IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 103 of 2013
Reserved on: 12.03.2026
Date of Decision: 24.04.2026

Satish Kumar ...Appellant

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Appellant : Mr Amit Singh Chandel, Advocate.

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

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 11.01.2013, passed by learned Special Judge-I, Sirmour District at Nahan, H.P. (learned Trial Court), vide which the appellant (accused before learned Trial Court) was convicted of the commission of an offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act and sentenced to undergo rigorous imprisonment for two years, pay a fine of ₹20,000/-

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

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and in default of payment of fine to undergo further imprisonment for six months. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under section 22 of the NDPS Act. It was asserted that SI/ Additional SHO Jawahar Singh (PW-12), PSI Naresh Kumar (PW-11), Constable Ravinder Kumar (PW-8), HHC Maan Singh and HHC Jagdish Chand were present at Shamsher Ganj on 19.02.2012 at about 3:30 p.m, when they saw two persons riding a motorcycle from Chamba ground towards the Naya bazaar. They turned their motorcycle towards Masjid Gali after seeing the police. The pillion rider lost his balance and fell along with a bag. The motorcyclist sped away from the spot. The police inquired about the pillion rider's name, and he identified himself as Satish Kumar (the present appellant). He disclosed that Pritam Singh was driving the motorcycle. The police saw that the bag being carried by Satish Kumar was torn from the fall, and some vials were visible in it. The police became suspicious, joined

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Mohammed Islam and Sohail Khan (PW-2), searched the bag being carried by Satish Kumar, found 148 vials (Ext.P-3 to Ext.P-150) bearing the mark 'Rexcof', four packets containing 138 capsules of Spasmo-Proxyvon, ₹965 in the form of currency notes, one coin of ₹5, one driving license, one ATM card and a mobile phone. The police put all the articles into the bag from which they were recovered and demanded the documents for possessing the vials and the capsules. The accused could not produce any document. The police sewed the bag and put it in a cloth parcel. The police put the currency notes, ATM card, driving license and mobile in another parcel. The parcel containing the bag was sealed with twelve seals of seal 'T', and the parcel containing currency notes, a mobile phone, etc., was sealed with six seals of seal 'T'. The seal impression (Ext.PW-12/A) was taken on a separate piece of cloth, and the NCB-I form (Ext.PW-3/B). The seal was handed over to Sohail Khan (PW-2) after its use. All the articles were seized vide memo (Ext.PW-2/A), and signatures of witnesses Mohammed Islam, Sohail Khan (PW-2) and PSI Naresh Kumar (PW-11) were obtained. SI Jawahar Singh (PW-12) prepared the Rukka (Ext.PW-7/A) and sent it to Police Station, Nahan, District Sirmour, H.P. through Constable

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Ravinder Kumar (PW-8). He handed over the Rukka to the ASI Mast Ram (PW-7), who registered the F.I.R. (Ext.PW-7/B) and handed over the case file to Constable Ravinder Kumar (PW-8) with a direction to carry it to the spot. SI Jawahar Singh investigated the matter. He prepared the site plan (Ext.PW-12/B). He arrested the accused and communicated the grounds of arrest to him vide memo (Ext.PW-12/C). He conducted the personal search of the accused and prepared the memo (Ext.PW-11/A). He handed over the case property in the police station to HC Kunwar Singh (PW-4), who made an entry in the Malkhana register at Serial No. 312 (Ext.PW-4/A) and deposited all the articles in Malkhana. SI Jawahar Singh (PW-12) prepared the special report (Ext.PW-6/A) and handed it over to Superintendent of Police Rameshwar Thakur, who made the endorsement on the Special Report and handed it over to HC Ramesh Kumar (PW-6). HC Kunwar Singh (PW-4) sent the parcel containing bottles and capsules, sample seal, NCB-I form in triplicate to SFSL, Junga, through Constable Subhash Chand (PW-5) vide RC No. 12 (Ext.PW-4/B). He handed over all the articles at SFSL, Junga and handed over the receipt to HC Kunwar Singh (PW-4) on his return to the police station. Dr Kapil Sharma (PW-3) analysed

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the case property and issued the report (Ext.PW-3/A), stating that the exhibit, stated as Spasmo Proxyvon, is a sample of Dextropropoxyphene Napsylate Capsules and the vials of Rexcof contained Codeine Phosphate in them. Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of an offence punishable under section 22 of the NDPS Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses to prove its case. HHC Jagdish Kumar (PW-1), Sohail Khan (PW-2), Constable Ravinder Kumar (PW-8), and PSI Naresh Kumar (PW-11) are the witnesses to the recovery. Dr Kapil Sharma (PW-3) analysed the case property. HC Kunwar Singh (PW-4) was working as MHC with whom the case property was deposited. Constable Subhash Chand (PW-5) carried the case property to SFSL, Junga. HC Ramesh Kumar (PW-6) was working as a Reader to the Superintendent of Police to whom the Special report was handed over. ASI Mast Ram (PW-7) signed the F.I.R. HHG Ved Parkash (PW-9) and HC Gurdayal Singh (PW-10) witnessed the recovery

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of the motorcycle. SI Jawahar Singh (PW-12) investigated the matter.

5. The accused, in their statement recorded under Section 313 of Cr.PC denied the prosecution's case in its entirety. Accused Satish Kumar stated that witnesses Sohail Khan and Mohammad Islam were joined as witnesses in an earlier case where police officials were beaten by some persons. PSI Naresh Kumar (PW-11) had an altercation with Satish Kumar around fifteen days before the incident, and he had threatened to involve the accused Satish Kumar in a false case. The accused Satish Kumar had also made complaints against PSI Naresh Kumar (PW-11) regarding this fact. Accused Pritam Singh stated that he was falsely implicated because Satish Kumar is his friend. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of the witnesses corroborated each other. There was nothing in their cross-examination to show that they were making false statements. Minor contradictions regarding the exact spot where the accused had fallen, the time taken for completing the proceedings and the place of conducting proceedings were bound to occur with a passage of time and did not affect the recovery.

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The defence taken by the accused Satish Kumar regarding some altercation with PSI Naresh Kumar (PW-11) was not proved by any evidence on record. The fact that Sohail Khan (PW-2) and Mohammad Islam were joined as witnesses in an earlier case did not show that they were stock witnesses. Their shops were located near the place of the incident, and they were natural witnesses. The integrity of the case property was duly established. The report of the analysis showed that capsules of Spasmo Proxyvon contain Dextropropoxyphene Napsylate and bottles of Rexcof contained Codeine Phosphate. The bag containing the vials and packet was in the possession of the accused Satish. The accused, Pritam, had turned the motorcycle after seeing the police, which may give rise to a suspicion, but it is not sufficient to fasten him with liability; hence, the learned Trial Court acquitted the accused Pritam but convicted the accused Satish Kumar and sentenced him as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in convicting and sentencing the accused. The ownership of the bag was not established. The police had not joined any independent witnesses

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but had joined Sohail Khan and Mohammed Islam, who had earlier appeared as the witnesses of the prosecution. The testimonies of police officials were required to be seen with utmost care and caution. The statements of the prosecution witnesses contradicted each other on material aspects. The integrity of the case property was not established. The defence taken by the accused Satish that a false case was made against him due to an altercation with PSI Naresh Kumar (PW11) was highly probable, and the learned Trial Court erred in rejecting it. Hence, it was prayed that the present appeal be allowed and the judgment and sentence passed by the learned Trial Court be set aside.

8. I have heard Mr Amit Singh Chandel, learned counsel for the appellant/accused, and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

9. Mr Amit Singh Chandel, learned counsel for the appellant/accused, submitted that the statements of prosecution witnesses contradicted each other on material aspects. The statement of Sohail Khan (PW-2) was wrongly relied upon by the learned Trial Court. He had appeared as a witness on behalf of the police in an earlier case. The police had failed to join independent

witnesses even though the incident had occurred in the middle of the Bazaar. The police had not collected any material to connect the accused to the bag, and the possibility of Pritam Singh being the owner of the bag could not be ruled out because he had sped away from the spot. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that the statements of witnesses corroborated each other on material aspects. There was nothing in their cross-examination to show that they were making false statements. Merely because the witnesses had appeared earlier in a police case will not make them stock witnesses. Learned Trial Court had properly appreciated the material on record, and this Court should not interfere with the well-reasoned judgment of the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

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

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12. HHC Jagdish Kumar (PW-1) stated that he, PSI Naresh Kumar (PW-11), HHC Maan Singh, Constable Ravinder Kumar (PW-8), and SHO Jawhar Singh (PW-12) were present at Shamsher Ganj on 19.02.2012 on routine patrolling duty. One motorcycle came from the Chamba ground at about 3:30 p.m. The accused Pritam Singh was driving the motorcycle, and the accused Satish Kumar was the pillion rider. The accused Satish Kumar held a bag on his lap. The accused Pritam turned the motorcycle towards Masjid Gali after seeing the police, and the accused Satish fell from the motorcycle along with the bag. Accused Pritam fled away from the spot along with the motorcycle, but accused Satish Kumar was apprehended. The bag was found to contain bottles; hence, Mohammad Islam and Sohail Khan (PW-2) were called from the nearby shop. The police searched the bag in their presence and recovered 149 vials of 100 ml of Rexcof and four cartons containing 576 capsules. The accused could not produce any license for carrying these drugs. The police put the drugs into the bag and sealed the bag in a cloth parcel. The police conducted a personal search of the accused and recovered currency notes worth ₹965/-, a driving license, an ATM card and a mobile phone. These were put in a separate cloth

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parcel. Both parcels were sealed with seal T and seized vide memo (Ex. PW. All the articles were seized by the police vide memo (Ext.PW-2/A).

13. He stated in his cross-examination that the shortcut from the police station to Nahan Bazaar is through a gate via the police line. The other gate near the SP office is on the longer route. He admitted that Chowgan is situated in the heart of Nahan. Accused Satish Kumar was already involved in criminal cases, but he was not aware of the number of cases pending against him. He was known to the police because of his previous involvement in criminal cases, but the investigating officer had enquired about his name. The witnesses were present inside the shop. The accused Satish Kumar fell on the main road, and not on the road leading to Masjid Gali. The place where the accused was apprehended is a thickly populated area that comprises residential houses and the shop. It took about 3-3 ½ hours to investigate the matter. The Constable Ravinder Kumar (PW-8) left the spot with Rukka at 5:00 pm. He denied that the accused Satish was not apprehended on the spot.

14. Sohail Khan (PW-2) stated that he was present in his shop on 19.02.2012 at about 3:00-3:30 p.m. when two persons

riding on a scooter or motorcycle crossed his shop towards Gali and they were apprehended by the police. They were carrying one bag. He identified the accused Satish as one of the occupants of the motorcycle. The police checked the bag and recovered 148 vials. The police put the drugs into the bag from which they were recovered and sealed the bag. The search of the accused was conducted, and ₹965/-, a driving licence and an ATM card were recovered. These were put in another cloth parcel, and the parcel was also sealed. The person who was driving the motorcycle sped away from the spot. He identified the case property in the Court.

15. He stated in his cross-examination that the Gali is not visible from his shop. He volunteered to say that he came out because somebody had fallen. He admitted that the area around his shop was thickly populated. The bag was lying at a distance of 7 – 8 meters on the main road in the Gali. The Gali leading to the Masjid and the Lal Jewellery shop is narrow, and it is not possible to drive a vehicle in a Gali at high speed. 15-20 people had gathered on the spot. The police officials left the spot after checking the bag for about 20 minutes. He was called by the police after 2 ½ hours to the police station. Mohammad Islam also accompanied him. The police sealed the parcels and obtained

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his signature on the document. He admitted that he and Mohammad Islam were cited as witnesses in a case titled State vs Sandeep, in which allegations of beating the police officials were made.

16. Constable Ravinder Kumar (PW-8) stated that he, PSI Naresh Kumar, HHC Maan Singh and Additional SHO Jawhar Singh were patrolling. They were present at Shamsher Ganj Mohalla at about 3:30 p.m. when two persons came on a motorcycle from the HRTC Workshop. The motorcyclist tried to turn it towards Masjid Gali after seeing the police. The pillion rider holding the bag fell with the bag. The motorcyclist sped away from the spot. The person who had fallen was apprehended by the police, and he disclosed his name as Satish Kumar and the name of the motorcycle driver as Pritam. The bottles of drugs were visible in the bag; hence, Mohammad Islam and Sohail Khan (PW-2) were called from nearby shops, and the bag was opened. 148 vials of Rexcof and 576 capsules were found inside the bag. Accused Satish Kumar was asked to produce the documents for processing the medicines, but he could not produce any documents. The drugs were put in the bag from which they were recovered, the bag was put in a cloth parcel, and

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the parcel was sealed with seal impression 'T'. A personal search of the accused Satish Kumar was conducted, and ₹965/-, a driving license, a mobile phone and an ATM card were recovered. These were put in a separate cloth parcel, and the parcel was sealed with seal 'T'. SI Jawhar Singh (PW-12) prepared a rukka and handed it over to him. He handed over the Rukka to ASI Mast Ram (PW-7) in the police Station.

17. He stated in his cross-examination that they had left the police Station at 3:00 p.m. They went from the police station up to the gate of the HRTC workshop, which is located at a distance of about a hundred metres from the police station. They had not carried out any checking in the HRTC workshop. They were walking towards the rest house at the time of the arrival of the motorcycle. The Gali was 4 – 5 feet wide, but he could not tell its length. The pillion rider fell on the turn from the main road to Gali, and the bag also fell with him. They remained on the spot for about 1½ hours. The investigation was completed by 5:00 p.m., and his statement was recorded on the spot. The people had not gathered on the spot. The distance between the spot and the police station was about 50-55 meters. The Investigating Officer had not marked the bottles that were recovered and sealed by the

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police. No identification mark was put on the strips of Spasmo-Proxyvon. He denied that no recovery was effected, and the accused was falsely implicated.

18. PSI Naresh Kumar (PW-11) also supported the prosecution's case. Since his examination in chief is on a similar line as the statement of Constable Ravinder Kumar (PW-8), the same is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that the house of the accused Satish was beside Villa Road. He was not aware of the house of the accused, Pritam. Many cases were registered against the accused Satish before the present case, but he could not say anything about the cases registered against the accused Pritam. They left the Police Station at 3:00 p.m. and reached the spot at 3:30 p.m. They were going towards Naya Bazar through the sentry gate. A speed breaker is ahead of the spot and Masjid Gali, but he cannot say its distance from Masjid Gali. Accused Satish Kumar fell at the curve with the bag. He admitted that the place was thickly populated. He could not say that the Vice President of Municipal Corporation Nahan was residing in the vicinity. The Investigating Officer had not made any efforts to join other witnesses. Many people had gathered on the spot, but he could

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not tell their number. It took about four hours to complete the proceedings on the spot. The proceedings were conducted beside the shop by sitting on the stool by the Investigating Officer. He had written some of the documents on the spot. The investigating officer wrote other documents. The search and seizure memo was prepared in his presence, but he had not signed it. No identification marks were put on the bottles and capsules. He denied that he had an altercation with the accused Satish Kumar, and he falsely implicated him (the accused Satish Kumar) because of the enmity.

19. SI Jawhar Singh (PW-12) has also deposed in similar lines as the other witnesses; hence, his examination-in -chief is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that the name of the accused, Pritam, was disclosed by Satish Kumar, soon after he was apprehended. He admitted that Purbia Mohalla is located at a distance of 2 furlongs from the Police Station. He voluntarily said that the house of the accused Pritam was raided several times, but he was not available at home. He had not carried out any investigation to find out the name of the shop from where the drugs were purchased by the accused. The proceedings were conducted by

sitting inside the shop of Mohammad Islam. Satish Kumar fell with the bag at point 'H' shown in the site plan (Ext.PW-12/B). He had not made any effort to join any other person except Sohail Khan and Mohammad Islam. The statement of Sohail Khan was recorded by PSI Naresh Kumar (PW-11), whereas the statements of HHC Jagdish and Mohammad Islam were recorded by him. Ravinder Kumar (PW-8) came back with the case file within 1½ hours. He denied that no proceedings were conducted on the spot and that the accused were falsely implicated.

20. It was submitted that the statements of the prosecution's witnesses contain the following contradictions:

i) HHC Jagdish Kumar (PW-1) stated in his cross-examination that the accused Satish Kumar fell from the motorcycle on the main road. Constable Ravinder Kumar (PW-8) stated that the pillion rider fell from the motorcycle at a curve from the main road to Gali. PSI Naresh Kumar (PW-11) stated that the accused Satish fell at the place where the road turns towards Gali. SI Jawhar Singh (PW-12) stated that the accused Satish fell on a curve shown at point 'H' (Ext.PW-12/B)

ii) HHC Jagdish Kumar (PW-1) stated that it took about 3 to 3 ½ hours to carry out the investigation. Sohail Khan (PW-2) stated that the police left the spot within 20 minutes. Constable Ravinder Kumar (PW-8) stated in his cross-examination

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that he remained on the spot for about 1½ hours. PSI Naresh Kumar (PW-11) stated that it took about 4 hours to complete the investigation. SI Jawhar Singh (PW-12) stated that it took about 1 ½ to 2 hours to complete the proceedings on the spot.

iii). HHC Jagdish Kumar (PW-1) stated that the distance from the spot to the Police Station Sadar was around 100 yards. Constable Ravinder Kumar (PW-8) stated that the distance between the spot and the Police Station was 50-55 meters.

iv). HHC Jagdish Kumar (PW-1) stated that they remained present on the main road during the entire proceedings. Sohail Khan (PW-2) stated that the proceedings were conducted in the police station where the parcels were sealed, and signatures were obtained. Constable Ravinder Kumar (PW-8) stated in his cross-examination that the proceedings were conducted by sitting on the side of the road. PSI Naresh Kumar (PW-11) stated that proceedings were conducted beside the shop by sitting on the stool. SI Jawhar Singh (PW-12) stated that proceedings were conducted by sitting inside the shop of Mohammad Islam.

v) HHC Jagdish Kumar (PW-1) stated in his cross-examination that no person had arrived on the spot besides the witnesses. Sohail Khan (PW-2) stated that 15-20 people had gathered on the spot, including the people living in the vicinity. Constable Ravinder Kumar (PW-8) stated in his cross-examination that people had not gathered

on the spot. PSI Naresh Kumar (PW-11) stated that several persons had gathered during the proceedings, but he could not tell their names.

21. It was submitted that the prosecution's case has become suspect because of these contradictions, and the learned Trial Court erred in relying upon the statements of the prosecution witnesses. This submission will not help the accused. 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:
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> > *"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*

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

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

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

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

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

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

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

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

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

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

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

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

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

> "**38.** From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]*** held: (SCC p. 446, para 24)
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> > "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."
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> **39.** Referring to ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable, contradictions were not. In this

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case, there was no contradiction, only minor discrepancies.

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

> "*30*. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render credentials to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of***

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Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961].

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

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

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

"*46.* Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses

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

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

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

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

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

> "17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed to the hand or foot, but the constant narrative of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury to the informant, PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this court in ***Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra, 2000 8 SCC 457***. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under:
>
> > "42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is a contradiction of a statement of a witness on any material point, that is no ground to reject the whole

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of the testimony of such witness."

24. It was laid down by the Hon'ble Supreme Court in ***Achchar Singh vs. State of H.P., AIR 2021 SC 3426,*** that the testimony of a witness cannot be discarded due to exaggeration alone. It was observed:

> "24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines "exaggeration" as "the fact of making something larger, more important, better or worse than it is". Merriam-Webster defines the term "exaggerate" as to "enlarge beyond bounds or the truth". The Concise Oxford Dictionary defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an 'exaggerated statement' lies in a fact, to which fictitious additions are made to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, the Advanced Law Lexicon defines "false" as "erroneous, untrue; opposite of correct, or true". Oxford Concise Dictionary states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differential between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction, is duty-bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that, in their separation, no real evidence survives that the whole evidence can be discarded. [***Sucha Singh v. State of Punjab, (2003) 7 SCC 643,*** *18.*]

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25. Learned State counsel has rightly relied on ***Gangadhar Behera*** *(Supra)* to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, a conviction can be based on it. This Court in ***Hari Chand v. State of Delhi, (1996) 9 SCC 112*** held that:

> "24. ...So far as this contention is concerned, it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses, the maxim *falsus in uno, falsus in omnibus* cannot apply, and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of the evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon..."

26. There is no gainsaying that homicidal deaths cannot be left to judicium dei. The Court, in their quest to reach the truth, ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of the doubt is extended.

27. An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version."

25. It was laid down by the Hon'ble Supreme Court in

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Arvind Kumar @ Nemichand and others Versus State of Rajasthan, 2022 Cri. L.J. 374, that the testimony of a witness cannot be discarded because he had made a wrong statement regarding some aspect. The principle that when a witness deposes falsehood, his entire statement is to be discarded does not apply to India. It was observed: -

> "48. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have a strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of the discrepancy in a given case. When the discrepancies are very material, shaking the very credibility of the witness, leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

26. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the statements of the witnesses cannot be discarded due to omissions, contradictions, or discrepancies. The Court must consider whether the discrepancies negatively affect the prosecution's case and whether they pertain to the core of the case rather than the details.

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27. The contradiction regarding the place where the motorcycle had fallen is no contradiction at all. Site plan (Ext.PW-12/B) shows that the pillion rider had fallen with the bag on the main road on a curve leading towards the Masjid. Therefore, the statements of the witnesses support each other that the pillion rider had fallen on the main road on a curve leading to Masjid, even though they have described the place of fall differently.

28. The contradiction regarding the time is not significant because no person remembers the time by looking at the watch, and when anyone is asked about the time, he gives a different time, which may or may not be correct. It was laid down by the Hon'ble Supreme Court in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217*** that people make their estimates by guesswork regarding the time on the spur of the moment, and one cannot expect people to make very precise or reliable estimates in such matters. It was observed:-

> "(5) 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."

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29. Therefore, the contradiction regarding the time cannot be used to discard the prosecution's version.

30. Similarly, the contradiction regarding the distance between the spot and the police station is also no contradiction because no person measures the distance by using a measuring tape. Every person has a different perception of the distance, which may vary among different individuals. Therefore, the discrepancy regarding the distance will not make the statements of the witnesses doubtful.

31. The contradictions regarding the place where the investigation was conducted and the number of people who had gathered during investigations are related to matters of detail, which are bound to come with time because of failure to remember the facts identically. They do not affect the core of the prosecution's case and cannot be used to discard the prosecution's version.

32. The statement of Sohail Khan (PW2) that the investigation was conducted in the police station and he was called to the police station will not make the prosecution's case false because the principle of *falsus in uno falsus in omnibus* does not apply in the India and falsity in his statement regarding the

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investigation will not make the prosecution's case regarding recovery doubtful.

33. Therefore, the testimonies in the statements of prosecution witnesses could not have been used to discard the prosecution's version.

34. It was submitted that Sohail Khan (PW-2) and Mohammad Islam were joined as witnesses in an earlier case by the police, and this is sufficient to discard their testimonies. This submission cannot be accepted. Learned Trial Court had rightly held that the mere fact that they were witnesses in a previous case does not show that they are the stock witnesses. It was laid down by the Hon'ble Supreme Court *in **State of U.P. v. Zakaullah, (1998) 1 SCC 557: 1998 SCC (Cri) 456***, that if a person had provided help to the police, that will not destroy his independent outlook. It was observed at page 561: -

> "**10.** The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute, not for the purpose of helping the indicated person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or another. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon, many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty, or any other matter, it cannot be said that those are not

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> independent persons. If the police, in order to carry out official duties, have sought the help of any other person, he would not forfeit his independent character by giving help to police action. The requirement to have an independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose whatsoever. [***Hazari Lalv.State (Delhi Admn.)[(1980) 2 SCC 390: 1980 SCC (Cri) 458: (1980) 2 SCR 1053]***.]

35. The site plan shows that the shop of Sohail Khan (PW-2) is near the place of the incident. Hence, he was a natural witness, and his testimony cannot be discarded simply because he had appeared as a prosecution witness in an earlier case.

36. It was submitted that the police failed to collect any material to connect the petitioner to the bag. The bag could have belonged to Pritam Singh, who was riding the motorcycle and had sped away from the spot. This submission will not help the accused. The accused Satish Kumar was found carrying the bag in his lap. He never claimed that the bag belonged to the accused Pritam Singh. His defence is one of denial. Since the accused Satish was carrying the bag, he has to be treated as in possession. The possibility that the accused Pritam might have been in possession of the bag is merely a hypothesis, not supported by any evidence and does not constitute a reasonable doubt. Prof. Glanville Williams explained the degree of reasonable doubt in

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The Hamlyn Lectures, seventh series, ***The Proof of Guilt*** (Stevens & Sons Ltd. 1955) on page 133 as under: -

> "It is then a question of degree; some risk of convicting an innocent person must be run. What this means in terms of the burden of proof is that a case need not be proved beyond all doubt. The evidence of crime against a person may be overwhelming and yet it may be possible to conjecture a series of extraordinary circumstances that would be consistent with his innocence by supposing that some stranger of whose existence there is no evidence, interposed at a crucial moment and committed the crime when all the evidence points to the fact that accused was alone on the spot, or by supposing in a charge of murder that the deceased died of heart failure the moment before the bullet entered his body. The fact that these unlikely contingencies do sometimes occur so that by neglecting them there is, on rare occasions, a miscarriage of justice cannot be held against the administration of law, which is compelled to run this risk."

37. It was laid down by the Hon'ble Supreme Court in ***State of U.P. v. Krishna Gopal*, *(1988) 4 SCC 302: 1988 SCC (Cri) 928: 1988 SCC OnLine SC 230***that a reasonable doubt is not an imaginary, fanciful or trivial doubt but must be borne out from the evidence. It was observed at page 313:

> **"25.** A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond a reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned Author says [See: "***The Mathematics of Proof-II":***

Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]:

> "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability and the degrees of it cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond a reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice."

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38. The accused Satish claimed that he had an altercation with PSI Naresh Kumar, and he had filed complaints against him. Learned Trial Court had rightly pointed out that this version was not proved. No copy of the complaint filed by accused Satish Kumar against PSI Naresh Kumar (PW-12) was brought on record. No person was examined to show that he had an altercation with PSI Naresh Kumar (PW-11); therefore, this version was not proved by any material on record and was rightly discarded by the learned Trial Court. It was laid down by this Court in ***Budhi Ram Vs State, 2021 (4) Shim. L.C. 1945***, that where the defence asserts that the accused was falsely implicated because of some quarrel, it must be proved that enmity or quarrel between the accused and the police was such as to push the police to wrongly frame the accused. It was observed:-

> "**[16]** We have considered the contentions as well as the evidence of DW-1. The evidence of DW-1 is not to such an extent that would support the contentions of the learned counsel for the appellant. The evidence of DW-1 only indicates that a quarrel took place between the accused and the police. What was the quarrel, and what was the intensity of the enmity between the accused and the police has not been stated. The enmity or hatred between the appellant and the police should be to such an extent which would push the police into wrongly framing the accused. The incident should have hurt the police to such an extent that they had no other option but to falsely implicate the accused. We do not find that the intensity of the evidence

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> is to such an extent as to lead to such a conclusion. The evidence only indicates that there was an altercation between the accused and the police. It may not be possible for us to conclude that this particular quarrel between the accused and the police has led to the wrong implication for the accused. We do not find that there is any nexus between the contention of a false implication of the accused with the evidence of DW-1. Therefore, we are unable to accept the evidence of DW-1 to the extent which is sought to be argued."

39. In the present case, no details of the altercation have been given, and it cannot be held that any altercation had occurred or that it was of such a nature as to push the police to falsely implicate the accused.

40. It was submitted that the prosecution did not examine Mohammed Islam, and an adverse inference should be drawn against the prosecution. This submission cannot be accepted.. It was held in ***Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490: 2000 SCC (Cri) 1416: 2000 SCC OnLine SC 1311*** that the Public Prosecutor is not obliged to examine the witness who will not support the prosecution. It was observed at page 495:

> "**13.** When the case reaches the stage envisaged in Section 231 of the Code, the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which

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

14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that anyone among that category would not support the prosecution's version, he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

15. A four-judge Bench of this Court had stated the above legal position thirty-five years ago in ***Masalti v.State of***

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U.P.[AIR 1965 SC 202: (1965) 1 Cri LJ 226] It is contextually apposite to extract the following observation of the Bench:

> "It is not unknown that where serious offences like the present are committed, and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court."

16. The said decision was followed in***Bava Hajee Hamsav.State of Kerala[(1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902]***. In ***Shivaji Sahabrao Bobadev.State of Maharashtra[(1973) 2 SCC 793: 1973 SCC (Cri) 1033],*** Krishna Iyer J., speaking for a three-judge Bench, had struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses, he should be fair to the court and the truth. This Court reiterated the same position in ***Dalbir Kaurv.State of Punjab[(1976) 4 SCC 158: 1976 SCC (Cri) 527***].

41. It was laid down by the Hon'ble Supreme Court in ***Pohlu v. State of Haryana, (2005) 10 SCC 196: 2005 SCC (Cri) 1496: 2004 SCC OnLine SC 1393*** 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 at page 199: -

> **"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 eyewitnesses 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 the 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 eyewitnesses, 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."

42. This position was reiterated in ***Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: 2013 SCC OnLine SC 496,*** and it was held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. It was observed at page 442:

> ***"Whether the prosecution must examine all the witnesses***
>
> **14.** A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses, is whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in***Abdul Ganiv.State of M.P.[(1952) 1 SCC 253: AIR 1954 SC 31: 1954 Cri LJ 323],*** has examined the aforesaid issue and held that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to, and no doubt would take into

consideration the absence of witnesses whose testimony would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.

15. In***Sardul Singhv.State of Bombay[AIR 1957 SC 747: 1957 Cri LJ 1325]***, a similar view has been reiterated, observing that a court cannot normally compel the prosecution to examine a witness which the prosecution does not choose to examine, and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are necessary for the purpose of disclosing the story of the prosecution with all its essentials.

16. In ***Masalti v.State of U.P.[AIR 1965 SC 202 : (1965) 1 Cri LJ 226],*** this Court held that it would be unsound to lay down as a general rule, that every witness must be examined, even though the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised.

> In such cases, *it is always open to the defence to examine such witnesses as their own witnesses*, and the court itself may also call upon such a witness in the interests of justice under Section 540 CrPC. (SCC p. 209, para 12) emphasis supplied)

(See also***Bir Singhv.State of U.P.[(1977) 4 SCC 420: 1977 SCC (Cri) 640]***)

17. In***Darya Singhv.State of Punjab[AIR 1965 SC 328 : (1965) 1 Cri LJ 350]***, this Court reiterated a similar view and held that if the eyewitness(s) is deliberately kept back, the court may draw an inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

18. In Raghubir ***Singhv.State of U.P.[(1972) 3 SCC 79: 1972 SCC (Cri) 399: AIR 1971 SC 2156]*** this Court held as under: (SCC p. 84, para 10)

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

19. In***Harpal Singhv.Devinder Singh[(1997) 6 SCC 660: 1997 SCC (Cri) 981: AIR 1997 SC 2914],*** this Court reiterated a similar view and further observed : (SCC p. 668, para 24)

> "*24.* ... Illustration (*g*) in Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse inference merely on the strength of non-examination of a witness, even if it is a material witness."

20. In***Mohanlal Shamji Soniv.Union of India[1991 Supp (1) SCC 271: 1991 SCC (Cri) 595: AIR 1991 SC 1346]***, this Court held: (SCC p. 277, para 10)

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

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

21. In ***Banti v.State of M.P.[(2004) 1 SCC 414: 2004 SCC (Cri) 294: AIR 2004 SC 261]***, this Court held : (SCC p. 419, paras 12-14)

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

13. When the case reaches the stage as envisaged in Section 231 of the Code, the Sessions Judge is obliged 'to take all such evidence as may be produced in support of the prosecution'. It is clear from the said section that the Public Prosecutor is expected to produce evidence 'in support of the prosecution' and not in derogation of the prosecution case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the court can be

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saved from repetitious depositions on the same factual aspects. ... This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the court considerably in lessening the workload. The time has come to make every possible effort to lessen the workload, particularly of those courts crammed with cases, but without impairing the cause of justice.

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

22. The said issue was also considered by this Court in R. ***Shaji[R. Shajiv.State of Kerala, (2013) 14 SCC 266: AIR 2013 SC 651]*** and the Court, after placing reliance upon its judgments in Vadivelu ***Thevarv.State of Madras[AIR 1957 SC 614: 1957 Cri LJ 1000]*** and ***Kishan Chandv.State of Haryana[(2013) 2 SCC 502: JT (2013) 1 SC 222]***, held as under : (SCC pp. 281-82, para 39)

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

23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined, witnesses, if he so

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> desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution, and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive". In an extraordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court and, therefore, to the truth. In a given case, the court can always examine a witness as a court witness if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.

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

> ***Non-examination of the witness***
>
> **34.** A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials sufficient to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.
>
> **35.** The aforesaid settled principle of law has been laid down in ***Sarwan Singh v.State of Punjab[Sarwan Singh v.***

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State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]: (SCC pp. 377-78, para 13)

> "*13.* Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the "pakodewalla", hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. *The onus of proving the prosecution's case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecution's case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were, therefore, material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters.* In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any

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

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

"*19*. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy or otherwise. The legal system has laid emphasis on the value provided by each witness rather than the multiplicity or plurality of witnesses. It is quality and not quantity which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination

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> of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, the conviction can even be based on the testimony of a sole eyewitness if the same inspires confidence. (Vide ***Vadivelu Thevarv.State of Madras [Vadivelu Thevar v.State of Madras, 1957 SCR 981: AIR 1957 SC 614], Kunju v.State of T.N.[Kunjuv.State of T.N., (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], Bipin Kumar Mondal v.State of W.B.[Bipin Kumar Mondalv.State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], Maheshv.State of M.P.[Maheshv.State of M.P., (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singhv.State of Punjab[Prithipal Singhv.State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1]*** and ***Kishan Chandv.State of Haryana[Kishan Chandv.State of Haryana, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807]***.

44. In the present case, Mohammed Islam was given up as having been won over, and no adverse inference can be drawn for his non-examination.

45. It was submitted that the police had conducted the personal search of the accused without complying with the requirements of Section 50 of the NDPS Act. Hence, the accused is entitled to an acquittal. This submission cannot be accepted. No recovery of any narcotics was found during the personal search. It was laid down by the Hon'ble Supreme Court in ***Ranjan Kumar Chadha v. State of H.P., 2023 SCC OnLine SC 1262: AIR 2023 SC 5164,*** that where the recovery was effected from the backpack being carried by the accused, and not from the personal search, there is no requirement to comply with the provision of Section 50 of the

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NDPS Act. This position was reiterated in ***Firdoskhan Khurshidkhan v. State of Gujarat, 2024 SCC OnLine SC 680***, wherein it was observed:

> "**19.** So far as the contention of learned counsel for the appellants that the search and seizure proceedings are vitiated on account of the non-compliance of Section 50 of the NDPS Act is concerned, the same is also noted to be rejected because admittedly, the seizure in this case was not effected during the personal search of the appellant Anwar Khan(A-1). Admittedly, the contraband was being carried in a polythene bag held by the appellant Anwar Khan(A-1) in his hand, and hence, there was no requirement for the Seizure Officer to have acted under the provisions of Section 50 of the NDPS Act before conducting the search and seizure proceedings."

46. Hence, the submission that the prosecution case is to be discarded due to the non-compliance of Section 50 of the NDPS Act is not acceptable.

47. The prosecution's witnesses consistently deposed about the recovery. There is nothing in their cross-examination to discard their testimonies. It was laid down by the Hon'ble Supreme Court in ***Kripal Singh v. State of Rajasthan*, *(2019) 5 SCC 646: (2019) 2 SCC (Cri) 680: 2019 SCC OnLine SC 207,*** that the testimonies of the police officials cannot be ignored because they are police officials. It was observed at page 656:

> "**21.** The submission of the learned Senior Counsel for the appellant that recovery has not been proved by any independent witness is of no substance for the reason that,

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> in the absence of an independent witness to support the recovery, in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials, unless supported by an independent witness, is unworthy of acceptance or that the evidence of police officials can be outrightly disregarded."

48. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri.L.J.4254*** that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

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

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

> "The testimony of police personnel should be treated in the same manner as the testimony of any other witness, and there is no principle of law that, without

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

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

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

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

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

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

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

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

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official

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

51. Learned Trial Court had accepted the testimonies of police officials as correct. Nothing was shown to this Court that these findings are incorrect. It was laid down by the Hon'ble Supreme Court in ***Goverdhan v. State of Chhattisgarh (2025) SCC Online SC 69*** that the Appellate Court should not interfere with the findings regarding the credibility of the witnesses recorded by the learned Trial Court unless there is some illegality in it. It was observed: -

> "**83.** The trial court, after recording the testimony of the PW-10, and on consideration of the same, found her evidence trustworthy and credible. We see no reason to question the assessment of the credibility of the witness by the Trial Court, which had the advantage of seeing and hearing the witness and all other witnesses. Nothing has been brought to our notice of any serious illegality or breach of fundamental law to warrant taking a different view of the evidence of PW-10.
>
> In this regard, we may keep in mind the valuable observations made by this Court in ***Jagdish***

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Singh v. Madhuri Devi, (2008) 10 SCC 497, in the following words:

> **"28.** At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not be forgotten that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in the appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.
>
> **29. .....**
>
> 30. In ***Sara Veeraswami v. Talluri Narayya [(1947-48) 75 IA 252: AIR 1949 PC 32]*** the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated [*Quoting from* ***Watt v. Thomas, [1947] 1 All ER 582***, pp. 583 H-584 A.]: (IA p. 255)
>
> > "...but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of the first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a

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> question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing how their evidence is given."

52. Therefore, the learned Trial Court had rightly accepted the testimonies of the prosecution witnesses.

53. SI Jawahar Singh (PW-12) stated that he had deposited the case property in the police station. His statement is duly corroborated by HC Kunwar Singh (PW-4), who stated that SI Jawhar Singh (PW-12) had deposited the case property with him, he made an entry in the register of Malkhana at Sl. No. 312 (Ext.PW-4/A) and deposited the case property in the Malkhana. His statement is corroborated by the entry made by him in the register of Malkhana. He further stated that he had sent the case property and other articles to SFSL Junga through Constable Subhash Chand (PW-5). Constable Subhash Chand (PW-5) stated that MHC Kunwar Singh (PW-4) had handed over the sealed parcel sealed with seal 'T', NCB-I form and sample seal to him. He delivered all these articles at SFSL Junga and handed over the receipt to MHC on his return. He stated in his cross-examination that he had visited SFSL Junga on .22.02.2012 at 10:30 a.m. and had stayed in the police Post Junga, during the night.

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54. The statements of these witnesses are corroborated by the statement of Dr Kapil Sharma (PW-3), who stated that one cloth parcel was received in the laboratory through Constable Subhash Chand (PW-5). The seals were found intact and tallied with the specimen seal sent by the forwarding authority and the seal impression impressed on the NCB-I form. He was not cross-examined regarding this part of his testimony, but was cross-examined regarding the contents of his report related to the analysis; therefore, it was duly proved on record that the sample seals were intact when the case property was received in SFSL Junga. It was held in ***Baljit Sharma vs. State of H.P 2007 HLJ 707,*** where the report of analysis shows that the seals were intact, and the prosecution's case that the case property remained intact is to be accepted as correct. It was observed:

> "A perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner, and the sample seal was separately sent and tallied with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the expert also."

55. Similar is the judgment in ***Hardeep Singh vs State of Punjab 2008(8) SCC 557,*** wherein it was held:

> "It has also come on evidence that till the date the parcels of the sample were received by the Chemical Examiner,

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> the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage, and the sample received by the analyst for chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant."

56. In ***State of Punjab vs Lakhwinder Singh 2010 (4) SCC 402,*** the High Court had concluded that there could have been tampering with the case property since there was a delay of seven days in sending the report to FSL. It was laid down by the Hon'ble Supreme Court that case property was produced in the Court, and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of tampering. It was observed:

> "The prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk, and accordingly, the same were seized after taking samples therefrom which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put in the samples were in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination, when it could not be proved that the seal of the sample was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been recorded in his report, a mere observation by

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> the High Court that the case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.
>
> 17. We may at this stage refer to a decision of this Court in ***Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557*** in which there was a delay of about 40 days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution's case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.
>
> 18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with."

57. Similar is the judgment of the Hon'ble Supreme Court in ***Surinder Kumar vs State of Punjab (2020) 2 SCC 563***, wherein it was held:-

> "10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such link evidence was incomplete. In this regard, it is to be noticed that Yogi Raj, SHO, handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13. The concerned Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order

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> Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar till further orders. Since Joginder Singh, ASI, was not in possession of the seals of either the SHO or the Investigating Officer, the question of tampering with the case property by him did not arise at all.
>
> 11. Further, he has returned the case property, after production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh did not, in any way, affect the case of the prosecution. *Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample tallied with the sample seals. In that view of the matter, the chain of evidence was complete.*" (Emphasis supplied)

58. Therefore, the prosecution's version is to be accepted as correct that the case property remained intact till its analysis at FSL, Junga.

59. The report of the analysis mentions that the Spasmo-Proxyvon contained the sample of Dextropropoxyphene Napsylate and Rexcof contained codeine phosphate. Thus, it was duly proved that the capsules recovered on the spot contained Dextropropoxyphene Napsylate and the bottles of Rexcof contained codeine Phosphate, which are prohibited drugs under the NDPS Act. Therefore, the Ld. The Trial Court had rightly held that the accused was found in possession of narcotic drugs and

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had rightly convicted the accused of the commission of an offence punishable under section 22(b) of the NDPS Act.

60. It was submitted that the case property was not resealed, and this is fatal to the prosecution's case. This submission cannot be accepted. The recovery was made by SI/Additional SHO Jawhar Singh, and if he thought that, being an SHO, he was not supposed to comply with the requirement of Section 55, he cannot be faulted. It was laid down by this Court in ***Prem Bahadur Vs State of H.P., 2009 (1) Shim. L.C. 65***, that the provisions of Sections 52 and 55 are not mandatory and directory. When the investigating officer was the SHO, and he had not resealed the case property, believing that, since he was the SHO and there was no such requirement, it was not sufficient to acquit the accused. It was observed:-

> "12. From a perusal of the aforesaid two judgments, it is apparent that the provisions of Sections 52 and 55 are not mandatory but only directory. If there is substantial compliance with the same, the accused cannot be acquitted. If there are sufficient reasons for non-compliance with the Sections, then the accused cannot claim the benefit of acquittal under these provisions. At best, the Court may have to scrutinise the prosecution's evidence with greater care and caution.
>
> 13. In the present case, the recovery of the Charas has been proved beyond a reasonable doubt. We cannot lose sight of the fact that the investigating officer, PW6, was also the SHO of the Police Station, Manali. He presumed that he

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> was in charge of the police station and, therefore, the provisions of Sections 52 and 55 were not applicable to him. At best, it can be presumed that when he was the investigating officer, some other police officer must be deemed to be in charge of the police station. At best, we can presume that MHC Khem Chand (PW 2) was in charge of the police station. However, even if we presume that MHC Khem Chand (PW 2) was the in-charge of the police station, then the mere non-compliance of Sections 52 and 55 by not putting the seal on the sample would not by itself be a ground to acquit the accused."

61. It was submitted that there is a violation of a provision of Section 52-A of the ND&PS Act, which is mandatory. This submission will not help the accused. A perusal of the impugned judgment shows that no samples were drawn in the present case, and the whole bulk was sent to FSL. It was laid down by this Court in ***Narayan Singh v. State of H.P. 2023 HHC 9715*** that the provision of Section 52-A will not apply when the samples were not drawn, and the entire contraband was sent to the FSL for analysis. It was observed:-

> 19. After going through the aforesaid judgments, we are of the considered view that the same does not apply to the facts of the instant case. It would be noticed that in all the earlier judgments, the Hon'ble Court was dealing with cases where samples had been drawn from the bulk and then samples had been sent for chemical analysis, and the residue or bulk sample remained with the investigating agency. However, this is not the fact of the obtaining situation in the instant case. Here, the entire contraband had been sent for chemical analysis, that to be done on the very next date of its recovery. In such circumstances, there

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could be no better and primary evidence for the purpose of the trial.

62. Similarly, it was laid down in ***Sandeep Kumar Vs State of H.P., 2022 Law Suits (HP) 149***, that the provisions of Section 52-A are not mandatory and non-compliance with Section 52-A is not fatal to the prosecution case. It was observed:-

> "24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the NDPS Act and thus cast a shadow of doubt on its story. The contention raised on behalf of the appellants is that the rules framed for investigations under the NDPS Act are mandatory and have to be strictly followed. Neither the required sample was taken on the spot nor were the samples preserved by complying with Section 52-A of the Act. It has been argued that compliance with Section 52-A of the Act is mandatory.....
>
> xxxxxx
>
> 27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the prosecution's case under the NDPS Act. On the other hand, in ***State of Punjab vs. Makhan Chand, 2004 (3) SCC 453***, the Hon'ble Supreme Court, while dealing with the question of the effect of non-compliance of Section 52-A, has held as under: -
>
> > 10. This contention, too, has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage

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> space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for the search of an accused but only deals with the disposal of seized narcotic drugs and psychotropic substances.
>
> 11. Secondly, when the very same standing orders came up for consideration in ***Khet Singh v. Union of India, 2002 (4) SCC 380***, this Court took the view that they were merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules, as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

63. It was laid down in ***Bharat Aambale v. State of Chhattisgarh, 2025 SCC OnLine SC 110,*** that non-compliance with

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Section 52-A of the ND&PS Act does not vitiate the trial. It was observed:

> "**50.** We summarise our conclusion as under:—
>
> **(I)** Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in the presence of a gazetted officer would not constitute sufficient compliance with the mandate under Section 52A sub-section (2) of the NDPS Act.
>
> **(II)** Although there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.
>
> **(III)** Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in the original is actually produced before the court or not.
>
> **(IV)** The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS

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Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in charge of the investigation, and as such, what is required is substantial compliance with the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully, keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to draw an adverse inference against the prosecution; however, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been a lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Actor the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of

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> the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.
>
> **(IX)** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
>
> **(X)** Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

64. Therefore, the non-compliance of Section 52-A of the ND&PS Act will not make any difference to the present case.

65 The learned Trial Court had sentenced the accused to undergo rigorous imprisonment for two years, pay a fine of ₹20,000/- and, in default of payment of fine, to undergo further imprisonment for six months, which cannot be said to be excessive considering the quantity of narcotics found in possession of the accused.

66 No other point was urged.

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

68. Record of learned Trial Court be sent back forthwith along with a copy of the judgment. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

24th April, 2022
(ravinder)