IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 459 of 2010
Reserved on: 26.08.2025
Date of Decision: 09.10.2025

Jagat Ram ...Appellant

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***Yes***

For the Appellant : Mr Vipin Rajta, Advocate.

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

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 30.09.2010 passed by learned Additional Sessions Judge, Shimla (learned Trial Court) vide which the appellant (accused before learned Trial Court) was convicted of the commission of an offence punishable under Section 324 of the Indian Penal Code (hereinafter referred to as IPC) and was sentenced to undergo simple imprisonment for two years, pay a fine of ₹2,000/-, and in default of payment of fine to undergo further imprisonment of two months *(Parties shall*

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

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Sections 307, 324 and 506 of the IPC. It was asserted that the victim Puran Chand (PW12) was going with his wife Padma Devi (PW13) to village Shergata on 02.02.2007, at about 11.00 AM to extend an invitation to the villagers as local Deity was to visit his home. Jagat Ram (accused) met him on the way. He was armed with a Darat. The informant Puran Chand wished Jagat Ram, but he (Jagat Ram) inflicted a blow by darat on the neck of Puran Chand. Puran Chand (PW12) moved to save himself and sustained an injury on his right shoulder. Informant Puran Chand shouted for help. Jagat Ram ran away from the spot and threatened to kill Puran Chand (PW12). Kamla Devi (PW14) and Guddi Devi also saw this incident. The informant was taken to the hospital, and an intimation was given to the police. The police recorded an entry (Ex.PW10/A) in the daily diary. SI Shyam Sunder (PW11), HC Tek Chand and Constable Gian Chand went to the hospital for verification. SI Shyam Sunder recorded the statement (Ex.PW10/B)

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of Puran Chand, which was sent to the police station, where FIR (Ex.PW10/C) was recorded. An application (Ex.PW15/B) was filed for conducting the medical examination of the injured Puran Chand. Dr H.R. Rahi (PW15) conducted his medical examination and found that Puran Chand had sustained an incised wound with underlying muscles cut on the right shoulder, which could have been caused by means of a darat. He advised an X-ray. No fracture was detected in the X-ray. A report (Ex.PW15/A) was issued. ASI Jai Gopal (PW17) investigated the matter. He went to the spot and prepared the site plan (Ex.PW17/A). He found blood on the soil and the grit. He took the photographs (Ex.PW17/B1 to Ex.PW17/B3), whose negatives are Ex.PW17/B4 to Ex.PW17/B6. He seized the blood-stained soil and grit, vide memo (Ex.PW1/A). He put them in a plastic container, put the container in a parcel, and sealed the parcel with seal 'T'. ASI Jai Gopal (PW17) recorded the statements of witnesses as per their version. Accused produced a darat (Ex.P3). ASI Jai Gopal prepared its sketch (Ex.PW2/B). He wrapped it in a paper and thereafter in a cloth. He sealed the parcel with seal 'M'. The parcel was seized vide memo (Ex.PW2/A). Seal impressions of seals 'T' (Ex.PW17/D) and 'M' (Ex.PW17/E) were taken on separate pieces of cloth. The case property was sent to the FSL Junga. Blood

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was found on the blood-stained soil, grit, sweater, shirt and pyjama of the victim and the informant; however, the blood was insufficient for blood grouping. After the completion of the investigation, the challan was prepared and presented before the learned Additional Chief Judicial Magistrate, Shimla, who assigned it to the learned Judicial Magistrate First Class, Court No. 4, Shimla. The case was committed to the learned Sessions Judge, Shimla, who assigned it to the learned Additional Sessions Judge, Shimla (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 offences punishable under Sections 307, 324 and 506 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined seventeen witnesses to prove its case. Vidya Sagar (PW1) is the witness to recovery. Ramesh Kumar (PW2) did not support the prosecution's case. Ram Kishan (PW3) and Neeraj Kumar (PW4) brought the injured to the hospital. Dr Gian Thakur (PW5) is the forensic expert who examined the samples collected from the spot. Constable Bhagat Singh (PW6) carried the case property to SFSL Junga. Constable Jai

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Ram (PW7) brought the case property from Junga to Police Station Dhali. Constable Surender Kumar (PW8) carried the parcel from IGMC Shimla to Police Station Dhali. Vijay Kumar (PW9) prepared the challan. HC Ramesh Chand (PW10) was working as MHC with whom the case property was deposited. Shyam Sunder (PW11) recorded the statement of the informant/victim. Puran Chand (PW12) is the victim. Padma Devi (PW13) and Kamla Devi (PW14) are the eyewitnesses. Dr H.R. Rahi (PW15) conducted the medical examination of the injured. HC Dilu Ram (PW16) and ASI Jai Gopal (PW17) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He admitted that he had gone to the police station on 06.02.2007, but denied that he had produced the darat before the police. He did not lead any defence evidence.

6. The learned Trial Court held that the victim's testimony was corroborated by the testimonies of Padma Devi (PW13) and Kamla Devi (PW14). The matter was reported to the police without any delay. The Medical Officer also found the injury on the victim's shoulder. Clothes of the deceased had a cut mark, which corroborated the victim's version that the injury was inflicted with

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a darat. No repeated blows were given, and it could not be inferred that the accused had attempted to murder the informant/ victim. Hence, the accused was convicted of an offence punishable under Section 324 of the IPC and sentenced 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 statements of prosecution witnesses were full of contradictions. The prosecution failed to prove its case beyond a reasonable doubt. Prosecution relied upon the statements of the informant and his wife, both of whom are interested witnesses. Kamla Devi (PW14) denied the presence of Padma Devi (PW13) on the spot. Learned Trial Court erred in relying upon the statement of Padma Devi. 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 Vipin Rajta, learned Counsel for the appellant and Mr Jitender K. Sharma, learned Additional Advocate General for the respondent/ State.

9. Mr Vipin Rajta, learned Counsel, for the appellant, submitted that the learned Trial Court failed to properly appreciate the material on record. The presence of Padma Devi (PW13) on the

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spot was doubtful because Kamla Devi (PW14) specifically stated that she had seen the victim alone. The testimony of the victim was not corroborated by any independent material. 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 K. Sharma, learned Additional Advocate General for the respondent/ State, submitted that the victim had sustained an injury which could have been caused by means of a Darat as per the medical evidence. This was corroborated by the cut mark on the victim's clothes. Minor discrepancies in the statements of the witnesses are not sufficient to discard them. 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. The victim Puran Chand (PW12) stated that he and his wife Padma Devi (PW13) were going to Shergata on 02nd February to extend invitations. Accused met them on the way at about 11.00 AM. He had a darat in his hand. The victim wished Jagat Ram, but the accused assaulted him with the darat on his right shoulder. He

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shouted for help. Kamla and Guddi heard the noise and enquired as to what had happened. The accused ran away towards the jungle with the darat. The victim and his wife went to the house of Neeraj, from where he was taken to the hospital. His sweater and shirt were cut and soiled with blood. He identified his clothes and darat. He stated in his cross-examination that the occurrence took place on a motorable road at a distance of about 100 meters from Shergata. 8-10 families reside in Shergata. He was residing at a distance of about 1½ kilometres from the place of the incident. Kamla and Guddi were at a distance of 1-2 furlongs from the place of occurrence. The incident continued for 5-7 minutes. He denied that he was a 'Tantrik', and he fell. He denied that the accused had not caused any injury.

13. Nothing was suggested to him in the cross-examination as to why he should be deposing falsely against the accused. 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 such a statement. It was observed:

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

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14. 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 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)

15. 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 eye-witness 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 eye-witness 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 injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of 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 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 the circumstances of the case, it is possible to believe their pres-

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> ence 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 yet 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 Khalde v. State of Maharashtra :(2023) 13 SCC 365***)

16. 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 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."

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17. The victim's testimony is corroborated by his previous statement (Ex.PW10/B), which was recorded on the same day at 06.15 PM in the hospital. It contains the details of the incident in the same manner as they were narrated in the Court.

18. Further corroboration is provided by the medical evidence. Dr H.R. Rahi (PW15) examined the victim and found an incised wound with clean cut margins about 5cm x 3cm, underlying muscles cut, placed midway between the right shoulder and neck on the right clavicular region. Fresh bleeding was present after removing the blood clots. The injury was dangerous to life because the patient was in a state of shock. A sharp-edged weapon was used to cause the injury. The injury could have been caused within six hours of the examination. He stated in his cross-examination that the injury was muscle deep. He admitted that the clothes would be cut by the forcible use of the darat. He volunteered to say that the clothes were also found to be cut in the present case. He sealed the victim's clothes and provided a 'chaddar' to the victim to cover his body. The injury could not have been caused by a fall because there sould have been some other injury on the head. He denied that the injury was dangerous to life. He admitted that the injury was not on the vital part of the body.

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19. The cross-examination of the Medical Officer was directed towards the nature of the injury and whether it was dangerous to life or not. Since, learned Trial Court has convicted the accused of the commission of an offence punishable under Section 324 of IPC and not 307 of IPC, therefore, this aspect needs no deliberation.

20. The Medical Officer categorically stated that the injury could not have been caused by way of a fall, because the victim would have sustained other injuries during the fall, and no such injuries were noticed by him. Thus, the medical evidence ruled out the possibility suggested to the victim that he had sustained injury by way of a fall.

21. The Medical Officer stated that the clothes of the victim were cut. This fact was duly corroborated by the report of Forensic Analysis (Ex.PW5/A). Dr Gian Thakur (PW5) stated that he had examined the case property. He found blood on the sweater, shirt, pyjama and darat, but the quantity was insufficient for blood grouping. He mentioned in the report (Ex.PW5/B) that the sweater, shirt and pyjama were torn. He stated in his cross-examination that the darat did not have any visible stains of blood. The material was extracted and tested for the presence of blood and its species

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of origin. Human blood was detected on the examination of the material extracted from the darat.

22. The report of this witness and the statement of the Medical Officer clearly show that the clothes were also cut during the incident. This would rule out the possibility of sustaining injury by way of a fall.

23. Padma Devi (PW13) stated that she and her husband were going to Shergata on 02nd February to extend an invitation. The accused met them on the way. The victim wished the accused. The accused had a darat and he inflicted a blow on the victim's neck. The blood started coming out of the injury. She shouted for help. Kamla and Guddi enquired as to what had happened. She told them that the accused had given a darat blow to the victim. The accused ran away from the spot. She requested Kamla and Guddi to make a phone call. She and the victim went to Chanai, from where the victim was brought to Shimla. She stated in her cross-examination that the incident occurred in 'Magh' during the winter season. The victim was wearing a grey shirt and a half-sleeved sweater. The occurrence lasted for 2-3 minutes. She denied that the accused had not given any blow to the victim.

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24. Her name was mentioned in the FIR. The victim also stated on oath that his wife was accompanying him. Both the victim and his wife were going to extend the invitations, and their being together is not unnatural. Therefore, her presence cannot be doubted.

25. Kamla Devi (PW14) stated in her examination-in-chief that no one was with Puran Chand. Heavy reliance was placed upon this part of the statement to submit that the presence of Padma Devi on the spot is doubtful. This submission is not acceptable. Kamla Devi was permitted to be cross-examined, and she stated in her cross-examination that she had not seen Puran Chand's wife accompanying him. She denied her previous statement (Mark-K), where this fact was mentioned.

26. ASI Jai Gopal (PW17) specifically stated that he had recorded the statements of witnesses as per their version. A general suggestion was made to him in the cross-examination that he had not recorded the statements of witnesses, which he denied. A denied suggestion does not amount to any proof, and his testimony cannot be rejected because of this denied suggestion. Therefore, the testimony of Kamla Devi has been contradicted by her previous statement. She is shown to have made two

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inconsistent statements on two different occasions, and her credit has been impeached with reference to her previous statement under Section 155(3) of the Indian Evidence Act.

27. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

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

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

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

29. Therefore, the testimony of Kamla Devi (PW14) that Padma Devi (PW13) was not accompanying the victim cannot be relied upon.

30. It was submitted that the prosecution witnesses are related to each other and they are interested witnesses. Learned Trial Court erred in relying upon the statements of interested witnesses. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in ***Laltu Ghosh v. State of W.B.*, *(2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2*** that a related witness is not an interested witness and his testimony cannot be rejected on the ground of interestedness. It was observed:

> **"12.** As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested"

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witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see ***State of Rajasthan* v. *Kalki*** **[*State of Rajasthan* v. *Kalki*, *(1981) 2 SCC 752: 1981 SCC (Cri) 593]; *Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590]*** and ***Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]***).

> **13.** Recently, this difference was reiterated in ***Ganapathi v. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793]***, in the following terms, by referring to the three-Judge Bench decision in ***State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793]***, SCC p. 555, para 14)
>
> > "*14*. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"...."
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> **14.** In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in ***Dalip Singh v. State of***

Punjab [Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465], wherein this Court observed : (AIR p. 366, para 26)

> "*26.* A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in ***Jayabalan v. State (UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966]***: (SCC p. 213, para 23)

> "*23.* We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses, must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses, but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

31. It was laid down by the Hon'ble Supreme Court in ***Thoti Manohar vs State of Andhra Pradesh (2012) 7 SCC 723*** that the court cannot discard the testimony of a witness on the ground of a relationship. It was observed:

"31. In this context, we may refer with profit to the decision of this Court in ***Dalip Singh v. State of Punjab AIR 1953 SC 364***, wherein Vivian Bose, J., speaking for the Court, observed as follows: -

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in ***Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)***."

32. In the said case, it was further observed that:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such criticism, and the mere fact of relationship, far from being a foundation is often a sure guarantee of truth."

33. In ***Masalti v. State of U.P. AIR 1965 SC 202***, it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

34. In ***Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82***, a three-judge Bench has held that

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evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to scrutiny and accepted with caution. If, on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

35. In ***Kartik Malhar v. State of Bihar (1996) 1 SCC 614***, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or some other reason.

36. In ***Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh AIR 2006 SC 3010***, while dealing with the liability of interested witnesses who are relatives, a two-judge Bench observed that:

> "It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased if it is otherwise found to be trustworthy and credible."

The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If, on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon.

> "If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

32. This position was reiterated in ***Rajesh Yadav vs. State of Bihar 2022 Cr.L.J. 2986 (SC)*** as under:

> "28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstands the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness only when he is desirous of implicating the accused in rendering a conviction, on purpose.
>
> 29. When the court is convinced of the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to rely upon it in proving a fact. The aforesaid position of law has been well laid down in ***Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591***:
>
> > "32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In ***Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465***, Vivian Bose, J. for the Bench, observed the law as under (AIR p. 366, para 26)
> >
> > > "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close

relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such a criticism, and the mere fact of relationship, far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

33. In ***Masalti v. State of U.P., (1964) 8 SCR 133: AIR 1965 SC 202: (1965) 1 Cri LJ 226]***, a five-judge Bench of this Court has categorically observed as under (AIR pp. 209-210, para 14)

"14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence, whether or not the evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the

> sole ground that it is partisan would invariably lead to the failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. The judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

34. In ***Darya Singh v. State of Punjab [(1964) 3 SCR 397: AIR 1965 SC 328: (1965) 1 Cri LJ 350]***, this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised, but no corroboration is necessary for acceptance of his evidence. In ***Harbans Kaur v. State of Haryana [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199]***, this Court observed that: (SCC p. 227, para 6)

> "6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves with is ***Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773]***, wherein this Court, after observing previous precedents, has summarised the law in the following manner: (SCC p. 164, para 38)

> "38. ... [I]t is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If, on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the "sole" testimony of such a witness. A close relationship of the witness with the deceased or the victim is no grounds to reject his evidence. On the contrary, a close relative of the deceased would normally

be most reluctant to spare the real culprit and falsely implicate an innocent one."

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule, which remains the bulwark of this system and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner when it involves his interests. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are the most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case."

30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect, as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself, which extends the maximum discretion to the court."

33. Similar is the judgment in ***M Nageswara Reddy vs. State of Andhra Pradesh 2022 (5) SCC 791,*** wherein it was observed:

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> "10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7."

34. It was laid down by the Hon'ble Supreme Court in ***Mohd. Jabbar Ali v. State of Assam, 2022 SCC OnLine SC 1440***, that merely because the witnesses are related to each other is no reason to discard their testimonies. The Court is required to see their testimonies with due care and caution. It was observed:

> **55.** It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court, in a number of cases, has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded; however, it is also true that when the witnesses are related/interested, their testimonies have to be

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scrutinised with greater care and circumspection. In the case of ***Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381***, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

56. In ***Raju alias Balachandran* v. *State of Tamil Nadu, (2012) 12 SCC 701***, this Court observed:

> "29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised, and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in ***Dalip Singh [AIR 1953 SC 364]*** and pithily reiterated in ***Sarwan Singh [(1976) 4 SCC 369***] in the following words: (***Sarwan Singh case [(1976) 4 SCC 369***, p. 376, para 10)
>
> > "10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require, as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth, such evidence could be relied upon even without corroboration."

57. Further delving into the same issue, it is noted that in the case of ***Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549***, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

35. This position was reiterated in ***Baban Shankar Daphal v. State of Maharashtra, 2025 SCC OnLine SC 137,*** wherein it was observed:

> "**27.** One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased, and for prudence, the prosecution ought to have examined some other independent eyewitnesses as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses, who had also reached the place of the incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinised with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.
>
> **28.** In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinised. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.
>
> **29.** The distinction between "interested" and "related" witnesses has been clarified in ***Dalip Singh v. State of Punjab***, ***AIR 1953 SC 364*** where this Court emphasised that a close

relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

> **i.** ***Md. Rojali Ali*** **v.** ***The State of Assam, Ministry of Home Affairs through secretary (2019) 19 SCC 567*****;**
>
> **ii.** ***Ganapathi*** **v.** ***State of T.N. (2018) 5 SCC 549*****;**
>
> **iii.** ***Jayabalan*** **v.** ***Union Territory of Pondicherry (2010) 1 SCC 199*****.**

30. Though the eyewitnesses who have been examined in the present case were closely related to the deceased, namely his wife, daughter and son, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitnesses has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.

36. In the present case, the incident occurred when the victim and his wife were going to Shergata to extend the invitations. Therefore, the presence of Padma Devi was natural, and her testimony cannot be discarded, because she is an interested witness.

37. The testimony of Kamla Devi shows that she had seen Puran Chand going to the village Shergata to extend an invitation.

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She saw that his clothes were soiled with blood. She enquired from the informant/ victim, and he replied that he was beaten by accused Jagat Ram. This statement was part of the same transaction and is admissible to corroborate the victim's testimony.

38. Neeraj (PW4) stated that he received a telephonic information from Kamla that a quarrel had taken place between Jagat Ram and Puran Chand at Shergata. Jagat Ram inflicted a darat blow on Puran Chand's shoulder. He (Neeraj) requisitioned a vehicle from Koti; he and Ram Krishan brought Puran Chand to IGMC in a vehicle. Puran Chand disclosed on the way that an injury was caused to him by Jagat Ram with a darat. He stated in his cross-examination that he had not asked Puran Chand if anybody else was present on the spot.

39. His testimony is corroborated by Ram Krishan (PW3), who stated that Neeraj brought Puran Chand to his house. Puran Chand was bleeding profusely. He and Neeraj brought Puran Chand to IGMC. Puran Chand disclosed on the way that Jagat Ram has inflicted a blow by a darat on him. He stated in his cross-examination that Puran Chand stated that he was going to Jagat Ram's house to extend him invitation, and Jagat Ram met him

(Puran Chand) on the way. He also stated that there was no dispute between him and the accused. He denied that Puran had disclosed that the accused had not inflicted a darat blow upon the victim.

40. The statements of these witnesses corroborate the testimony of the victim that the accused had inflicted an injury by means of a darat to Puran Chand. The statement was made contemporaneously and is admissible under Section 6 of the Indian Evidence Act. It was laid down by the Hon'ble Supreme Court in ***Sukhar v. State of U.P., (1999) 9 SCC 507: 2000 SCC (Cri) 419: 1999 SCC OnLine SC 1005*** that a contemporaneous statement is admissible under Section 6 of the Indian Evidence Act. It was observed at page 511:

> "**6.** Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts, and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule, as it is stated in ***Wigmore's Evidence Act,*** reads thus:
>
> > "Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example, that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state

of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

7. ***Sarkar on Evidence*** (15th Edn.) summarises the law relating to the applicability of Section 6 of the Evidence Act thus:

> "*1.* The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover, the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto, unless such facts are part of a transaction which is continuous.
>
> *2.* The declarations must be substantially contemporaneous with the facts and not merely the narrative of a past.
>
> *3.* The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & and the declarations of all concerned in the common object are admissible.
>
> *4.* Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated."

8. This Court in ***Gentela Vijayavardhan Rao v. State of A.P. [(1996) 6 SCC 241: 1996 SCC (Cri) 1290],*** considering the law embodied in Section 6 of the Evidence Act, held thus: (SCC pp. 246-47, para 15)

> "*15.* The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue as to form part of the same transaction that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that

hearsay evidence is not admissible. The rationale in making certain statements or facts admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such a fact or statement must be a part of the same transaction. In other words, such a statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication, then the statement is not part of res gestae."

9. In another recent judgment of this Court in ***Rattan Singh v. State of H.P. [(1997) 4 SCC 161: 1997 SCC (Cri) 525],*** this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: (SCC p. 167, para 16)

"[T]he aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity in time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus:

'(*a*) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the bystanders at the beating, or so *shortly before* or after it as to form part of the transaction, is a relevant fact.' (emphasis supplied)

Here the act of the assailant intruding into the courtyard during the dead of the night, the victim's identification of the assailant, her pronouncement that the appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence, it is admissible under Section 6 of the Evidence Act."

41. ASI Jai Gopal (PW17) stated that Jagat Ram revealed during the interrogation that he had kept a darat at his home. The accused produced the darat in the presence of Hari Nand, Ramesh

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Kumar and the informant. Ramesh Kumar (PW2) did not support the prosecution's case regarding the recovery. He stated that police had already parcelled the darat and obtained his signature on the parcel. He had not seen darat but only saw the parcel. He was permitted to be cross-examined. He admitted that police prepared the sketch of the darat in his presence. He was not aware that darat was brought by Jagat Ram from his home. He denied the previous statement recorded by the police that the accused had produced a darat. He stated in his cross-examination by the defence that he and Puran Chand belong to the same caste, whereas Jagat Ram belongs to a different caste.

42. The testimony of this witness is not reliable, first, he made contradictory statements before the Court and the police, which adversely affected his credibility; secondly, he stated that darat was already sealed in a parcel before his arrival, but admitted that the sketch was prepared in his presence. The sketch could not have been prepared, had the darat been sealed in a parcel. This shows that he is making incorrect statements, and his testimony cannot be used to discard the prosecution's case, that the accused had produced darat.

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43. Puran Chand (PW12) stated that the police called him to the house of Jagat Ram, where Jagat Ram produced a darat. It was the same darat with which the accused had inflicted a blow. He identified darat in the Court. He was not cross-examined regarding the production of darat. Only one suggestion was given to him that Jagat Ram had not produced any darat, and darat was produced by him, which he denied; hence, there is no reason to disbelieve his testimony that the accused had produced darat.

44. Darat was sent to SFSL, and traces of blood were found on it. It was identified by the victim as the weapon of offence. Dr H.R. Rahi (PW15) also stated that the injuries noticed by him on the person of the victim could have been caused by means of Darat (Ex.P3). These statements duly established that the accused had used the Darat to cause injury to the informant/ victim. It was laid down by the Hon'ble Supreme Court in ***Rajan*** (supra) that the recovery of the weapon at the instance of the accused can be used to aid the prosecution's evidence. It was observed:

> "**36.** Discovery or recovery of the weapon as the case may be, if any, could be brought in aid of the other evidence which the prosecution has led at the time of trial.
>
> **37.** In the aforesaid context, we may refer to and rely upon few decisions of this Court. In the ***State of Rajasthan v. Arjun Singh, (2011) 9 SCC 115***, this Court observed in paras 17 and 18 respectively as under:

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"17. Learned senior counsel for the accused persons contended that in the absence of recovery of pellets from the scene of occurrence or from the body of the injured persons, it is highly doubtful as to the scene of occurrence and whether such incident did take place in the manner suggested by the prosecution. Learned counsel appearing for the complainant pointed out that though there was an entry in Malkhana Register (Ex. P31A) wherein it was stated that a sealed packet containing pellets was deposited but prosecution failed to lead any evidence on this point. It was also pointed out that though a report was received from the Forensic Science Laboratory, no evidence regarding recovery of the pellets was produced.

18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere nonrecovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gun shot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gun shot wounds respectively while Raj Singh (PW-2) also received 8 gun shots scattered in front of left thigh. All these injuries have been noted by the Doctor (PW-1) in his reports Exs. P-1 to P-4." (emphasis supplied)

38. In ***Krishna Mochi v. State of Bihar, (2002) 6 SCC 81***, this Court observed in para 37 as under:

"It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable." (emphasis supplied)

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45. It was submitted that no disclosure statement was recorded by the police, and the recovery of Darat without disclosure statements is inadmissible. This submission is not acceptable. It was laid down by Hon'ble Supreme Court in ***Ghanashyam Das v. State of Assam, (2005) 13 SCC 387: (2006) 2 SCC (Cri) 331: 2005 SCC OnLine SC 1098*** that the recovery of weapon of offence at the instance of the accused is admissible under section 8 of Indian Evidence Act when it is not preceded by a disclosure statement. It was observed at page 388:

> "**5.** Another incriminating circumstance which corroborates the case of the prosecution is that the appellant led the IO PW 12 to the Kharbhanga riverside and pointed out the place where he had thrown away the *khukri*. According to the evidence of PW 12, the IO, and PW 6, the *khukri* was recovered from the river with the help of a diver. Though both the courts have eschewed this circumstance from consideration on the ground that no information was recorded by PW 12 the IO so as to attract Section 27 of the Evidence Act, we are of the view that the evidence of PW 12 and PW 6 to the effect that the accused led them to the spot and pointed out the place where the *khukri* was thrown, which fact stands confirmed by its recovery, can be looked into to throw light on the conduct of the accused under Section 8 of the Evidence Act vide ***H.P. Admn. v. Om Prakash [(1972) 1 SCC 249: 1972 SCC (Cri) 88***]."

46. This position was reiterated in ***A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714: 2005 SCC (Cri) 1938: 2005 SCC OnLine SC 1156,*** wherein it was observed at page 721:

> "**9.** By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in ***Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90: 1979 SCC (Cri) 656: AIR 1979 SC 400]***. Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4, the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and is admissible under Section 8 of the Evidence Act."

47. A similar view was taken in ***Sampat Dupare v. State of Maharashtra, (2015) 1 SCC 253: (2015) 1 SCC (Cri) 624: 2014 SCC OnLine SC 942,*** wherein it was observed at page 269:

> "**28.** Additionally, another aspect can also be taken note of. The fact that the appellant had led the police officer to find out the spot where the crime was committed and the tap where he washed the clothes eloquently speaks of his conduct, as the same is admissible in evidence to establish his conduct. In this context, we may refer with profit to the authority in ***Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90: 1979 SCC (Cri) 656]*** wherein the Court, after referring to the decision in ***H.P. Admn. v. Om Prakash [(1972) 1 SCC 249: 1972 SCC (Cri) 88]*** held

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thus : (***Prakash Chand case [(1979) 3 SCC 90: 1979 SCC (Cri) 656***], SCC p. 95, para 8)

> "*8.* ... There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act if such conduct is influenced by any fact in issue or relevant fact and the statement made to a police officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162 of the Criminal Procedure Code is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

29. In ***A.N. Venkatesh v. State of Karnataka [(2005) 7 SCC 714: 2005 SCC (Cri) 1938***], it has been ruled that : (SCC p. 721, para 9)

> "*9.* By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in ***Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90: 1979 SCC (Cri) 656]***. Even if we hold that the disclosure statement made by the appellants-accused (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7

> and PW 4, the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and is admissible under Section 8 of the Evidence Act."

48. A similar view was taken in ***Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, 2024 SCC OnLine SC 3769.***

49. Thus, the recovery will not become inadmissible because the police had not recorded the disclosure statement of the accused.

50. Therefore, the learned Trial Court had rightly held the accused guilty of the commission of an offence punishable under Section 324 of the IPC.

51. Learned Trial Court sentenced the accused to undergo simple imprisonment for two years, pay a fine of ₹2,000/-, and in default of payment of fine, to undergo further simple imprisonment for two months. An offence under Section 324 of IPC can be punished with imprisonment which may extend to three years, or with a fine, or with both. In the present case, the accused had inflicted injuries by means of a sharp-edged weapon on the shoulder without any reason. This injury was stated to be

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dangerous to life. The fact that the injuries were inflicted without any reason makes the offence more serious, and the punishment of two years cannot be said to be excessive; hence, there is no reason to interfere with it.

52. No other point was urged.

53. In view of the above, the present appeal fails, and the same is dismissed.

54. Registry is directed to send down the records along with copy of this judgment.

(Rakesh Kainthla)
Judge

09th October, 2025
(Anurag)