IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal (C-SB) No. 3 of 2025
Reserved on: 06.10.2026
Date of Decision: 26.10.2026.

Naveen Verma ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the Appellant : Mr Rishabh Sharma, Advocate vice Mr D.N. Sharma, 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 passed by learned Special Judge-II, Shimla, H.P. dated 03.07.2025 vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 21 of Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act") and sentenced to undergo rigorous

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

imprisonment for 3 years, pay a fine of ₹50,000/- and in default of payment of fine to undergo rigorous imprisonment for 6 months for the commission of the 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 against the accused before the learned Trial Court for the commission of an offence punishable under Section 21 of the NDPS Act. It was asserted that HC Lalit (PW16), HHC Sunil Kumar, Constable Bhuvnesh Kumar (PW13), Constable Rahul (PW12) and Ambilal were present at Police Barrier, Shoghi on 12.10.2022 at about 02:10 a.m. An HRTC bus bearing registration No. HP-64B-7896 came from Solan towards Shimla. The police signalled the driver to stop the bus. HC Lalit (PW16) and Constable Rahul (PW12) boarded the bus from the front door. The person occupying seat no. 2 started fidgeting after seeing the police. The police went to him and enquired as to why he was behaving like that. However, he could not give any satisfactory answer. HC Lalit (PW16) became suspicious that he might have concealed some contraband or thrown it around him. He called

Conductor Kuldeep and Driver Susheel Kumar and enquired about the name of the person occupying seat number 2, who identified himself as Naveen Verma, the present accused. The accused was asked to stand up. The accused stood up, and 2 balls wrapped with blue coloured tape were found on the seat of the accused. HC Lalit (PW16) picked up the balls and removed the blue tape. He found white substance inside the balls. He checked the substance and found it to be heroin. The heroin was weighed, and its weight was found to be 29.17 grams. The heroin, the plastic packet in which it was kept and the tapes were put in a cloth parcel (Ext.MO). The parcel was sealed with 7 impressions of seal "G". Seal impression (Ext.P1/PW1) was taken on a separate piece of cloth. NCB-1 Form (Ext.P4/PW15) was filled. The seal impression was also put on the Form. The parcel, sample seal and NCB-1 Form were seized vide memo (Ext.P4/PW1). The seal impression was also put on the Form. The seal was handed over to Kuldeep after use. Constable Rahul took the photographs (Ext.P1/PW12 to Ext.P7/PW12). HC Lalit (PW16) prepared Rukka (Ext.P1/PW15) and handed it over to Constable Rahul with a direction to hand it over to the SHO, Police Station West. FIR (Ext.P2/PW15) was

registered at the Police Station. Investigation was entrusted to HC Rajan (PW17), who went to the spot. HC Lalit (PW16) handed over the case property, documents, and the accused to HC Rajan (PW17) vide memo (Ext.P10/PW12). HC Rajan (PW17) prepared the site plan (Ext.P3/PW16). He arrested the accused vide memo (Ext.P1/PW17). He produced the case property, documents and the accused before SHO Deepak Thakur (PW15), who resealed the parcels with 3 seals of seal "A", and filled the relevant columns of NCB-1 Form (Ext.P4/PW15). He obtained the seal impression on the NCB-1 Form. A sample seal (Ext.P5/PW15) was also obtained on a separate piece of cloth. He issued the resealing certificate (Ext.P6/PW15) and handed over the case property to Anil Kumar (PW19), who made an entry in the Malkhana Register at Sl. No. 236/22 and deposited the case property in the Malkhana. Inspector Deepak Thakur (PW15) prepared an application (Ext.P7/PW15), an inventory (Ext.P8/PW15) and handed them over to HC Rajan (PW17) for getting the inventory certified. HC Rajan (PW17) produced the application, inventory and the case property before learned Judicial Magistrate First Class Court No.8, Shimla, H.P., who resealed the parcel with 3 Court seals, obtained the sample seal

(Ext.P2/PW17) on a separate piece of cloth, passed an order (Ext.P3/PW17) and certified the correctness of the inventory (Ext.P4/PW1). The photographs of the inventory proceedings (Ext.P1/PW14 to Ext.P6/PW14) were taken by Constable Rohit, which were duly attested by the learned Magistrate. The case property was again deposited with HC Anil Kumar (PW19), who handed it over to Constable Harmesh (PW7), with a direction to carry it to FSL Junga for chemical analysis vide RC No. 362/22 (Ext.P7/PW17). Constable Harmesh (PW7) deposited the case property at FSL and handed over the receipt (Ext.P2/PW19) to HC Anil Kumar (PW19). HC Rajan (PW17) prepared a special report (Ext.P2/PW3) and handed it over to Ramesh Sharma (PW10), who made the entry in the special report and handed it over to his Reader, HC Vaishno Pratap (PW3), who made an entry in the report of Special Register (Ext.P2/PW3) and retained the special report on record. The result of chemical analysis (Ext.P5/PW17) was issued, in which it was mentioned that the Exhibit stated as heroin was a sample of diacetylmorphine (heroin). The appointment orders of Susheel and Kuldeep (Ext.P2/PW8 to Ext.P7/PW8) were seized. Statements of witnesses were recorded as per their version,

and after the completion of investigation, the challan was prepared and presented before the learned Trial Court.

3. The Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 21 of the NDPS Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nineteen witnesses to prove its case. Kuldeep Singh (PW1) witnessed the recovery. LC Manju Bala (PW2) carried the special report to the Additional SP. HC Vaishno Pratap (PW3) was working as a Reader to the Additional SP to whom the special report was handed over. Constable Ajay (PW4), Constable Lokinder (PW5), Constable Shiva (PW6), Constable Purshottam (PW11), and LC Alka (PW18) proved the entries in the daily diary. Constable Harmesh (PW7) carried the case property to FSL Junga. Prakash Chand (PW8) produced the appointment orders of the driver and Conductor. LC Suman (PW9) brought the case property from FSL Junga. ASP Ramesh Sharma (PW10) was working as Additional SP, to whom the special report was

handed over. Constable Rahul (PW12) witnessed the recovery. Constable Bhuvnesh (PW13) was part of the police team. Constable Rohit Kumar (PW14) took the photographs of the inventory proceedings. Inspector Deepak Thakur (PW15) resealed the case property. HC Lalit (PW16) effected the recovery. HC Rajan (PW17) investigated the matter. HC Anil Kumar (PW19) was working as MHC, with whom the case property was deposited.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that police had set up a Naka on 12.10.2022 and an HRTC bus bearing registration No. HP-64B-7896 came from Solan at 02:10 a.m. He denied the rest of the prosecution's version. He stated that the police had asked all the passengers to get off the bus. He was getting off the bus, but the police stopped him, and he was made to sit in the bus. The police took the photographs and made a false case against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the testimonies of the witnesses corroborated each other and there was nothing in

their cross-examination to show that they were making false statements or had any motive to depose against the accused. The recovery was not made from the personal search and the provisions of Section 50 of the NDPS Act do not apply to the present case. The police had joined the Driver and Conductor as independent witnesses, and failure to join the passengers was not material. The minor contradictions in the statements of the witnesses were not sufficient to discard the prosecution version. The integrity of the case property was duly established. Therefore, learned Trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in appreciating the evidence on record. The statements of prosecution witnesses contradicted each other on material aspects. The link evidence was missing, and the sample analysed could not be connected to the substance recovered from the bus. There was a violation of Section 50 of the NDPS Act, which rendered the prosecution case highly suspect. Therefore, it was prayed that the present appeal be allowed and

the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Rishabh Sharma, learned vice counsel representing the appellant and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

9. Mr Rishabh Sharma, learned vice counsel representing the appellant, submitted that the statements of prosecution witnesses contradicted each other on material aspects. Kuldeep (PW1) admitted that a personal search of the accused was conducted, but the prosecution has not complied with the requirement of Section 50 of the NDPS Act. The police had not joined the passengers as witnesses. The driver was not produced before the Court. All these circumstances made the prosecution case suspect, and the learned Trial Court erred in convicting the accused. The learned Trial Court had imposed a harsh sentence which was disproportionate considering the quantity of heroin stated to have been found in the possession of the accused. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the Investigating Officer had joined the driver and Conductor of the bus as independent witnesses, and it was not the case of the accused that they were not independent persons. There was nothing in the cross-examination of the witnesses to show that they had any motive to depose falsely against the accused. The statements of witnesses corroborated each other, and the learned Trial Court had rightly accepted the statements of the witnesses. There is no infirmity in the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

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

12. Kuldeep (PW1) stated that he was a Conductor in an HRTC bus bearing registration number HP-64B-7896. The police signalled the bus to stop at Police Barrier Shoghi on 12.10.2022 at 02:30 a.m. Two persons entered the bus and said that they were Police Officials and wanted to search the bus.

The passengers sitting on seat number two got perplexed, and the police became suspicious. The passenger revealed his name as Naveen Verma, present in the Court as accused. The police joined Kuldeep and Susheel Kumar as witnesses. The accused was asked to stand up, and two balls wrapped with blue tape were found on the seat. The police removed the tape and found a white substance in them. The police checked the substance and found it to be heroin. It was weighed, and its weight was found to be 29.17 grams. The substance was put in the packets from which it was recovered. The packets were put into the balls, and the balls were put in a cloth parcel. The police sealed the parcel with 7 impressions of seal 'G'. A specimen of the seal impression was taken. He and Sunil Kumar put their signatures on the seal impression. The police also filled the form. The accused had initially taken a ticket from Kalka to Solan, but he did not alight at Solan. He subsequently purchased a ticket to Shimla. He identified the tickets sold to the accused. He stated in his cross-examination that the bus was fully occupied by passengers at the time of its departure from Delhi. The bus was stopped at many places for picking up and dropping off the passengers. Seat No. two and three were empty when the bus

had departed from Chandigarh. 24-25 passengers were travelling in the bus from Chandigarh. He denied that the passengers left their belongings or that some articles got dropped from the pockets of the passengers. He denied that the accused was not travelling on seat No. 2. He admitted that the accused had a fracture in his arm and he had a plaster. He was not aware that there were CCTV cameras installed at the Shoghi barrier. One person in uniform had signalled the driver to stop the bus. The accused had not tried to run away after seeing the police. The police had not told the accused that he had a right to be searched before a Gazetted Officer or a Magistrate. He denied that no recovery was effected, no proceedings were conducted, or that he was making a false statement.

13. His testimony is duly corroborated by Constable Rahul (PW12), who made a similar statement as was made by Kuldeep in his examination-in-chief, and the same is not being reproduced to avoid the prolixity and repetition. He stated in his cross-examination that they had left the SIU Office at about 09:30 p.m. They had stopped at Shoghi, which is located at a distance of 20-25 km from the SIU office. The police barrier and Police Post Shoghi are located at a distance

of 10-15 steps. He admitted that CCTV cameras were installed at the Police Barrier and Police Post. They were checking the traffic at Shoghi after 11:00 p.m. The police officials were with them. The police had boarded the bus from the front door. The police had not checked any other passenger. He had left the spot with Rukka at 04:20 a.m. by taking a lift. He admitted that the accused was wearing a plaster on his right arm. He denied that no recovery was effected from the accused and that he was making a false statement.

14. HC Lalit (PW16) made a similar statement as was made by Kuldeep in his examination-in-chief, and his examination-in-chief is not being reproduced to avoid the prolixity and repetition. HC Lalit stated in his cross-examination that the departure report was entered by LC Alka (PW18). The police had left in a private vehicle which was parked in the parking area of the lift. They did not stop on the way to Shoghi. Shoghi Barrier was at a distance of 12 to 15 km from the lift. They reached Shoghi Barrier at about 10:00 p.m. They had checked many vehicles from 10:00 p.m. till 02:10 a.m. However, he had not prepared any report. 24-25 passengers were travelling in the bus. HHC Sunil Kumar was in uniform,

and the other police officers were not wearing their uniforms. They had not checked any other passenger, and the accused was the first passenger who was checked by the police. The balls were found on the seat occupied by the accused. The police had no prior information about the transportation of the heroin. He admitted that the photographs do not show contraband lying on the seat. He volunteered to say that the process was videographed. The bus remained at the spot till 08:00-8:30 a.m. He had not associated any passenger as a witness. He had not personally searched the accused and had not given any option to him to be searched before a Magistrate or Gazetted Officer. Constable Rahul (PW12) left the spot at 04:20 a.m. He denied that no recovery was effected and that he was making a false statement.

15. The statements of these witnesses corroborate each other, and there is nothing in their cross-examination to show that they were making false statements or that they had any motive to depose against the accused. No such reason was elicited in the cross-examination. The accused also did not state in his statement recorded under Section 313 of CrPC that he had any enmity with the prosecution witnesses or that they

had any motive to depose against him. Therefore, the learned Trial Court had rightly accepted the testimonies of the prosecution's witnesses.

16. It was submitted that the statements of the witnesses contradicted each other. The following contradictions were highlighted:

i) Kuldeep Kumar (PW1) stated that the police had checked the other passengers. Constable Rahul (PW12) and HC Lalit (PW16) stated that no other passenger was searched.

ii) Kuldeep Kumar (PW1) stated in his cross-examination that no police officials left the spot in his presence during the proceedings. Constable Rahul (PW12) stated that he had left the spot with Rukka for the registration of the FIR.

17. 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 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 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.*
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> *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.*
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> *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)"***

18. 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 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 credentials to 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 that 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 them with medical aid and inform the police. The statements that are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to ***Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350: (2011) 1 SCC (Cri) 266]*** and ***Shivlal v. State of Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561: (2011) 3 SCC (Cri) 777]***.

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

"46. Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses have given different timings as to when they had seen the scuffling and strangulation of the deceased by the accused. ... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court

> has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.
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> 49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statements of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused."

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

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

19. 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 follows:

> "42. Only such omissions that amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in 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."

20. 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.

21. The contradiction regarding the search of the passenger can occur with a lapse of time and will not make the prosecution case doubtful. Similarly, the failure to notice the police official leaving the spot can arise because of error of observation and is not sufficient to discard the testimonies of police officials that Constable Rahul (PW12) had left the spot with Rukka.

22. It was submitted that the accused was not given an option to be searched before the Magistrate or the Gazetted Officer and there was a violation of Section 50 of the NDPS Act. This submission cannot be accepted. The police had not recovered anything from the personal search of the accused, and there was no requirement to comply with Section 50 of the

NDPS Act. It was laid down by the Hon'ble Supreme Court in ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473; (2020) 1 SCC (Cri) 22: 2019 SCC OnLine SC 1408,*** that where the recovery was effected from the bag, briefcase, etc., non-compliance with Section 50 is not fatal. It was observed at page 480:

> **13.** The law is thus well settled that an illicit article seized from the person during a personal search conducted in violation of the safeguards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contraband. But the question is, if there be any other material or article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance?
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> **14.** At this stage, we may also consider the following observations from the decision of this Court in ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746: (2010) 2 SCC (Cri) 475***: (SCC pp. 752-53, para 15)
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> > "*15.* The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply while searching the bag, briefcase, etc., carried by the person, and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noted that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where a search of a person is involved, and the said section is not applicable or attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc., does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly

speaks of the search of a person only. Secondly, the section speaks of taking the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue, in our considered opinion, is no longer res integra in view of the observations made by this Court in ***Madan Lal v. State of H.P., (2003) 7 SCC 465: 2003 SCC (Cri) 1664,*** the Court has observed: (SCC p. 471, para 16)

> '*16*. A bare reading of Section 50 shows that it only applies in the case of a personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see ***Kalema Tumba v. State of Maharashtra, (1999) 8 SCC 257: 1999 SCC (Cri) 1422***], State ***of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080]*** and ***Gurbax Singh v. State of Haryana, (2001) 3 SCC 28: 2001 SCC (Cri) 426***). The language of Section 50 is implicitly clear that the search has to be in relation to a person, as contrasted with a search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in State ***of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080***. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

23. This position was reiterated in ***Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197: 2021 SCC OnLine SC 1223,*** and it was observed at page 204: -

> **"16.** Simultaneously, the arguments advanced by the appellant regarding non-compliance with Section 50 of the NDPS Act are bereft of any merit because no recovery of contraband from the person of the accused has been made, to which compliance with the provision of Section 50 of the NDPS Act has to follow mandatorily.

> In the present case, in the search for a motorcycle in a public place, the seizure of contraband was made, as revealed. Therefore, compliance with Section 50 does not apply in the present case. It is settled in ***Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609 : (2011) 1 SCC (Cri) 497*** that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563 : (2020) 1 SCC (Cri) 767]*** and ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473 : (2020) 1 SCC (Cri) 22***. Considering the facts of this case, the argument of non-compliance with Section 50 of the NDPS Act advanced by the counsel is hereby repelled."

24. Similar is the judgment in ***Dayalu Kashyap v. State of Chhattisgarh, (2022) 12 SCC 398: 2022 SCC OnLine SC 334,*** wherein it was observed at page 400: -

> "**4.** The learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-section (1) of Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said section to the accused. To support his contention, he has relied upon the judgment of ***State of Rajasthan v. Parmanand, (2014) 5 SCC 345: (2014) 2 SCC (Cri) 563***, more specifically, SCC para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080*** to conclude that if a search is made by an empowered officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly

would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned, not being part of the statute, the same could not have been offered to the appellant, and thus, the recovery from him is vitiated.

5. In the conspectus of the facts of the case, we find that the recovery was in a polythene bag which was being carried on a kanwad. The recovery was not in person. The learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by a violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus cannot be relied upon. We cannot give such an extended view as is sought to be contended by the learned counsel for the appellant.

25. This judgment was followed in ***Ranjan Kumar Chadha v. State of H.P., 2023 SCC OnLine SC 1262***: ***AIR 2023 SC 5164,*** and it was observed:

> "**126.** As such, there is no direct conflict between ***SK. Raju*** (supra) and ***Baljinder Singh*** (supra). It is pertinent to note that in ***SK. Raju*** (supra), the contraband was recovered from the bag that the accused was carrying, whereas in ***Baljinder Singh*** (supra), the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being "inextricably linked to the person". ***Parmanand*** (supra) relied upon the judgment in ***Dilip*** (supra) while taking the view that if both the person of the accused as well as the bag are searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would

> be applicable. However, it is pertinent to note that *Dilip* (supra) has not taken into consideration ***Pawan Kumar*** (supra), which is of a larger Bench. It is also pertinent to note that although in *Parmanand* (supra) the Court looked into ***Pawan Kumar*** (supra), yet ultimately it followed ***Dilip*** (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the larger Bench in ***Pawan Kumar*** (supra). ***Baljinder Singh*** (supra), on the other hand, says that ***Dilip*** (supra) does not lay down good law.
>
> **127.** In the facts of the present case, there is no scope for applying the ratio of ***Parmanand*** (supra) and ***SK. Raju*** (supra). At the cost of repetition, we may state that in the case at hand, there is nothing to indicate that the search of the person of the accused was also undertaken along with the bag that he was carrying on his shoulder.
>
> **128.** We do not propose to say anything further as regards ***SK. Raju*** (supra) as well as ***Baljinder Singh*** (supra). We adhere to the principles of law as explained by the Constitution Bench in ***Baldev Singh*** (supra) and the larger Bench answering the reference in ***Pawan Kumar*** (supra)."

26. Therefore, the requirement of Section 50 of the NDPS Act does not apply to the present case.

27. It was submitted that Sushil Kumar, Driver of the bus, was not examined and the prosecution case is doubtful. This submission cannot be accepted. The learned Public Prosecutor made a statement on 20.05.2025 that he was giving up Sushil Kumar, being repetitive in nature. It was held in ***Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490: 2000 SCC***

(Cri) 1416: 2000 SCC OnLine SC 1311, that the Public Prosecutor is not obliged to examine all the witnesses. It was observed at page 495:

> "**13.**... If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice."

28. It was laid down by the Hon'ble Supreme Court in ***Pohlu v. State of Haryana, (2005) 10 SCC 196: 2005 SCC (Cri) 1496: 2004 SCC OnLine SC 1393*** that the intrinsic worth of the testimony of witnesses has to be assessed by the Court, and if the testimony of the witnesses appears to be truthful, the non-examination of other witnesses will not make the testimony doubtful. It was observed at page 199:

> "**10.** It was then submitted that some of the material witnesses were not examined, and in this connection, it was argued that two of the eyewitnesses named in the FIR, namely, Chander and Sita Ram, were not examined by the prosecution. Dharamvir, son of Sukhdei, was also not examined by the prosecution, though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eyewitnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained."

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

> ***"Whether the prosecution must examine all the witnesses***
>
> **14.** A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses, is whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in ***Abdul Gani v. State of M.P.***

[(1952) 1 SCC 253: AIR 1954 SC 31: 1954 Cri LJ 323], has examined the aforesaid issue and held that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to, and no doubt would take into consideration the absence of witnesses whose testimony would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.

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

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

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

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

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

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

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

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

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

strength of non-examination of a witness, even if it is a material witness."

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

> "*10.* It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence, and the court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. Nonetheless, if either of the parties withholds any evidence which could be produced and which, if produced, would be unfavourable to the party withholding such evidence, the court can draw a presumption under Illustration (*g*) to Section 114 of the Evidence Act. ... In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

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

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

13. When the case reaches the stage as envisaged in Section 231 of the Code, the Sessions Judge is obliged 'to take all such evidence as may be produced in support of the prosecution'. It is clear from the said section that the Public Prosecutor is expected to produce evidence 'in support of the prosecution' and not in derogation of the prosecution case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the court can be saved from repetitious depositions on the same factual aspects. ... This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the court considerably in lessening the workload. The time has come to make every possible effort to lessen the workload, particularly of those courts crammed with cases, but without impairing the cause of justice.

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

22. The said issue was also considered by this Court in R. ***Shaji [R. Shaji v State of Kerala, (2013) 14 SCC 266: AIR 2013 SC 651]*** and the Court, after placing reliance upon its judgments in Vadivelu ***Thevar v. State of Madras [AIR***

1957 SC 614: 1957 Cri LJ 1000] and ***Kishan Chand v. State of Haryana [(2013) 2 SCC 502: JT (2013) 1 SC 222]***, held as under: (SCC pp. 281-82, para 39)

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

23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined, witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution, and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive". In an extraordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court

and, therefore, to the truth. In a given case, the court can always examine a witness as a court witness if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar to discarding the same.

30. A similar view was taken in ***Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 SCC OnLine SC 150***, wherein it was observed at page 224: -

> ***Non-examination of the witness***
>
> **34.** A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials sufficient to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the part of the party that alleges that a witness has not been produced deliberately to prove it.
>
> **35.** The aforesaid settled principle of law has been laid down in ***Sarwan Singh v.State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]***: (SCC pp. 377-78, para 13)
>
> > "*13.* Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution's case of assault on the deceased, although the evidence shows that there were some

persons living in that locality, like the "pakodewalla", hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. *The onus of proving the prosecution's case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecution's case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were, therefore, material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters*. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted, a large crowd had gathered, and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then

withheld. We must not forget that in our country, there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness to a murder or any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes." (emphasis supplied)

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

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

> same inspires confidence. (Vide ***Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCR 981: AIR 1957 SC 614], Kunju v. State of T.N. [Kunju v. State of T.N., (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], Bipin Kumar Mondal v. State of W.B.[Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], Mahesh v. State of M.P.[Mahesh v. State of M.P., (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singh v. State of Punjab[Prithipal Singh v. State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1]*** and ***Kishan Chand v. State of Haryana[Kishan Chand v. State of Haryana, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807]***.

31. Therefore, the prosecution case cannot be doubted because the driver was not examined by the prosecution.

32. It was submitted that the CCTV footage was not seized by the police, and this will make the prosecution's version doubtful. This submission will not help the accused. The police had video-recorded the proceedings and transferred the video recording to the CD (Ext.P8/PW12). The police had also photographed the proceedings. The proceedings were conducted inside the bus, and CCTV footage would have only shown what was transpiring outside the bus. Hence, non-production of the CCTV footage is not material when the video recording has been produced before the Court.

33. It was submitted that the bus had many passengers and the prosecution had not joined any passenger as a witness. This submission will not help the accused. The police had joined the driver and conductor of the bus as independent witnesses. There is nothing in the cross-examination of the witnesses to show that the driver and conductor were not independent persons. The learned Trial Court had rightly held that it is easier to procure the presence of the public officials than the private persons. Hence, the prosecution case cannot be doubted because the passengers were not cited as witnesses.

34. It was submitted that there is a possibility that the balls were already lying on the seat and they did not belong to the accused. This submission will also not help the accused. The accused never protested that the balls did not belong to him or that they were left by some other passenger. He had not handed over the balls to the driver or conductor, which would have been the prudent conduct of a person finding some article not belonging to him lying on a seat occupied by him.

35. The learned Trial Court had rightly held that the cross-examination of the police officials did not show that

they had any motive to depose against the accused or that they were making a false statement, and their testimonies could not have been discarded on the ground that they were police officials. 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, in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials, unless supported by an independent witness, is unworthy of acceptance or that the evidence of police officials can be outrightly disregarded."

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

> "11. It is a settled proposition of law that the sole testimony of the police official, which, if otherwise, is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be

> interested in the success of the case. There is also no rule of law that lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. The rule of prudence may require more scrutiny of their evidence. Wherever the evidence of a police officer, after scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution's case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

37. 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)

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

> **22.** Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable and trustworthy, then basing the conviction thereupon

cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar* v. *State (Govt. of NCT of Delhi) 2013 (6) SCC 588***after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows its disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer 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 police department should be viewed with distrust. This is also based on the principle that the quality of the evidence outweighs the quantity of evidence.

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

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

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

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

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

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

39. Thus, there is no error in accepting the testimonies of the police officials.

40. HC Lalit (PW16) handed over the case property to HC Rajan (PW17), who produced it before Inspector Deepak (PW15). Inspector Deepak (PW15) resealed the parcel and issued the certificate regarding resealing. The case property was also produced before the Court of the learned Judicial Magistrate First Class, Court No. 8, Shimla. The learned Magistrate passed an order (Ext.P3/PW17) in which it was mentioned that the seals were intact. The heroin was weighed, put in the parcel, and the parcel was sealed with 3 impressions of the Court seal, Civil Nazir, Shimla. The case property was sent to FSL Junga through Constable Harmesh (PW7), who stated that he had deposited the case property in safe condition at FSL Junga. The result of analysis (Ext.P5/PW17) mentioned that one sealed parcel bearing 7 seals of seal "G", 3 seals of seal "K" and 3 seals of Civil Nazir, Court Shimla was received through Constable Harmesh. The seals were found intact, and they were tallied with the specimen seal sent by the forwarding authority and the seal impression of "G" and "K" impressed on the NCB-1 Form. Therefore, the result of analysis

corroborates the prosecution version regarding the integrity of the case property. 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 also."

41. 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."

42. 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. 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."

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

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

44. Therefore, the prosecution's version was rightly accepted by the learned Trial Court that the case property remained intact till its analysis at SFSL, Junga, H.P.

45. 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 to 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."

46. In the present case, the sample seal "K (Ext.P5/PW15), sample seal Court (Ext.P2/PW14) and sample seal "G" (Ext.P1/PW1) were produced before the Court. Further sample seals "G" and "K" were also put on the NCB-1 Form (Ext.P4/PW15). Thus, the Court had the sample seals to compare the seal impression put on the case property produced before it. Learned Trial Court noticed during the examination of Kuldeep Singh (PW1) that the parcel was sealed with 3 seals of seal "K", 7 seals of seal "G", 3 seals of "FSL" and 3 seals of "JMFC 8 Shimla", which were intact. Therefore, the Court had certified itself regarding the integrity of the seals, and it cannot be said that the failure to produce the seal was fatal in the present case.

47. The result of analysis shows that the quantity of heroin in the laboratory was found to be 28.330 grams,

excluding the weight of poly pieces. Therefore, the learned Trial Court had rightly held that the accused was found in possession of the heroin.

48. The learned Trial Court had sentenced the accused to undergo rigorous imprisonment for 3 years, pay a fine of ₹50,000/- and, in default of payment of fine, to further undergo rigorous imprisonment for 6 months. The Central Government has notified 250 grams of heroin as the commercial quantity, which means that a person who possesses 250 grams of heroin can be sentenced to 10 years' imprisonment. It was laid down by the Hon'ble Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8 SCC 109: 2023 SCC OnLine SC 755,*** that the Courts have to apply the principle of proportionality while imposing a sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719],*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence*." The Court also held that imposing "*meagre sentences*" *merely on account of*

lapse of time would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712]*** while advocating that sentencing should be fact dependent exercises, the Court also emphasised that : (***Jameel case [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712***], SCC p. 535, para 15)

> "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration*." (emphasis supplied)

11. Again, in ***Guru Basavaraj v. State of Karnataka [Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594: (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189]*** the Court stressed that: (SCC p. 744, para 33)

> "*33. ... It is the duty of the court to see that an appropriate sentence is imposed, regard being had to the commission of the crime and its impact on the social order*" (emphasis supplied)

and that sentencing includes "*adequate punishment*". In ***B.G. Goswami v. Delhi Admn. [B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85: 1973 SCC (Cri) 796 : (1974) 1 SCR 222]***, the Court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking

while determining the question of awarding appropriate sentences.

12. In ***Sham Sunder v. Puran [Sham Sunder v. Puran, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662]***, the appellant-accused was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that: (SCC p. 737, para 8)

> *8. … The court, in fixing the punishment for any particular crime, should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced.*" (emphasis supplied)

This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has emphasised, in that sentencing depends on the facts, and the adequacy is determined by factors such as "*the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected*" [***Ravada Sasikala v. State of A.P. [Ravada Sasikala v. State of A.P., (2017) 4 SCC 546 : (2017) 2 SCC (Cri) 436 : (2017) 2 SCR 379]***]. Other decisions, like: ***State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1 : (2014) 9 SCR 467]; Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159 : (2013) 5 SCR 979] and State of Punjab v. Saurabh Bakshi [State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182 : (2015) 2 SCC (Cri) 751 : (2015) 3 SCR 590]*** too, have stressed on the significance and importance of

imposing appropriate, "adequate" or "proportionate" punishments.

49. If the principle of proportionality is applied to the present case, the sentence of 3 years is excessive and requires interference.

50. Keeping in view the quantity of the heroin, the accused is sentenced to undergo rigorous imprisonment for 15 months and pay a fine of ₹15,000/- and in default of payment of fine, to undergo rigorous imprisonment for 3 months for the commission of an offence punishable under Section 21(b) of the NDPS Act. He is entitled to the benefit of the set-off for the period of imprisonment undergone by him during the trial and the appeal, if any.

51. In view of the above, the present appeal is partly allowed, and the sentence imposed by the learned Trial Court is modified, and the appellant is sentenced to undergo rigorous imprisonment for 15 months and pay a fine of ₹15,000/- and in default of payment of fine, to undergo rigorous imprisonment for 3 months for the commission of an offence punishable under Section 21(b) of the NDPS Act. Subject to this modification, the rest of the judgment and order are upheld.

52. The modified warrant be prepared.

53. A copy of this judgment, along with the record of the learned Trial Court, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

26th October, 2026
(Chander)