IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 191 of 2014
Reserved on: 6.10.2026
Date of Decision: 26.10.2026.

Firoz Khan ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the Appellant : M/s Anshul Bansal, Senior Advocate[2], and Piyush Dhanotia, Advocate.

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

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 05.05.2014 and the order of sentence dated 13.05.2014, passed by the learned Special Judge-I, Sirmaur District at Nahan (learned Trial Court), vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 22 of the Narcotic Drugs and

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.
[2] Correction carried out in compliance of order dated 28.10.2026.

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Psychotropic Substances Act (hereinafter referred to as the "NDPS Act"), and was sentenced to undergo rigorous imprisonment for seven months, pay a fine of ₹10,000/-, and in default of payment of fine, to undergo simple imprisonment for one month for the commission of aforesaid offence. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 22 of the NDPS Act. It was asserted that Inspector/SHO Laiq Ram (PW-10), ASI Ram Pal, ASI Lekh Raj (PW-9), HC Khazan Singh (PW-2), Constable Om Parkash (PW-1), Constable Naveen Kumar, and Lady Constable Promila were present at Amarpur Mohalla, Nahan, on 27.07.2012. They saw the accused carrying a bag, who returned after seeing the police and started running away. The police became suspicious and apprehended the accused. The police joined Ajay Kumar (PW-5) as a witness and inquired about the name of the accused. The accused identified himself as Firoz Khan. The police checked the bag in the presence of the witness and found 202 capsules of Spasmo-

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Proxyvon, each containing 100 mg of dextropropoxyphene. The accused could not produce any document for transporting the capsules.

3. Inspector Laiq Ram put the capsules into the carry bag, put the carry bag into a parcel, and sealed the parcel with seal impression 'R'. He filled the NCB-I form (Ext. PW-8/A) in triplicate and put the seal impression on the form. He obtained the sample seal (Ext. PW-2/B) on a separate piece of cloth and handed over the seal to Ajay Kumar after its use. He seized the parcel vide memo (Ext. PW-2/A). He prepared the *ruka* (Ext. PW-1/A) and sent it to the Police Station, where FIR (Ext. PW-1/B) was registered. Inspector Laiq Ram investigated the matter. He prepared the site plan (Ext. PW-10/A) and recorded the statements of witnesses as per their version. He arrested the accused vide memo Ext. PW-10/C. He handed over the case property to MHC Ravi Kumar (PW-8), who made an entry in the register at Serial No. 467 (Ext. PW-8/B) and deposited the case property in the Malkhana. MHC Ravi Kumar handed over the case property to Constable Om Parkash (PW-1) with a direction to carry it to FSL Junga. Constable Om Parkash handed over the case property at FSL Junga. Inspector Laiq Ram prepared the special report (Ext. PW-4/A) and sent it to

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Additional SP Nahan, Sanjeev Lakhanpal, Additional SP Sirmaur, who received it on 29.07.2012 at 4:00 PM, made an endorsement, and handed it over to Reader HC Ramesh Kumar (PW-4). HC Ramesh Kumar made an entry in the register of the special report and retained the report on record. The report of analysis (Ext. PW-10/D) was issued, stating that the capsules of Spasmo-Proxyvon contained dextropropoxyphene napsylate. The statements of remaining 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.

4. The learned Trial Court found sufficient grounds to summon the accused, and when the accused appeared, he was charged 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.

5. The prosecution examined 10 witnesses to prove its case. Constable Om Parkash (PW-1) and Head Constable Khazan Singh (PW-2) witnessed the recovery. Constable Madan Dutt (PW-3) proved the entry in the daily diary. HC Ramesh Kumar (PW-4) was posted as a Reader to Additional SP Sirmaur, to whom

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the special report was handed over. Ajay Kumar (PW-5) is an independent witness who did not support the prosecution case. SI Kulbir Singh (PW-6) proved the FIR. ASI Dalip Kumar (PW-7) investigated the matter partly. HC Ravi Kumar (PW-8) was working as an MHC, with whom the case property was deposited. ASI Lekh Raj (PW-9) was a member of the raiding party. Inspector Laiq Ram (PW-10) effected the recovery and investigated the matter.

6. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He claimed that the police party had raided his house in his absence at about 3:30–3:45 PM. He was called from his work by his daughter at the instance of the police and was arrested at about 5 pm from his home. He examined Shakeel Ahmed (DW-1) to prove his defence.

7. The learned Trial Court held that the testimonies of official witnesses corroborated each other. There was nothing in their cross-examination to show that they were inimical to the accused or that they had any motive to falsely depose against the accused. The defence taken by the accused that he was called to his

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home by his daughter and was apprehended at home was not believable. The mere fact that the independent witness had turned hostile was no reason to acquit the accused. The witnesses stated that the case property was sealed with seal 'R'; however, the impression ℟ was put on the case property, and this discrepancy was not material because the seal impression was taken on the spot and it bears the signature of the independent witness. The NCB-I form contained the impression '℟'. The defence witness had not made any complaint to any person regarding the false implication of the accused. The integrity of the case property was duly established, and it was proved by the report of analysis that the capsules contained dextropropoxyphene napsylate. The prosecution had proved its case beyond reasonable doubt. Hence, the learned Trial Court convicted and sentenced the accused as noticed above.

8. 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. As per the prosecution, the police had apprehended the accused in a busy place; however, no independent person was joined, which made the prosecution case

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suspect. Dextropropoxyphene napsylate does not find mention in the list of psychotropic substances defined under the NDPS Act, and Section 22 of the NDPS Act was not applicable. Napsylate is a stabilising agent which is usually used in medicinal drugs to stabilise the effect of stronger ingredients in the drug. The defence version that the accused had reached his home after receiving a call from his daughter and was falsely implicated was highly probable, and the learned Court below erred in rejecting this version. The police official had put an impression ℟, whereas the witnesses stated that the case property was sealed with seal 'R'. This was a significant discrepancy which made the integrity of the case property doubtful. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

9. I have heard Mr Anshul Bansal, learned Senior Advocate, assisted by Mr Piyush Dhanotia, learned counsel for the appellant/accused and Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State.

10. Mr Anshul Bansal, learned Senior Advocate, for the appellant/accused, submitted that the learned Trial Court had

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framed charges for the commission of an offence punishable under Section 22 of the NDPS Act. Dextropropoxyphene napsylate does not find mention in the list of psychotropic substances, and the learned Trial Court failed to appreciate this aspect. The witnesses stated that the case property was sealed with seal 'R', whereas the impression ℞ was put on the case property. The identity of the case property was made suspect by this discrepancy. The statements of the witnesses contradicted each other on material aspects, which made the prosecution case highly doubtful. The defence version that the police had called the accused to his home through his daughter was highly probable, and the learned Trial Court erred in rejecting it. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

11. Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State, submitted that dextropropoxyphene has been mentioned in the notification specifying small and commercial quantities at Serial No. 33. Note 4 to the notification provides that the quantities apply to the narcotic drug or psychotropic substance of that particular drug in dosage form or isomers, esters, ethers, and salts of these drugs,

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including salts of esters, ethers, and isomers, wherever the existence of such substance is possible, and not in its pure drug content. Therefore, the salt of the drug is also included in the list. The charge should have been framed under Section 21 because the accused was found in possession of a manufactured drug; however, there was no prejudice to the accused, and he cannot take advantage of the defect in the charge. The prosecution witnesses had consistently deposed about the apprehension of the accused and recovery of the capsules from him. The accused had not assigned any reason as to why the police officials would depose falsely against him. The learned Trial Court had rightly appreciated the evidence, and no interference is required with the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

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

13. The police filed a challan before the learned Trial Court for the commission of an offence punishable under Section 22 of the NDPS Act. The learned Trial Court framed the charge against the accused for the commission of an offence punishable under

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Section 22 of the NDPS Act and also recorded the conviction for the commission of the aforesaid offence. Section 22 of the NDPS Act deals with psychotropic substances. The list of psychotropic substances has been given in the Schedule to the NDPS Act, and dextropropoxyphene is not mentioned in the list. Therefore, the charge was wrongly framed for the commission of an offence punishable under Section 22 of the NDPS Act and should have been framed under Section 21 of the NDPS Act for possessing manufactured drugs or preparation.

14. It was submitted that the error in framing of charge is fatal and the accused is entitled to acquittal on this ground. This submission cannot be accepted. The charge-sheet specifically mentions that the accused was found in possession of 202 capsules of Spasmo-Proxyvon containing dextropropoxyphene napsylate. The accused was aware of the fact that he was being tried for possessing capsules of Spasmo-Proxyvon, and the mentioning of Section 22 of the NDPS Act did not mislead or prejudice him in putting up his defence before the Court. It was laid down by the Hon'ble Supreme Court in ***State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600***, that mere mentioning of the wrong section in the charge does not constitute a fundamental

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defect and the charge cannot be held to be bad because an inapplicable provision was mentioned in it. It was observed: -

> **"25.** It is settled law that a "fundamental defect" should be found in the charges if the court has to quash them. Whether the accused was misled and whether there was reasonable possibility of prejudice being caused to the accused on account of defective charges are relevant considerations in judging the effect of wrong or deficient charges. Section 215 CrPC makes it clear that no error or omission in stating either the offence or the particulars required to be stated shall be regarded as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The test of prejudice or reasonable possibility of prejudice was applied by this Court in the ***William Slaney case [Willie (William) Slaney v. State of M.P., (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291]*** in testing the argument based on the omission, error or irregularity in framing the charges. The same test was also applied in ***State of A.P. v. Cheemalapati Ganeswara Rao [(1964) 3 SCR 297: (1963) 2 Cri LJ 671]***. It has not been demonstrated in the instant case as to how the accused or any of them were misled, or any prejudice was caused to them on account of the alleged defects in the framing of charges. No such objection was even taken before the trial court. As pointed out in the ***William Slaney case [Willie (William) Slaney v. State of M.P., (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291]*** (para 45 of AIR), it will always be material to consider whether the objection to the nature of charge was taken at an early stage. To the same effect are the observations in ***Ganeswara Rao case [(1964) 3 SCR 297: (1963) 2 Cri LJ 671]***. It is difficult to spell out with exactitude the details relating to the starting point of conspiracy. As pointed out in ***Esher Singh v. State of A.P. [(2004) 11 SCC 585: 2004 SCC (Cri) Supp 113]*** (SCC p. 607, para 39), it is not always possible "to give affirmative evidence about the date of the formation of the criminal conspiracy". We do not think that if instead of mentioning

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> "the first week of December 2001" the wording "before December 2001" is employed, the prosecution should fail merely for that reason. The accused cannot be said to have been misled or prejudiced on that account. On the other hand, it is more than clear that the accused did understand the case they were called upon to meet. The question whether Section 120-B applies to the POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion could be reached ahead of the trial. It is not uncommon that the offence alleged might seemingly fall under more than one provision and sometimes it may not be easy to form a definite opinion as to the section in which the offence appropriately falls. Hence, charges are often framed by way of abundant caution. Assuming that an inapplicable provision has been mentioned, it is no ground to set aside the charges and invalidate the trial.

15. In the present case also, the charge had mentioned Section 22, and should have mentioned Section 21. However, the accused was aware of the fact that he was being prosecuted for possessing the capsules of Spasmo-Proxyvon, and he defended himself during the trial. Therefore, the error in the charge has not caused any prejudice to the accused, and the submission that the defect in the charge would invalidate the trial cannot be accepted.

16. It was submitted that dextropropoxyphene napsylate has not been mentioned in the list of the substances and the prosecution of the accused is bad. This submission is not acceptable. It was rightly submitted on behalf of the State that the notification specifying small quantity and commercial quantity

issued by the Central Government mentions dextropropoxyphene at Serial No. 33. The memorandum of appeal itself mentions that napsylate is used to stabilise a stronger drug. Note-4 of the notification provides that the quantities mentioned in the table would also apply to the salts of these drugs, and not just the pure drug content. Dextropropoxyphene napsylate contains napsylate, a stabilising agent as per the accused, and being the salt, is included in the drug. Hence, it cannot be said that the accused was being tried for possessing a drug which is not mentioned in the notification issued by the Central Government, and the submission that the prosecution of the accused was bad is not acceptable.

17. Ajay Kumar (PW-5) stated that no proceedings of this case were conducted in his presence. He was permitted to be cross-examined. He denied that the police had apprehended the accused. He denied that the police searched the accused and found 202 capsules of Spasmo-Proxyvon with the accused. He denied that the police seized the capsules, prepared the document, and handed over the seal to him. He admitted his signatures on the seizure memo (Ext. PW-2/A) and sample seal (Ext. PW-2/B). He denied that his previous statement was recorded by the police.

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18. It was submitted that the testimony of this witness made the prosecution case highly suspect and the learned Trial Court erred in rejecting the testimony of this witness. This submission will not help the accused. This witness had initially stated that no proceedings were conducted in his presence and thereafter admitted his signatures on the documents. He could not provide any explanation for putting the signatures. He stated in his cross-examination by learned counsel for the defence that the police had raided the house of the accused, Feroz Khan, at about 3:45 PM and the accused was called by his daughter. This part of his statement and the signatures on the documents are inconsistent with his examination-in-chief that no proceedings were conducted in his presence, and the testimony of this witness cannot be used to discard the prosecution version.

19. He denied the previous statement recorded by the police. Inspector Laiq Ram (PW-10) specifically stated that he had recorded the statement of Ajay Kumar (Ext. PW-10/B) as per his version. This was not challenged in the cross-examination. It was suggested to him that false statements of witnesses were recorded, but he denied it. A denied suggestion does not amount to any proof and cannot be used to discard his testimony. Therefore,

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witness Ajay Kumar is shown to have made two inconsistent statements: one before the police that the accused was searched in his presence and 202 capsules of Spasmo-Proxyvon were recovered from the accused, and the other before this Court that the accused was not searched in his presence. Both the statements cannot stand together, and credit of Ajay Kumar has been impeached under Section 155(3) of the Indian Evidence Act, 1872. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

> "52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution

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> and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

20. This Court also took a similar view in ***Ian Stilman versus State 2002(2) ShimLC 16*** wherein it was observed:

> "12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In ***Jagir Singh v. The State (Delhi Administration), AIR 1975 Supreme Court 1400***, the Apex Court observed:
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> > "It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony.

21. It was laid down by the Hon'ble Supreme Court in ***Mahesh v. State of Maharashtra, (2008) 13 SCC 271; (2009) 3 SCC (Cri) 543; 2008 SCC OnLine SC 656*** that where the witness had made an inconsistent statement before the police, his testimony before the Court cannot be relied upon. It was observed at page 289:

> **"49.** It is the evidence of PW PSI Dhimole that portion marked "A" appearing in the statement of PW 1 was recorded by him correctly. The defence has not brought on

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> record any evidence to show why the investigating officer had recorded the portion marked " A " of the statement of PW 1 incorrectly. If PW 1, the maker of the complaint, has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness, for no plausible and tenable reasons pointed out on record, will give rise to doubt as to the testimony of the investigating officer, who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution."

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

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

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23. Thus, the testimony of Ajay Kumar cannot be used to discard the prosecution version.

24. Inspector Laiq Ram (PW-10) stated that he, Additional SHO Ram Pal, HC Khazan Singh, Constable Om Parkash, Constable Naveen, LC Promila, and ASI Lekh Raj had left the police station for patrolling on 27.07.2012 vide entry No. 44 (Ext. PW-4/A). They were moving through a *gali* in Amarpur Mohalla when the accused came from the opposite side. The accused tried to slip away after seeing the police. The police apprehended the accused. Ajay Kumar reached the spot, and he was joined as a witness. The accused had a carry bag with him. The police checked the carry bag in the presence of the witness and found 202 capsules of Spasmo-Proxyvon in the carry bag. The accused was asked to produce any document for possessing the drug, but he failed to produce any document. The capsules were put in the carry bag, and the carry bag was put in a parcel. The parcel was sealed with a seal ℟. NCB-I form was filled in triplicate, and the seal impression was taken on a separate piece of cloth. The parcel was seized vide memo (Ext. PW-2/A). *Ruka* was prepared and was sent to the police station. Statements of witnesses were recorded, and the accused was arrested. He identified the case property in the Court.

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25. He stated in his cross-examination that they had left the police station at about 3:40 PM. They went to Naya Bazar Chowk through PWD Rest House. They went from Naya Bazar towards the dairy shop. The accused was apprehended at a distance of about 15 to 20 feet from Kalisthan Johar. He was coming from Purbia Mohalla towards Kalisthan Johar. All the police officials were in official uniform except Constable Om Parkash and Constable Naveen. He admitted that the *gali* where the accused was apprehended is frequented by the general public. No witness was called from the vicinity. He could not say that Purbia Mohalla had 500-600 residential houses; however, he admitted that it was a thickly populated space. It took about 2 hours to complete the investigation. He denied that the police had called the accused to his house from where he was arrested.

26. ASI Lekh Raj (PW9) also supported the prosecution case in his examination-in-chief, which is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that they had patrolled in Naya Bazar and had reached Naya Bazar through Chowgan. They had left the Police Station at about 3.40. They went from Naya Bazar by the side of the dairy shop. One road leads towards Kalisthan Pond, and

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another goes towards Purvia Mohalla from Naya Bazar. The accused was going towards Kalisthan Pond. The distance of the place from where the gali starts to the main road is about 200 mtrs. Om Prakash and Constable Naveen were in civil dress. The accused was coming from Purbia Mohalla. No witness was called from the vicinity. He denied that the accused was called to his house from where he was apprehended.

27. Constable Om Prakash (PW-1) also supported the prosecution version in his examination-in-chief. He stated in his cross-examination that they had left the Police Station at about 3.40 PM on foot. They went to Naya Bazar and to Purbia Mohalla. There were large number of houses in Purbia Mohalla, but he could not tell their exact number. He admitted that one *gali* comes out from Purbia Mohalla towards the east. The accused was apprehended at a distance of 150-200 mtrs. from the main road. The place where the accused was apprehended had houses on both sides. The proceedings were conducted on the spot, and it took about 1½ hours to complete the investigation. He admitted that the place of the incident is frequented by the general public and the Investigating Officer had not called any independent person to

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witness the proceedings. He denied that he was not present on the spot and that the accused was apprehended from his home.

28. Head Constable Khazan Singh (PW-2) also supported the prosecution version in his examination-in-chief. He stated in his cross-examination that they had left the police station at about 3:40 PM. Constable Om Prakash and Constable Naveen were in civil dress. They came from Naya Bazar Road directly to the place of occurrence. The place where the accused was apprehended was located at a distance of 15 ft. from the main road. 10 to 12 houses are located near the place of the incident. ASI had tried to join witnesses from the vicinity, but no person was available. Ajay Kumar was going towards Purbia Mohalla. Many people had gathered on the spot after the proceedings were over. He denied that he was not present on the spot and that no recovery was effected from the accused. He denied that the accused was called to his home, from where he was arrested.

29. It was submitted that the statements of the prosecution witnesses show that the incident had occurred in a thickly populated area, but no independent witness was associated, which makes the prosecution case suspect. This

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submission cannot be accepted. The police were on patrolling duty. They saw the accused, who tried to slip away after seeing the police, which made the police suspicious. Therefore, the accused was apprehended without any prior information. It was laid down by the Hon'ble Supreme Court in ***Kashmira Singh Versus State of Punjab, 1999 (1) SCC 130*** that the police party is under no obligation to join independent witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless. It was observed:

> "3. Learned counsel for the appellant has taken us through the evidence recorded by the prosecution, as also the judgment under appeal. Except for the comment that the prosecution is supported by two police officials and not by any independent witness, no other comment against the prosecution is otherwise offered. This comment is not of any value since the police party was on patrolling duty, and they were not required to take along independent witnesses to support recovery if and when made. It has come to the evidence of ASI Jangir Singh that after the recovery had been effected, some people had passed by. Even so, obtaining their counter-signatures on the documents already prepared would not have lent any further credence to the prosecution's version."

30. In similar circumstances, it was laid down by this court in ***Chet Ram Vs State Criminal Appeal No. 151/2006, decided on 25.7.2018,*** that when the accused was apprehended after he tried to flee on seeing the police, there was no necessity to associate any

person from the nearby village. It was observed: -

> "(A)appellant was intercepted, and a search of his bag was conducted on suspicion, when he turned back and tried to flee, on seeing the police. Police officials did not have any prior information, nor did they have any reason to believe that he was carrying any contraband. They overpowered him when he tried to run away and suspected that he might be carrying some contraband in his bag. Therefore, the bag was searched, and Charas was recovered. *After the recovery of Charas, there was hardly any need to associate with any person from the nearby village because there was nothing to be witnessed.*
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> It is by now well settled that non-association of independent witnesses or non-support of the prosecution's version by independent witnesses where they are associated, by itself, is not a ground to acquit an accused. It is also well-settled that the testimony of official witnesses, including police officials, carries the same evidentiary value as the testimony of any other person. The only difference is that Courts have to be more circumspect while appreciating the evidence of official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of official witnesses, in a case where independent witnesses are not associated, contradictions and inconsistencies in the testimony of such witnesses are required to be taken into account and given due weightage unless satisfactorily explained. Of course, it is only the material contradictions and not the trivial ones, which assume significance." (Emphasis supplied)

31. It was laid down by the Hon'ble Supreme Court of India in ***Raveen Kumar v. State of H.P., (2021) 12 SCC 557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 869*** that non-association of the independent witnesses will not be fatal to the prosecution case.

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However, the Court will have to scrutinise the statements of prosecution witnesses carefully. It was observed on page 566:

> "**(C)** ***Need for independent witnesses***
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> **19.** It would be gainsaid that the lack of independent witnesses is not fatal to the prosecution's case. [***Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134: AIR 1998 SC 201***, para 9] However, such omissions cast an added duty on courts to adopt a greater degree of care while scrutinising the testimonies of the police officers, which, if found reliable, can form the basis of a successful conviction."

32. This position was reiterated in ***Rizwan Khan v. State of Chhattisgarh, (2020) 9 SCC 627: 2020 SCC OnLine SC 730,*** wherein it was observed at page 633:

> "**12.** It is settled law that the testimony of the official witnesses cannot be rejected on the grounds of non-corroboration by independent witnesses. As observed and held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution's case [see ***Pardeep Kumar [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808: (2019) 1 SCC (Cri) 420]***].
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> **13.** In the recent decision in ***Surinder Kumar v. State of Punjab [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563: (2020) 1 SCC (Cri) 767]***, while considering a somewhat similar submission of non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paras 15 and 16, this Court observed and held as under: (SCC p. 568)
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> > "*15.* The judgment in ***Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2011) 3 SCC 521: (2011) 1 SCC (Cri) 1191]***, relied on by the counsel for the respondent State, also supports the case of the

prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status.

16. In ***State (NCT of Delhi) v. Sunil [State (NCT of Delhi) v. Sunil, (2001) 1 SCC 652: 2001 SCC (Cri) 248]***, it was held as under: (SCC p. 655)

> 'It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust in the actions and the documents made by the police. 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.'

33. Similar is the judgment of this Court in ***Balwinder Singh & Anr. Vs State of H.P., 2020 Criminal L.J. 1684***, wherein it was held:

"3. (iii) Learned defence counsel contended that in the instant case, no independent witness was associated by the Investigating Officer; therefore, the prosecution case cannot be said to have been proved by it in accordance with provisions of the Act. Learned defence counsel, in support of his contention, relied upon the titled ***Krishan Chand versus State of H.P.,2017 4 CriCC 531***

3(iii)(d). It is now well settled that a prosecution case cannot be disbelieved only because the independent witnesses were not associated."

34. This position was reiterated in ***Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197: 2021 SCC OnLine SC 1223***, wherein it

was held at page 204: -

> "17. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the two courts, has also been dealt with by this Court in ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563 : (2020) 1 SCC (Cri) 767]*** holding that merely because independent witnesses were not examined, the conclusion could not be drawn that the accused was falsely implicated. Therefore, the said issue is also well settled and, in particular, looking at the facts of the present case, when the conduct of the accused was found suspicious, and a chance recovery from the vehicle used by him is made from a public place and proved beyond a reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference."

35. A similar view was taken in ***Kehar Singh v. State of H.P.,*** ***2024 SCC OnLine HP 2825,*** wherein it was observed:

> **16.** As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-support of the prosecution version by independent witnesses itself is not a ground for acquittal of the Appellants/accused. It is also well-settled that the testimonies of the official witnesses, including police officials, carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most circumspect while appreciating the evidence of the official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated, contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weightage unless satisfactorily explained.

However, the contradiction must be a material and not trivial one, which alone would assume significance.

17. Evidently, this is a case of chance recovery; therefore, the police party was under no obligation to join independent witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless.

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19. A similar reiteration of law can be found in the judgment rendered by the learned Single Judge of this Court in ***Avtar @ Tarri v. State of H.P., (2022) Supreme HP 345***, wherein it was observed as under: —

> "24. As regards the second leg of the argument raised by learned counsel for the appellant, it cannot be said to be of much relevance in the given facts of the case. The fact situation was that the police party had laid the 'nakka' and immediately thereafter had spotted the appellant at some distance, who got perplexed and started walking back. The conduct of the appellant was sufficient to raise suspicion in the minds of police officials. At that stage, had the appellant not been apprehended immediately, the police could have lost the opportunity to recover the contraband. Looking from another angle, the relevance of independent witnesses could be there when such witnesses were immediately available or had already been associated at the place of 'nakka'. These, however, are not mandatory conditions and will always depend on the facts of each and every case. The reason is that once the person is apprehended and is with the police, a subsequent association of independent witnesses may not be of much help. In such events, the manipulation, if any, cannot be ruled out."

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22. A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in ***Cr. A. No. 202 of 2020, titled Dillo Begum v. State of H.P., decided on 27.03.2024***."

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36. The police found Ajay Kumar on the road and joined him. It was not suggested to any of the prosecution witnesses that he was not a chance witness or that he had any enmity towards the accused. Therefore, the prosecution case cannot be doubted merely on account of the absence of independent witnesses.

37. It was submitted that there are various discrepancies in the statements of the witnesses. The following discrepancies were highlighted:

- Constable Om Prakash (PW-1) stated that there were 400 to 500 houses in Purbia Mohalla; Head Constable Khazan Singh (PW-2) stated that there were 10 to 12 houses near the place of occurrence; and Inspector Laiq Ram (PW-10) stated that he could not say whether Purbia Mohalla had 500 to 600 houses.
- Constable Om Prakash (PW-1) stated that the accused was intercepted at a distance of about 150 to 200 meters from the main road. HC Khazan Singh (PW-2) stated that the accused was apprehended at a distance of 15 feet from the main road. ASI Lekh Raj (PW-9) stated that the accused was found at a distance of 10 meters from the main road. Inspector Laiq Ram (PW-10) stated that the accused was apprehended at a distance of 15 to 20 feet from Kalisthan Johar.
- Constable Om Prakash (PW-1) stated that the I.O. had not called any person to witness the proceedings on the spot. HC Khazan Singh (PW-2) stated that the police had called many people, but nobody was available. ASI Lekh Raj (PW-9) stated in his cross-examination that no witness was called from the adjoining houses. Inspector Laiq Ram (PW-10)

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stated that he had not called any person from the nearby houses.

- Constable Om Prakash (PW-1) stated that the proceedings continued for about 1½ hours. HC Khazan Singh (PW-2) stated that the proceedings continued for 1 hour. ASI Lekh Raj (PW-9) stated that it took about 2 to 2½ hours to carry out the proceedings. Inspector Laiq Ram (PW-10) stated that it took about 2 hours to complete the proceedings.
- Constable Om Prakash (PW-1) stated that they went from the police station to Naya Bazar and then to Purbia Mohalla. HC Khazan Singh (PW-2) stated that they came from Naya Bazar towards the road.
- ASI Lekh Raj (PW-9) stated that they conducted patrolling in Naya Bazar and reached Naya Bazar through Chaugan. Inspector Laiq Ram (PW-10) stated that they went towards Naya Bazar through the PWD Rest House.

38. It was submitted that these discrepancies in the statements of the witnesses render the prosecution case highly suspect. This submission cannot be accepted. 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 follows:
>
> > *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once*

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that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

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

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

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

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

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an

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incident. It is not as if a videotape is replayed on the mental screen.

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

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

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

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

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

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

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

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

> "**38.** From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]*** held: (SCC p. 446, para 24)
>
> > "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and

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> infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."

39. Referring to ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable; contradictions were not. In this case, there was no contradiction, only minor discrepancies.

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

> "*30.* This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render the depositions inadmissible. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the

testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961]***.

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

32. These are variations 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

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> 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."

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

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

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> the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, would not cause any dent in the testimony of PW 2. Even if there is a contradiction of a statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

41. 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.

42. 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

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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."

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

44. The contradiction regarding the distance is not significant, as no person measures the distance mathematically; one merely gives an estimate of the distance, which may or may not be precise. Therefore, the discrepancy regarding the distance cannot be used to discard the prosecution case.

45. The discrepancy regarding the number of houses is more apparent than real because the witnesses were asked about different places. Constable Om Prakash (PW-1) stated that Purbia Mohalla had 400 to 500 houses, whereas Head Constable Khazan Singh (PW-2) stated that there were 10 to 12 houses near the place of occurrence. Therefore, both witnesses were deposing about different places. Om Prakash was deposing about the number of

houses in the whole mohalla, while Khazan Singh was deposing about the number of houses in the vicinity. Hence, the testimonies of these witnesses cannot be said to contradict each other.

46. The contradiction regarding the manner of visiting Naya Bazar Chowk is also more apparent than real because Inspector Laiq Ram (PW-10) stated that they went to Naya Bazar through the PWD Rest House, whereas ASI Lekh Raj (PW-9) stated that they went to Naya Bazar via Chaugan. There is no evidence on record that Chaugan and the Rest House are located at different places, and the statements of these witnesses cannot be said to contradict each other.

47. The contradiction regarding joining the person is a matter of detail that can occur with time because of failure of memory and is not sufficient to discard the prosecution's case.

48. Therefore, the contradictions pointed out by the learned counsel are not sufficient to discard the prosecution's case.

49. The accused asserted that he was called by his daughter at about 3:00 to 3:30 PM. He reached his house at about 5:00 PM, and was arrested and taken into custody. He examined Shakeel

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Ahmed to prove his defence, who stated that he was a munshi with Yogesh Aggarwal, Contractor, and the accused was employed with the said contractor as a mason. The accused was working at the building on 27.07.2012. Firoz Khan sought leave to visit his house as he was called in connection with the raid by the police. He (accused) left his workplace and went to his home. He produced the attendance register.

50. The name of this witness or Yogesh Aggarwal, Contractor, was never suggested to any of the prosecution witnesses. The accused had also not stated in his statement recorded under Section 313 of the Code of Criminal Procedure that he was working with Yogesh Aggarwal, Contractor. Hence, the testimony of this witness is without any foundation, and the same was rightly rejected by the learned courts below.

51. Shakeel Ahmed admitted in his cross-examination that he had not told the police that the accused was working with him till 4:30 PM. The learned Trial Court rightly pointed out that this conduct falsifies his version. It was held by the Hon'ble Supreme Court in ***Jarnail Singh v. State of Punjab, (2011) 3 SCC 521***, that where the witness had not made any complaint in writing to the police

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authorities or civil administration regarding the false implication of the accused, his testimony is not believable. Therefore, the learned Trial Court was justified in rejecting the statement of this witness.

52. Learned Trial Court had rightly held that the testimonies of Police Officers cannot be discarded because they happened to be the Police Officers. 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, in the absence of an independent witness to support the recovery, it 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."

53. 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:

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> "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 which 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 scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of a conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

54. 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 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)

55. 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

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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 their 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 to be unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that the quality of the evidence weighs over the quantity of evidence.

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: —

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> "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 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 confidence. Therefore, basing the conviction on the 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."

56. In the present case, the official witnesses corroborated each other. There is nothing in the statements of the official witnesses to show that they were making false statements or that

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they had any motive to falsely implicate the accused. Therefore, the learned Trial Court rightly relied upon the statements of the official witnesses to hold that the accused was found in conscious possession of 202 capsules of Spasmo-Proxyvon.

57. The prosecution witnesses stated that the capsules were put in the carry bag, which was put into a parcel, and the parcel was sealed with a seal impression resembling 'R'. It was submitted that there is an error in the statements because the parcel was sealed with the impression ℟ and not seal ‘R’. This submission will not help the accused. The impression ℟ is a specialised symbol, and the people are not aware of its name. It looks like ‘R ’, and if the witnesses had used the term ‘R ’, they cannot be faulted. The learned Trial Court had rightly pointed out that the specimen sample seal (Ext.PW-2/B) was taken on the spot. The sample seal is legible, and the impression can be read on it. Even Ajay Kumar, who did not support the prosecution case, admitted that his signatures were obtained on the sample seal. Therefore, the fact that the sample seal was taken on the spot is duly established. The seal impression was also taken on the NCB-1 form (Ext.PA). Thus, the documents on record duly prove that the impression ℟ was put on the parcel and the documents. The

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impression ℞ was also specifically recorded in the report of analysis (Ext. PW-10/D). Therefore, it cannot be said that the integrity of the case property has not been established.

58. It was submitted that the seal was not produced before the Court, and this is fatal to the prosecution's case. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the court is not fatal. It was observed: -

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it into writing and sent the same to PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla. At 3.05 P.M., PW7, Head Constable Surender Kumar, stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar, travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his scooter, which contained varying quantities of 'charas'. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla, who had arrived by then, gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. each were taken from the two Gunny Bags and sealed with the seal 'S', and given to PW5. PW2, Jaswinder Singh, the Malkhana Head Constable, resealed it with the seal 'P'. The conclusion of the Trial Court that the seal had not been produced in the Court is therefore perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner."

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59. In the present case, the sample seal (Ext. PW-2/A) and NCB-1 form (Ext.PA) were produced before the Court. The Court had a seal impression on the parcel and made a specific endorsement while recording the statement of HC Khazan Singh (PW-2) that the seals were intact. Therefore, the failure to produce the seal used for sealing the case property is not material in the present case.

60. The report of analysis (Ext. PW-10/D) specifically mentions that the parcel was sealed with three seals of the impression 'R'. Seals were found intact and were tallied with the specimen seal impressions sent separately by the forwarding authority and impressed on the form NCB-1. The report clearly shows that the seals were intact when the parcel was received in the laboratory. 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 claim 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

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also."

61. 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 to date the parcels of the sample were received by the Chemical Examiner, 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."

62. 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 the 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 on the samples were in any manner tampered with before they were examined by the Chemical Examiner.

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> 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 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."

63. 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,

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> 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 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 at 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)

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

65. It was submitted that the case property was not resealed and there was a violation of Section 55 of the NDPS Act. This submission will not help the accused. It was laid down by this Court in ***Prem Bahadur Vs State of H.P., 2009 (1) Shim. L.C. 65***, that

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the provisions of Sections 52 and 55 are not mandatory but are directory. When the investigating officer was the SHO, and he had not resealed the case property, believing that since he was 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 also the accused cannot claim the benefit of acquittal under these provisions. At best, the Court may have to scrutinise the prosecution 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 was the 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 the 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."

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66. In the present case, also the recovery was effected by Inspector/SHO Laiq Ram, and if he had omitted to reseal the parcel, the same is not fatal to the prosecution's case.

67. Hence, the learned Trial Court rightly held that the prosecution had proved its case beyond reasonable doubt that the accused was found in possession of 202 capsules of Spasmo-Proxyvon. As per the report of the laboratory, each capsule contained 100.02 mg of Dextropropoxyphene Napsylate. Thus, the accused was found in possession of 20,204.04 mg, equal to 20.20404 grams of Dextropropoxyphene Napsylate. The Central Government has notified 20 grams as small quantity and 500 grams as commercial quantity. Therefore, the accused was found in possession of an intermediate quantity, slightly exceeding the small quantity threshold.

68. The learned Trial Court sentenced the accused to undergo rigorous imprisonment for a period of 7 months, pay a fine of ₹10,000/-, and in default of payment of fine, to further undergo simple imprisonment for 01 month. Applying the principle of proportionality, the sentence imposed by the learned Trial Court is not excessive, requiring interference by this Court.

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69. In view of the above, there is no infirmity in the judgment of conviction and order of sentence passed by the learned Trial Court. Hence, the present appeal fails and is dismissed.

70. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

26th October, 2026
(Chander)