IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4137 of 2013
Reserved on: 13.10.2026
Date of Decision: 02.11.2026.

Baldev @ Dev ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the appellant : Ms. Sheetal Vyas, Advocate.

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

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 30.08.2013 passed by the learned Additional Sessions Judge, Fast Track Court, Chamba, District Chamba, H.P. (learned Trial Court), vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 325 of the Indian Penal Code (IPC) and was sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹1,00,000/-,

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

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and in default of payment of fine, to undergo further rigorous imprisonment for one year. It was ordered that out of the fine amount, a sum of ₹10,000/- be applied towards defraying the expenses incurred in the prosecution and ₹90,000/- be paid to the victim as compensation. *(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 against the accused for the commission of an offence punishable under Section 307 read with Section 34 of the Indian Penal Code (IPC). It was asserted that Uttam Singh (PW-18) was running a shop at Dram Nallah. Anjali Kumari (PW-5) told the informant, Chaman Singh (Uttam Singh's elder brother), on 08.06.2012 that Uttam Singh was bleeding from his ear. The informant (Chaman Singh) and Ashok Kumar visited the shop. Uttam Singh was sitting on a chair, his shirt was wet, and he was not talking. The informant took Uttam Singh to Shahpur, from where he was referred to Tanda and ultimately to the PGI, where he was operated upon.

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3. The informant made inquiries and found that Uttam Singh, accused Dev, and Jallu had consumed liquor inside the shop. Dev and Uttam argued, and Dev inflicted a blow on Uttam's head. Uttam became unconscious. The accused poured water upon Uttam, but he did not regain consciousness, and the accused ran away from the spot.

4. The informant submitted an application (Ex. PW-1/A) to the police, and the police registered an FIR (Ex. PW-13/B). ASI Sher Singh (PW-15) investigated the matter. He opened the lock of the victim's shop and found two bottles of Officer's Choice (Ext. P-2 and Ext. P-3), four glasses (Ext. P-4 to Ext. P-7), and three empty bidi packets (Ext. P-8) in the shop. He put them in a parcel (Ext. P-1) and sealed the parcel with three impressions of seal 'S'. He obtained sample seals (Ext. PW-2/C and Ex. PW-2/D) on separate pieces of cloth and seized the parcel vide memo (Ext. PW-2/A). He seized one blood-stained wooden piece (Ex. P-11), put it in a parcel (Ext. P-9), and sealed the parcel with five impressions of seal 'S'. He seized the parcel vide memo (Ex. PW-2/B). He lifted the blood lying in the shop with a cotton piece, put the cotton piece (Ext. P-13) into a plastic container (Ext. P-12). He sealed the parcel with three impressions of seal

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'S'. He seized the blood-stained cotton vide memo (Ext. PW-2/F). He prepared the spot map (Ext. PW-15/C). He made applications (Ext.PW-15/F to Ext. PW-15/H) for obtaining certificates regarding the victim's fitness to make a statement; however, the doctors did not find the victim fit to make a statement. He filed an application (Ext. PW-9/A) and obtained the Jamabandi (Ext. PW-9/B) and Tatima (Ext. PW-9/C).

5. Dr Kalpna (PW-11) examined the victim on 08.06.2012 and found active bleeding from the right ear, a cut over the post-auricular region, and swelling over the mastoid area. She provided first aid, issued the MLC (Ext. PW-11/B), and referred the injured to Dr RPGMCH, Tanda for further treatment. The injuries were dangerous to life and could have been caused by means of a wooden stick (Ext. P-10), in her opinion.

6. The case property was sent to the State Forensic Science Laboratory (SFSL), and reports (Ext. PX and Ext. PY) were issued, stating that human blood of Group 'O' was detected on the wooden stick and on the blood lifted from the spot. Ethyl alcohol was detected in the bottles, but no alcohol was detected in the glass tumblers or the packets recovered from the spot.

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7. Dr Diveshwar Singh (PW-16) accompanied the police to the victim's house, where the victim's statement was recorded. The statements of the remaining witnesses were recorded as per their versions. After completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate First Class, Dalhousie, who committed it to the Court of Sessions. The learned Sessions Judge assigned the case to the learned Additional Sessions Judge, Fast Track Court, Chamba (learned Trial Court).

8. The learned Trial Court charged the accused with the commission of offences punishable under Section 307 read with Section 34 of IPC, to which they pleaded not guilty and claimed to be tried.

9. The prosecution examined 18 witnesses to prove its case. Chaman Singh (PW1) is the informant. Dilawar Singh (PW2) witnessed the recoveries. Ashwani Kumar (PW-3) found victim Uttam Singh and accused Dev Singh in an inebriated condition on the date of the incident. Chain Singh (PW4) had also found accused Dev and Jallu Ram intoxicated, and Uttam Singh sitting inside his shop. Anjali Kumari (PW5) found Uttam Singh bleeding

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and made him sit on a chair. Udham Singh (PW6) had brought liquor on the date of the incident. HC Vijay Singh (PW7) filed an application for the victim's medical examination. ASI Chunni Lal (PW8) filed an application before the Medical Officer at PGI Chandigarh for recording the victim's statement. Anil Kumar (PW9) issued Jamabandi and Aks Tatima Shajra. Ashwani Kumar (PW10) took the photographs and video-recorded the place of the incident. Dr Kalpna (PW11) examined the victim. Constable Sandeep Kumar (PW12) carried the case property to RFSL Dharamshala. HC Rajpal (PW-13) was working as MHC, with whom the case property was deposited. Inspector Hem Raj (PW-14) prepared the challan. ASI Sher Singh (PW-15) investigated the matter. Dr Dineshwar Singh (PW-16) accompanied the police to the victim's house. HC Tej Singh (PW-17) filed an application before the Medical Officer for recording the victim's statement and certifying the victim's capacity to make the statement. Uttam Singh (PW-18) is the victim.

10. Accused Jallu Ram admitted that Uttam Singh was running a stationery shop at Dram Nallah and Baldev was running a shop of steel works adjacent to the victim's shop. He

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denied that Baldev had slapped Uttam Singh or that any altercation had taken place. He admitted that Anjali Kumari had informed the complainant about the injury caused to the victim. He claimed that the witnesses deposed falsely against him and that he was falsely implicated. He did not produce any evidence in his defence.

11. Accused Baldev alias Dev claimed that Uttam Singh had fallen in a state of intoxication and sustained injuries by way of a fall. He admitted that Anjali Kumari had seen Uttam Singh sitting on a chair, but denied that blood was coming from the victim's ear. He stated that he had asked Anjali Kumari to inform the informant about the injuries sustained by the victim. He admitted that the informant and Ashok Kumar had visited the spot, and the victim was taken to the hospital. He stated that he was not aware that the victim was also taken to PGI. He claimed that the witnesses had deposed falsely against him and he was falsely implicated. He did not produce any evidence in his defence.

12. The learned Trial Court held that it was duly proved on record that accused Dev, Jallu, and the victim had consumed

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alcohol. Accused Dev had inflicted a blow by means of a piece of wood upon the victim, who fell and sustained injuries. Anjali Kumari made the victim sit on the chair and informed the victim's brother about the injury. The police had recovered the blood-stained wooden piece and liquor bottles from the shop. The victim had sustained a grievous injury. The defence version that the victim had fallen in a state of intoxication was not proved on record. The police were informed about the injury to Uttam Singh, but the police had not taken any action. The informant had reported the matter to the police after Uttam Singh had come out of danger. The delay was not material in the present case. It was not proved that accused Jalu Ram had shared the common intention to cause hurt to the victim. The injury was grievous and dangerous to life. Hence, the learned Trial Court convicted the accused Baldev alias Dev of the commission of an offence punishable under Section 325 IPC and sentenced him as aforesaid.

13. Being aggrieved by the judgment of conviction and order of sentence passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court had found that Uttam Singh was not in a position to understand

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the questions of the Prosecutor and answer them properly. Therefore, reliance should not have been placed upon the victim's testimony. No other person had seen the incident. Many of the witnesses had turned hostile. There was a delay in reporting the matter to the police, which was not properly explained. The learned Trial Court had imposed a harsh sentence. Therefore, it was prayed that the present appeal be allowed, judgment and order passed by learned Trial Court be set aside.

14. I have heard Ms Sheetal Vyas, learned counsel for the appellant/accused, and Mr. Jitender Sharma, learned Additional Advocate General for the respondent-State.

15. Ms Sheetal Vyas, learned counsel for the appellant/accused, submitted that there was a delay of more than one month in reporting the matter to the police, which was not properly explained. The learned Trial Court had observed that the victim was not in a condition to make the statement, and the learned Trial Court erred in basing the conviction on the victim's testimony. The police had found blood on the wooden piece of the group 'O', but there is no evidence that Uttam Singh had the blood group 'O'. The piece of wooden stick recovered by the police

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was not proved to be a weapon of offence. The defence version that the victim had fallen in a state of intoxication and sustained injury was highly probable, and the learned Trial Court erred in rejecting this version. The learned Trial Court had imposed an excessive sentence. Therefore, she prayed that the present appeal be allowed, and the judgment and order passed by the learned Trial Court be set aside.

16. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the learned Trial Court had rightly appreciated the evidence. The victim's testimony was believable, and there is nothing in his examination to show that he was unable to make the statement before the court. Difficulty in understanding cannot be equated to inability to make the statement. The victim and accused were seen together by many persons before the incident, and the victim's testimony that he was hit by the accused cannot be discarded without any cogent reasons. Learned Trial Court had rightly appreciated the evidence and imposed an adequate sentence. Therefore, he prayed that the present appeal be dismissed.

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

18. Injured Uttam Singh (PW-18) stated that he was running a stationery shop at Dram nallah, adjacent to the shop of accused Dev. The incident occurred on 26th January; he again stated that it was rainy season. Accused Dev had given money for liquor, and his brother had brought the liquor. He (Uttam Singh) had two bottles of drinks in his shop with accused Dev and another who was also present in the Court. The accused hit him with a wooden stick (Ext. P-10). The learned Trial Court observed that the witness was not in a normal state; his skull on the left side was depressed, and he was unable to understand the questions of the prosecutor and answer them spontaneously. The injured further stated that he had sustained injuries on the left side of his skull. Accused Dev had initially asked him to bring liquor, but he had refused. When the liquor was brought, he had a wordy duel, and accused Dev had hit him with a wooden stick. Two or three persons were also present; the name of one person was Chain Singh and of another, Punjabi. He (Uttam Singh) had become unconscious after the incident.

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19. He stated in his cross-examination that his statement was recorded by the police in the evening. He admitted that his statement was recorded on the same evening when he had sustained injuries on his head, and thereafter his statement was not recorded. He had not consumed liquor. The accused and two other persons had drinks. He could not recall the reason for the quarrel. He admitted that construction work was going on adjacent to his shop and the plinth had been laid. He denied that he had fallen in a state of intoxication. He admitted that police had recorded his statement after seven months. He denied that he had made a false statement against the accused.

20. There is nothing in his examination-in-chief or the cross-examination that shows he was unable to understand the questions put to him and answer them rationally. Merely because he was not giving answers promptly does not mean that he was an incompetent witness. The delay in the answers may be because of the injury sustained by him, but the delay alone will not make him an unreliable witness. The learned Trial Court had not found the injured to be an incompetent witness. It was laid down by the Delhi High Court in ***State v. Raj Kumar*, *2000 SCC OnLine Del 841: ILR (2000) 2 Del 393*** that when the Court had

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recorded the statement of a witness, it must be presumed that the witness is competent. It was observed at page 400:

> **10.** Section 118 of the Evidence Act has been worded negatively. If the Court would consider that a particular witness does not understand the questions put to him and fails to give rational answers to those questions, the Court would not proceed to take the evidence of that witness. Where there is absence of record, but yet the Court proceeds to record the evidence, it must be taken that the Court considered the witness as competent to testify (See: *C.D. Field's Law of Evidence*, 11th Edition, Volume 5 page 4491). In order to judge the credibility of the witnesses, the Court is not confined only to the way in which the witnesses have deposed, or the demeanour of the witness, but it is open to it to look into the surrounding circumstances as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses. (See ***Ramchandra Rambux v. Champabai, AIR 1965 SC 354***) The necessity of corroboration is a matter of caution and prudence and not a rule of law or practice.....

21. It was held in ***Acharaparambath Pradeepan v. State of Kerala*, *(2006) 13 SCC 643: (2008) 1 SCC (Cri) 241: 2006 SCC OnLine SC 1421*** that when the judge had satisfied himself about the competence of the witness, the witness is to be taken to be competent. It was observed at page 655:

> "**44.** Section 118 of the Evidence Act seeks to exclude evidence of those who may suffer from intellectual weaknesses. It reads as under:
>
> > "118. *Who may testify.* —All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to

> them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."
>
> In terms of the said provision, therefore, all persons shall be competent to testify unless by reason of tender years, the court considers that they are incapable of understanding the questions put to them and of giving rational answers. It is for the Judge to satisfy himself as regards fulfilment of the requirements of the said provision. The opinion of the learned Judge had been recorded and, thus, it satisfies the test laid down by this Court in ***Rameshwar v. State of Rajasthan [1951 SCC 1213: AIR 1952 SC 54: 1952 Cri LJ 547***].

22. In the present case, the learned Trial Court had not recorded that the injured was an incompetent witness. No objection was raised by the defence that the injured was unable to understand the questions put to him and answer them rationally. Therefore, the submission made on behalf of the accused that the injured was not a competent witness cannot be accepted.

23. The injured stated that the incident had taken place on 26th January and the police had recorded his statement on the date of the incident itself. It was submitted that this statement is false and will make the injured's testimony doubtful. This submission will not help the defence, because the principle of *falsus in uno, falsus in omnibus* does not apply in India. It was laid down by the Hon'ble Supreme Court in ***Arvind Kumar @***

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

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

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

> 24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines "exaggeration" as "the fact of making something larger, more important,

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

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

> "24. ...So far as this contention is concerned, it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses, the maxim

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> falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused, and if that part of the evidence is not found acceptable, the remaining part of the evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon..."
>
> 26. There is no gainsay that homicidal deaths cannot be left to judicium dei. The Court in its quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of the doubt is extended.
>
> 27. An eyewitness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version."

25. Therefore, the victim's testimony cannot be discarded because of the discrepancy in his statement.

26. Dr Alpana (PW-11) examined the victim on 8.6.2012 at around 6:30 PM and found him to be unconscious. She provided

first aid and referred him to Dr RPGMC, Tanda. She stated in her cross-examination that the injured was unconscious since 1:00 PM and was brought to the hospital in an unconscious state. She is an independent person having no reason to support any person, and her testimony proves that the victim was unconscious on the date of the incident and could not have made the statement in the evening of the incident. Thus, the victim's testimony that his statement was recorded in the evening is to be ignored.

27. Ashwani Kumar (PW-3) stated that accused Dev owns a shop at Dram Nalllah. The accused called him (Ashwani Kumar) and paid him ₹120/-. He saw Uttam Singh and Dev sitting in their shops in an inebriated condition. He returned to the home. He was permitted to be cross-examined. He denied that the accused had offered drinks to him and Jallu Ram. He denied that he and Jallu Ram had gone inside Uttam Singh's shop. He denied that all of them had consumed liquor after contributing money. He denied that the accused Dev and Uttam quarrelled and Dev slapped Uttam. He denied that he made efforts to pacify them and when he was unable to do so, he returned to his home. He denied that Dev and Jallu Ram had given beatings to Uttam in

furtherance of their common intention. He denied the previous statement recorded by the police.

28. Uttam Singh (PW-6) stated that he had gone to bring sand for the repair of his house. He had seen Devraj and Jallu Ram sitting with Uttam Singh in front of their shops. All three persons were smoking. Mian and Jallu asked him to bring the liquor from the wine shop. Mian paid the money. He (Uttam Singh) brought the bottle and delivered it to Mian. The accused also offered him liquor, but he declined. He was permitted to be cross-examined. He admitted that accused Devraj had called him and paid ₹500/- to bring the liquor bottle. He admitted that he had brought Officer's Choice IMFL for ₹100/- and returned the rest of the money. He admitted that Devraj had asked him to prepare three pegs—one for himself, one for Devraj, and one for Mian. He denied that Mian was beaten up by Devraj and Jallu Ram. He denied his previous statement. He stated in his cross-examination that all three persons had asked him to bring the liquor bottle and the money was paid by Mian.

29. The statements of these two witnesses substantially corroborated the victim's testimony that he had consumed liquor

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with accused Dev and Jallu Ram. This fact was also proved by the recovery of the bottles of Officer's Choice from the shop. Thus, the victim's testimony was corroborated by independent circumstances.

30. The police opened the shop and found a wooden stick having blood on it. The blood was also spilt on the floor. The police picked up the blood and sent it to RFSL, Dharamshala along with the wooden stick. Blood of blood group 'O' was found on both of the samples lifted from the spot and the wooden stick.

31. Ms Sheetal Vyas, learned counsel for the accused, vehemently contended that there is no proof of the fact that the victim had the blood group 'O', and the blood on the wooden piece is not connected to the accused. She relied upon the judgments of the Hon'ble Supreme Court in ***Balwan Singh v. State of Chhattisgarh, (2019) 7 SCC 781*** and ***Mustakeem v. State of Rajasthan, (2011) 11 SCC 724*** in support of her submission. This submission will not help the defence. In ***Balwan Singh*** (*supra*), the Hon'ble Supreme Court held that failure of the serologist to determine the blood group will not be fatal to the prosecution case. It was observed: -

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> **"23.** From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.

32. In ***Mustakeem*** (*supra*), the Hon'ble Supreme Court held that mere recovery of the blood-stained weapon is not sufficient to prove the guilt of the accused. In the present case, there is evidence of the victim, and the prosecution is not merely relying upon the recovery of a blood-stained weapon to establish its case. Therefore, the cited judgment does not apply to the present case.

33. It is undisputed that the victim had sustained injury and he was bleeding. Even the accused Baldev admitted in his statement recorded under Section 313 of the CrPC that Uttam Singh had sustained injury because of the fall. He admitted that Anjali Kumari had seen Uttam Singh sitting on the chair. Thus, the injury and the presence of Anjali Kumari on the spot are not disputed.

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34. Anjali Kumari (PW-5) stated that Uttam and Devraj were her tenants. She saw blood oozing out of Uttam’s right ear, and his clothes were drenched. She questioned as to what had happened, but he did not respond. She admitted that construction work was going on adjacent to the shop of Uttam.

35. Her testimony regarding the blood coming out of the ear of Uttam was not shattered in the cross-examination. This fact was also noticed by Dr Alpana (PW-11), who had found active bleeding from the right ear with fresh bleeding. Thus, it was duly proved on record that Uttam had sustained a bleeding injury. The Investigating Officer had picked up the blood on the cotton from the shop, which was found to be of 'O' group. Thus, the only inference which can be drawn from the evidence on record is that the victim Uttam had blood group 'O' and his blood was found on the piece of wood recovered by the police. This corroborates the victim's testimony that accused Dev had inflicted injury by means of a piece of wood. It was held by the Hon’ble Supreme Court in ***Neeraj Sharma v. State of Chhattisgarh, (2024) 3 SCC 125; 2024 SCC OnLine SC 13,*** that the testimony of the injured witness has to be accepted as correct unless there are compelling circumstances to doubt his testimony. It was observed:

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"**22.** The importance of an injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as extremely valuable evidence in a criminal trial.

23. In ***Balu Sudam Khalde v. State of Maharashtra [Balu Sudam Khalde v.State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355],*** this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows: (SCC para 26)

> "*26.* When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
>
> *26.1.* The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> *26.2.* Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
>
> *26.3. The evidence of the injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *26.4.* The evidence of the injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
>
> *26.5.* If there be any exaggeration or immaterial embellishment in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

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> *26.6.* The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with the passage of time should be discarded." (emphasis supplied)

36. This position was reiterated in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** wherein it was observed:

> "**33.** When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:
>
> > *"(a) The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
> >
> > *(b) Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
> >
> > *(c) The evidence of an injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*
> >
> > *(d) The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
> >
> > *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.*
> >
> > *(f) The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*
>
> **34.** In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in

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> the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. (See: ***Balu Sudam Khaldev.State of Maharashtra: (2023) 13 SCC 365***).

37. It was laid down by the Hon'ble Supreme Court in ***State of Punjab vs. Hari Singh, 1974 (3) SCR 725*** that a person speaking on oath should be presumed to be a truthful witness unless there is something inherently improbable in his testimony. It was observed:

> "The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility for the consequences of what

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> they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them."

38. It was laid down by the Hon'ble Supreme Court in ***State of U.P. Versus Smt. Noorie Alias Noor Jahan and Others, (1996) 9 SCC 104***, that while assessing the evidence of an eyewitness, the Court must adhere to two principles, namely, whether, in the circumstances of the case, the eyewitness could be present and whether there is anything inherently improbable or unreliable. It was observed: -

> "7. The High Court having acquitted the accused persons on appreciation of the evidence, we have ourselves scrutinised the evidence of PWs 1, 2 and 3. The conclusion is irresistible that their evidence on material particulars has been brushed aside by the High Court by entering into the realm of conjecture and fanciful speculation without even discussing the evidence, more particularly the evidence relating to the basic prosecution case. *While assessing and evaluating the evidence of eyewitnesses, the Court must adhere to two principles, namely, whether, in the circumstances of the case, it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable*. The High Court, in our opinion, has failed to observe the aforesaid principles and, in fact, has misappreciated the evidence, which has caused a gross miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is created by his evidence, taken insofar as the context of the case, and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3, we find they are consistent with one

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> another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-examination to impeach their testimony. The aforesaid oral evidence fully corroborates the medical evidence. In that view of the matter, we unhesitatingly come to the conclusion that the prosecution has been able to establish the charge against the accused persons and the High Court committed an error in acquitting the three respondents, namely Inder Dutt, Raghu Raj and Bikram." (emphasis supplied)

39. The injuries sustained by the victim establish his presence on the spot. Being an injured witness, he is not likely to depose falsely against any person to spare his real assailants, and the learned Trial Court had rightly accepted the victim's testimony to hold that accused Baldev alias Dev had inflicted an injury to the victim by means of a piece of wood.

40. It was submitted that there was a delay in reporting the matter to the police, which is fatal to the prosecution case. This submission cannot be accepted. HC Vijay Singh (PW-7) stated that the Medical Officer, PHC Shahpur informed the Police Station Shahpur that one person had been brought in injured state on 8.6.2012. He reached PHC Shahpur and found Uttam Singh in an injured state. He moved an application (Ext. PW-7/A) to record the victim's statement and for issuance of the MLC;

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however, the victim was found to be unfit for making the statement. He informed the Police Post Sihunta regarding the case and asked them to take the MLC from him. His testimony shows that he had specifically informed the Police Post Sihunta about the injured having been brought to the PHC Shahpur, but the police failed to take any action in the matter. The learned Trial Court had rightly pointed out that the police were informed about the incident and the police had not taken any action in the matter, for which the victim cannot be faulted. It was held in ***Karnel Singh vs. State, 1995 (5) SCC 518,*** that the prosecution's case cannot be doubted due to the defective investigation because the investigating officer is not under the control of the complainant, and the complainant cannot be penalised for the negligence of the investigating officer. It was held:

> "4. We have very carefully scrutinised the evidence, having regard to the fact that (PW 6) the Investigation Officer had not taken the care expected of him. He did not record the statements of the two witnesses, nor did he refer to the attachment of the 'Chaddi' in his oral evidence. That was a very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. There is no doubt that the investigation was casual and defective. But despite these deficiencies, both

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> the Courts below have recorded a conviction. The question is: are they right?
>
> 5. Notwithstanding our unhappiness regarding the nature of the investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation, the Court has to be circumspect in evaluating the evidence, but it would not be right in acquitting an accused person solely on account of the defect; to do so would be tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure memo regarding the 'Chaddi'. That is the reason why we have said that the investigation was slipshod and defective.
>
> 6. We must admit that the defective investigation gave us some anxious moments, and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny, we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury."

41. This position was reiterated in ***Sachin Kumar Singhraha v. State of M.P. (2019) 8 SCC 371: 2019 SCC OnLine SC 363,*** and it was held:

> "At this juncture, we would like to recall that it is well-settled that criminal justice should not become a casualty because of the minor mistakes committed by the Investigating Officer. We may hasten to add here that if the Investigating Officer suppresses the real incident by creating certain records to make a new case altogether, the Court would definitely strongly come against such action of the Investigating Officer. There cannot be any dispute that the benefit of doubt arising out of major

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> flaws in the investigation would create suspicion in the mind of the Court, and consequently, such an inefficient investigation would accrue to the benefit of the accused. As observed by this Court in the case of ***State of H.P. v. Lekh Raj, (2000) (1) SCC 247***, a criminal trial cannot be equated with a mock scene from a stunt film. Such a trial is conducted to ascertain the guilt or innocence of the accused arraigned, and in arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial."

42. It was laid down by the Hon'ble Supreme Court in ***Srichand K. Khetwani v. State of Maharashtra, 1966 SCC OnLine SC 32: (1967) 1 SCR 595: AIR 1967 SC 450: 1967 Cri LJ 414: (1967) 2 SCJ 178*** that no adverse inference can be drawn for failure to collect the evidence. It was observed:

> **8.** Further, an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained, it cannot be said what that evidence could have been and therefore, no question of presuming that that evidence would have been against the prosecution, under Section 114, illustration (*g*) of the Evidence Act, can arise.

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43. This position was reiterated in ***Chand Khan v. State of U.P., (1995) 5 SCC 448: 1995 SCC (Cri) 915,*** wherein it was observed:

> "In the FIR, which was lodged within two hours of the incident, the substratum of the entire prosecution case finds place, including a statement that during the incident, Sm. Naeema Parveen had, in defending herself, given a blow to one of the accused with a vegetable-cutting knife. In view of the above statement recorded in the FIR, the Investigation Officer (PW 16) ought to have taken steps to seize the knife even if PW 5 had not produced it; one of the essential requisites of a proper investigation is the collection of evidence relating to the commission of the offence, and that necessarily includes, in a case of assault, seizure of the weapon of offence, but then failure to collect evidence and failure to produce evidence collected during investigation at the trial carry two different connotations and consequences. While the former may entitle the court to hold the investigation to be perfunctory or tainted, affecting the entire trial, in the case of the latter, the court may legitimately draw a presumption in accordance with Section 114(*g*) of the Evidence Act. As the case presented before us comes under the first category of failures, we have to find out whether we will be justified in discarding the prosecution case solely for the remissness of the Investigating Officer in seizing the knife. The consistent and reliable evidence of the eyewitnesses, coupled with the nature of injuries sustained by some of them and Chand Khan, and the fact that in the FIR it has clearly been stated that one of the miscreants had been assaulted by a vegetable cutting knife, do not persuade us to answer the question in the affirmative."

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44. Therefore, the victim cannot be penalised because the police had not taken any action after they were informed about the injuries sustained by the victim.

45. Dr Alpana (PW-11) issued a final opinion that the nature of injury was dangerous to life and could have been caused by means of a wooden stick. She specifically denied that injuries can be caused by way of a fall under the state of intoxication from a height of 5–6 ft. She explained that the person would have suffered corresponding injuries in case of a fall. This opinion is reasonable because it is not possible to sustain an isolated injury in case of a fall, but multiple injuries and corresponding injuries would also be present. Therefore, the learned Trial Court had rightly accepted the testimony of this witness to hold that the victim had sustained grievous injuries.

46. Dr Dineshwar Singh (PW-16) had accompanied the Medical Officer to the victim's house. Ms Sheetal Vyas, learned counsel for the accused, was highly critical of the fact that he had not issued any certificate regarding the victim's fitness to make the statement. This will not make any difference because the substantive evidence is the victim's testimony in the Court and

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not the statement recorded by the police during investigation. Therefore, the failure to record the certificate will not be material in the present case.

47. There is nothing in the cross-examination of the victim that he had any motive to depose against the accused. The accused had also not stated in his statement recorded under Section 313 of the Cr.P.C. that the victim had any motive to depose falsely against him. Therefore, the learned Trial Court had rightly accepted the victim's testimony, and there is no infirmity in the findings recorded by the learned Trial Court.

48. Thus, it was duly proved on record that the accused had inflicted an injury to the victim by means of a piece of wood which was grievous and dangerous to life; hence, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 325 of the IPC.

49. The offence under Section 325 of the IPC is punishable with imprisonment which may extend to 7 years and a fine. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused. This submission cannot be accepted. The victim had sustained injury and was bleeding

from his ear. The injury was caused to a vital part of the body, and if left unattended, could have been proved fatal. No effort was made by the accused to carry the injured to the hospital, which would have mitigated the effect of the injury caused by him. This conduct makes the offence serious, disentitling the accused from the benefit of the Probation of Offenders Act. Thus, the benefit of the Probation of Offenders Act cannot be granted to the accused.

50. Learned Trial Court had imposed a rigorous imprisonment for 5 years, which was excessive even after considering the conduct of the accused. Only one injury was caused, and the accused had not taken advantage of the situation. Thus, the sentence of 5 years is not justified.

51. The incident had taken place on 8.6.2012. More than 14 years have elapsed since the incident. The accused faced the agony of trial and thereafter the appeal. Hence, keeping in view all these circumstances, the sentence imposed by the learned Trial Court is reduced to 3 years' rigorous imprisonment. The learned Trial Court had imposed a fine of ₹1,00,000/-, out of which ₹90,000/- was awarded to the victim as compensation.

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This is adequate considering the grievous injuries sustained by the victim and his condition noticed by the court.

52. In view of the above, the present appeal is partly allowed, and the sentence of 5 years imposed by the learned Trial Court is reduced to rigorous imprisonment for 3 years for the commission of an offence punishable under Section 325 of the IPC. Subject to this modification, the rest of the judgment and order passed by the learned Trial Court are upheld. A modified jail warrant be prepared accordingly.

53. The record of the learned Court below be sent back with a copy of this judgment for the information of the learned Trial Court.

54. Appeal stands disposed of along with pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

2nd November, 2026
(Chander)