IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision Nos. 200 and 201 of 2015
Reserved on: 04.11.2026
Date of Decision: 23.11.2026.

Cr. Revision No. 200 of 2015

Karnail Singh ...Petitioner

Versus

State of H.P. ...Respondent

Cr. Revision No. 201 of 2015

Jarnail Singh ...Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the Petitioner(s) : Mr T.S. Chauhan, Senior Advocate, with Mr Surya Chauhan, in both the petitions.

For the Respondent : Mr Tarun Pathak, Deputy Advocate General, in both the petitions.

---

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

2026:HHC:50415

Rakesh Kainthla, Judge

The present revisions are directed against the judgment dated 04.06.2015 passed by learned Additional Sessions Judge (I), Una, District Una, H.P. (learned appellate Court) vide which the judgment of conviction and order of sentence dated 22.08.2012 passed by learned Chief Judicial Magistrate, Una district, Una (learned Trial Court) were partly upheld. (*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 revisions are that the informant Krishan Singh (PW1) informed the police on 22.03.2008 at about 1:30 a.m. that he had parked his tractor bearing registration number HP-67-0181 near his home, which was stolen by some person and there was a possibility of taking the tractor towards Hoshiarpur. The police recorded an entry in the daily diary (Ex. PW4/B) and registered the FIR (Ex. PW4/A). HC Sukhdev (PW4) and Raj Kumar (PW3) set up a Naka and waited for the tractor. The tractor bearing registration number HP-67-181 and a motorcycle bearing registration

2026:HHC:50415

number PB-57-9947 came to the spot at about 2 a.m. The drivers of the tractor and the motorcycle stopped and ran away from the spot. Krishan Singh (PW1) also reached the spot in the meantime. The police followed the driver and apprehended Jarnail Singh, who revealed the name of the other person as Karnail Singh. Krishan Singh identified the tractor as his own, and the police seized the tractor and motorcycle vide memos (Ex. PW1/C and Ex. PW4/D). HC Sukh Dev prepared the spot map (Ex. PW4/E) of the place where the tractor was recovered and the spot map (Ex. PW4/F) from where the tractor was stolen. HC Ravinder Singh (PW6) arrested the accused Karnail Singh, who identified the place from where the tractor was stolen. HC Ravinder Singh (PW6) prepared the spot map (Ex. PW6/A) and recorded the statements of the witnesses as per their version. The challan was prepared and presented before the court after the completion of investigation.

3. The learned trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of an offence punishable under section 379 of the Indian Penal Code (IPC), to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. The informant, Krishan Singh (PW1), is the owner of the tractor. Shashi Pal (PW2) is the informant's brother. Constable Raj Kumar (PW3) and HC Sukh Dev (PW4) had set up a Naka. Constable Sanjiv Kumar (PW5) proved the entry in the daily diary. HC Ravinder Singh (PW6) investigated the matter.

5. The accused, in their statements recorded under section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution's case in its entirety. They did not produce any evidence in their defence.

6. The learned Trial Court held that the testimonies of the prosecution witnesses corroborated each other. The testimonies of the informant and his brother could not be discarded because they were related to each other. Minor contradictions are bound to come with time and cannot be used to discard the prosecution's version. The police officials supported the prosecution version, and there is nothing in their testimonies to show that they were making false statements or had any motive to falsely depose against the accused. Accused Jarnail Singh was caught on the spot with a stolen tractor, which

2026:HHC:50415

proved that he had committed the theft. Hence, the learned trial Court convicted and sentenced the accused as under:

Conviction	Sentence
Section 379 of IPC	To undergo simple imprisonment for one year, pay a fine of ₹3,000/- each and, in default of payment of fine, to undergo simple imprisonment for two months each

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge (I), Una district, Una (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statements of the prosecution witnesses corroborated each other; minor contradictions in the statements of the witnesses were not sufficient to discard them, and there was nothing in the cross-examination of the witnesses to show that they were making false statements. The learned Trial Court had rightly declined the benefit of the Probation of Offenders Act to the accused. However, considering the time lapsed between the

2026:HHC:50415

date of the incident and the date of sentence, the imprisonment awarded by the learned Trial Court was reduced to 6 months.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused have filed the present revision, asserting that accused Karnail Singh was not apprehended on the spot, and he was not properly identified. The prosecution relied upon the statement made by co-accused Jarnail Singh to connect the accused Karnail Singh to the commission of the crime; however, the statement made by the co-accused is not admissible in evidence, and the learned Courts below erred in relying upon the statement of the co-accused to convict the accused Karnail Singh. The statements of prosecution witnesses contradicted each other in material aspects, and the learned Courts below erred in relying upon their testimonies. Therefore, it was prayed that the present revisions be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr TS Chauhan, learned Senior Advocate, assisted by Mr Surya Chauhan, learned counsel for the

2026:HHC:50415

petitioners/accused, and Mr Tarun Pathak, learned Deputy Advocate General for the Respondent/State.

10. Mr TS Chauhan, learned Senior Advocate for the petitioners, submitted that the testimonies of prosecution witnesses contradicted each other on material aspects and learned Courts below erred in relying upon them. The accused Karnail Singh was not arrested on the spot. The witnesses did not know him before the incident, and his identity was not established. The accused were not charged with the commission of an offence punishable under section 379 read with section 34 of the IPC and could not have been convicted without framing the formal charge. The benefit of the Probation of Offenders Act was wrongly denied to the accused. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State, submitted that minor contradictions in the statements of the witnesses are not sufficient to doubt them. The accused were aware of the fact that they were charged for committing an offence jointly, and the absence of a formal

charge under section 34 of the IPC was not material in the present case. The accused Jarnail Singh was apprehended on the spot, and he had named the other accused as Karnail Singh. The witnesses had categorically identified the accused in court. This court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision petitions 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:
>
> > "**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 ***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 re-appreciate 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 the 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.
>
> 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."

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 so as 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 revisions are to be decided as per the parameters mentioned above.

15. The learned Trial Court mentioned in the charge that the accused, along with his co-accused, had committed theft of the tractor. Thus, the accused were aware of the fact that both of

2026:HHC:50415

them were being tried for committing the theft of the tractor. In these circumstances, the absence of section 34 of the IPC in the charge does not cause any prejudice to the accused. It was laid down by the Punjab and Haryana High Court in ***Bhola Singh v. State of Punjab, 1994 SCC OnLine P&H 273*** that where the accused were aware of the nature of the accusation against them and were not prejudiced, the absence of charge under section 34 of the IPC is not material. It was observed:

> **15.**.....Both Bhola Singh and Kaila Singh, the appellants, can be convicted under Section 302 read with Section 34 of the Penal Code, 1860, even though the present appellants have only been charged under Section 302 of the Penal Code, 1860 for intentionally committing the murder of Ram Singh in furtherance of their common intention, which can be reasonably presumed in this case from the fact that the appellants came to the spot together and, after committing the murder of Ram Singh and causing injuries to Harbans Singh, left the spot together. All these tell-tale circumstances were specifically put to both the appellants in their statements under Section 313 of the Code of Criminal Procedure, and they were fully aware of the case they had to meet in their defence. Thus, failure to mention Section 34 of the Penal Code, 1860 in the charge framed against the appellants by the learned trial Court, in our opinion, would not cause any material prejudice to the appellants.
>
> **16.** We find support in our view from the authority of the apex Court in ***Rawalpenta Venkalu v. The State of Hyderabad, AIR 1956 SC 171***, wherein it was held that though Section 34 is not added to Section 302, the accused had clear notice that they were being charged with the

> offence of committing murder in pursuance of their common intention to put an end to the life of Moinuddin. Hence, the omission to mention Section 34 in the charge has only an academic significance and has not in any way misled the accused. As already indicated, there is clear evidence that both the accused lighted a matchstick and set fire to the cottage and each one of them therefore is clearly liable for the offence of murder. Their subsequent acts in repelling all attempts at bringing succour to the trapped person clearly show their common intention of bringing about the same result, namely, the death of Moinuddin.
>
> **17.** We find further support in our view from the authority of the apex Court in ***Bhoor Singh v. State of Punjab, (1974) 4 SCC 754: AIR 1974 SC 1256*** wherein conviction under Section 302 read with Section 34 of the Penal Code, 1860 was maintained by the apex Court even though no specific charge was framed under Section 34 of the Penal Code, 1860. All the circumstances showing concert and participation in the joint criminal action by all the three appellants were duly put to them in their examination under Section 342 Cr.P.C. and the appellants were fully aware of the matter with which they were charged. It was observed in ***Bhoor Singh's case*** (supra) that no question of prejudice arises in such circumstances.

16. In the present case also, the accused were informed in the charges that they had committed the offence of theft together. All the incriminating circumstances were put to them in their statements recorded under section 313 of the CrPC. The accused failed to show any prejudice caused to them by omission to mention section 34 of the IPC in the charge. Therefore, the

2026:HHC:50415

absence of section 34 of the IPC in the charge is not material in the present case.

17. Krishan Singh (PW1) and Shashi Pal (PW2) admitted in their cross-examination that they were told about the theft of the tractor by their father, which clearly suggests that they had not seen any person committing the theft. Therefore, there is no eyewitness to the incident.

18. It is an admitted case that the tractor driver had absconded from the spot, and the police had apprehended Jarnail Singh, who was driving the motorcycle. He revealed that Karnail Singh was driving the tractor. This part of the statement made by Jarnail Singh to the police during the course of investigation is inadmissible and cannot be used for any purpose whatsoever. It was laid down by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588,*** that a statement made by an accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. It was also held that the confession made by the co-accused is inadmissible under

2026:HHC:50415

Section 25 of the Indian Evidence Act. It was observed at page 568:-

> **44.** Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eyes of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible, having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in ***Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47]*** and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains an admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

19. Thus, not much advantage can be derived from the statement made by the co-accused.

20. Krishan Singh (PW1) and Shashi Pal (PW2) stated that they had identified the driver of the tractor on the spot. They also identified the accused in the Court. It is submitted that their identification in court establishes that Karnail Singh was driving the tractor. This submission cannot be accepted. It is the admitted case of the prosecution that both of them were following the tractor and the motorcycle and would not have had

2026:HHC:50415

sufficient opportunity to see the driver of the tractor. They did not say that they knew the accused before the incident; hence, the identification made by them in the court without a previous test identification parade is not sufficient to convict the accused Karnail Singh. Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

> "It might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.
>
> People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

21. It has been stated in ***Halsbury's Laws of England 4th Edition Volume 2*** that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

> "A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

22. It was laid down by the Hon'ble Supreme Court in ***P. Sasikumar v. State of T.N., (2024) 8 SCC 600: (2024) 3 SCC (Cri) 791: 2024 SCC OnLine SC 1652*** that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed on page 605:

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP") was not conducted. All the prosecution witnesses who identified the accused in Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them had seen the appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!
>
> **xxx**
>
> **21.**It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not

a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP, to admit the identification by PW 1 made for the first time in court was not proper.

xxxx

23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see: ***Kunjumon v. State of Kerala***, (*2012) 13 SCC 750: (2012) 4 SCC (Cri) 406*).

xxx

27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the recent two cases of ***Jayanv. State of Kerala, (2021) 20 SCC 38*** and ***Amrik Singh v. State of Punjab, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404***.

28. In ***Jayan v. State of Kerala, (2021) 20 SCC 38***, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the aspect of TIP in the following words: (***Jayan v. State of Kerala, (2021) 20 SCC 38***, SCC p. 44, para 18)

"*18*. It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the

> first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

23. Therefore, the identification of the accused Karnail Singh by the witnesses for the first time in the Court without any corroboration from previous Test Identification Parade is meaningless, and cannot be relied upon to record the conviction.

24. HC Ravinder Singh (PW6) arrested the accused Karnail Singh and prepared the site plan (Ex. PW6/A) at his instance showing the place of the theft. This site plan will not assist the prosecution because this place was disclosed to the police by Krishan Singh (PW1) and no new fact was discovered. It was laid down by this Court in ***State of Himachal Pradesh versus Sanjiv Kumar Alias Sanju 2019 (3) ShimLC 1710*** that there cannot be any rediscovery of a fact. When the place was known to the police, the disclosure made by the accused regarding a place without any recovery would be inadmissible under Section 27 of the Indian Evidence Act. It was observed: -

> "(j) Disclosure statement of accused Sanjay Kumar alias Sanjjan regarding the place from where the dead body was thrown: The prosecution examined Constable Narpat Ram

(PW-16 in ST No.3/95) to prove the disclosure statement (Ext. PM) of accused Sanjay Kumar alias Sanjjan in ST No. 3/1995. However, the accused Sanjay Kumar is dead; therefore, this evidence is also not going to arrive at any conclusion. Even otherwise, his testimony is also cryptic and leads to no conclusion because it points to the place from where the accused had thrown the dead body. *Whereas the police had already recovered the dead body from that place. Therefore, in the absence of recovery, such a confession does not fall within the exception of Section 27 of the Indian Evidence Act, 1872.*

(k) In ***Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217***, a three-member bench of the Supreme Court holds,

> 20. Then we come to the recoveries. The false beard and mask were found buried in the grounds of Dewayat's house, and the appellant is said to have recovered them in the presence of panchas. But those discoveries are inadmissible in evidence because the police already knew where they were hidden...

(l) In ***Thimma v. State of Mysore, 1970 2 SCC 105***, a three-member bench of the Supreme Court holds,

> 10. Reliance on behalf of the prosecution was also placed on the information given by the appellant, which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Evidence Act. This information, it was argued, also lends support to the appellant's guilt. It appears to us that when P. W. 4 was suspected of complicity in this offence, he would in all probability have disclosed to the police the existence of the dead body and the other articles at the place where they were actually found. *Once a fact is discovered from*

> *other sources, there can be no fresh discovery, even if relevant information is extracted from the accused, and Courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 of the Evidence Act is not whittled down by the mere manipulation of the record of the case diary*. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt. We are accordingly disinclined to take into consideration this statement. (Emphasis supplied)

25. It was laid down by the Hon'ble Supreme Court in ***Thimma and Thimma Raju v. State of Mysore, (1970) 2 SCC 105: 1970 SCC (Cri) 320*** that where the police had discovered some fact from other sources, it cannot be re-discovered at the instance of the accused. It was observed on page 112:

> "**10.** Reliance on behalf of the prosecution was also placed on the information given by the appellant, which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Indian Evidence Act. This information, it was argued, also lends support to the appellant's guilt. It appears to us that when PW 4 was suspected of complicity in this offence, he would, in all probability, have disclosed to the police the existence of the dead body and the *other articles at the place where they were actually found. Once a fact is discovered from other sources, there can be no fresh discovery even if relevant information is extracted from the accused, and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the*

> *wholesome provisions of Sections 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of the case diary.* It would, in the circumstances, be somewhat unsafe to rely on this information to prove the appellant's guilt. We are accordingly disinclined to take into consideration this statement." (Emphasis supplied)

26. A similar view was taken in ***Allarakha Habib Memon Etc. v. State of Gujarat, 2024 SCC OnLine SC 1910,*** wherein it was observed:

> "**41.** We find that these so-called confessions are *ex facie* inadmissible in evidence for the simple reason that the accused persons were presented at the hospital by the police officers after having been arrested in the present case. As such, the notings made by the Medical Officer, Dr Arvindbhai (PW-2), in the injury reports of Mohmedfaruk @ Palak and Amin @ Lalo would be clearly hit by Section 26 of the Indian Evidence Act, 1872 (hereinafter being referred to as 'Evidence Act'). As a consequence, we are not inclined to accept the said admissions of the accused as incriminating pieces of evidence relevant under Section 21 of the Evidence Act. *The circumstances regarding the identification of the place of incident at the instance of the accused is also inadmissible because the crime scene was already known to the police, and no new fact was discovered in pursuance of the disclosure statements.*" (Emphasis supplied)

27. It is undisputed that nothing was recovered pursuant to the statement made by Karnail Singh. It was held in ***State of Maharashtra Versus Damu Gopinath Shinde, AIR 2000 S.C. 169,*** that

2026:HHC:50415

where the statement of the accused did not lead to the discovery of any fact, the same is not admissible. It was observed: -

> "The information permitted to be admitted in evidence is confined to that portion of the information which 'distinctly relates to the fact thereby discovered." But the information to be admitted need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by P.W. 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.
>
> 38. How did particular information lead to the discovery of the fact? No doubt, the recovery of the dead body of Dipak from the same canal was antecedent to the information, which P.W. 44 obtained. *If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all.* But when the broken glass piece was recovered from that spot, and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot." (Emphasis supplied)

28 Therefore, no advantage can be derived from the statement made by Karnail Singh pointing out the place from where the theft was committed.

29. There is no other material to connect the accused Karnail Singh with the commission of the crime and the learned Courts below erred in convicting and sentencing him.

2026:HHC:50415

30. Accused Jarnail Singh was riding the motorcycle and was apprehended on the spot after his motorcycle had skidded. The mere fact that he was driving the motorcycle along with the tractor does not prove that he had committed the theft or that he had shared common intention to commit the theft. This may give rise to a suspicion; however, a suspicion, howsoever grave it may be, is not sufficient to convict the accused. It was laid down by the Hon'ble Supreme Court in ***Sujit Biswas v. State of Assam*, *(2013) 12 SCC 406: 2013 SCC OnLine SC 488,*** that suspicion cannot take the place of proof. It was observed at page 412:

> **13.** Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion, no matter how strong, cannot and must not be permitted to take the place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive

> appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide ***Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71: AIR 1952 SC 343: 1953 Cri LJ 129], State v. Mahender Singh Dahiya [(2011) 3 SCC 109: (2011) 1 SCC (Cri) 821: AIR 2011 SC 1017]*** and ***Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777: (2012) 2 SCC (Cri) 905]***)

31. Therefore, the accused Jarnail Singh could not have been convicted merely because he was found to be driving the motorcycle with the tractor.

32. Learned Courts below have only relied upon the fact that Jarnail Singh was found on the spot and he had disclosed the name of Karnail Singh without appreciating that mere presence on the spot with the motorcycle was not sufficient to convict Jarnail Singh and the statement made by him naming Karnail Singh was inadmissible in evidence. Therefore, the judgments and order passed by the learned Courts below cannot be sustained.

33. In view of the above, the present revisions are allowed, and the judgment of conviction and order of sentence

2026:HHC:50415

dated 22.08.2012 passed by the learned Chief Judicial Magistrate, Una District, Una, as affirmed by the learned Additional Sessions Judge (I), District Una, are ordered to be set aside, and the accused are acquitted of the charged offences. The fine, if deposited, be refunded to the petitioners/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

34. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioners/accused are directed to furnish personal bond in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioners/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

2026:HHC:50415

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

(Rakesh Kainthla)
Judge

23rd November, 2026
(ravinder)