IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 44 of 2014
Reserved on: 08.10.2026
Date of Decision: 26.10.2026.

Balwinder Singh @ Titi ...Petitioner

Versus

State of H.P. ...Respondent

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

For the Appellant : Mr Atharv Sharma, Advocate.

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

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 24.10.2013 passed by learned Additional Sessions Judge-I Kangra at Dharamshala (Circuit Court at Indora) (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 24.11.2010 passed by learned Judicial Magistrate First Class, Indora, District, Kangra, HP (learned Trial Court) were upheld. *(The parties shall*

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

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

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 451 and 354 of the Indian Penal Code (IPC). It was asserted that the informant (name being withheld to protect her identity) was residing with her children. Her husband had gone to Jammu and Kashmir to earn his livelihood. She was sleeping in her courtyard on 15.05.2006. The accused, Balwinder Singh, entered the courtyard at about 03:30 a.m. He started acting indecently with the informant. The informant pushed away the hands of the accused and enquired as to what he was doing. The informant's bangles were broken in the incident. The informant's children woke up. They tried to apprehend the accused, but the accused ran away. The informant's children had identified the accused in the moonlight. The matter was reported to the Pradhan in the morning, who stated that she would make enquiries from the accused. Subsequently, the informant came to know that the accused had molested two other girls. The matter was reported

to the police and the police registered the FIR (Ext.PW1/A). Ramesh Kumar (PW11) investigated the matter. He prepared the site plan (Ext.PW11/A) and seized the broken pieces of bangles (Ext.P1) lying on the spot vide memo (Ext.PW1/D). He also seized a pair of shoes (Ext.P2), torch (Ext.P3) and towel (Ext.P4) vide memo (Ext.PW1/C). The accused produced his pair of slippers (Ext.P5), which were seized vide memo (Ext.PW9/A). These were put in separate cloth parcels, and the parcels were sealed with different seals. The case property was sent to the FSL, and a report (Ext.PW11/F) was issued stating that the shoes and the slippers were similarly worn out and could have been used by one person. However, no definite opinion could be given. Statements of witnesses were recorded as per their version, and after the completion of investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of offences punishable under Sections 451 and 354 of IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven witnesses to prove its case. Informant (PW1) and her son (PW2) narrated the incident. The second victim (PW8), her mother (PW3), and her grandmother (PW4) narrated the second incident. Surinder Singh (PW5) did not support the prosecution case. The third victim (PW6) and her brother (PW7) narrated the third incident. Veena Pathania (PW9) witnessed the recovery. Ashok Kumar (PW10) carried the case property to FSL Junga. Ramesh Kumar (PW11) investigated the matter. Rajinder Singh (PW12) was working as MHC, with whom the case property was deposited.

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

6. Learned Trial Court held that the informant's statement was convincing and inspired confidence. Her statement was corroborated by her son’s statement. There was no reason to disbelieve their testimonies. Hence, the learned Trial Court convicted and sentenced the accused as under:

Sections	Sentence
Section 451 of IPC	To undergo simple imprisonment for one year, pay a fine of ₹3000/- and in default of payment of fine, to undergo further simple imprisonment for two months.
Section 354 of IPC	To undergo simple imprisonment for two years, pay a fine of ₹3000/- and in default of payment of fine, to undergo further simple imprisonment for four months.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by learned Trial Court, the accused filed an appeal which was decided by learned Additional Sessions Judge-I, Kangra at Dharamshala, HP, Circuit Court at Indora (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the informant's testimony was duly corroborated by her son’s testimony and the recovery of broken pieces of bangles. The police had recovered shoes, torch and towel of the accused. The second and third incidents were also proved. Learned Trial Court had rightly convicted and sentenced the accused. There was no

infirmity in the judgment and order passed by learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the evidence on record. The prosecution witnesses were closely related to each other, and they had made a false case against the accused. The sample seal was not deposited with the MHC by the Investigating Officer. Three incidents of the same nature in one night showed that the police had exaggerated the version to falsely implicate the accused. The statements of prosecution witnesses contradicted each other on material aspects. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

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

10. Mr Atharv Sharma, learned counsel for the petitioner, submitted that the learned Trial Court had framed

the charge regarding the first incident. However, the prosecution examined the witnesses of the second and third incidents for which no charge was framed. This evidence was inadmissible. However, the learned Appellate Court considered this evidence and specifically held that the second and third incidents were also proved. The prosecution could not have proved the incident which was not the subject matter of the charge. The consideration of the second and third incident materially prejudiced the accused. Hence, he prayed that the present revision be allowed and the judgment passed by the learned Appellate Court be set aside and the matter be remitted to the learned Appellate Court for fresh consideration after excluding the irrelevant evidence.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, conceded that the learned Trial Court had framed the charge regarding the first incident, but the evidence of the second and third incidents was also led before the learned Trial Court, which was not permissible. He submitted that no prejudice was caused to the accused. Hence, he prayed that the present revision be dismissed.

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

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

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and

if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

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

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

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

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

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC***

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

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its

> own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

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

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

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

> "27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH,***

> *(2008) 14 SCC 457*, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."
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> **7.5.** In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

15. Learned Trial Court had put a notice of accusation to the accused that on 16.05.2006 at about 03:30 a.m. the accused had committed house trespass in the informant's house and had outraged her modesty. No notice of accusation was put regarding the second and the third incidents. However,

the prosecution examined the witnesses related to the second and third incidents. This was impermissible.

16. Section 5 of the Indian Evidence Act specifically reads that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and relevant facts and of no others. It was laid down by the Full Bench of the Allahabad High Court in ***Collector of Gorakhpur v. Palakdhari Singh*, *1889 SCC OnLine All 42: ID (18E88-1890) 6 All 751,*** that anything which is not included in the Indian Evidence Act cannot be admitted. It was observed at page 776:

> As to the first question, of course, as I have already indicated, there being no English common law of evidence antecedent to the Evidence Act, the only manner in which these judgments of 1874 could be excluded would be by reason of that Act itself. In s. Section 3 of that statute defines what relevant facts are and what are not, and in s. 5 of that enactment it is laid down that "evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others." So that this last section renders exclusive everything which is not covered by the purview of some other section which follows in the statute. Here, the case rests not upon applying any principle which is to be found in the English common law of evidence, but upon knowing whether this statute in s. 5 ever contemplated the alteration of the law as it stood at the time when the statute was passed. For the reasons stated by Mr Justice

> Mitter in his dissenting judgment in the Full Bench case of ***Gujju Lall v. Fatteh Lall [6 C. 171***], I hold that the law of the land before the passing of the statute (I of 1872) was that a judgment such as that of Mr Justice Turner and my brother Brodhurst of 1874 would be admitted in evidence. I do not wish to add anything to those reasons, because **[44]** I adopt them fully. This indeed is the conclusion at which, I understand, the learned Chief Justice and my brothers Straight and Tyrrell have also arrived.

17. It was held by Patna High Court in ***Mt. Khedia v. Mt. Turia*, *1961 SCC OnLine Pat 105: AIR 1962 Pat 420*** that the Judge cannot admit any evidence because he thinks that such evidence will help in deciding the matter. It was observed at page 422:

> **10.** It is well settled that the Indian Evidence Act prohibits the employment of any kind of evidence not specifically authorised by the Act itself, and, therefore, it is unsound and not correct to say, as is attempted to be argued here, that the principle of exclusion adopted by the Indian Evidence Act shall not be applied to exclude matters which may be essential for the ascertainment of truth. On this subject, the observations of Lord Atkin, in ***Sris Chandra Nandy v. Rakhalananda, 68 Ind App 34: (AIR 1941 PC 16***), are very apposite and may usefully be read here for guidance. The noble Lord, who delivered the judgment of the Board, at p. 45 (of Ind App): (at p. 20 of AIR), observed:
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> > "What matters should be given in evidence as essential for the ascertainment of truth, it is the purpose of the law of evidence, whether at common law or by statute, to define. Once a statute is passed that purports to contain the whole law, it is

> imperative. It is not open to any judge to exercise a dispensing power and admit evidence not admissible by the statute because to him it appears that the irregular evidence would throw light upon the issue. The rules of evidence, whether contained in a statute or not, are the result of long experience choosing, no doubt, to confine evidence to particular forms, and, therefore, eliminating others which it is conceivable might assist in arriving at truth. But that which has been eliminated has been considered to be of such doubtful value, as on the whole, to be more likely to disguise truth than discover it is therefore discarded for all purposes and in all circumstances. To allow a judge to introduce it at his own discretion would be to destroy the whole object of the general rule."

18. Thus, any evidence, which is not made admissible and relevant under the provisions of the Indian Evidence Act, cannot be admitted. In the present case, the fact in issue was whether the accused had committed a house trespass by entering into the informant's house and outraged her modesty. The second and third incidents were not the facts in issue, and no evidence could have been led of these incidents. Further, the evidence of the second and third incidents was inadmissible in view of Section 14 of the Indian Evidence Act as evidence of a similar nature as mentioned in illustrations (n), (o) and (p) of the Act. In ***Emperor v. Panchu Das and Goberdhone Singh*, *1920 SCC OnLine Cal 24: (1919-20) 24 CWN 501: AIR 1920 Cal 500: 1920 Cri LJ 849*,** the prosecution adduced evidence to show that the

accused had robbed the women on earlier occasions. This evidence was held to be inadmissible. It was observed at page 517:

> "It is plain that this section [14 of the Indian Evidence Act] is of no assistance. The existence of a state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards a person or the existence of a state of body or bodily feeling, was not and could not be in issue in the circumstances of the case. The defence was a complete denial, and no question of the character contemplated by sec. 14 did or could arise. The first explanation to the section creates a further difficulty, because the relevant fact proved to show the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. The evidence introduced was plainly not of this description. The illustrations (*i*), (*j*), (*o*), and (*p*) clearly show that the evidence could not be admitted. Reference may particularly be made to the last two illustrations. A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions, shot at B is relevant, as it shows his intention to shoot B; but the fact that A was in the habit of shooting at people with the intent to murder them is irrelevant. A is tried for a crime; the fact that he said something indicating an intention to commit that particular crime is relevant, but the fact that he said something indicating a general disposition to commit crimes of that class is irrelevant. These illustrate the elementary principle that evidence of general disposition, habit and tendencies is not relevant.
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> From the statement of the case by Mr Justice Chaudhuri, it appears that secs. 14 and 15 were the only sections which had been referred to, and I have consequently

considered, up till now, the question of their true construction. Upon a plain reading of these sections, I feel no doubt that they do not make the evidence admissible. This conclusion is supported by the decisions in ***Empress v. Moodeliar [I.L.R. 6 Cal. 655 (1881)]***, ***Baharuddin Mandal v. Emperor [18 C.L.J. 578 (1913)]*** and ***Emperor v. Abdul Wahid Khan [I.L.R. 34 All. 93 (1911)***. In the first of these cases, Sir Richard Garth, C.J., pointed out that sec. 141 applies to that class of cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, and added that the Court must be very careful not to extend the operation of the section to other cases where the question of guilt or innocence depends upon actual facts and not upon the state of a man's mind or feeling. Mr Justice Mitter, if I have read his judgment correctly, did not really dissent from this view. The same line of reasoning was adopted in the second I case, where it was ruled that proof cannot be offered of an independent offence to show that by reason of such independent offence, the accused is more likely to have committed the one for which he is on trial; in other words, evidence of such collateral offence cannot be received as substantive evidence of the offence on trial, though under sec. 14 evidence may be given of intention and like matters where the factum of such intention or like matters is relevant. The distinction between cases where intention is, and cases where intention is not relevant is illustrated by the decisions in ***Emperor v. Debendra, Prosad [I.L.R. 36 Cal. 573: s.c. 13 C.W.N. 973 (1909)]*** and ***Emperor v. Abdul Wahid [I.L.R. 34 All. 93 (1911)]*** which lie on opposite sides of the dividing line. Reference may also be made to the decision of West, J., in ***R. v. Parbhudas [11 Bom. H.C.R. 90 (1874).]*** where he emphasised the inadmissibility of evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected, even though cognate crime. On behalf of the Crown, reliance was, however, placed upon the

decisions in ***Mahin v. Attorney-General [[1894] A.C. 57]***, and *R.* ***v. Ball [[1911] A.C. 47 (52)]*** reversing ***R. v. Ball [5 Cr. App. Rep. 238 (1910). R. v. Smith [[1911] Cr. App. Rep. 229.], R. v. Bond [[1906] 2 K.B. 389.]*** and *R.* ***v. Thompson [[1917] 2 K.B. 630***: affirmed on H***.L. [1918] A.C. 221.]*** which has been affirmed by the House of Lords in ***Thompson v. The King [[1917] 2 K.B. 630***: affirmed on ***H.L. [1918] A.C. 221.]***. No useful purpose would be served by a detailed analysis of these decisions; most of them, along with other cases, were reviewed by this Court in ***Amritalal Hazra v. Emperor [I.L.R. 42 Cal. 957: s.c. 19 C.W.N. 676 (1915).]*** where the principles deducible therefrom as to the law administered in England were formulated in the following terms:—

"Facts similar to but not part of the same transaction as the main fact are not, in general, admissible to prove either the occurrence of the main fact or the identity of its author. But evidence of similar facts, although in general inadmissible to prove the main facts or the connection of the parties therewith, is receivable, after evidence *aliunde* on these points has been given, to show the state of mind of the parties with regard to such fact; in other words, evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction, or his intent with respect thereto. In general, whenever it is necessary to rebut, even by anticipation, the defence of accident, mistake, or other innocent condition of mind, evidence that the Defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given. To admit evidence under this head, however, the other acts tendered must be of the same specific kind as that in question and not of a different character, and the acts tendered must also have been proximate in point of time to that in question."

I have re-examined these cases, and I see no reason to doubt the accuracy of the above statement, which fully accords with the decisions of the Court of Criminal Appeal in the cases of ***R. v. Rodley [[1913] 3 K.B. 468; 9 Cr.***

> ***App. Rep. 69; 23 Cox. 574 (1913).]*** and ***R. v. Ellis [[1910] 2 K.B. 746; 5 Cr. App. Rep. 41.]*** as also other recent cases, such as ***Thompson v. The King [[1917] 2 K.B. 630***: affirmed on H.L. [1918] A.C. 221.], *R.* v. *Fisher* [[1910] 2. K.R. 149.], *R.* ***v. Mason [111 L.T. 336.]***, ***R. v. Baird [84 L.J.K.B. 1785 (1915).]*** and ***Perkins v. Jeffery [[1915] 2 K.B. 702.]***. It is plain that the principles so enunciated are of no assistance to the prosecution. On the other hand, there is an important passage in the judgment of Kennedy, J., in the case of ***R. v. Bond [[1906] 2 K.B. 389 (405)]*** to which the attention of the Standing Counsel was drawn by the learned Chief Justice in the course of the argument, as destructive of his contention:—
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> "The admissibility, not merely the weight, of the evidence depends upon the evidence of such conduct as would authorise a reasonable inference of a systematic pursuit of the *same* criminal object."

19. Similarly, it was held in ***Emperor vs. Gangaram Hari Pandit (05.07.1920 - BOMHC): MANU/MH/0102/1920*** that the evidence of previous murders committed by the accused was inadmissible. It was observed:

> "3. In the present case, there is no question as to whether the death of Dadu was accidental or intentional. It is the case on both sides that Dadu was murdered, and whoever assaulted Dadu intended to murder him. Whether the six persons mentioned by Gangaram actually committed the murder or whether some of the present accused committed it is the real question. But it cannot be said that there is any point as to the death of Dadu being accidental. It may be a part of the prosecution case that, in attacking the party, assuming for the sake of argument that the enemies of the present accused were the assailants, the object was to go at Gangaram and not at Dadu. The fact remains that those

who went at Dadu did murder him, i. e., they intended to do what their act would show they intended to do. Whether those persons were actuated by a desire to go to Gaugaram more than at Dadu or whether they went to Dadu by mistaking him for Gangaram, they undoubtedly murdered him, and there can be no doubt that they intended to do so. There is no question of the death being accidental. I may refer to the observations in ***Rex v. Boyte [1914] 3 K.B. 339***, which suggest the test to be adopted in determining whether evidence of similar acts is admissible under Section 15 or not in a particular case. Though there may be cases in which it may not be easy to determine whether the evidence is admissible under Section 15 or not, 1 do not think that in the present case there is any difficulty whatever. Though Section 9 of the Indian Evidence Act has not been relied upon on behalf of the Crown, I have considered it with reference to the question as to whether this evidence can be let in to explain the conduct of the persons who are said to have been falsely charged. I have already referred to this consideration so far as it can be said to fall within the scope of Section 8; and I am satisfied that to explain the conduct of those six persons in absconding when they received the news that their names were given as the assailants of Dadu, the belief on the part of some of them that on previous occasions false charges of that character had succeeded or had been brought would be relevant. There is evidence in this case to show that there was a belief in the village that the accused in Gangu's case were wrongly convicted; and that may be relevant to explain the conduct of the six persons in this case, but that belief might exist whether the accused in that case were rightly convicted or not. In my opinion, that would not entitle the prosecution in this case relating to the murder of Dadu to prove that on two previous occasions some of the accused were concerned in similar murders and in charging others falsely. Taking a broad and general view of this type of evidence, I feel that, in effect, it amounts to evidence of

> habit for committing a murder under circumstances as are now alleged to exist. That kind of evidence is not relevant. It seems to me that the second part of the illustration (o) to Section 14 clearly indicates that unless the evidence was particularly directed to show that on a previous occasion any one of the present accused made an attempt to murder any one of the six persons now said to have been falsely implicated, it would not be relevant. It is quite clear that the persons concerned in those two cases, the accused persons, were different. I also feel that there is some force in the argument urged on behalf of the defence as to such evidence being, in substance, evidence of bad character. Its net result is to create the impression on the mind of the Court that these persons are men of bad character and are in the habit of committing murders, and that, therefore, they must have committed murder on this occasion. That is a line of proof which, in my opinion, is excluded by the Indian Evidence Act and should not be allowed. We have, therefore, excluded from consideration only that evidence which has been adduced by the prosecution to show specifically that the charges in both those earlier murder cases were positively false and that the persons convicted in Gangu's case were innocent."

20. The Judicial Committee of the Privy Council also held in ***Noor Mohamed v. King*, *1948 SCC OnLine PC 76: (1949) 62 LW 530: AIR 1949 PC 161*** that the evidence of similar crimes is inadmissible in evidence. It was observed at page 532:

> "The first comment to be made on the evidence under review is that it plainly tended to show that the appellant had been guilty of a criminal act which was not the act with which he was charged. In ***Makin v. Attorney-General for New South Wales [(1894) A.C. 57 at p. 65.]*** Lord Herschell, then Lord Chancellor, delivering the judgment of the Board, laid down two principles which

must be observed in a case of this character. Of these, the first was that:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried."

In 1934, this principle was said by Lord Sankey, then Lord Chancellor, with the concurrence of all the noble and learned Lords who sat with him, to be "one of the most deeply rooted and jealously guarded principles of our criminal law" and to be "fundamental in the law of evidence as conceived in this country." [***Maxwell v. The Director of Public Prosecutions [(1935) A.C. 309*** at pages 317, 320].

The second principle stated in ***Makin's case [(1894) A.C. 57 at p. 65]*** :

> "The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

The statement of this latter principle has given rise to some discussion. A plea of not guilty puts everything in issue which is a necessary ingredient of the offence charged, and if the Crown were permitted, ostensibly in order to strengthen the evidence of a fact which was not denied and perhaps could not be the subject of rational dispute, to adduce evidence of a previous crime, it is manifest that the protection afforded by the "jealously

guarded" principle first enunciated would be gravely impaired.

This aspect of the matter was considered by the House of Lords in ***Thompson v. The King [(1918) A.C. 221]***. Their Lordships need not allude to the facts of that case. It is enough to say that the evidence there admitted was held to be relevant as one of the indicia by which the accused man's identity with the person who had committed the crime could be established. (See per Lord Parker of Waddington, at p. 231). In the words of Lord Atkinson, it rebutted the defence of an alibi which otherwise would have been open (pp. 230-1). Nothing of the kind can be suggested in the present case. The value of the case for the present purpose is that Lord Sumner dealt particularly with the difficulty to which their Lordships have referred, and stated his conclusion as follows:

> "Before an issue can be said to be raised, which would permit the introduction of such evidence so obviously prejudicial to the accused, it must have been raised in substance if not in so many words, and the issue so raised must be one to which the prejudicial evidence is relevant. The mere theory that a plea of not guilty puts everything material in issue is not enough for this purpose. The prosecution cannot credit the accused with fancy defences in order to rebut them at the outset with some damning piece of prejudice"

There can be little doubt that the manner of Ayesha's death, even without the evidence as to the death of Gooriah, would arouse suspicion against the appellant in the mind of a reasonable man. The facts proved as to the death of Gooriah would certainly tend to deepen that suspicion, and might well tilt the balance against the accused in the estimation of a jury. It by no means follows that this evidence ought to be admitted. If an examination of it shows that it is impressive just because it appears to demonstrate, in the words of Lord Herschell in ***Makin's case [(1894) A.C. 57.]*** "that the

accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried", and if it is otherwise of no real substance, then it was certainly wrongly admitted. After fully considering all the facts which, if accepted, it revealed, their Lordships are not satisfied that its admission can be justified on any of the grounds which have been suggested or on any other ground. Assuming that it is consistent with the evidence relating to the death of Ayesha that she took her own life, or that she took poison accidentally (one of which assumptions must be made for the purposes of the Crown's argument at the trial), there is nothing in the circumstances of Gooriah's death to negate these possible views. Even if the appellant deliberately caused Gooriah to take poison (an assumption not lightly to be made, since he was never charged with having murdered her), it does not follow that Ayesha may not have committed suicide. As to the argument from similarity of circumstances, it seems on analysis to amount to no more than this: that if the appellant murdered one woman because he was jealous of her, it is probable that he murdered another for the same reason. If the appellant were proved to have administered poison to Ayesha in circumstances consistent with an accident, then proof that he had previously administered poison to Gooriah in similar circumstances might well have been admissible. There was, however, no direct evidence in either case that the appellant had administered the poison. It is true that in the case of Gooriah, there was evidence from which it might be inferred that he persuaded her to take the poison by a trick, but this evidence cannot properly be used to found an inference that a similar trick was used to deceive Ayesha, and so to fill a gap in the available evidence. The evidence which was properly adduced as to Ayesha shows her to have been acquainted, as were, it may be supposed, most of the inhabitants of the village in which the appellant lived, with the fact that suspicion rested on him in respect of Gooriah's death, and the

theory that Ayesha was deceived into taking poison by a similar ruse to that which is supposed to have succeeded with Gooriah seems to their Lordships to rest on an improbable surmise. The effect of the admission of the impugned evidence may well have been that the jury came to the conclusion that the appellant was guilty of the murder of Gooriah, with which he had never been charged, and having thus adjudged him a murderer, were satisfied with something short of conclusive proof that he had murdered Ayesha. In these circumstances, the verdict cannot stand, notwithstanding the care with which the learned Judge summed up the case, and the fairness with which the trial was conducted in all other respects.

With all due deference to the Court of Criminal Appeal, their Lordships feel bound to say that they are not convinced that the method of approach which it thus approved has any advantage over that which it rejects as incorrect. The expression "logically probative" may be understood to include much evidence which English law deems to be irrelevant. Logicians are not bound by the rules of evidence which guide English Courts, and theories of probability sometimes cause a clash of philosophic opinion. It would no doubt be wrong to interpret the observations of the Court of Criminal Appeal as meaning that evidence can sometimes be admitted merely for the reason that it shows a propensity in the accused to commit crimes of the nature of that with which he is charged. It cannot be supposed that the Court intended to lay down a proposition which would conflict with principles which have been laid down, or approved, by the House of Lords. It may be assumed that it is still true to say, as Lord Sumner said thirty years ago:

> "No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime and even to

> a particular crime:" ***Thompson v. The King [(1918) A.C. 221 at p. 232.]***"
>
> If all that the Court meant to say was that evidence of the kind specified in the first of the principles stated in ***Makin's case [(1894) A.C. 57.]***, may be admitted if it is relevant for other reasons, then the dictum has no novelty. It does seem, however, that the passage quoted was intended at least to bear the meaning that evidence ought to be admitted which is in any way relevant to a matter which can be said to be in issue, however technically, between the Crown and the accused, because a little later in the judgment the following passage occurs:
>
> > "It is of the utmost importance for a fair trial that the evidence should be *prima facie* limited to matters relating to the transaction which forms the subject of the indictment and that any departure from these matters should be strictly confined."

21. Therefore, the evidence of the second and third incident was inadmissible in view of the provision of Section 14 of the Indian Evidence Act.

22. Learned Trial Court had only confined itself to the testimonies of the informant and her son and had referred to the testimonies of the witnesses of the second and third incidents while answering a submission raised before him. However, the learned Appellate Court relied upon the memos (Ext.PW1/C and Ext.PW9/A) related to the second and third incidents and the testimonies of the witnesses of the second

and third incidents. This evidence was specifically inadmissible and could not have been considered.

23. Therefore, the submission made on behalf of the petitioner/accused has to be accepted as correct that the learned Appellate Court had erred in relying upon the testimonies of the witnesses of the second and third incidents, which had materially prejudiced the accused. The First Appellate Court is a Court on facts, where a person is entitled to make all submissions regarding the appreciation of evidence; therefore, there is no option but to set aside the judgment passed by the learned Appellate Court and remit the matter to the learned Appellate Court with a direction to confine itself to the relevant evidence of the first incident and exclude the evidence of the second and third incidents.

24. In view of the above, the present revision is allowed. Judgment passed by learned Additional Sessions Judge-I, Kangra at Dharamshala, HP (Circuit Court at Indora) is ordered to be set aside. The matter is remitted to the learned Appellate Court, which shall confine itself to the evidence of the first

incident and shall exclude the evidence of the second and third incidents.

25. The parties through their learned counsel are directed to appear before learned Appellate Court on **18.11.2026.**

26. A copy of this judgment, along with the records of the learned Courts below, is to be sent back forthwith.

(Rakesh Kainthla)
Judge

26th October, 2026
(Nikita)