

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 183 of 2021

Reserved on : 09.09.2026

Decided on : 08.10.2026

Uploaded on : 08.10.2026

Krishan Chand @ Thithi

...Appellant.

Versus

State of Himachal Pradesh

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? Yes

For the Appellant.

Ms. Kiran Dhiman, Advocate.

For the Respondent:

Mr. Yashwardhan Chauhan, Senior
Additional Advocate General.

Bhupesh Sharma, Judge

The appellant (hereinafter referred to as 'accused') calls in question the legality of the conviction recorded in terms of Section 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') passed by the learned Special Judge, Chamba, Division Chamba, H.P., in Sessions Trial No.29 of 2019 (NDPS Act) (CNR No.HPCH01-

001063-2019), titled as '*State of Himachal Pradesh Vs. Kishan Chand @ Thithi*', whereby the appellant/accused has been convicted for the offence punishable under Section 20(b)(ii)(C) of NDPS Act vide judgment of conviction dated 08.03.2021 and has been sentenced to undergo rigorous imprisonment for a term of ten years and to pay a fine of ₹1 lakh for the said offence and in default of payment of fine amount, to undergo simple imprisonment for a term of one year vide order of sentence dated 09.03.2021. The benefit of set off under Section 428 Cr.PC has been given to the accused.

2. The accused was sent to face trial for commission of offence under Section 20(b)(ii)(C) of NDPS Act by SHO Police Station Sadar, Chamba, District Chamba, H.P. in case FIR No. 33/2019 dated 26.01.2019. The accused was prosecuted for the offence under Section 20(b)(ii)(C) of the NDPS, Act and was convicted by the learned trial Court vide impugned judgment of conviction dated 08.03.2021 and order of sentence dated 09.03.2021 in Sessions Trial No.29 of 2019 (NDPS Act) (CNR

No.HPCH01-001063-2019), titled as '*State of Himachal Pradesh Vs. Kishan Chand @ Thithi*',.

3. The case for the prosecution as set -out against the accused, in short, is as under:

3(a). On 26.01.2019 at about 3:00 PM at Behi near Koti on Chamba-Tissa Road, Tehsil and District Chamba, H.P., the accused was found in conscious and exclusive possession of 1.555 Kgs of '*Charas*'(Cannabis).

3(b). On 26.01.2019, Police party headed by HC Vikky Raj No.77, Investigating Officer of Special Investigation Unit (SIU), Chamba, left for routine patrolling, traffic checking, law and order and crime detection duty from Special Investigation Unit (SIU) Office at 12:30 PM vide Rapat No.03 Roznamcha dated 26.01.2019. He was accompanied by other police officials, namely HHC Upinder Chona No.178, Constable Sunil Kumar No. 228, Constable Sanjay Kumar No.327, and Constable Mukesh Kumar No.488. Police party was traveling in a personal vehicle of Constable Mukesh Kumar No.488. At about 3:00 PM, Police party was present at a place 'Behi' near Koti on Chamba-Tissa

Road, where they spotted and intercepted the accused coming on foot from Koti side with a backpack (pithu bag). The accused on seeing the Police party got frightened. Thereafter, the police officials confronted the accused regarding his suspicious conduct, later they disclosed their intention to search the backpack (pithu bag) in his possession on suspicion. The Investigating Officer, HC Vikky Raj No.77, after ascertaining the name and identity of the accused, constituted raiding/search party by associating one independent witness Vinod Kumar, being a nearby shopkeeper, and two official witnesses, namely Constable Sunil Kumar No. 228 and Constable Sanjay Kumar No.327 and thereafter, the backpack (pithu bag) in possession of the accused was searched, leading to recovery of 1.555 Kgs 'Charas'(Cannabis). The accused could not account for the contraband, which was recovered from his conscious and exclusive possession. Pursuant to recovery of the 'Charas'(Cannabis) from the possession of the accused, the same was sealed in a cloth parcel after affixing six seals of impression 'A'. The sample seal impression 'A' was taken on a

separate piece of cloth and the seal, after its use, was handed over to Constable Sanjay Kumar No.327. Thereafter, the Investigating Officer filled relevant columns of NCB-I form in triplicate. Thereafter, the case property, along with seal impression 'A' and NCB-I form in triplicate, were taken into possession vide recovery and seizure memo in the presence of official witnesses, i.e. Constable Sunil Kumar No.228 and Constable Sanjay Kumar No.327, and independent witness Vinod Kumar. The signatures of the witnesses were obtained on the seizure memo. The accused also signed the said document and copy of the same was handed over to him free of cost. The Investigating Officer, HC Vikky Raj No.77, thereafter sent rukka and handed over the same to Constable Mukesh Kumar No.488 for registration of FIR against the accused and in pursuance thereof, case FIR No. 33/2019 dated 26.01.2019 under Section 20 of NDPS Act was registered against the accused at Police Station Sadar, Chamba, District Chamba, H.P. The photographs during the said proceedings were taken by Constable Mukesh Kumar No.488.

3(c) On 26.01.2019 at about 4:52 PM vide Rapat No.17, HC Chaman Lal No.53, Investigating Officer, Police Station Sadar Chamba, went on the spot along with other police officials, namely HHC Latif Mohammad, HHG Naresh Kumar, and HHG Rakesh Kumar, and took over investigation from HC Vikky Raj No.77 vide inventory memo. Thereafter, he prepared spot map and recorded the statements of witnesses under Section 161 Cr.PC. On the basis of evidence collected, the accused was arrested at 8:55 PM in accordance with law. Thereafter, the Police party returned to Police Station Sadar, Chamba, along with the accused and case property, and presented the same before Inspector Prashant Thakur, SHO Police Station Chamba, for re-sealing of the case property under Section 55 of NDPS Act, 1985. The re-sealing of the case property was conducted by Inspector Prashant Thakur by affixing six seals of impression 'SB' and after doing the needful, he issued the re-sealing certificate under Section 55 of NDPS Act, 1985. The re-seal sample 'SB' was taken on a separate piece of cloth for the purpose of record. He also filled relevant columns of NCB-I form in triplicate.

Thereafter, the case property along with documents were handed over to MHC Rajpoot Pardeep No.28 of Police Station, Sadar Chamba, for safe custody.

3(d) On 28.01.2019, Special Report under Section 57 of the NDPS Act, 1985, was sent to Supervisory Officer of Police Station, Sadar Chamba, i.e. Additional SP Chamba, through Constable Vipin Kumar No.559. In pursuant to the receipt of the Special Report, it was endorsed and its entry was made in Special Reports Register at Serial No.117 dated 29.01.2019. The case property was later sent for Forensic Examination to State Forensic Science Laboratory, Junga through Constable Constable Surinder Kumar, No.211, vide R.C. No.40/2019 dated 29.01.2019, and vide State Forensic Science Laboratory Report No.317 NDPS Division 93/2019 dated 07.02.2019, the contraband substance was found to be an extract of Cannabis and sample of Charas and the quantity of purified resin was 27.05% w/w.

3(e). Pursuant to completion of the investigation, the accused was found in exclusive conscious possession of 1.555

Kgs of 'Charas'(Cannabis). Accordingly, he was found to have committed an offence punishable under Section 20(b)(ii)(C) of the NDPS Act, 1985. A final report under Section 173(2) Cr.PC. was prepared and filed before the learned Special Judge, Chamba Division, Chamba (H.P.), as Sessions Trial No. 29 of 2019 (NDPS Act) (CNR No.HPCH01-001063-2019), titled as '*State of Himachal Pradesh Vs. Kishan Chand @ Thithi*'

4. The accused was charged for commission of offence punishable under Section 20(b)(ii)(C) of the NDPS Act, 1985 vide order dated 20.06.2019, to which he pleaded not guilty and claimed trial.

5. The prosecution, in order to prove and substantiate the allegations and accusations, against the accused examined fifteen witnesses. The principal prosecution witnesses pertaining to search, recovery and seizure of the contraband are Constable Sunil Kumar No.228 examined as PW-6, Vinod Kumar independent witness examined as PW-7, Constable Sanjay Kumar No.327 examined as PW-11, Constable Mukesh Kumar No.488 examined as PW-12 and Investigating Officer HC Vikky

Raj No.77 examined as PW-15. The other witnesses examined by the prosecution are formal in nature, who were associated by the Police at various stages of the investigation and constitute the link evidence.

6. The prosecution, apart from examining the aforesaid witnesses, also relied upon the documentary evidence placed on record, which was collected against the accused during the course of investigation i.e. Photographs (Ex.PW1/A to H), C.D. (Ex.PW1/J), Certificate U/S 65 Evidence Act (Ex.PW1/K), Copy of Rapat (Ex.PW2/A), Copy of Rapat Roznamcha (Ex.PW2/B), Sample seal SB (Ex.PW3/A), Reseal memo (Ex.PW3/B), Copy of rukka (Ex.PW5/A), Copy of receipt register (Ex. PW5/B), Special report (Ex.PW5/C), Sample seal A (Ex.PW6/A), Seizure memo (Ex.PW6/A), Seizure memo (Ex.PW6/B), Inventory (Ex.PW6/C), Extract of Malkhana register (Ex.PW9/A), Copy of R.C. (Ex.PW9/B), General Diary Details (Ex.PW9/C to H), Copies of G.D. Entries (Ex.PW9/J to L), CCTNS Certificate (EX.PW9/M), Rukka (Ex.PW10/A), Copy of FIR (Ex.PW10/B), Endorsement on rukka (EX.PW1/C), NCB form (Ex.PW10/D), Destruction certificate

(Ex.PW10/E), State FSL report (Ex.PX), Site plan (Ex.PW14/A), Arrest memo (Ex.PW14/B), Jamatalashi memo (Ex.PW14/C), Application to the Court (Ex.PW14/D), Annexure I (Ex.PW14/E), Annexure-2 (Ex.PW14/F), Application to CJM, Chamba (Ex.PW14/G), Zimni order dt.27.1.19 of CJM, Chamba (Ex.PW14/H), Certfs. U/S 52A(3) NDPS Act (Ex.PW14/J&K) and Specimen seal of the Court (Ex.PW14/L).

7. The substance of the prosecution case was put to the accused in his statement recorded under Section 313 Cr.PC on 11.12.2020, wherein he has denied the prosecution case in its entirety by raising the defence of denial simplicitor and false implication by the police.

8. The learned trial Court, after considering the material on record and hearing the parties, found the accused guilty of being in possession of 1.555 Kgs of '*Charas*'(Cannabis), which was recovered from his exclusive and conscious possession on 26.01.2019 at 3:00 PM at a place Behi, near Koti on Chamba–Tissa Road, Tehsil and District Chamba. Accordingly, he was convicted for the commission of offence punishable under

Section 20(b)(ii)(C) of the NDPS Act, 1985 in Sessions Trial No.29 of 2019 (NDPS Act) (CNR No.HPCH01-001063-2019), titled as '*State of Himachal Pradesh Vs. Kishan Chand @ Thithi*', vide impugned judgment of conviction dated 08.03.2021 and order of sentence dated 09.03.2021.

9. Feeling aggrieved and dissatisfied with the impugned judgment of conviction dated 08.03.2021 and order of sentence dated 09.03.2021 passed by the learned Special Judge, Chamba, Division Chamba (H.P.) in Sessions Trial No.29 of 2019 (NDPS Act) (CNR No.HPCH01-001063-2019), titled as '*State of Himachal Pradesh Vs. Kishan Chand @ Thithi*', the accused is in appeal before this Court on various grounds.

10. **GROUND OF APPEAL:**

- (i) *"That the judgment of the Learned Trial Court is both against law and facts of the case and is therefore, liable to be quashed and set aside.*
- (ii) *That the Learned Trial Court has passed the impugned judgement merely on conjectures, hypothesis and surmises and therefore, the same is liable to be set aside.*
- (iii) *That the Learned Trial Court has not assigned reasonable, cogent grounds for conviction of*

the appellant. In fact, there is not even iota of evidence to connect the appellant with the commission of alleged offences. Therefore, the impugned judgement cannot be sustained in the eyes of law and is liable to be set aside.

- (iv) The genesis of the incident, the place of incident and the manner in which the incident took place was not found to have been established by cogent and credible prosecution evidence.*
- (v) That no reliance can be placed on the testimonies of police witnesses and it is not proved beyond reasonable doubt as to what was the spot from where the alleged seizure took place. The entire evidence brought on the record is inconsistent and incredible. No conviction can be based on such unreliable and untrustworthy evidence.*
- (vi) That in the present case, the search of the bag allegedly carried by the convict was conducted in the absence of the compliance of any statute, rule, ordinance or legally enforceable direction. No reliance can be placed on such an unlawful search and recovery made to such an illegal search. And also the sealed parcel deposit in malkhana, when produced before the court below it was not intact and sample and bulk of charas not exhibits in the court.*
- (vii) The mandatory provision of Section 42(2) has not complied in its entirety.*
- (viii) That the the investigation has not been conducted by an empowered officer.*

- (ix) *That the preparation of the memos are doubtful and there is contradiction in the names of the persons who scribed the same.*
- (x) *That no specimen seal was sent to the laboratory.*
- (xi) *That the investigation in the case has been done to the disadvantage of the accused and is unfair and prejudiced manner.*
- (xii) *That the prosecution witnesses, instead of rendering corroboration to the statements of each other have rather contradicted each other on material particulars and such contradictions cannot be brushed aside by terming them as discrepancies and forgetfulness due to lapse of time.*
- (xiii) *That the statements of the prosecution witnesses cannot be relied upon because the witnesses examined by the prosecution were highly interested witnesses.*
- (xiv) *That the prosecution has failed to bring home the guilt to the appellant beyond reasonable doubts and thus the appeal deserves to be allowed.*
- (xv) *That there are contradictions, embellishments, and improvements in the statements of the material prosecution witnesses, which go to show that the occurrence has not at all taken place in the manner as has been suggested by the prosecution.*
- (xvi) *That the case has not been considered in its true prospective. The impugned judgement is*

against the law and the facts of the case, and is legally untenable and deserves to be set aside. Learned Trial Court has failed to appreciate the case in its proper perspective. All the alleged recoveries and specimen signatures have been made in violation of Article 20(3) of the Constitution of India and are legally inadmissible. The alleged recovered have been manufactured by the investigating agency and is concocted and illegal and inadmissible in law.

(xvii) That this Hon'ble Court has ample powers to review the evidence upon the basis of which an illegal conviction has been passed. In the present appeal, it is prayed to this Hon'ble Court to re-appraise the evidence and come to its own conclusion.

(xviii) That the present appeal is being filed against the impugned judgement on the above stated apart from various other grounds, which will be submitted at the time of final hearing of the case as the Appellant is presently confined in jail. The appellant also reserves his rights to file an application to lead additional evidence by filing an appropriate application under the relevant provisions of law."

11. We have heard learned counsel for the parties and carefully gone through the records.

12. Ms. Kiran Dhiman, learned counsel for the accused submitted that the statements of the prosecution witnesses contradict each other on material aspects. Furthermore, the

police failed to comply with the mandatory and directory provisions under the NDPS Act, which is fatal to the prosecution case. The Investigating Officer, at the time of the alleged recovery, did not associate independent witnesses as mandated, therefore, the prosecution case is liable to be doubted on the said score. Hence, she prayed that the present appeal be allowed and the judgment of conviction and order of sentence passed by the learned trial Court be set aside, being unsustainable and perverse.

13. Mr. Yashwardhan Chauhan, learned Senior Additional Advocate General submitted that the learned trial Court has rightly appreciated the oral and documentary evidence adduced by the prosecution. He submitted that there are no procedural lapses in the prosecution case and the independent witness Vinod Kumar examined as PW-7 has fully supported the prosecution case qua the recovery of the contraband from exclusive and conscious possession of the accused in the presence of official witnesses, namely Constable Sunil Kumar No.228 (PW-6), Constable Sanjay Kumar, No.327 (PW-11), and

Constable Mukesh Kumar, No.488 (PW-12). He also referred to all the material documents, which were prepared by the police during the course of the investigation. The official witnesses have supported the prosecution case, which is further corroborated by the independent witness. There are no material contradictions in the statements of the witnesses examined before the learned trial Court rendering the prosecution case vulnerable and unacceptable. Therefore, he prayed that the present appeal be dismissed.

14. The accused has been convicted and sentenced for commission of the offence punishable under Section 20(b)(ii)(C) of the NDPS Act, 1985 by the learned Special Judge, Chamba, Division Chamba (H.P.) vide impugned judgment of conviction dated 08.03.2021 and order of sentence dated 09.03.2021. The accused was apprehended and was found in possession of 1.555 Kgs of 'Charas'(Cannabis) by the Police party headed by HC Vikky Raj, No.77 (PW-15) on 26.01.2019 at about 3:00 PM at place Behi near Koti on Chamba–Tissa Road, Tehsil and District Chamba (H.P.).

15. As put forth, the case of the prosecution evidently pertains to the chance recovery of 1.555 Kgs of '*Charas*' (Cannabis) from exclusive and conscious possession of the accused during routine patrolling by HC Vikky Raj No.77 (PW-15) of Special Investigation Unit (SIU), Chamba. The accused was apprehended and subsequently searched by HC Vikky Raj No. 77 (PW-15) in the presence of two official witnesses, Constable Sunil Kumar No.228 (PW-6) and Constable Sanjay Kumar No. 327 (PW-11), and also in the presence of Vinod Kumar (PW-7) being an independent witness. Apart from this, Constable Mukesh Kumar No.488 (PW-12) also actively remained associated during the course of proceedings, took photographs and later went to Police Station, Chamba along with rukka Ex. PW-10/A.

16. Evidently, the Investigating Officer HC Vikky Raj, No. 77 (PW-15), during the course of search of the backpack and seizure of the contraband, associated only one independent witness, Vinod Kumar examined as PW-7. The aforesaid witness runs a shop at village Behi, P.O. Koti, Tehsil and District Chamba

(H.P.), where the accused was apprehended and searched by the Police party. Needless to emphasize that the aforesaid witness in his evidence has come forward in support of the fact qua recovery of the contraband, i.e. 1.555 Kgs of '*Charas*' (Cannabis) from the exclusive and conscious possession of the accused. He further goes to support the entire proceedings carried out by the police on the spot in his presence, whereby the case property was sealed and taken into possession vide recovery and seizure memo Ex. PW-6/B. He has also identified his signatures over memo Ex. PW-6/B, parcel Ex. P-1, backpack (pithu bag) Ex. P-2, another article being blanket Ex. P-3, and carry bag Ex. P-4.

17. One of the contentions raised by the learned counsel for the accused is that the Investigating Officer, during the course of proceedings, made no efforts to join two independent witnesses as mandated, therefore, the aforesaid circumstance is to be construed against the prosecution. The submission made by the learned counsel is liable to be discarded since the police party was on routine patrolling and there was no prior information

regarding the movement of the accused along with the contraband. The police apparently associated only one independent witness, Vinod Kumar (PW-7), who runs a confectionery shop at village Behi where the accused was spotted and apprehended. Since the accused was spotted and apprehended under the given circumstances, therefore, the Investigating Officer had no time and opportunity to look for another independent witness, hence, the prosecution case cannot be doubted solely for the reason that the Investigating Officer associated only one independent witness during the course of proceedings.

18. The law is fairly settled that the prosecution case cannot be thrown out due to non-association of independent witnesses. The Hon'ble Supreme Court in **Kalp Nath Rai vs. State, 1998 AIR(SC)201, Kashmira Singh Versus State of Punjab 1999 (1) SCC 130, Rizwan Khan versus State of Chattisgarh (2020) 9 SCC 627, Surender Kumar vs. State of Punjab, (2020) 2 SCC 563, Balwinder Singh & Anr. Versus State of HP 2020 Cr.L.J 1684 and Raveen Kumar Vs. State of**

H.P. (2021) 12 SCC 557, held that the prosecution case cannot be discarded merely because independent witnesses were not associated.

19. This position was reiterated in **Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197.**

20. A similar view was taken in **Kehar Singh v. State of H.P., 2024 SCC OnLine HP 2825.**

21. Thus, in view of the binding precedents of this Court and the Hon'ble Supreme Court, the non-association of independent witnesses is not fatal, and the prosecution's case cannot be either discarded or doubted due to non-association of independent witnesses. However, the duty has been cast upon the Court to carefully scrutinize the evidence of police officials, who otherwise are competent witnesses under the law.

22. Adverting to the prosecution evidence regarding the search of the backpack (pithu bag) Ex.P2 and the recovery of contraband from the exclusive and conscious possession of the accused.

23. PW-6 Constable Sunil Kumar No.228 has testified that on 26.01.2019, he was accompanying the Police party headed by HC Vikky Raj No.77 (PW-15). The Police party of Special Investigation Unit(SIU), Chamba was on routine patrolling, traffic checking, law and order and crime detection duty towards Balu, Sarol, Kiani, Pukhri, Koti, etc. At about 3:00 PM, the Police party was present at village Behi near Koti, where the accused was spotted coming from Koti side carrying a backpack(pithu bag). He was searched on suspicion in the presence of Vinod Kumar (PW-7), being an independent witness, leading to recovery of 1.555 Kgs of '*Charas*'(Cannabis) from the pithu bag (Ex.P-2). Pursuant to the recovery of the contraband, codal seizure formalities were conducted, and the case property was taken into possession vide recovery and seizure memo Ex.PW-6/B in his presence and in the presence of independent witness Vinod Kumar (PW-7) and official witness Constable Sanjay Kumar No.327 (PW-11).

24. PW-7 Vinod Kumar is an independent witness of the proceedings. As per his evidence, he is running a confectionery

shop at village Behi, P.O. Koti, Tehsil and District Chamba, H.P.. On 26.01.2019, he was present in his shop, and at about 3:00 PM, the police party came to the spot and it was in his presence that the accused was apprehended and searched, leading to the recovery of 1.555 Kgs of '*Charas*'(Cannabis) from the pithu bag (Ex.P-2) being carried by him. He has also supported the prosecution case qua the seizure formalities conducted on the spot and has identified his signatures over the seizure memo Ex.PW-6/B.

25. Similarly, Constable Sanjay Kumar No.327 examined as PW-11 and Constable Mukesh No.488 examined as PW-12 have also supported the prosecution case regarding the apprehension of the accused on 26.01.2019 at 3:00 PM at village Behi, P.O. Koti, Tehsil and District Chamba, H.P., for having found in exclusive and conscious possession of 1.555 Kgs '*Charas*'(Cannabis). They have also supported the contents of the recovery and seizure memo Ex.PW-6/B and have identified the pithu bag Ex.P-2, blanket Ex.P-3, and carry bag Ex.P-4.

26. Apart from the evidence of the aforesaid witnesses, the Investigating Officer, HC Vikky Raj No.77 (PW-15), has also supported and corroborated the factum regarding the recovery of 1.555 Kgs of '*Charas*'(Cannabis) from the possession of the accused when he was apprehended on 26.01.2019 at about 3:00 PM at village Behi, P.O. Koti on Chamba–Tissa road, Tehsil and District Chamba (H.P.).

27. It may be pertinent to refer to rukka Ex.PW-10/C, which explicitly and elaborately puts on record the sequence of events pertaining to the incident, the search of back pack in possession of the accused, recovery of 1.555 Kgs of '*Charas*'(Cannabis) therefrom, and the seizure proceedings conducted subsequently as reflected in the recovery and seizure memo Ex.PW-6/B.

28. The other documents, i.e. NCB-I form in triplicate Ex.PW-10/D, spot map Ex.PW-14/A, and resealing certificate under Section 55 of NDPS Act Ex.PW-3/B, further support and corroborate the prosecution case.

29. The learned counsel for the accused also argued that there are material contradictions and omissions in the testimonies of the official and independent witnesses, rendering the entire prosecution case vulnerable and unworthy of credence. He specifically pointed out that PW-6 Constable Sunil Kumar No.228 makes reference in his statement that the spot was also visited by the Additional Superintendent of Police, Chamba prior to the arrival of HC Chaman Lal No.53 (PW-14). However, the aforesaid fact is conspicuously missing in the evidence of other official witnesses and the independent witness, as well as in the statements of the Investigating Officers, HC Vikky Raj No.77 (PW-15) and HC Chaman Lal No.53 (PW-14). He has also pointed out that the witnesses have contradicted each other on other aspects as well, i.e. the arrival of the Police party on the spot and the proceedings conducted after the alleged recovery of contraband from the accused.

30. Before advertng to the contradictions as pointed out by the learned counsel, it may be reiterated that the discrepancies in the statements of witnesses to which do not

shake the core and root of the prosecution case are not to be attached undue importance.

31. The Hon'ble Supreme Court in **Rajan v. State of Haryana, 2025 SCC OnLine SC 1952** has observed:

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

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

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of

evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

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

IV. Minor discrepancies on trivial matters not touching the core of the case, 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)”

32. 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** has observed:-

“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. 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 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 which 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 persons 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 him with medical aid and inform the police. The statements which 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 Shivilal v. State of Chhattisgarh [Shivilal 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.”

33. Therefore, in view of the ratio of law laid down by the Hon'ble Supreme Court, this Court and after carefully going through the statements of the official witnesses, namely

Constable Sunil Kumar No.228 (PW-6), Constable Sanjay Kumar No.327 (PW-11), Constable Mukesh No.488 (PW-12), and HC Vikky Raj No.77 (PW-15), and also considering the testimony of independent witness Vinod Kumar (PW-7), we do not find any material omissions, contradictions, or discrepancies to negate the prosecution case.

34. Apart from the stray reference regarding the visit of Additional SP, Chamba on the spot in the statement of Constable Kumar No.228 (PW-6), there are no other material contradictions in their respective evidence rendering the prosecution case unbelievable. Therefore, minor contradictions discrepancies, in the testimonies of the police officials are liable to be ignored without giving undue importance.

35. Other link evidence adduced by the prosecution is complete. The case property was duly sealed vide recovery and seizure memo Ex.PW6/A and subsequently re-sealed vide re-sealing certificate Ex.PW3/B. Furthermore, necessary compliance under Section 57 NDPS Act and Section 52-A (2) NDPS Act can be inferred after going through the copy of Special

Reports Register Ex.PW5/B, Special Report under Section 57 NDPS Act Ex.PW5/C, Certificate under Section 52A NDPS Act Ex.PW14/J and Certificate under Section 52A(3) NDPS Act Ex.PW14/K. Apart from this Ex.PW14/H is zimini order dated 27.01.2019 of learned Chief Judicial Magistrate, Chamba passed on an application under Section 52(A) (2) NDPS Act for certification of correctness of inventory.

36. The SFSL Report No.317 NDPS Division 93/2019 dated 07.02.2019 (Ex.PX) confirms the sample subjected to examination was of '*Charas*'(Cannabis) and the quantity of purified resin was found 27.05% w/w.

37. Keeping in view the above noted exposition, it appears that the view taken by the learned Special Judge is correct. The material and evidence adduced by the prosecution has been duly appreciated by the learned Trial Court, the judgment of conviction dated 08.03.2021 and order of sentence dated 09.03.2021 cannot be faulted.

38. In view of the above, the present appeal fails and it is dismissed.

39. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

8th October, 2026
(Kiran)