IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 97 of 2015
Reserved on: 10.09.2025
Date of Decision: 15.10.2025.

Sanjeev Kashyap & Another ...Petitioners

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Petitioner : Mr Sunil Chauhan, Advocate.
For the Respondents : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioners have filed the present revision against the judgment dated 11.11.2014 passed by learned Additional Sessions Judge-II, Shimla, H.P. (learned Appellate Court), vide which the judgment of conviction dated 19.10.2011 and order of sentence dated 22.10.2011 passed by learned Judicial Magistrate First Class, Court No.2, Shimla (learned Trial Court)

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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

2. Briefly stated, the facts giving rise to the present revision are that the police filed the charge sheet before the learned Trial Court for the commission of an offence punishable under Section 379 read with Section 34 of the Indian Penal Code (hereinafter referred to as IPC). It was asserted that ASI Shiv Kumar (PW6) and Constable Suresh Kumar (PW4) were on patrolling duty on 19.03.2009. When they reached near the garbage dumper on IGMC road at 2:30 a.m., they saw that one person was putting a tyre into the vehicle bearing registration No. HP-52A-1352 and another person was sitting in the driver's seat. Both of them ran away after seeing the police. Constable Atma Ram (PW2) and HHG Yashwant Singh (PW3) reached the spot, and they apprehended those persons. They (apprehended persons) revealed their names as Sanjeev Kashyap and Vikrant Thakur. Sanjeev Kashyap also disclosed that he had removed the tyre of a vehicle bearing registration No. HP-10-1204. ASI Shiv Kumar (PW6) prepared the rukka (Ext.PW4/A) and sent it to the police station, where FIR (Ext.PW6/A) was registered. ASI Shiv

Kumar (PW6) investigated the matter. He prepared the site plan (Ext.PW6/C) and seized the vehicle bearing registration No. HP52A-1352, its key, registration certificate, insurance certificate, and stolen tyre vide memo (Ext.PW2/A). He arrested the accused vide memos (Ext.PW4/B and Ext.PW4/C). The photographs (Ext.PW8/A to Ext.PW8/E) whose negatives are Ext.PA-1 to Ext.PA5 were taken by Constable Lokinder Singh (PW8). ASI Shiv Kumar (PW6) went towards the vehicle bearing registration No. HP-10-1204 and found that its tyre was removed, and the vehicle was put on the jack and rod. The police seized the jack (Ext.P1) and the rod (Ext.P2) vide memo (Ext.PW-1/B). He found four nuts lying on the spot, which were handed over to Dr Suresh Kumar (PW1), the owner of the vehicle. ASI Shiv Kumar (PW6) recorded the statements of witnesses as per their version, and after the completion of the 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, notice of accusation was put to them for the commission of offences

punishable under Section 379 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 8 witnesses to prove its case. Dr Suresh Kumar (PW1) is the owner of the vehicle bearing registration No. HP-10-1204 from which the tyre was stolen. Constable Atma Ram (PW2) and HHG Yashwant Singh (PW3) apprehended the accused. Constable Suresh Kumar (PW4) was accompanying ASI Shiv Kumar (PW6) and found the accused loading the tyre into their vehicle. Harmesh Kumar (PW5) proved that his brother Sanjeev Kashyap used to drive the vehicle bearing registration No. HP52A-1352, ASI Shiv Kumar (PW6) investigated the matter, Constable Sohan Lal (PW7) proved the entry in the daily diary. Constable Lokinder Singh (PW8) took the photographs.

5. The accused, in their statements recorded under Section 313 Cr.P.C., denied the prosecution's case in its entirety. They stated that the prosecution witnesses deposed falsely against them. They were sitting in the vehicle and were going to Sanjauli. Police falsely implicated them in the present case. They did not lead any evidence in their defence.

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6. Learned Trial Court held that the police party was on a patrolling duty when they found that a tyre was being loaded in the vehicle bearing registration No. HP52A-1352. This Tyre was stolen from the vehicle bearing registration No. HP10-1204. The police also found Jack (Ext.P1) and Panna (Ex. P2) on the spot. Panna was lying near the car, and Jack was put beneath the car to lift it to facilitate the removal of the tyre. The entry No.22 in the daily diary (Ext.PW7/B) mentioned the date of the departure of ASI Shiv Kumar (PW6) and Constable Suresh Kumar (PW4) as 18.03.2009, but it was a clerical error, as the earlier entry No.19 (Ext.PW7/A) regarding the departure of Constable Atma Ram (PW2) and HHG Yashwant Singh (PW3) was recorded on 18.03.2009 at 10:55 PM. The subsequent entry No. 22 recorded at 2 a.m. could not have been recorded on 18.03.2009. The absence of a rod on the spot was not material because the panna (Ext.P2) could be used to lift the jack and remove the nuts. The incident occurred in the middle of the night, and failure to join the independent witness was not material. Both the accused were acting in concert. Therefore, they were convicted of the commission of an offence punishable under Section 379 read with Section 34 of IPC and were

sentenced to undergo simple imprisonment for three months, pay a fine of ₹500/- each and in default of payment of fine to undergo further simple imprisonment for seven days.

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-II, Shimla (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had removed the tyre of the car bearing registration No. HP10-1204. One accused was loading a tyre into the car bearing registration No. HP52A-1352 and the other accused was sitting in the driver's seat. This showed that both the accused were acting together. Doctor Suresh Kumar (PW1), the owner of the vehicle bearing registration No HP-10-1204, stated that the tyre was removed without his consent. Therefore, all the ingredients of the commission of an offence punishable under Section 379 of the IPC were duly satisfied. The discrepancy in the entry in the daily diary was not material, and the learned Trial Court had rightly held it to be a clerical error. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Trial Court, the accused have filed the present revision asserting that the learned Courts below did not properly appreciate the material placed before them. The material contradictions and inconsistencies in the prosecution's case were ignored. The photograph (Ext.PW8/D) was taken in front of the police station, whereas the photograph (Ext.PW8/A) was taken near Sanjauli Chowk. Both photographs should have been taken at the same spot. The absence of an operating rod for the jack of the vehicle was not considered by the learned Courts below. There was a discrepancy in the entry in the daily diary, which made the presence of ASI Shiv Ram (PW6) on the spot doubtful. The tyre stated to be stolen was shown outside the car, and another tyre was found in the vehicle. The photograph showed the stolen tyre was in the back of the car, whereas Constable Atma Ram (PW2) stated that the tyre was lying near the vehicle. 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 Sunil Chauhan, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

10. Mr Sunil Chauhan, learned counsel for the petitioner/accused, submitted that the learned Courts below failed to properly appreciate the material on record. The police did not find any operating rod of the jack, which made it suspect that the tyre was removed from the vehicle bearing registration No. HP10-1204 by using the jack. The photographs were not taken on the spot, and one photograph was taken outside the police station. No proper explanation was provided for this lapse. The entry in the daily diary bore the date 18.03.2009, which made the presence of ASI Shiv Ram (PW6) and Constable Suresh Kumar (PW4) on the spot doubtful. The learned Courts below brushed aside these aspects of the prosecution's case. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Court below be set aside. He relied upon the judgments of ***Gulab Singh vs. State of Uttar Pradesh (2022) 12 Supreme Court Cases 677*** and ***State of Madhya Pradesh vs. Jad Bai (2023) 6 Supreme Court Cases 552*** in support of his submission.

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11. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the learned Courts below have dealt with the submissions made by learned counsel for the accused/petitioner and found them to be untenable. This Court should not interfere with the concurrent findings of learned Courts below. Therefore, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests

jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

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

> **"14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.**It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v.Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where the scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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> > "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded

> error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

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

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

> 5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

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

possible. The following has been laid down in para 14: (SCC p. 135)

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

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

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional

> Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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

18. The accused did not dispute their presence in the vehicle bearing registration No. HP52A-1352. In their statements recorded under Section 313 Cr. P.C., they replied to question No.12 by stating that they were sitting in the vehicle and were going to Sanjauli, and they were falsely implicated by the police in this case. Thus, the presence of the police and the presence of the accused in the vehicle are undisputed. Hence, the submission that there is a discrepancy in the entry in the daily diary, which made the presence of ASI Shiv Kumar (PW6) and Constable Suresh Kumar (PW4) on the spot doubtful, will not help the accused.

19. Entry No. 19 dated 18.03.2009 (Ext.PW7/A) was recorded on 10:55 p.m. regarding the departure of Constable Atma Ram (PW2) and HHG Yashwant Singh (PW3) towards beat No. 2. Entry No. 22 dated 18.03.2009 (Ext.PW7/B) was recorded at 2 a.m. regarding the departure of ASI Shiv Ram (PW6) and

Constable Suresh Kumar (PW4) towards beat No. 1, 2, 3 and 4. The learned Trial Court had rightly held that if the entry number 19 was recorded on 18.03.2009 at 10:55 pm, entry No.22 could not have been recorded on 18.03.2009 at 2:00 a.m. Thus, there was an apparent error in the entry regarding the date of its recording, and not much advantage can be derived from the date 18.03.2009 mentioned in the entry in the daily diary No. 22 (Ext.PW7/B).

20. Constable Atma Ram (PW2) stated in his examination-in-chief that he and HHG Yashwant Singh (PW3) were returning when they found ASI in charge and two Constables on patrolling duty. This part of his testimony was not challenged in the cross-examination, and nothing was suggested to this witness that ASI Shiv Kumar (PW6) was not on patrolling duty or had not met him on the date of the incident. Thus, this part of his testimony is accepted by the accused as correct. It was laid down by the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561*** that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State***

of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4, and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, such the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.
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> **59.** The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not

speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P.v.Nahar Singh[State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850]***, quoted from ***Browne v.Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13*. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:
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> (*1*) to test his veracity,
>
> (2) to discover who he is and what his position in life is, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under : (SCC pp. 294-95, paras 15-16)

> "*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandalv.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***.
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> *16.* In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian,***

> ***1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83]*** has laid down that when attestation is not specifically challenged and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

21. HHG Yashwant Singh (PW3) stated that he and Constable Atma Ram (PW2) were going from IGMC towards Sanjauli chowk at 2:35 am, and they met ASI Shiv Kumar (PW6) with Constable Suminder and another Constable. He was also not cross-examined regarding this part of his testimony. No suggestion was given to him that ASI Shiv Ram (PW6) did not meet him with two constables. Thus, the testimonies of these

witnesses clearly showed the presence of ASI Shiv Kumar (PW6) on the spot, and the findings recorded by the learned Courts below to this effect cannot be faulted.

22. ASI Shiv Kumar (PW6) stated that he and Constable Suresh Kumar (PW4) reached near the garbage dumper on the IGMC road. They found that one person was loading the tyre into his vehicle and another was sitting in the driver's seat. Both of them ran away after seeing the police, and they were apprehended with the help of other police officials. He identified them in the Court. He found during the interrogation that the vehicle bearing registration No. HP10-1204 was parked on the IGMC road, and the tyre was removed from it. He prepared the rukka and sent it to the Police Station. He conducted the investigation and seized the vehicle bearing registration No. HP52A-1352 along with documents, key and the stolen tyre.

23. He stated in his cross-examination that the police officials left the police station at 10:55 pm, and an entry was recorded regarding their departure. He admitted that the duty is assigned only once. A vehicle bearing registration No. HP10-1204 was locked. Jack and Rod, attached to the vehicle, did not

belong to it. He admitted that people continue to move on the IGMC road. The car in which the tyre was being put was parked near the dumper. He admitted that no photographs of the vehicle bearing registration No. HP52A-1352 were taken near the dumper, and the photographs were taken outside the police station. They were going from the Police Post towards IGMC and then towards Sanjauli. The accused were seen by him and Constable Suresh Kumar. He admitted that his name was not mentioned in entry number 19 regarding the patrolling. He admitted that his entry was recorded on 18.03.2009 at 2 a.m. He volunteered to say that he and Suresh Kumar (PW4) were on patrolling duty during the night, and entry No.22 was recorded to this effect. He went towards Lakkar Bazaar from the Police Post. He admitted that the office of the electricity board is located near the dumper. He was not aware that the officials were posted in the office during the night. He denied that the accused were falsely implicated and that they had not committed any offence.

24. His testimony was corroborated by Constable Atma Ram (PW2), who stated that ASI Shiv Kumar (PW6) and two Constables shouted catch the thieves as they were running away.

He and HHG Yashwant Singh (PW3) ran towards Lakkar Bazaar road and apprehended Sanjeev Kashyap, who was brought to ASI Shiv Kumar (PW6). Constable Suresh Kumar (PW4) apprehended another person who identified himself as Vikas Thakur. ASI Shiv Kumar (PW6) seized the vehicle bearing registration No. HP-52A-1352, a stolen tyre, key and documents. The photographs of the vehicle from which the tyre was stolen and the vehicle from which the tyre was recovered were taken. He identified the accused present in the Court.

25. He stated in his cross-examination that photographs were taken during the night. The tyre was lying near the vehicle bearing registration No. HP52-1352. He was not aware whether the key was used to open the dicky of the car. Another tyre was found inside the dicky. The jack was inside the car, and Panna was outside the car. He admitted that the office of the electricity board is located at some distance from the dumper. He denied that the officials remain on night duty in the office. He volunteered to say that they keep on sleeping during the night.

26. HHG Yashwant Singh (PW3) also supported the prosecution’s case. He stated that he and Constable Atma Ram

(PW2) were on patrolling duty, and a car was parked near the dumper. He saw one person running away. He and Constable Atma Ram (PW2) apprehended him. The other person was apprehended by Constable Suresh Kumar (PW4). He identified the accused present in the Court.

27. He stated in his cross-examination that he and Constable Atma Ram (PW2) were patrolling together. He had not seen any person sitting inside the vehicle. Maruti car bearing registration No. HP52A-1352 was parked towards the railing side. Many vehicles were parked towards the hillside. The photographs were taken after 2:30 a.m. He was not aware whether the car was parked near the railing. He did not know which vehicle was photographed. He volunteered to say that he was not present at the time of photography. He admitted that the road leading to Lakkar Bazaar can be covered by going towards Sanjauli Chowk. He had gone towards Lakkar Bazaar from Sanjauli Chowk. He denied that he was not on duty, and he made a false statement.

28. Constable Suresh Kumar (PW4) also corroborated the prosecution's version. He stated that he and ASI Shiv Kumar

(PW6) reached the IGMC road and found a person loading a tyre in his vehicle bearing registration No. HP52A-1352. Another person was sitting in the driver's seat. Both people ran away after seeing the police. He, Constable Atma Ram (PW2) and HHG Yashwant Singh (PW3) followed them. The persons revealed their names as Sanjeev Kumar and Vikrant Thakur. They revealed that the tyre was removed from the vehicle bearing registration No. HP10-1204. A rukka was prepared and was handed over to him. He handed over the rukka in the Police Station. ASI Shiv Kumar (PW6) seized the vehicle and the stolen tyre.

29. He stated in his cross-examination that he was posted in Police Post Sanjauli on 19.03.2009. He was deputed with ASI Shiv Kumar (PW6). They went towards the local bus stand and Sanjauli, and thereafter they went towards IGMC for checking. Constable Atma Ram (PW12) and a Home Guard official were on duty. HHG Yashwant Singh (PW3) was on duty from 11:00 pm till 5 am. The vehicle bearing registration No. HP-52A-1352 was parked near the dumper. The car bearing registration No. HP10-1204 was parked at some distance. The rukka was written at 3 am by him as per the directions of ASI

Shiv Kumar (PW6). It took about half an hour to register the FIR. He denied that the police officials had returned to the police post in the meantime. He reached the spot at 3:45 am. Jack and Panna were seized by ASI Shiv Kumar (PW6). The vehicle bearing registration No. HP10-1204 was locked. The photographs were taken from outside the car before preparing the memo. He denied that the accused had committed any theft.

30. The statements of police officials are quite consistent. Nothing was suggested to them as to why they should be deposing falsely against the accused. The accused also did not provide any explanation in their statements recorded under Section 313 of Cr. P.C. regarding any motive of the police official to falsely implicate them. Thus, there is no reason to doubt the testimonies of the police officials.

31. It was submitted that there are various discrepancies in the statements of police officials, which made the prosecution's case highly suspect. This submission is not acceptable. The incident occurred on 19.03.2009, and the statements of the witnesses were recorded in the year 2009 and afterwards. Thus, a considerable time period has lapsed since

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the date of the incident. The contradictions were bound to come with the passage of time due to the failure to remember the fact. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

> "**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as under:
>
> > *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
> >
> > *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*

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

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

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

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

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

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

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

> *X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.*
>
> *XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.*
>
> *XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.*
>
> *XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness." [See* ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717*** and ***Tahsildar Singh v. State of UP (AIR 1959 SC 1012)"***

32. In the present case, the statements of the police officials had a ring of truth, and minor discrepancies were not sufficient to discard them.

33. ASI Shiv Kumar (PW6) and Constable Suresh Kumar (PW2) saw the accused Vikrant loading the tyre into the vehicle bearing registration No. HP 52A-1352. The accused Sanjeev was sitting in the driver's seat. Both of them ran away from the spot after seeing the police. The fact that one person was loading the tyre into the vehicle and the other person was sitting on the driver's seat, ready to drive the vehicle, clearly showed that they were acting in concert and they shared their common intention to commit the theft of the tyre. Hence, they were rightly held liable by the learned Courts below after applying Section 34 of the IPC.

34. Section 34 of IPC was explained by the Hon'ble Supreme Court in ***Jasdeep Singh v. State of Punjab, (2022) 2 SCC 545: (2022) 1 SCC (Cri) 526: 2022 SCC OnLine SC 20*** as under at page 554:

> 17. We shall first go back into history to understand Section 34 IPC as it stood at its inception and as it exists now.
>
> | Old Section 34 of IPC | New Section 34 of IPC |
> |---|---|
> | "When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone" | "When a Criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the |

	same manner as if it were by him alone"

18. On comparison, one could decipher that the phrase "in furtherance of the common intention" was added to the statute book subsequently. It was first coined by Barnes Peacock, C.J., presiding over a Bench of the Calcutta High Court, while delivering its decision in ***R. v. Gorachand Gope [R. v. Gorachand Gope, 1866 SCC OnLine Cal 16],*** which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view : (SCC Online Cal)

> "It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in a company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that, although a man is present when a felony is committed, if he takes no part in it, and does not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on

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> without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert and that the beating was in furtherance of a common design. I do not know what the evidence was; all that I wish to point out is that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

19. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one. Therefore, in order to attract Sections 34 to 39 IPC, a series of acts done by several persons would be related to a single act, which constitutes a criminal offence. A similar meaning is also given to the word "omission", meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

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

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

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, midfielder, striker, and keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared among the players. The same logic is the foundation of Section 34 IPC, which creates shared liability on those who shared the common intention to commit the crime.

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

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

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

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention

having adequate connectivity. When we speak of intention, it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

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

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

28.1.*Suresh v. State of U.P. [Suresh v. State of U.P., (2001) 3 SCC 673: 2001 SCC (Cri) 601]* : (SCC pp. 682-83 & 686-87, paras 24 & 40)

> "24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has a nexus with the offence. Such an act need not be very substantial; it is enough that the act is only for guarding the scene to facilitate the crime. The act need not necessarily be overt; even if it is only a covert

act, it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e.g. a co-accused, standing near the victim face to face, saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught, deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence, an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has a common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked to convict that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC.

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40. Participation in the crime in furtherance of the common intention cannot be conceived of as some independent criminal act by all accused persons, besides the ultimate criminal act, because for that individual act, the law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under the law is that the accused persons sharing the common intention must be physically present at the scene of the occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under

Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in ***Satrughan Patar v. Emperor [Satrughan Patar v. Emperor, 1919 SCC OnLine Pat 4: AIR 1919 Pat 111]*** held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

28.2.*Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268: 2003 SCC (Cri) 301]* : (SCC p. 277, para 22)

"22. The above discussion in fine thus culminates in the effect that the requirement of the statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot absolve the accused, though the same, however, depends upon the fact situation of the matter under consideration and no rule steadfast can be laid down therefor."

28.3.*Chhota Ahirwar v. State of M.P. [Chhota Ahirwar v. State of M.P., (2020) 4 SCC 126]* : (SCC p. 133, para 24)

"24. Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender, as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act, but additionally makes all other offenders liable. The essence of liability under Section 34 is a simultaneous consensus of the minds of

persons participating in the criminal act to bring about a particular result, which consensus can even be developed on the spot, as held in ***Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268: 2003 SCC (Cri) 301]***. There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

28.4.***Barendra Kumar Ghosh v. Emperor [Barendra Kumar Ghosh v. Emperor, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: AIR 1925 PC 1]*** : (SCC OnLine PC)

"... the words of Section 34 are not to be eviscerated by reading them in this exceedingly limited sense. By Section 33, a criminal act in Section 34 includes a series of acts and, further, "act" includes omissions to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By Section 37, when any offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things, "they also serve who only stand and wait". By Section 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part because they refer to it. Section 37 provides that, when several acts are done so as to

result together in the commission of an offence, the doing of any one of them, with an intention to cooperate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence. Section 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by one intention or by the other."

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

"... Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all", nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused, leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan."

28.6.*Rambilas Singh v. State of Bihar [Rambilas Singh v. State of Bihar, (1989) 3 SCC 605 : 1989 SCC (Cri) 659]* : (SCC pp. 609-10, para 7)

"7. ... It is true that in order to convict persons vicariously under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were not done in furtherance of the common intention of all the accused or the prosecution of the common object of the members of the unlawful assembly."

28.7.*Krishnan v. State of Kerala [Krishnan v. State of Kerala, (1996) 10 SCC 508: 1996 SCC (Cri) 1375]* : (SCC p. 515, para 15)

"*15*. Question is whether it is obligatory on the part of the prosecution to establish the commission of an overt act to press into service Section 34 of the Penal Code. It is no doubt true that the court likes to know about an overt act to decide whether the person concerned had shared the common intention in question. The question is whether an overt act has *always* to be established? I am of the view that the establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when "a criminal act is done by several persons in furtherance of the common intention of all". What has to be, therefore, established by the prosecution is that all the persons concerned had shared a common intention. The Court's mind regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention: *res ipsa loquitur*." (emphasis in original)

28.8.*Surendra Chauhan v. State of M.P. [Surendra Chauhan v. State of M.P., (2000) 4 SCC 110: 2000 SCC (Cri) 772]* : (SCC p. 117, para 11)

"*11.* Under Section 34, a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture."

28.9.*Gopi Nath v. State of U.P. [Gopi Nath v. State of U.P., (2001) 6 SCC 620]* : (SCC p. 625, para 8)

"*8.* ... As for the challenge made to the conviction under Section 302 read with Section 34 IPC, it is necessary to advert to the salient principles to be kept into consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by a plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action — be it that it was not overt or was only a covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and

conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case."

28.10.*Ramesh Singh v. State of A.P. [Ramesh Singh v. State of A.P., (2004) 11 SCC 305: 2004 SCC (Cri) Supp 70]* : (SCC p. 314, para 12)

12. ... As a general principle in a case of criminal liability, it is the primary responsibility of the person who actually commits the offence, and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code, the legislature laid down the principle of joint liability for doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused, leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention, then every person who did the criminal act with that common intention would be responsible for the offence committed, irrespective of the share which he had in its perpetration."

28.11.*Nand Kishore v. State of M.P. [Nand Kishore v. State of M.P., (2011) 12 SCC 120 : (2012) 1 SCC (Cri) 378]* : (SCC pp. 126-27, paras 20-23)

"*20.* A bare reading of this section shows that the section could be dissected as follows:

(*a*) A criminal act is done by several persons.

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

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

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While the first two are the acts which are attributable and have to be proved as actions of the accused, the third is the

consequence. Once the criminal act and common intention are proved, then, by a fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 IPC, must be done by several persons. The emphasis in this part of the section is on the word "done". It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity.

21. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and "mens rea" as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former, but they are distinct and different.

22. Section 34 also deals with constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

If the common intention leads to the commission of the criminal offence charged, each one of the persons sharing the common intention is constructively liable for the criminal act done by one of them. (Refer to ***Brathi v. State of Punjab [Brathi v. State of Punjab, (1991) 1 SCC 519: 1991 SCC (Cri) 203]*** .)

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

28.12.*Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]* : (SCC p. 682, para 87)

"*87.* Upon analysis of the above judgments and in particular the judgment of this Court in ***Dharnidhar v. State of U.P. [Dharnidhar v. State of U.P., (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491]***, it is clear that Section 34 IPC applies where two or more accused are present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 IPC, moreover, involves vicarious liability and therefore, if the intention is proved but no overt act was committed, the section can still be invoked. This provision carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he had the common intention to commit the act. The phrase "common intention" means a pre-oriented plan and acting in pursuance to the plan, thus, the common intention must exist prior to the commission of the act in a point of time. The common intention to give effect to a particular act may even develop on the spur of the moment between a number of persons with reference to the facts of a given case."

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

> "*15*. Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. Under this section, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime showing a prearranged plan and prior concert. The common intention may develop in the course of the fight but there must be clear and unimpeachable evidence to justify that inference. This has been clearly laid down by this Court in ***Amrik Singh v. State of Punjab [Amrik Singh v. State of Punjab, (1972) 4 SCC (N) 42: 1972 Cri LJ 465***].
>
> *16*. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and

critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

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

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

37. Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand

fulfilled, i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

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

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

41. The essence of Section 34 IPC is a simultaneous consensus of the minds of the persons participating in a criminal action to bring about a particular result. Russell, in his celebrated book *Russell on Crime*, 12th Edn., Vol. 1, indicates some kind of aid or assistance producing an effect in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony. It was observed by Russell that

any act of preparation for the commission of a felony is done in furtherance of the act.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence, there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be a long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or specified person. In fact, the section is intended to cover a case where a number of persons act together, and on the facts of the case, it is not possible for the prosecution to prove which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34."

35. A similar view was taken in ***Gulab*** (supra), wherein it was observed:

24. Section 34 IPC provides that:

"**34.** ***Acts done by several persons in furtherance of common intention.***—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

25. The well-established principle underlying the above provisions emerges from the decision of Vivian Bose, J., in ***Pandurang v. State of Hyderabad [Pandurang v. State of Hyderabad, (1955) 1 SCR 1083: AIR 1955 SC 216]*** where it was held : (AIR p. 222, paras 32-33)

"*32.* Now, in the case of Section 34, we think it is well established that a common intention presupposes prior concert. It requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: ***Mahbub Shah v. King Emperor [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5 : (1944-45) 72 IA 148]***, IA at pp. 153-154. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man, and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow, and yet none would have the common intention required by the section because there was no prior meeting of minds to form a prearranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: ***Barendra Kumar Ghosh v. King Emperor [Barendra Kumar Ghosh v. King Emperor, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: AIR 1925 PC 1], IA at p. 49*** and ***Mahbub Shah v. King Emperor [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5 : (1944-45) 72 IA 148]***. As their Lordships say in the latter case, 'the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.' (***Mahbub Shah case [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5: (1944-45) 72 IA 148]***, IA p.154)

33. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on

bystanders to help him kill a given individual, and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a prearranged plan, however hastily formed and rudely conceived. But, prearrangement must be there and a premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g. the intention to rescue another and, if necessary, to kill those who oppose." *(emphasis supplied)*

26. In ***Virendra Singh v. State of M.P. [Virendra Singh v. State of M.P., (2010) 8 SCC 407 : (2010) 3 SCC (Cri) 893]***, Dalveer Bhandari, J. speaking for a two-Judge Bench, explained the ambit of the words "in furtherance of the common intention of all" : (SCC p. 413, para 15)

"*15.* Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if they had the common intention to commit the offence. The words "common intention" imply a prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged plan. Common intention comes into force before the commission of the act at the point of time, which need not be a long gap. Under this section, a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and the circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime, showing a prearranged plan and prior concert. The common intention may develop in the course of the fight, but there must be clear and unimpeachable evidence to justify that inference. This has been clearly laid down by this

> Court in ***Amrik Singh v. State of Punjab [Amrik Singh v. State of Punjab, (1972) 4 SCC (N) 42***] ."

27. Emphasising the fundamental principles underlying Section 34, this Court held that:

27.1. Section 34 does not create a distinct offence, but is a principle of constructive liability.

27.2. In order to incur a joint liability for an offence, there must be a prearranged and premeditated concert between the accused persons for doing the act actually done.

27.3. There may not be a long interval between the act and the premeditation, and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person.

27.4. The provision is intended to cover cases where a number of persons act together, and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime.

28. These principles have been adopted and applied in another two-Judge Bench decision of this Court in ***Chhota Ahirwar v. State of M.P. [Chhota Ahirwar v. State of M.P., (2020) 4 SCC 126]*** Indira Banerjee, J. speaking for the two-Judge Bench observed : (SCC p. 133, paras 26-27)

> "26. To attract Section 34 of the Penal Code, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention [***see Asoke Basak [Asoke Basak v. State of Maharashtra, (2010) 10 SCC 660 : (2011) 1 SCC (Cri) 85***], SCC at p. 669]. To quote from the judgment of the Privy Council in the famous case of ***Barendra Kumar Ghosh [Barendra Kumar Ghosh v. King Emperor, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: AIR 1925 PC 1***], "they also serve who stand and wait".
>
> 27. Common intention implies acting in concert. Existence of a prearranged plan has to be proved either from the conduct of the accused, or from

> circumstances or from any incriminating facts. It is not enough to have the same intention independently of each other."

29. In ***Dhanpal v. State (NCT of Delhi) [Dhanpal v. State (NCT of Delhi), (2020) 5 SCC 705 : (2020) 3 SCC (Cri) 188***], the appellant had exhorted a co-accused to kill the deceased. The exhortation was not repeated by the eyewitnesses in identical terms. Further, it was also alleged that there was no neutral witness since all the eyewitnesses were related to the deceased, and there was a delay in lodging the FIR. Aniruddha Bose, J. speaking for the two-Judge Bench of this Court observed : (SCC pp. 709-10, paras 8 & 11)

> "*8.* There are sufficient materials, however, to establish that the three appellants had returned together to the place of occurrence and attacked the deceased victim, with Dhanpal exhorting to kill Ajay. They had grappled the victim and said Kamal inflicted multiple injuries on him with the knife. On the basis of evidence disclosed, the trial court and the High Court [***Sanjeev v. State, 2009 SCC OnLine Del 2868***] found that there was a prior meeting of minds of all four convicts and all three appellants had an intention common with that of Kamal. On this point, the ratio of the judgment of this Court in ***Asif Khan v. State of Maharashtra [Asif Khan v. State of Maharashtra, (2019) 5 SCC 210 : (2019) 2 SCC (Cri) 484***] is relevant. In an earlier case, ***Rajkishore Purohit v. State of M.P. [Rajkishore Purohit v. State of M.P., (2017) 9 SCC 483 : (2017) 3 SCC (Cri) 749]***, it has been held that to establish common intention to cause murder, overt act or possession of weapons by all the accused persons is not necessary. In ***Richhpal Singh Meena v. Ghasi [Richhpal Singh Meena v. Ghasi, (2014) 8 SCC 918 : (2014) 6 SCC (Cri) 424***], the ratio is that in the event the nature of the assault is such that the target person is likely to die from the injuries resulting therefrom, the accused

must be deemed to have known the consequences of his act.

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11. We find the approach of the trial court and the High Court in the appeal was proper in dealing with the discrepancies pointed out on behalf of the appellants. The delay in registering the FIR has been explained properly, and judgment of conviction cannot fail for that reason. It is a fact that the eyewitnesses were known to the deceased, and there was no neutral witness. But for that factor alone, we cannot exonerate the appellants, particularly since the court of first instance and the first appellate court have already examined the evidence and given their findings in favour of the prosecution. We do not find any error in the judgment of conviction and order of sentence so far as the appellants are concerned. All three appeals are dismissed."

30. Recently, in ***Sandeep v. State of Haryana [Sandeep v. State of Haryana, (2022) 14 SCC 812: 2021 SCC OnLine SC 642]***, a two-Judge Bench of this Court held that an exhortation given by an accused immediately before a co-accused fired a shot killing the deceased would prove his involvement in the crime beyond a reasonable doubt. Accordingly, this Court upheld the conviction of the accused under Sections 302 and 34IPC.

36. This position was reiterated in ***Jad Bai*** (supra), wherein it was observed:-

15. In ***Gurbachan Singh [State of Rajasthan v. Gurbachan Singh, (2022) 15 SCC 817: 2022 SCC OnLine SC 1716***], it is observed and held as under: (SCC paras 17-18)

"*17*. Given the aforesaid position, we are of the view that Section 34IPC, i.e. common intention, is clearly attracted in the case of Gurbachan Singh, whose case cannot be distinguished, so as to exclude him

> as one who did not share common intention with Darshan Singh, Balvir Singh and Manjit Singh. Section 34IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34IPC to apply, there should be a common intention among the co-perpetrators, which means that there should be a community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself.
>
> *18*. Common intention is necessarily a psychological fact, and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention has to be determined by drawing an inference from the facts proved. Constructive intention can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention."

37. It was submitted that the police did not find any rod near the vehicle bearing registration No. HP10-1204, which made the prosecution's case doubtful. This submission will not help the accused. ASI Shiv Kumar (PW6) specifically stated in his cross-examination that the panna is used to operate the jack. There is no evidence to falsify this part of his testimony. Hence, the learned courts below had rightly held that the testimony of the police officials cannot be doubted because no connecting rod was found on the spot.

38. It was submitted that the photographs of the vehicles were not taken, which made the prosecution's case highly doubtful. This submission will also not help the accused. The primary evidence is the statements of the police officials, which are found to be satisfactory. Therefore, the absence of the photographs will not make the prosecution's case doubtful. It would be only a lapse in the investigation, and the benefit of any lapse in the investigation cannot be given to the accused unless there is some prejudice against him. In the present case, no prejudice is shown.

39. Dr Suresh Kumar (PW1) stated that he is the owner of the vehicle bearing registration No. HP-10-1204. He had parked it on the IGMC road at a distance of about 20 meters from the garbage dumper. He found on the next morning that the tyre of the vehicle was missing. The jack was put beneath the vehicle. Nut, bolt and panna were lying on the spot. The police also reached the spot. The police showed him a tyre which he identified as his own. He put the signatures as an identifier on the memo. He stated in his cross-examination that the people continue to move on the road because of the existence of the hospital. He admitted that there is an office of the electricity

board in which the officials are employed for 24 hours. He admitted that his vehicle was visible from three sides. The jack was visible to the people walking on the road. He admitted that no person had stolen the tyre in his presence and no person had used a panna.

40. The testimony of this witness clearly showed that the tyre of his vehicle was stolen. He identified the tyre recovered from the vehicle of the accused as his tyre. The learned Appellate Court had rightly held that the recent possession of the stolen object immediately after the theft would give rise to a presumption regarding the accused being the thieves. Hence, his testimony also supports the prosecution's case regarding the commission of theft by the accused.

41. It was submitted that no independent witness was examined, and the prosecution's case becomes doubtful due to the non-examination of the witnesses. This submission is not acceptable. The learned Courts below found the testimonies of police officials satisfactory. There is no evidence that any person was present on the road. The incident occurred in the middle of the night at about 2:30 am during the winter season of March. In

the absence of any positive evidence that any person was walking on the road who had seen the accused committing the theft, the prosecution's case cannot be doubted simply because of some possibility of the presence of some independent witness.

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

> "**[10]** It was then submitted that some of the material witnesses were not examined and, in this connection, it was argued that two of the eye-witnesses named in the FIR, namely, Chander and Sita Ram, were not examined by the prosecution. Dharamvir, son of Sukhdei, was also not examined by the prosecution, though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be

> truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eye witnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained."

43. Therefore, the prosecution's case cannot be doubted because no independent witness was examined.

44. No other point was urged.

45. Therefore, learned Courts below had rightly accepted the prosecution version and had rightly convicted the accused of the commission of an offence punishable under Section 379 read with Section 34 of the IPC.

46. Learned Trial Court sentenced the accused to undergo simple imprisonment for a period of three months. Keeping in view the fact that theft was committed after due deliberation, the sentence of three months cannot be said to be excessive and no interference is required with the sentence imposed by the learned Trial Court and affirmed by the learned Appellate Court.

47. In view of the above, the present revision fails, and the same is dismissed.

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48. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing whatsoever, on the merits of the case.

49. The records of learned Courts below be returned forthwith alongwith copy of this judgment.

(Rakesh Kainthla)
Judge

15th October,2025
(Nikita)