

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 124 of 2014****Reserved on: 16.09.2026****Date of Decision: 01.10.2026****Naresh Kumar****...Petitioner****Versus****State of Himachal Pradesh****...Respondent****Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.***

For the petitioner : Mr Ashwani Sharma,
Advocate.

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

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 09.04.2014, passed by learned Sessions Judge, Hamirpur, H.P. (learned appellate Court), vide which the judgment of conviction and order of sentence dated 09.08.2012, passed by learned Judicial Magistrate, First Class

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

Court No.1, District Hamirpur, H.P. (learned trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned trial Court against the accused for the commission of offences punishable under Sections 382, 353 and 506 of the Indian Penal Code (IPC). It was asserted that informant Jagdev Singh Pathania (PW-12) was posted as Regional Transport Officer, Hamirpur. The accused, Naresh Kumar Darji, is the owner of a bus. He called the informant on 01.04.2003, at about 01:10 p.m. and said that his bus would not be impounded. Anup Rana (PW-1), Rup Singh (PW-3), Ashok Kumar (PW-4), Hukam Chand (PW-2) and other police officials had set up a nakka outside the gate of National Institute of Technology, Hamirpur, H.P. at about 03:10 p.m. They stopped a bus bearing registration No. HP-22-4834 for inspection. It was found that the owner of the bus had not paid Special Road Tax after June 2002 and the Token Tax after 31.03.2002. The bus was not being plied on the sanctioned

route. Therefore, the bus was challaned and was seized. The bus was being taken to the workshop of Himachal Pradesh Road Transport Corporation for parking. The accused came to the spot in a vehicle. He removed the driver of the bus and took away the bus from the spot. The informant made a complaint (Ext.PW-12/A) to the police and an FIR (Ext.PW-13/E) was registered at the Police Station. Ramesh Chand (PW-13) investigated the matter. He visited the spot and prepared the site plan (Ext.PW-13/A). The bus was seized vide memo (Ext.PW-2/A). The site plan of the place of seizure (Ext.PW-13/B) was prepared. The photographs of the bus (Ext. PW13/C1 to Ext. PW13/C4), whose negatives are Ext.PW13/C5 to Ext.PW13/C8 were taken. The appointment order, posting order (Ext.PW-4/D) and the documents regarding the payment of tax (Ext. PW-4/A to Ext.PW-4/C) and impounding order (Ext.PW-13/D) were taken in possession. The statements of witnesses were recorded as per their version, and after the completion of investigation, the challan was prepared and presented before the learned trial Court.

3. The learned trial Court found sufficient reasons to summon the accused. When the accused appeared, he was

charged with the commission of offences punishable under Sections 353, 382 and 506 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 13 witnesses to prove its case. Anup Rana (PW-1), Hukam Chand (PW-2), Rup Singh (PW-3), Ashok Kumar (PW-4), Prithi Chand (PW-5), Constable Kirpal Singh (PW-8) and HC Shiv Parkash (PW-9) are the eyewitnesses. Anup Kumar (PW-6) is the owner of the bus. Kuldeep Chand (PW-7) and Roshan Lal (PW-11) did not support the prosecution case. ASI Daljit Singh (PW-10) was working as MHC. Jag Dev Singh Pathania (PW-12) was the informant. Ramesh Chand (PW-13) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He did not produce any evidence in his defence.

6. Learned trial Court held that the testimonies of prosecution witnesses corroborated each other. The informant was discharging his duties at the time of the incident. He had impounded the bus. The accused threatened the informant and drove away the bus. The mere fact that

some of the witnesses had not supported the prosecution case was not sufficient to make it doubtful. The minor variations in the statements of witnesses were not sufficient to doubt the prosecution case; hence the learned trial Court convicted and sentenced the accused as under: -

Section(s)	Sentence(s)
382 of IPC	The accused was sentenced to undergo rigorous imprisonment for three years, pay a fine of ₹5000/- and, in default of payment of the fine amount, to further undergo simple imprisonment for one month.
353 of IPC	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹5000/- and, in default of payment of the fine amount, to further undergo simple imprisonment for one month.
506 of IPC	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹5000/- and, in default of payment of the fine amount, to further undergo simple imprisonment for one month.

All the substantive sentences of imprisonment were ordered to run concurrently.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge, Hamirpur, H.P. (learned appellate Court). The learned

appellate Court concurred with the findings recorded by the learned trial court that the bus bearing registration No. HP-22-4834 was impounded by the informant for violating the provisions of the Motor Vehicles Act and HP Motor Vehicle Taxation Act, 1972. The bus was being taken to the HRTC workshop for being parked. The accused came and took the bus away from the informant's possession. He had threatened the informant. The mere fact that some of the witnesses had not supported the prosecution case was not sufficient to doubt it. The learned trial Court had rightly convicted and sentenced the accused. Therefore, the appeal preferred by the accused 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 prosecution has failed to prove that the informant had impounded the bus or that any public servant was prevented from discharging his official duties. The prosecution relied upon the statements of interested witnesses and the learned Courts below erred in accepting those testimonies. Therefore, it was prayed that the

present revision be allowed and the judgments and order passed by the learned courts below be set aside.

9. I have heard Mr Ashwani Sharma, learned Counsel for the petitioner/accused and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

10. Mr Ashwani Sharma, learned counsel for the petitioner/accused, submitted that learned Courts below erred in appreciating the material on record. There was no evidence that the accused had assaulted the informant in discharge of his official duties. The prosecution witnesses had not supported the prosecution case, which made it doubtful. Learned Courts below erred in ignoring the testimonies of the witnesses; therefore, he prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside. He relied upon the following judgments in support of his submissions:

- *Vikram Johar vs. State of U.P. & Anr (2019) 14 SCC 207;*
- *Manik Taneja and another vs. State of Karnataka and another (2015) 7 SCC 423; and*
- *B.N. John vs. State of UP & another (2025) 11 SCC 701.*

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the accused had called the informant during the day and threatened him. However, the informant went to the spot to check the bus. He found the bus without the payment of the Special Road Tax and the Token Tax and seized it. The accused took away the bus from the informant's possession and obstructed the informant in the discharge of his official duties. Learned courts below had rightly appreciated the evidence and this Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in *Kuntegowda v. Thurubaiah*, 2026 SCC OnLine SC 1485 that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed: -

“7. Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

“438. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying 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, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659: 2004 SCC (Cri) 2003, observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting

as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. 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:

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 own 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 coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

- i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.
- ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.
- iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in *Sanjabij Tari v. Kishore S. Borcar*, 2025 INSC 1158, in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. 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.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.”

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred

in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The present revision has to be decided as per the judgment.

15. The informant, Jagdev Singh Pathania (PW-12), stated that he and other persons were checking the vehicles. A bus bearing registration No. HP-22-4834 was checked, and it was found that Special Road Tax and Token Tax in respect of it were not paid. Hence, the bus was impounded. The bus was being taken to the HRTC workshop. He and other persons were travelling in the Gypsy. Naresh Kumar met them near the office of PWD (SE) at a lonely place. He stopped the bus and asked the driver to get down. He sat in the bus and told them to remove the Gypsy, or he would hit it with the bus. Hence, the Gypsy was removed. He was posted as a Regional Transport Officer (RTO) and was travelling in the official vehicle. He made a complaint to the police. He identified the accused in the Court. He stated in his cross-examination that

he knew the accused because he was a transporter. He admitted that Naresh Kumar had called him on 01.04.2003, at about 01:10 p.m. and told him that the bus would not be impounded under police protection. Thereafter, they went to NIT Chowk. Many vehicles were checked, but he could not provide their details. A document of impounding was prepared, and the driver was directed to take the bus to HRTC. This was the procedure adopted in all the cases. Gypsy was ahead, the bus was in the middle, and the police vehicle was behind the bus. Many vehicles were moving on the road. He could not tell the registration number of the vehicle in which the accused had visited the spot. He was standing outside the Gypsy and the accused was in the bus. He denied that the accused had not threatened him or had not caused any obstruction in the duty.

16. His testimony that he had impounded the bus is duly corroborated by the order (Ext. PW-13/D), passed by him, in which it was specifically mentioned that the bus bearing registration No. HP-22-4834, was intercepted on 01.04.2003 near NIT, Hamirpur, and it was being plied in contravention of Section 66(1), Section 192A, and Section

72(2) of the Motor Vehicles Act, 1988 read with Sections 3 and 4 of HP Motor Vehicles Taxation Act, 1972. The person in possession of the bus had failed to produce the relevant documents; therefore, the bus was ordered to be impounded in exercise of the jurisdiction conferred under Section 207 of the Motor Vehicles Act.

17. Anup Rana (PW-1) stated that he was posted as a Regional Manager of HRTC. He and other officials were checking the vehicles outside the gate of NIT, Hamirpur, H.P. A bus bearing registration No. HP-22-4834 came from Awah Davi towards Hamirpur. Its documents were incomplete. Therefore, it was seized by the RTO, who directed that the bus should be parked in the workshop of the HRTC. The driver was driving the bus. The accused came and drove the bus. The police officials told the RTO that the accused was threatening to hit the official vehicle of the RTO. Hence, the vehicles were moved to the side. The accused took away the bus from the spot. He stated in his cross-examination that he knew the accused since 1992-1993, because the accused was a transporter. The accused had 1-2 vehicles in his name. He admitted that the accused is a transporter and he knew how to

drive the vehicle. RTO had called him at about 02:30 p.m. Prem Chand was driving the vehicle in which he and Anup Rana were travelling. One Motor Vehicle Inspector and one official were travelling with the RTO. He did not know whether any other vehicle was checked or not. The police officials also accompanied them. The vehicle of the RTO was moving ahead of his (Anup Rana's) vehicle, and the police vehicle was moving behind the bus. He denied that the accused had not threatened to hit the official vehicle. He denied that a false case was made against the accused.

18. Retired Inspector Hukam Chand (PW-2) stated in his cross-examination that the bus was seized at NIT. He was directed by Dy.SP Headquarters to go to the spot. The official vehicle of RTO was present on the spot, but he did not remember the names of the persons whose vehicles were also taken to the spot. The driver was driving the bus at the time of the checking. The accused met them on the way. He did not know how the accused had visited the spot. The accused had not threatened the RTO in his presence. He volunteered to say that his vehicle was behind the bus. The bus was seized after one and a half hours of the incident. He admitted that the

accused is a driver and the Panchayat Pardhan. The police driver had brought the bus from Hira Nagar, where it was seized.

19. Rup Singh (PW-3) stated that he was posted as MVI at Hamirpur. He was present with the RTO for checking on 01.04.2003. A bus bearing registration No. HP22-4834 came to the spot from Awah Devi. It was checked and found that road tax was not deposited in respect of the bus. Hence, a Challan was issued by the RTO, and an order of impounding the bus was passed. RTO directed that the bus should be taken to the HRTC workshop. When they reached near the PWD office, the accused got down from some vehicle, boarded the bus bearing registration No. HP-22-4834, and started driving it. He attempted to hit the official vehicle of the RTO, and when the vehicle was moved to the side, the accused took the bus away from the spot. He stated in his cross-examination that they had started from their office at about 02:45 p.m. He, Ashok Kumar and Sudarshan had accompanied the RTO. The vehicles of SHO, Hamirpur and Regional Manager, Hamirpur were also present on the spot. He did not know who had informed him that the accused was driving the bus without the payment of

the road tax. The accused had two vehicles in his name. He did not know the routes assigned to the vehicles of the accused. The bus was impounded on the spot. He was also travelling in the vehicle of the RTO. The police vehicle was moving behind the bus. The accused came to the spot in a vehicle without any registration number. However, no infringement report was issued.

20. Ashok Kumar (PW4) stated that he, RTO, Regional Manager, Hamirpur and SHO, Hamirpur, were checking the traffic outside the gate of NIT, Hamirpur, on 01.04.2003. A bus bearing registration No. HP 22-4834 came from Awah Devi towards Hamirpur. The RTO demanded the documents of the bus, and it was found that the tax in respect of the bus was not paid. Hence, the RTO issued a challan and impounded the bus. He handed over the bus to the police and directed them to park the bus in the HRTC workshop. The vehicle of the RTO was moving ahead, and the bus was behind it. The driver of the bus stopped it near the PWD office because the owner had come. The owner directed the driver of the RTO to move the official vehicle to the side, and the bus was taken away. He stated in his cross-examination that he had accompanied the

RTO before this incident. The vehicle was impounded because its documents were not found to be in order. The impounded vehicle is handed over to the police or is parked in the workshop of the HRTC. He was not aware of the distance between his vehicle and the vehicle of the Regional Manager. He was not aware whether any complaint was filed regarding the bus of the accused.

21. Constable Kirpal (PW-8) stated that he was with the RTO and other persons for the traffic checking. A bus bearing registration No. HP-22-4834 came to the spot at about 03:10 p.m. Its documents were checked by the RTO. The bus did not have the route permit and other documents; hence, the RTO directed that the bus be impounded and parked in the HRTC workshop. While the bus was being taken towards the workshop, another bus being driven by the accused came to the spot. The accused boarded the impounded bus and threatened the RTO to move the vehicle to the side; otherwise, he would hit the vehicle with the bus. The vehicle of the RTO was moved to the side, and the accused took the bus towards Hiranagar. The bus was intercepted at Hiranagar link road. He stated in his cross-examination that the

Regional Manager was travelling in the vehicle of the RTO; the SHO, driver and two-three officials were travelling in the police vehicle. He did not remember the number of vehicles checked on the date of the incident. He was only stopping the bus and the vehicles, and the RTO was checking them. The passengers were sent in another vehicle. The vehicle of the RTO was moving ten meters ahead of the bus. The vehicle in which the accused had visited the spot had stopped for about two minutes.

22. HC Shiv Parkash (PW-9) stated that he was checking the vehicles with other officials outside the gate of NIT, Hamirpur, when a bus bearing registration No. HP-22-4834 came from Awah Devi. RTO checked the documents of the vehicle. He directed that the bus be taken to the HRTC workshop. The Gypsy of the RTO was moving ahead of the bus, and the police vehicle was behind the bus. Naresh Kumar came from Hamirpur and stopped the impounded bus near the PWD workshop. He started driving the bus. He threatened the RTO to move the Gypsy towards the side and took away the bus from the spot. The bus was subsequently intercepted near Hiranagar. He stated in his cross-examination that the PWD

workshop is located near Hamirpur Jail. Two vehicles were taken for checking. The staff of the RTO was with him. Three police officials and drivers were present in the police vehicle. They remained on the spot for about 20 minutes. He could not give the details of the documents checked by the RTO. He admitted that the accused was not present on the spot. He did not know the name of the driver of the official vehicle of the RTO. He denied that the driver had taken the bus towards a side to enable the other vehicle to pass. The accused had threatened the RTO to move the Gypsy towards a side; otherwise, he would hit the Gypsy.

23. The statements of these witnesses corroborated each other, and there is nothing in their cross-examination to show that they were making incorrect statements or had any motive to depose against the accused.

24. It was submitted that the statements of the witnesses contradicted each other regarding the position of the vehicle. However, this submission will not help the accused. The incident had taken place on 01.04.2003, and the statements were recorded in the years 2007 and 2012, after a considerable lapse of time; therefore, the contradictions were

bound to arise and cannot be used to discard the prosecution case. It was held by the Hon'ble Supreme Court in *Rajan v. State of Haryana*, 2025 SCC OnLine SC 1952, that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: –

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

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

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

III. When an eyewitness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

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

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

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

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

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

IX. By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the

main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

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

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

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

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

25. It was laid down by the Hon'ble Supreme Court in *Karan Singh v. State of U.P.*, (2022) 6 SCC 52; (2022) 2 SCC (Cri) 479; 2022 SCC OnLine SC 253 that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter. It was observed at page 60: -

“38. From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in *Rohtash Kumar v. State of Haryana* [*Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 434; (2014) 4 SCC (Cri) 238] held: (SCC p. 446, para 24)

“24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness.”

39. Referring to *Narayan Chetanram Chaudhary v. State of Maharashtra* [*Narayan Chetanram Chaudhary v. State of Maharashtra*, (2000) 8 SCC 457; 2000 SCC (Cri) 1546], Mr Tyagi argued that minor discrepancies caused by

lapses in memory were acceptable; contradictions were not. In this case, there was no contradiction, only minor discrepancies.

40. In *Kuriya v. State of Rajasthan* [*Kuriya v. State of Rajasthan*, (2012) 10 SCC 433: (2013) 1 SCC (Cri) 202], this Court held: (SCC pp. 447-48, paras 30-32)

“30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render credentials to the depositions inadmissible. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur v. State of Gujarat* [*Kathi Bharat Vajsur v. State of Gujarat*, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], *Narayan Chetanram Chaudhary v. State of Maharashtra* [*Narayan Chetanram Chaudhary v. State of Maharashtra*, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], *Gura Singh v.*

State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205; 2001 SCC (Cri) 323] and *Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100; 2002 SCC (Cri) 961]*.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case that the Court has to consider whether the witness was stating the truth or not. [Ref. *Sunil Kumar v. State (NCT of Delhi) [Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367; 2004 SCC (Cri) 1055]*].

32. These are variations that would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 people can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide them with medical aid and inform the police. The statements that are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to *Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350; (2011) 1 SCC (Cri) 266]* and *Shivlal v. State of Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561; (2011) 3 SCC (Cri) 777]*.

41. In *Shyamal Ghosh v. State of W.B.* [*Shyamal Ghosh v. State of W.B.*, (2012) 7 SCC 646: (2012) 3 SCC (Cri) 685], this Court held: (SCC pp. 666–67, paras 46 & 49)

“46. Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses have given different timings as to when they had seen the scuffling and strangulation of the deceased by the accused. ... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statements of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.”

42. In *Rohtash Kumar v. State of Haryana* [*Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238], this Court held: (SCC p. 446, para 24)

“24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to

render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness.”

26. Similar is the judgment in *Anuj Singh v. State of Bihar*, 2022 SCC OnLine SC 497: AIR 2022 SC 2817, wherein it was observed:

“17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed to the hand or foot, but the constant narrative of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury to informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this Court in *Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra*, 2000 8 SCC 457. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as follows:

"42. Only such omissions that amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions

are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, would not cause any dent in the testimony of PW 2. Even if there is a contradiction of a statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

27. In the present case, the statements of the witnesses are consistent regarding the fact that the bus was impounded and it was being taken to the workshop of HRTC. The accused came to the spot and boarded the bus near the HPPWD workshop. He threatened the driver of the Gypsy to move it and took away the bus from the spot. The minor contradictions regarding the position of the vehicles and the persons boarding each vehicle relate to the details surrounding the incident and are not sufficient to discard the core of the prosecution version.

28. Prithi Chand (PW-5) was driving the bus. He stated that his bus was stopped, the documents were demanded, the Challan was issued, and he was directed to take the bus to Police Line. He took the bus to the police line. He was contradicted with reference to his previous statement, and he denied it.

29. Roshan Lal (PW-11) stated that he was posted as a driver in the police station. He had gone towards Anu with the SHO, RTO and Regional Manager of HRTC were with them. He was not aware as to what happened thereafter. He was declared hostile. He denied that when the bus was being taken, the accused came in a vehicle and boarded the bus. He denied that the accused threatened the RTO to hit the vehicle in case the vehicle was not moved. He denied the previous statement recorded by the police.

30. Kudeep Chand (PW-7) stated that the RTO had directed the bus to be parked in the workshop. He left the spot, and he was not aware as to what had transpired. He was permitted to be cross-examined. He denied that the accused had threatened him that he would hit the bus with the Gypsy. He admitted that the accused had taken the bus towards Hamirpur. He stated that he had moved his vehicle to the side because another vehicle had come from the opposite side. He denied the previous statement recorded by the police.

31. It is apparent from the statements of these witnesses that they have been contradicted with their previous statements. Ramesh Chand (PW-13) specifically

stated that he had recorded the statement of Prithi Chand (Ext.PW13/G) and Roshan Lal (Ext.PW13/H), as per their version. Therefore, the witnesses are shown to have made two inconsistent statements: one before the police, that the accused had threatened the informant and took away the bus from the spot, and another before the Court that no such incident had taken place. Both these statements cannot stand together. It was laid down by the Hon'ble Supreme Court in *Mahesh v. State of Maharashtra*, (2008) 13 SCC 271; (2009) 3 SCC (Cri) 543; 2008 SCC OnLine SC 656 that where the witness had made an inconsistent statement before the police, his testimony before the Court cannot be relied upon. It was observed at page 289:

“49. It is the evidence of PW PSI Dhimole that portion marked “A” appearing in the statement of PW 1 was recorded by him correctly. The defence has not brought on record any evidence to show why the investigating officer had recorded the portion marked " A " of the statement of PW 1 incorrectly. If PW 1, the maker of the complaint, has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness, for no plausible and tenable reasons pointed out on record, will give rise to doubt as to the testimony of the investigating officer, who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole

purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution.”

32. It was held in *Paramjeet Singh v. State of Uttarakhand*, (2010) 10 SCC 439: 2010 SCC OnLine SC 1087 that where a witness makes different statements at different times, he does not have any regard for truth and his testimony should be seen with due care and caution. It was observed at page 448:

“16. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times has no regard for the truth. His evidence has to be read and considered as a whole with a view to finding out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide *State of Rajasthan v. Bhawani* [(2003) 7 SCC 291: 2003 SCC (Cri) 1628].)

33. Thus, learned courts below had rightly held that the testimonies of the hostile witnesses were not sufficient to discard the prosecution case.

34. The witnesses have consistently stated that the accused had boarded the impounded bus; he started it and

threatened the driver of the official vehicle to move it otherwise, he would hit the bus with the official vehicle. Section 351 of the IPC, defines the word 'assault' as any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person to apprehend that he who makes a gesture or preparation is about to use criminal force to that person. The illustration to Section 351 of the IPC shows that when a person shakes his fist at another, causing the other to believe that he was about to strike the other, it would constitute an assault. Therefore, it is not essential that an injury should have been caused to another person by the act of the accused. It is sufficient that the accused makes a gesture or shows any preparation that gesture or preparation will cause another person to apprehend that criminal force is likely to be used. In the present case, the accused had boarded the bus, started it and threatened the driver of the Gypsy that he would hit it with the bus in case the Gypsy was not moved. Therefore, the act of the accused was such as would give apprehension to the driver of the Gypsy and other occupants of the Gypsy that it was likely to be hit by the bus in case it was not moved to a side. Hence, the act of the

accused satisfied the requirement of Section 351 of the Indian Penal Code.

35. The statements of the witnesses clearly show that the RTO was discharging the official duties. He had impounded the bus and directed that the bus be taken to the HRTC workshop; hence, the accused had assaulted the RTO and the officials present in the vehicle in the discharge of their official duties; therefore, the requirements of Section 353 of IPC were duly satisfied.

36. It was held in *B. N. John (supra)* that creating a disturbance and the assault and criminal force are different. In the present case, there was no disturbance, but actual assault. Therefore, the cited judgment does not apply to the present case.

37. In *Manik Taneja (supra)*, the accused had criticised the police officials on Facebook, and this was held to be insufficient to constitute an offence punishable under Section 353 of the IPC. In the present case, there is no criticism, but the accused had boarded the bus and threatened to hit the Gypsy carrying the RTO and other officials. Hence, this Judgment does not apply to the present case.

38. The statements of the witnesses consistently show that the RTO had impounded the bus. Therefore, he was in possession of the bus. The accused drove away the bus from the possession of the RTO without his consent; therefore, his act constituted a theft, as defined in Section 378 of the IPC.

39. The accused had threatened to use the bus as a weapon to hit the Gypsy to cause fear of hurt to the occupants of the Gypsy and to ensure his escape after taking possession of the bus; therefore, his act fell within the definition of Section 382 of the IPC.

40. The accused threatened the RTO and other occupants that he would hit the Gypsy and would kill them in case the Gypsy was not moved to the side; therefore, the act of the accused threatened the RTO and the other occupants with injury to their person. The fact that the Gypsy was moved to a side after such threat shows that the threat had caused alarm in the mind of the occupants of the Gypsy. Hence, the necessary ingredients of the commission of an offence punishable under Section 506 of the IPC were satisfied.

41. In *Vikram Johar (supra)*, the Hon'ble Supreme Court held that mere abuse does not satisfy the requirement of

Section 506 of the IPC. In the present case, there is no abuse but a threat to hurt the RTO and other occupants of the Gypsy. Therefore, the cited judgment does not apply to the present case.

42. It was submitted that the benefit of the Probation of Offenders Act was not granted to the accused and such a benefit should have been granted to him. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Siyasaran v. State of M.P.*, 1994 SCC OnLine SC 4: 1995 Cri LJ 2126, that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of the commission of an offence punishable under Section 353 of the IPC; therefore, such a benefit cannot be extended as per the judgment of the Hon'ble Supreme Court.

43. The offence under Section 382 of the IPC is punishable with imprisonment, which may extend to 10 years. The learned Trial Court had imposed a sentence of three years. The offence under Section 353 of the IPC is punishable with imprisonment of two years, and the learned Trial Court had imposed a sentence of two years. The offence under Section 506 of the IPC is punishable with imprisonment which may

extend to seven years, and the learned trial court had imposed a sentence of two years. The sentences imposed by the learned trial Court for the commission of offences punishable under Section 382 of the IPC and 506 of the IPC, cannot be said to be excessive, however, the sentence imposed by learned trial Court for the commission of an offence punishable under Section 353 IPC, is maximum sentence that can be imposed. No justification was provided for imposing the maximum sentence; hence, this sentence cannot be sustained. Considering that much time has elapsed since the incident, the sentence for the commission of an offence punishable under Section 353 of the IPC is reduced to one year.

44. No other point was urged.

45. In view of the above, the present revision is partly allowed, and the sentence imposed by the learned trial court for the commission of an offence punishable under Section 353 of the IPC is reduced to one year from two years. Subject to this modification, the rest of the judgment and order passed by learned courts below are upheld. Modified Jail Warrant be prepared accordingly.

46. The present revision stands disposed of, along with the pending application(s), if any.

47. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

01st October, 2026.
(Ravinder)