency of a civil suit between the parties. This witness has specifically stated that the lock was not put in his presence, which shows that he is a truthful witness and not prone to exaggeration, and his testimony was rightly accepted by the learned Trial Court.

37. It was submitted that he was declared hostile by the prosecution and his credibility is suspect. It is true that the witness was declared hostile and was cross-examined by the prosecution. However, he was not contradicted with his previous testimony, and his credit has not been impeached under Section 155 (3) of the Indian Evidence Act. It was laid down by the Hon'ble Supreme Court in ***Selvamani v. State, 2024 SCC OnLine SC 837***, that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

“9. A 3-Judge Bench of this Court in the case of *Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627: 1991 INSC 153*, relying on the judgments of this Court in the cases of *Bhagwan Singh v. State of Haryana (1976) 1 SCC 389: 1975 INSC 306*, *Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233: 1976 INSC 204*, *Syed Akbar v. State of Karnataka (1980) 1 SCC 30: 1979 INSC 126*, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

10. This Court, in the case of *C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567: 2010 INSC 553*, has observed thus:

“81. It is a settled legal proposition that (*Khujji case*, SCC p. 635, para 6)

‘6..... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’

82. In *State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360*], this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543*, *Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516*, *Radha Mohan Singh v. State of U.P.*,

(2006) 2 SCC 450, Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360 and Subbu Singh v. State, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence.”

38 Thus, the testimony of this witness cannot be discarded simply because he was declared hostile by the prosecution.

39. His testimony is corroborated by Rajender Kumar (PW3), who stated that the police and Dharam Singh reached the spot. Meena Devi opened the room with the key she had brought with her, and the informant was taken out of the room. The police took the photographs. He stated in his cross-examination that he and his mother came to the spot after they were called by the informant. Reeta Devi, informant, is his real sister. There are many houses near the place of the incident. The neighbours did not visit the spot even though they were watching the incident from their home.

40. It was submitted that the prosecution has relied upon the statements of related witnesses who are interested, and the Learned Courts below erred in relying upon their testimonies. This submission is not acceptable. It was laid down

by the Hon'ble Supreme Court in *Laltu Ghosh v. State of W.B.*, (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2 that a related witness is not an interested witness and his testimony cannot be rejected on the ground of interestedness. It was observed:

“12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki* [*State of Rajasthan v. Kalki*, (1981) 2 SCC 752: 1981 SCC (Cri) 593]; *Amit v. State of U.P.* [*Amit v. State of U.P.*, (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] and *Gangabhavani v. Rayapati Venkat Reddy* [*Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]).

13. Recently, this difference was reiterated in *Ganapathi v. State of T.N.* [*Ganapathi v. State of T.N.*, (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan v. Kalki* [*State of Rajasthan v. Kalki*, (1981) 2 SCC 752: 1981 SCC (Cri) 593] : (*Ganapathi case* [*Ganapathi v. State of T.N.*, (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793], SCC p. 555, para 14)

“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a

litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested””

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465], wherein this Court observed : (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)* [*Jayabalan v. State (UT of Pondicherry)*, (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966]: (SCC p. 213, para 23)

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses, must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses, but the court must not be suspicious of such evidence. The primary

endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

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

“31. In this context, we may refer with profit to the decision of this Court in ***Dalip Singh v. State of Punjab AIR 1953 SC 364***, wherein Vivian Bose, J., speaking for the Court, observed as follows: -

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

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

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when

feelings run high and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such criticism, and the mere fact of relationship, far from being a foundation is often a sure guarantee of truth.”

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

34. In ***Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82***, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to scrutiny and accepted with caution. If, on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

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

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

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

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

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

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

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

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

“32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In ***Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465***, Vivian Bose, J. for the Bench observed the law as under (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such a criticism, and the mere fact of relationship, far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

33. In ***Masalti v. State of U.P., (1964) 8 SCR 133: AIR 1965 SC 202: (1965) 1 Cri LJ 226***], a five-judge Bench of this Court has categorically observed as under (AIR pp. 209-210, para 14)

“14. ... There is no doubt that when a criminal court has to appreciate evidence given by

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

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

“6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield

the actual culprit and falsely implicate the accused.”

35. The last case we need to concern ourselves with is *Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773]*, wherein this Court, after observing previous precedents, has summarised the law in the following manner: (SCC p. 164, para 38)

“38. ... It is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If, on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the “sole” testimony of such a witness. A close relationship of the witness with the deceased or the victim is no grounds to reject his evidence. On the contrary, a close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule, which remains the bulwark of this system and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desires to do so. Similarly, he may not be in a position to provide evidence in an impartial manner when it involves his

interests. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are the most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case.”

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

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

“10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7.”

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

55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court, in a number of cases, has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded; however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinised with greater care and circumspection. In the case of *Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381*, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

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

“29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised, and the evidence of the witness would have to be examined by applying a standard of

discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* [AIR 1953 SC 364] and pithily reiterated in *Sarwan Singh* [(1976) 4 SCC 369] in the following words: (*Sarwan Singh case* [(1976) 4 SCC 369, p. 376, para 10)

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require, as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth, such evidence could be relied upon even without corroboration.”

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

45. This position was reiterated in *Baban Shankar Daphal v. State of Maharashtra*, 2025 SCC OnLine SC 137, wherein it was observed:

“27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased, and for prudence, the prosecution ought to have examined some other independent eyewitnesses as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses, who had also reached the place of the incident, the

evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinised with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinised. However, being a relative does not automatically render a witness “interested” or biased. The term “interested” refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A “related” witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

29. The distinction between “interested” and “related” witnesses has been clarified in **Dalip Singh v. State of Punjab 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465**, where this Court emphasised that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

- i. *Md. Rojali Ali v. The State of Assam, Ministry of Home Affairs through secretary (2019) 19 SCC 567*;
- ii. *Ganapathi v. State of T.N. (2018) 5 SCC 549*;
- iii. *Jayabalan v. Union Territory of Pondicherry (2010) 1 SCC 199*.

30. Though the eyewitnesses who have been examined in the present case were closely related to the deceased, namely his wife, daughter and son, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitnesses has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.

46. In the present case, the informant had called her relatives to save herself. Therefore, their presence on the spot is duly explained, and their testimonies cannot be discarded because they are related to the informant.

47. It was submitted that independent witnesses were not examined, and an adverse inference has to be drawn against the prosecution. This submission is not acceptable. 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 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...”

48. 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:

“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.”

49. 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 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 party that 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 Sarbarv.State of Bihar*[*Gulam Sarbarv.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 emphasised 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 Thevarv.State of Madras*[*Vadivelu Thevarv.State of Madras, 1957 SCR 981: AIR 1957 SC 614*], *Kunjuv.State of T.N.* [*Kunjuv.State of T.N., (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331*], *Bipin Kumar Mondalv.State of W.B.* [*Bipin Kumar Mondalv.State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150*], *Maheshv.State of M.P.* [*Maheshv.State of M.P., (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783*], *Prithipal Singhv.State of*

Punjab[Prithipal Singhv.State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and *Kishan Chandv.State of Haryana[Kishan Chandv.State of Haryana, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807]*.

50. Therefore, no adverse inference can be drawn from the non-examination of the witnesses.

51. Dinesh Kumar (PW4) did not support the prosecution's case. However, he is the witness to the recovery of the Scooty. The accused Lekh Ram admitted in his statement recorded under Section 313 Cr. P.C. that the Scooty was seized by the police along with the documents. Thus, the recovery of the Scooty and the documents is not disputed, and the fact that this witness has not supported the prosecution's case will not make the prosecution's case suspect.

52. Sonu (PW7) also did not support the prosecution's case. He was permitted to be cross-examined. He denied the previous statement recorded by the police. He admitted that the accused was visible in the photographs (Ex. P2 to Ex. P4), opening the lock. ASI Hoshiyar Singh (PW5) categorically stated that he had recorded the statement of Sonu (Ex. PW5/H) as per his version. This was not challenged in the cross-examination and is deemed to be accepted. Hence, Sonu is shown to have made two inconsistent statements, one before

the police and one before the Court and his credit has been impeached under Section 155(3) of the Indian Evidence Act.

53. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

“52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”

54. This Court also took a similar view in ***Ian Stilman versus. State 2002(2) ShimLC 16*** wherein it was observed:

“12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In *Jagir Singh v. The State (Delhi Administration)*, AIR 1975 Supreme Court 1400, the Apex Court observed:

"It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony".

55. In the present case, the credibility of this witness has been impeached by contradicting him with his previous statement recorded by the police, and his testimony cannot be used to discard the prosecution's case.

56. The informant specifically stated that accused Lekh Ram told his wife to bring the lock from the cowshed and locked the informant inside the room. This shows that both the accused were acting in concert. Her statement is corroborated by the production of the key by the accused. Therefore, the learned Trial Court had rightly held that the accused were guilty of the commission of an offence punishable under Section 342 read with Section 34 of the IPC.

57. It was submitted that the learned Trial Court erred in not extending the benefit of the Probation of Offenders Act to

the accused and had imposed a harsh sentence. This submission cannot be accepted. It is undisputed that there was a dispute over the land between the parties. The accused locked the informant inside the room due to the dispute; hence, it was a deliberate act of the accused, and a deterrent view had to be taken in the present matter so that people may not take the law into their own hands. Keeping in view this consideration, the sentence of six months is not harsh.

58. In view of the above, the present revision is partly allowed and judgment and order passed by learned Trial Court convicting and sentencing the accused for the commission of an offence punishable under Section 504 read with Section 34 of IPC are ordered to be set-aside whereas the judgment and order passed by learned Trial Court convicting and sentencing the accused of the commission of an offence punishable under Section 342 read with Section 34 of IPC are ordered to be upheld.

59. Records of the learned Courts below be sent back forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

15 October, 2025.
(yogesh)