IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision Nos. 83 of 2015 & 86 of 2015

Reserved on: 31.03.2026

Decided on: 03-06.2026

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1. Cr. Revision No.83 of 2015

Nagesh Awasthi & others **Petitioners**

vs

State of H.P **Respondent**

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2. Cr. Revision No.86 of 2015

Vishal Thakur @ Goldi and another **Petitioners**

vs

State of H.P **Respondent**

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?

For the petitioners : **Mr Lovneesh Kanwar, Sr. Advocate, with Mr Tarun Garla, Advocate for petitioner Nos. 1 & 3 in Cr. Rev. No.83 of 2015.**

Mr Peeyush Verma, learned Senior Advocate, assisted by Mr Abhishek Thakur, for petitioner No.2 in Cr. Rev. No.83 of 2015.

Mr Vinod Thakur, Advocate, for the petitioners in Cr. Rev. No.86 of 2015.

Whether reporters of Local Papers may be allowed to see the judgment?

For the respondent : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge:

The present revisions are directed against the judgment dated 28.02.2015 passed by the learned Additional Sessions Judge-III, Kangra at Dharamshala, Circuit Court at Baijnath, Distt. Kangra, H.P (hereinafter referred to as the learned Appellate Court), vide which, the judgment of conviction dated 19.05.2011 and order of sentence dated 20.05.2011 passed by learned Judicial Magistrate First Class, Baijnath, District Kangra (learned Trial Court) were upheld. (The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned trial Court against the accused for the commission of offences punishable under Sections 341, 323, 325, 506, and 147 read with Section 149 of the Indian Penal Code (IPC). It was asserted that the informant Sudhir Rana (PW-8), Subhash Chand (PW-9) and Arun Kumar (DW-3) had gone to Baijnath temple on 13.11.2006. The informant, Sudhir Rana, and Arun went to the park after going to the temple. Vishal Thakur @ Goldi and

his friend Suman Kumar came to the spot along with 5-6 friends. They obstructed the informant and other persons and gave beatings to them with kicks, fist blows, and sticks. The informant party shouted for help. Vishal, Suman Kumar and other persons left the spot and threatened to kill the informant party. The injured were taken to the hospital, and intimation was given to the police. The police recorded an entry No. 6 (Ext.PW 10/A) and sent ASI Mehar Deen (PW-4), HC Puni Chand and HHC Durga Dass for verification. ASI Mehar Deen found on the spot that the injured had been taken to the hospital. He and the other police officials went to the hospital, where Sudhir Rana made a statement (Ext.PW 4/A), which was sent to the police Station, where FIR (Ext.PW7/A) was registered. An application (Ext.PW4/B) was filed for conducting the medical examination of the injured. Doctor Sunita (PW-3) examined Subhash Chand and found that he had sustained multiple injuries. The fracture and compression of the L4 and L5 vertebrae were detected after the X-ray. Hence, the nature of the injury was stated to be grievous. MLC (Ext.PW 3/A) was issued. Doctor Sunita also examined Arun and found that he had sustained simple injuries, which could have been caused within six hours of examination. She issued MLC (Ext.PW3/B). Doctor Sunita also examined Sudhir Rana and found that he had sustained multiple injuries, which could have been caused

within six hours of examination. She issued MLC (Ext.PW3/C). All the injuries could have been caused by means of a stick, in her opinion. Mehar Deen (PW-4) investigated the matter. He visited the spot and prepared the site plan (Ext.PW4/C). He recorded the statements of witnesses as per their versions. Suman Thakur and Vishal Thakur produced one stick each on 24.11.2007, which were seized vide memos (Ext.PW4/K and Ext. PW 4/L). Statements of remaining witnesses were recorded as per their versions, and after completion of the investigation, the challan was prepared and presented before the Court.

3. Learned trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under Sections 147, 341, 323, 325, 506 read with Section 149 of the IPC, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Tanuj Thakur (PW-1), Tara Chand (PW-2), and Sudarshan Kumar (PW-11) did not support the prosecution's case. Doctor Sunita (PW-3) examined the injured. ASI Mehar Deen (PW-4) investigated the matter. Head Constable Puni Chand (PW-5) obtained the final opinion in the MLC. Dr Tilak Bhagra (PW-6) went through the X-ray. Surestha Thakur

(PW-7) signed the FIR and prepared the challan. Sudhir Rana (PW-8) is the informant/victim. Subhash Chand (PW-9) is an eyewitness. HHC Gulzar (PW-10) proved the entry in the daily diary.

5. The accused, in their statements recorded under Section 313 of the Criminal Procedure Code (CrPC), denied the prosecution's case in its entirety. They examined HC Puni Chand (dW-1), Virender Kumar (DW-1) and Arun Kumar (DW-2) in their defence.

6. The learned trial Court held that the testimonies of eye-witnesses corroborated each other. The medical evidence corroborated the statements of the eyewitnesses. Minor discrepancies in the statements of the witnesses were not sufficient to discard them. The statements of defence witnesses were not reliable. The failure to examine independent witnesses was not sufficient to discard the prosecution's case. Hence, the learned trial Court convicted and sentenced the accused as under: -

Sections	Sentences
147 IPC	Accused were sentenced to undergo simple imprisonment for six months, pay a fine of ₹ 300/-each and in default of payment of fine to undergo further simple imprisonment for one month
341 of IPC	Accused were sentenced to undergo simple imprisonment for one month, pay a fine of

	₹300/-each and in default of payment of fine, to further undergo simple imprisonment for one month
323 of IPC	Accused were sentenced to undergo simple imprisonment for six months, pay a fine of ₹ 500/-each and in default of payment of fine, to further undergo simple imprisonment for one month
325 of IPC	Accused were sentenced to undergo simple imprisonment for one year, pay a fine of ₹1000/-each and in default of payment of fine, to further undergo simple imprisonment for two months
506 IPC	Accused were sentenced to undergo simple imprisonment for six months, pay a fine of ₹500/-each and in default of payment of fine, to further undergo simple imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Additional Session Judge (III), Kangra at Dharamshala, Circuit Court at Baijnath, District Kangra (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statements of eye-witnesses corroborated each other. The medical evidence also corroborated the statements of the eyewitnesses. Minor contradictions were not sufficient to discard the prosecution's case. The statements of the defence witnesses did not

cast any doubt on the prosecution's case. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused have filed two separate appeals. In an appeal filed by Nagesh Awasthi and others (Cr. Revision No.83 of 2015), it has been asserted that the learned Courts below erred in appreciating the material on record. Independent witnesses had not supported the prosecution's case, which made the prosecution's case highly doubtful. The recovery of the sticks was also not proved by the testimonies of independent witnesses. There was a discrepancy regarding the date of the incident, the benefit of which should have been granted to the accused. Medical Officer admitted in her cross-examination that injuries could have been caused by means of a fall. The informant stated that the incident had occurred on the path, which is contrary to the case set up by the prosecution; therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. In a revision filed by Vishal Thakur & another (Cr. Revision No.86 of 2015), it has been asserted that the prosecution failed to prove the motive behind the commission of the crime. The witnesses

admitted that many people were present on the spot, but no witness was examined. The informant and the investigating officer asserted that the incident occurred on 14.11.2006, whereas other witnesses mentioned the date of occurrence as 13.11.2006. This discrepancy made the prosecution's case highly suspect. Police had not recovered the torn cloth to corroborate the informant’s version. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

10. I have heard Mr. Lovneesh Kanwar, learned Senior Advocate, assisted by Mr. Tarun Garla, learned Counsel for petitioners No.1 and 3, Mr. Peeyush Verma, learned Senior Advocate assisted by Mr. Abhishek Thakur, learned Counsel for the petitioner No.2, Mr. Vinod Thakur, learned Counsel for the petitioners in Criminal Revision No. 86 of 2015 and Mr. Jitender Sharma, learned Additional Advocate General for the respondent-State.

11. Mr Lovneesh Kanwar, learned Counsel for the petitioners No.1 and 3 in Criminal Revision No. 83 of 2015, submitted that the identity of the accused was not proved. The prosecution witnesses admitted that there was a huge rush, but no independent witness was examined. The independent witnesses cited by the prosecution have

not supported the prosecution's case, and the recovery of the sticks was not established. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

12. Mr Peeyush Verma, learned Counsel for petitioner No.2 in Criminal Revision No.83 of 2015, adopted the submission of Mr Lovneesh Kanwar, Senior Advocate and further submitted that the testimonies of the witnesses contradicted each other. The statements of hostile witnesses were not considered. The learned Courts below had discarded the major contradictions by calling them minor contradictions; therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

13. Mr Vinod Thakur, learned counsel for the petitioners in Criminal Revision No. 86 of 2015, adopted the submissions of Mr Lovneesh Kanwar and Mr Peeyush Verma and further submitted that the investigating officer had not collected the corroborative evidence to support the testimonies of eye-witnesses. The benefit of doubt should have been extended to the petitioners. He relied upon the judgment of the Hon'ble Supreme Court in ***Sunder Lal v. State of Uttar Pradesh and***

another Criminal Appeal No.of 2024 (@ SLP (Crl.) No.10756/2023 in support of his submissions.

14. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the statements of the injured witnesses corroborated each other in material particulars. They had properly identified the accused in the Court, and the identification was never in dispute. The mere fact that an independent witness has not supported the prosecution's case is not sufficient to discard it. The testimonies of defence witnesses do not inspire confidence and were rightly rejected by learned Courts below. This Court should not interfere with the concurrent findings of fact while deciding a revision petition. Hence, he prayed that the present petition be dismissed.

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

16. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh***, ***(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

17. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> "**14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
>
> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been

considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12*. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the

> charge is a much-advanced stage in the proceedings under CrPC."

18. The present revisions have to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. Dr. Sunita (PW-3) medically examined the injured. She found multiple injuries on the person of Subhash Rana, Arun and Sudhir Rana. Arun Kumar (DW-3) stated that some persons had beaten Sudhir and Subhash near the Baijnath temple, and many people had rescued them. They had also sustained injuries in the incident and were medically examined. Therefore, as per the testimony of Arun Kumar, the injuries were caused in a beating, and the injuries on the bodies of Sudhir Rana (PW-8) and Subhash Rana (PW-9) show their presence on the spot.

20. It was laid down by the Hon'ble Supreme Court in ***Bhajan Singh @ Harbhajan Singh & Ors. Versus State of Haryana (2011) 7 SCC 421***, that the evidence of an injured witness must be given due weightage as his presence on the spot cannot be doubted. It was observed: -

> "36. The evidence of the stamped witness must be given due weight, as his presence at the place of occurrence cannot be doubted. His statement is generally considered to be very reliable, and it is unlikely that he has spared the actual assailant to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy, as

> he has sustained injuries at the time and place of occurrence, and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: ***Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra, (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., (2011) 4 SCC 324).***

21. 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.
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> **23.** In ***Balu Sudam Khaldev.State of Maharashtra [Balu Sudam Khalde v.State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355],*** this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows: (SCC para 26)

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

22. 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 an injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *(d) The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
>
> *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.*
>
> *(f) The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*

34. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by

> other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial 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***).

23. Therefore, the testimonies of the injured witnesses are entitled to a great weight because their presence on the spot is established and being injured, they will not substitute any other person for the real assailants.

24. 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."

25. Sudhir Rana (PW-8) stated that he, Subhash Rana and Arun Kumar were going to the Baijnath Shiv temple. Goldi, Suman and the other accused came from the opposite side and attacked him and the persons accompanying him. The accused were armed with sticks, and they gave beatings with the sticks, kicks and fist blows. They were taken to the hospital. He stated in his cross-examination that the house of Subhash Rana was located at Baijnath at a distance of 10-11 km from his house. He was studying in the second year of B.Com at the time of the incident. He admitted that the Baijnath Shiv temple is a huge temple and many people are usually present in the temple. He had reached the temple after changing 2–3 buses. The offices of Irrigation and Public Health and many other shops are also located in the vicinity. He regained consciousness in the vehicle. He did not remember the time of the visit from the police. He denied that he had a scuffle with some unknown person and filed a false complaint against the accused.

26. Subhash Rana (PW-9) stated that he, Sudhir and Arun were going to the temple. The accused came and started beating him and the persons accompanying him. The accused left the spot and threatened him. He stated in his cross-examination that he had known Sudhir for

two years. The distance between his house and Sudhir's house is about one and a half kilometers. One case was pending in the Court against him. The incident continued for 5-10 minutes. He became unconscious but regained consciousness after some time. He denied that the accused had not beaten him, and he was making a false statement.

27. Sudhir Rana (PW-8) stated in his examination-in-chief that the incident had occurred on 14.11.2006. It was submitted that this statement is contrary to the prosecution's case as reflected in the FIR, and the discrepancy in the date will make the prosecution’s case suspect. This submission will not help the accused. Arun Kumar (DW-2) stated that the incident had occurred on 13.11. 2006. The FIR was registered on 13.11.2006. The medical examination of the injured was conducted on 13.11. 2006. Therefore, it is apparent that the date 14.11.2006 was mentioned mistakenly, and this mistake is not sufficient to doubt the prosecution's case.

28. The witnesses Sudhir Rana (PW-8) and Subhash Rana (PW-9) were confronted and contradicted with the portion of the statements recorded by the police. It was submitted that these confrontations and contradictions will make the prosecution's case highly suspect. This submission cannot be accepted. ASI Mehar Deen (PW-4) investigated

the matter. No question was asked of him regarding the statements made by Sudhir Rana and Subhash Rana before him. Therefore, the confrontations have not been proved as per the law. It was laid down by the Hon'ble Bombay High Court about a century ago in ***Emperor vs. Vithu Balu Kharat (1924) 26 Bom. L.R. 965*** that the previous statement has to be proved before it can be used. It was observed:

> "The words "if duly proved" in my opinion, clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness; and the provisions of Section 67 of the Indian Evidence Act apply to this case, as well as to any other similar ease. Of course, I do not mean to say that, if the particular police officer who recorded the statement is not available, other means of proving the statement may not be availed of, e.g., evidence that the statement is in the handwriting of that particular officer."

29. It was laid down by the Hon'ble Supreme Court in ***Muthu Naicker and Others, etc. Versus State of T.N. (1978) 4 SCC 385***, that if the witness affirms the previous statement, no proof is necessary, but if the witness denies or says that he did not remember the previous statement, the investigating officer should be asked about the same. It was observed: -

> "52. This is the most objectionable manner of using the police statement, and we must record our emphatic disapproval of the same. The question should have been framed in a manner to point out that, from amongst those accused mentioned in examination-in-chief, there were some whose names were not mentioned in the police statement and if the witness affirms this, no further proof is necessary and if the witness denies or says that she does not remember, the investigation officer should have been questioned about it."

30. The Gauhati High Court held in ***Md. Badaruddin Ahmed v. State of Assam, 1989 SCC OnLine Gau 35: 1989 Cri LJ 1876***, that if the witness denies having made the statement, the portion marked by the defence should be put to the investigating officer and his version should be elicited regarding the same. It was observed at page 1880: -

> "13. The learned defence counsel has drawn our attention to the above statement of the Investigating Officer and submits that P.W. 4 never made his above statement before the police and that the same, being his improved version, cannot be relied upon. With the utmost respect to the learned defence counsel, we are unable to accept his above contention. Because, unless the particular matter or point in the previous statement sought to be contradicted is placed before the witness for explanation, the previous statement cannot be used in evidence. In other words, drawing the attention of the witness to his previous statement sought to be contradicted and giving all opportunities to him for explanation are compulsory. If any authority is to be cited on this point, we may conveniently refer to the case of ***Pangi Jogi Naik v. State reported in AIR 1965 Orissa 205: (1965 (2) Cri LJ 661)***. Further, in the case of ***Tahsildar Singh v. State of U.P.,***

reported in AIR 1959 SC 1012: (1959 Cri LJ 1231), it was also held that the statement not reduced to writing cannot be contradicted and, therefore, in order to show that the statement sought to be contradicted was recorded by the police, it should be marked and exhibited. However, in the case at hand, there is nothing on the record to show that the previous statement of the witness was placed before him and that the witness was given the chance for explanation. Again, his previous statement was not marked and exhibited. Therefore, his previous statement to the police cannot be used. Hence, his evidence that when he turned back, he saw the accused Badaruddin lowering the gun from his chest is to be taken as his correct version.

14. The learned defence counsel has attempted to persuade us not to rely on the evidence of this witness on the ground that his evidence before the trial Court is contradicted by his previous statement made before the police. However, in view of the decisions made in the said cases we have been persuaded irresistibly to hold that the correct procedure to be followed which would be in conformity with S. 145 of the Evidence Act to contradict the evidence given by the prosecution witness at the trial with a statement made by him before the police during the investigation will be to draw the attention of the witness to that part of the contradictory statement which he made before the police, and questioned him whether he did, in fact, make that statement. If the witness admits having made the particular statement to the police, that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the accused as establishing the contradiction. However, if, on the other hand, the witness denies to have made such a statement before the police, the particular portions of the statement recorded should be provisionally marked for identification as B-1 to B-1, B-2 to B-2 etc. (any identification mark) and when the

> investigating officer who had actually recorded the statements in question comes into the witness box, he should be questioned as to whether these particular statements had been made to him during the investigation by the particular witness, and obviously after refreshing his memory from the case diary the investigating officer would make his answer in the affirmative. The answer of the Investigating Officer would prove the statements B-1 to B-1, B-2 to B-2, which are then exhibited as Ext. D. 1, Ext. D. 2, etc. (exhibition mark) in the case and will go into evidence, and may, thereafter, be relied on by the accused as contradictions. In the case in hand, as was discussed in above, the above procedure was not followed while cross-examining the witness to his previous statements, and, therefore, we have no alternative but to accept the statement given by this witness before the trial Court that he saw the accused Badaruddin lowering the gun from his chest to be his correct version."

31. Andhra Pradesh High Court held in ***Shaik Subhani v. State of A.P., 1999 SCC OnLine AP 413: (1999) 5 ALD 284: 2000 Cri LJ 321: (1999) 2 ALT (Cri) 208*** that putting a suggestion to the witness and the witness denying the same does not amount to putting the contradiction to the witness. The attention of the witness has to be drawn to the previous statement, and if he denies the same, the same is to be proved by the investigating officer. It was observed at page 290: -

> "24... As far as the contradictions put by the defence are concerned, we would like to say that the defence Counsel did not put the contradictions in the manner in which it ought to have been put. By putting suggestions to the witness and the witness denying the same will not amount to putting

contradiction to the witness. The contradiction has to be put to the witness as contemplated under Section 145 of the Evidence Act. If a contradiction is put to the witness and it is denied by him, then his attention has to be drawn to the statement made by such witness before the Police or any other previous statement and he must be given a reasonable opportunity to explain as to why such contradiction appears and he may give any answer if the statement made by him is shown to him and if he confronted with such a statement and thereafter the said contradiction must be proved through the Investigation Officer. Then, it only amounts to putting the contradiction to the witness and getting it proved through the Investigation Officer."

32. The Calcutta High Court took a similar view in ***Anjan Ganguly v. State of West Bengal, 2013 SCC OnLine Cal 22948: (2013) 2 Cal LJ 144*** and held at page 151: -

"21. It was held in ***State of Karnataka v. Bhaskar Kushali Kothakar, reported as (2004) 7 SCC 487,*** that if any statement of the witness is contrary to the previous statement recorded under Section 161, Cr.P.C. or suffers from omission of certain material particulars, then the previous statement can be proved by examining the Investigating Officer who had recorded the same. Thus, there is no doubt that for proving the previous statement, the Investigating Officer ought to be examined, and the statement of the witness recorded by him can only be proved by him, and he has to depose to the extent that he had correctly recorded the statement, without adding or omitting, as to what was stated by the witness.

23. Proviso to Section 162(1), Cr.P.C. states in clear terms that the statement of the witness ought to be duly proved. The words, if duly proved, cast a duty upon the accused who wants to highlight the contradictions by confronting the

witness to prove the previous statement of a witness through the police officer who has recorded the same in the ordinary way. If the witness in the cross-examination admits contradictions, then there is no need to prove the statement. But if the witness denies a contradiction and the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be proved by the police officer. In case the prosecution fails to call the police officer in a given situation Court can call this witness, or the accused can call the police officer to give evidence in defence. There is no doubt that unless the statement as per proviso to sub-section (1) of Section 162, Cr.P.C. is duly proved, the contradiction in terms of Section 145 of the Indian Evidence Act cannot be taken into consideration by the Court.

24. To elaborate on this further, it will be necessary to reproduce Section 145 of the Indian Evidence Act.

> "*S. 145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.*"

25. Therefore, it is appropriate that before the previous statement or statement under Section 161, Cr.P.C. is proved, the attention of the witness must be drawn to the portion in the statement recorded by the Investigating Officer to bring to light the contradiction, a process called confrontation.

26. Let us first understand what the proper procedure is. A witness may have stated in the statement under Section 161, Cr.P.C. that 'X murdered Y'. In the court, the witness stated 'Z murdered Y'. This is a contradiction. Defence Counsel or

Court, and even prosecution if the witness is declared hostile, having resiled from a previous statement, is to be confronted to bring contradiction on record. The attention of the witness must be drawn to the previous statement or statement under Section 161, Cr.P.C., where it was stated that 'X murdered Y'. Since Section 145 of the Indian Evidence Act uses the word being proved, therefore, in the course of examination of the witness, a previous statement or a statement under Section 161, Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion contradicted will be specified. The trial court, in the event of contradiction, has to record as under:

27. The attention of the witness has been drawn to portions A to A of the statement marked as 1, and confronted with the portion where it is recorded that 'X murdered Y'. In this manner, by way of confrontation, contradiction is brought on record. Later, when the Investigating Officer is examined, the prosecution or defence may prove the statement, after the Investigating Officer testifies that the statement assigned mark was correctly recorded by him; at that stage, the statement will be exhibited by the Court. Then the contradiction will be proved by the Investigating Officer by stating that the witness had informed or told him that 'X murdered Y' and he had correctly recorded this fact.

28. Now, a reference to the explanation to Section 162, Cr.P.C., which says that an omission to state a fact or circumstance may amount to contradiction. Say, for instance, if a witness omits to state in Court that 'X murdered Y', what he had stated in a statement under Section 161, Cr.P.C. will be material? contradiction, for the Public Prosecutor, as the witness has resiled from the previous statement, or if he has been sent for trial for the charge of murder, omission to state 'X murdered Y' will be a material omission, and amount to contradiction so far as the defence of 'W is concerned. At that stage also attention

of the witness will also be drawn to a significant portion of the statement recorded under Section 161, Cr.P.C., which the witness had omitted to state, and note shall be given that attention of the witness was drawn to the portion A to A wherein it is recorded that 'X murdered Y'. In this way, the omission is brought on record. The rest of the procedure stated earlier, qua confrontation shall be followed to prove the statement of the witness and the fact stated by the witness.

29. Therefore, to prove the statement for the purpose of contradiction, it is necessary that the contradiction or omission must be brought to the notice of the witness. His or her attention must be drawn to the portion of the previous statement (in the present case statement under Section 161, Cr.P.C)"

33. A similar view was taken in ***Alauddin v. State of Assam, 2024 SCC OnLine SC 760,*** wherein it was observed:

"7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it

satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

> "145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous

statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act, of confronting the witness by showing him the relevant part of his prior statement, is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

> "155. Impeaching credit of the witness. — The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—
>
> (1) .....
>
> (2) .....
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission, depending upon the facts of each case? Whether an omission is a contradiction also depends on the facts of each individual case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of ***Tahsildar Singh* v. *State of U.P.1959 Supp (2) SCR 875***. Paragraph 13 of the said decision reads thus:

> "13. The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in ***Shyam Singh v. State of Punjab [(1952) 1 SCC 514: 1952 SCR 812***]. Bose, J. describes the procedure to be followed to contradict a

witness under Section 145 of the Evidence Act, thus at p. 819:

> Resort to Section 145 would only be necessary if the witness *denies* that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. *Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to*

contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has

> not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure." (emphasis added)

This decision is a *locus classicus*, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination."

34. It was laid down in ***Kalabhai Hamirbhai Kachhot v. State of Gujarat, (2021) 19 SCC 555: 2021 SCC OnLine SC 347*** that minor contradictions cannot be used to discard the prosecution case. It was observed at page 564:

> "22. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs 18 and 19. The contradictions that are sought to be projected are minor contradictions that cannot be the basis for discarding their evidence. The judgment of this Court in ***Mohar [Mohar v. State of U.P., (2002) 7 SCC 606: 2003 SCC (Cri) 121],*** relied on by the learned counsel for the respondent State, supports the case of the prosecution. In the aforesaid judgment, this Court has held that convincing

evidence is required to discredit an injured witness. Para 11 of the judgment reads as follows: (SCC p. 611)

> "*11*. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution's case materially cannot create any infirmity. In the instant case, the discrepancy in the name of PW 4 appearing in the FIR and the cross-examination of PW 1 has been amply clarified. In cross-examination, PW 1 clarified that his brother Ram Awadh had three sons: (*1*) Jagdish, PW 4, (2) Jagarnath, and (*3*) Suresh. This witness, however, stated that Jagarjit had only one name. PW 2 Vibhuti, however, stated that at the time of occurrence, the son of Ram Awadh, Jagjit alias Jagarjit, was milking a cow, and he was also called as Jagdish. Balli (PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish."

23. The learned counsel for the respondent State has also relied on the judgment of this Court in ***Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324: (2011) 2 SCC (Cri) 216]***. In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paras 27 and 30 of the judgment, which are relevant, read as under: (SCC pp. 333-34)

> "27. The evidence of an injured witness must be given due weight, being a stamped witness; thus, his presence cannot be doubted. His statement is generally considered to be very reliable, and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else.

The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence, and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide ***Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719: (2010) 1 SCC (Cri) 107]***, ***Balraje v. State of Maharashtra [Balraje v. State of Maharashtra, (2010) 6 SCC 673: (2010) 3 SCC (Cri) 211]*** and ***Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259: (2010) 3 SCC (Cri) 1262])***

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30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental dispositions such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

‘*9*. Exaggerations, per se, do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version when the entire evidence is put in a crucible for being tested on the touchstone of credibility.’ [Ed.: As observed in ***Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186****, p. 192, para 9: 2004 SCC (Cri) 1435*]

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars, i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. (Vide ***State v. Saravanan [State v. Saravanan, (2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580], Arumugam v. State [Arumugam v. State, (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], Mahendra Pratap Singh v. State of U.P. [Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352]*** and ***Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375]***”

24. Further, in ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in a criminal trial. In the aforesaid judgment, it is held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under: (SCC p. 483)

> “*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 the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses, as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, the same 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."

35. It was submitted that the statements of witnesses Sudhir Rana (PW-8) and Subhash Rana (PW-9) were recorded after the examination of ASI Mehar Deen, and the defence counsel could not have put the contradictions and confrontations to the investigating officer. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in ***State of Rajasthan v. Teja Ram*, *(1999) 3 SCC 507: 1999 SCC (Cri) 436: 1999 SCC OnLine SC 315*** that the defence can always summon the investigating officer to prove the former statement. It was observed at page 516:

> "**32.** One of the permitted modes of impeaching the credit of a witness is proof of former statements which is inconsistent with any part of his testimony, as indicated in Section 155(3) of the Evidence Act. But the mode of using such former statements for the purposes of contradicting

> the witness is prescribed in Section 145 of the Evidence Act. It cannot be contended that the aforesaid former statement was not available for the defence to confront PW 15 (Mota Ram) with since the Head Constable PW 8 was examined later. It was open to the defence to request for recalling the witness for the purpose of further cross-examination to impeach his veracity on the strength of the alleged former statement which came on record subsequently (vide ***Naba Kumar Das v. Rudra Narayan Jana [AIR 1923 PC 95: 28 CWN 589]***). In this case, PW 15 was not asked anything about what he had told or not told PW 8, Head Constable. We are unable to appreciate the contention of the learned counsel on that score. In view of the retracing made by PW 8 during the latter part of the cross-examination, we are not disposed to give any further opportunity to the accused to confront PW 15 with that material."

36. In the present case also, it was open for the defence to seek further cross-examination of the investigating officer after the examination of Sudhir Rana and Subhash Rana, and if they had not sought the further examination of the investigating officer, they cannot take the advantage of it.

37. It was submitted that the prosecution witnesses admitted that the place of the incident is heavily populated, and no independent witness was examined. This submission will not help the accused. The Court has found that the testimonies of the injured are reliable and there is no reason to disbelieve those testimonies. Therefore, the question of corroboration would not arise in the present case because

the corroboration is required when the testimony of a witness is found to be not wholly reliable and requires confirmation from independent sources. Since, in the present case, the testimonies of the injured witnesses are satisfactory, the non-examination of independent witnesses will not make the prosecution's case suspect.

38. Virender Kumar (DW-1) stated that he was discharging the duties from 7:00 a.m. to 7:00 p.m. on 13.11.2006 at Shiv temple. No quarrel had taken place on that date. He knew the accused and the accused or the police officials had not visited the temple complex on 13.11.2006. He stated in his cross-examination that he and Ramesh Kumar were posted as security guards. The complex of the temple was huge. There were five passages to the temple. He admitted that it is difficult to find out what is happening if one stands towards the side of the temple. He could not say as to what had transpired on 13.11. 2006.

39. The statement of this witness is not sufficient to discard the prosecution's case. He has not given any particular reason for remembering the date 13.11.2006. Further, he admitted that a person standing on the side of the temple cannot know what was happening on the other side, which shows that it was possible for a person standing on one side not to know about the quarrel that had taken place towards

the other side. Therefore, the testimony of this witness cannot be used to discard the prosecution's case.

40. Arun Kumar (DW-2) has not supported the prosecution's case. He stated that the informant party was beaten by some unknown persons, and a false case was made against the accused. He has not assigned any cogent reason to falsely implicate the accused. He had not protested before any person regarding the false implication of the accused. Therefore, it is difficult to rely upon his testimony to discard the prosecution's case.

41. The statement (Ext.PW4/A) mentions that Vishal Thakur and his friend Suman Kumar came to the temple complex with 5-6 people and gave beatings to the informant party. This clearly shows that the victim was aware of the names of only two persons and did not know the others. The informant, Sudhir Rana, stated that Goldi, Suman Kumar and other accused came to the spot and attacked him. Similarly, Subhash Rana stated that the accused came to the spot and gave beatings to them. Therefore, the identity of only two persons, namely Goldi and Suman Kumar, has been established, and the other persons have been described as the accused persons without identifying them by their names. The act done by the accused was also not mentioned by

the witnesses. It was laid down by the Hon'ble Supreme Court in ***Pandurang vs. State of Hyderabad, AIR 1955 SC 216,*** that it is unsafe to rely upon the omnibus statement that the accused had committed the offence. It was observed:

> "Rasikabai says that the "accused" raised their axes and sticks and threatened her when she called out to them, but that again is an all-embracing statement which we are not prepared to take literally in the absence of further particulars. People do not ordinarily act in unison like a Greek chorus, and, quite apart from dishonesty, this is a favourite device with witnesses who are either not mentally alert or are mentally lazy and are given to loose thinking. They are often apt to say "all" even when they only saw "some" because they are too lazy, mentally, to differentiate. Unless, therefore, a witness particularises when there are several accused, it is ordinarily unsafe to accept omnibus inclusions like this at their face value."

42. Therefore, the vague statements made by the witnesses that the accused persons had given beatings are not sufficient to establish the identity of the accused, except Goldy and Suman.

43. ASI Mehar Deen (PW4) did not explain how he traced the other accused. It was laid by Hon'ble Supreme Court in ***Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702: 2002 SCC (Cri) 256: 2001 SCC OnLine SC 1243*** *that* when the identity of the accused is not disclosed, the Investigating Officers should explain the steps leading to the

detection of the offender to exclude the likelihood of his innocence having been branded as a culprit. It was observed at 713:

> "**26.** Before parting with the case, we would like to place on record an observation of ours, touching on an aspect of the case. There are clueless crimes committed. The factum of a cognizable crime having been committed is known, but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to the test the wits of an investigating officer. A vigilant investigating officer, well-versed with the techniques of the job, is in a position to collect the threads of evidence, finding out the path that leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to the hilt in a court of law. The evidence of the investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded, leading to the detection of the offender and the collection of evidence against him. This is necessary to exclude the likelihood of any innocent person having been picked up and branded as a culprit, and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances, treating them as of "beyond doubt" evidentiary value"..

44. The prosecution relied upon the identification made in the Court. However, not much advantage can be derived from the identification made for the first time in the Court. Professor Rupert Cross has stated in his celebrated treatise, ***Cross on Evidence***, Fifth

Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

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

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

> "A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general

practice, it is preferable that he should have been placed previously in a parade with other persons, so that potential witnesses may be asked to pick him up."

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

> "**17.** The admitted position in this case is that the test identification parade (hereinafter referred to as "TIP") was not conducted. All the prosecution witnesses who identified the accused in the Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/Accused 2 on the date of the crime while he was wearing a "green-coloured monkey cap"!
>
> **xxx**
>
> **21.**It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismissed the identification made by PW 1 for the reason that the appellant, i.e. Accused 2, was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW 1 made for the first time in the court was not proper.

xxxx

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

xxx

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

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

"*18.* It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy."

47. Therefore, the identification of the accused by the witnesses for the first time in the Court without any corroboration from previous Test Identification Parades will be meaningless, and cannot be relied upon to record the conviction.

48. Thus, the learned Courts below had rightly held that the identity of the accused Suman Thakur and Vishal Thakur alias Goldi was established, but erred in holding that the identity of Nagesh Awasthi, Arvind Katoch and Gopal Singh was proved.

49. Doctor Sunita (PW-3) admitted in her cross-examination that the injuries noticed by her are consistent with a fall on a hard surface. It was submitted that this testimony makes the defence version highly probable that the injuries were caused by a fall. This submission is only stated to be rejected. The Medical Officer had admitted an alternative hypothesis in her cross-examination, and an alternative hypothesis admitted by the medical Officer does not make the prosecution's case suspect. It was laid down by the Hon'ble Supreme Court in ***Ramakant Rai v. Madan Rai*, *(2003) 12 SCC 395: 2003 SCC OnLine SC 1086,*** that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative

possibilities is not sufficient to discard the prosecution's case. It was observed at page 404:

> "**22.** It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the "credit" of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

50. The accused examined Arun Kumar (DW-2), who specifically stated that Sudhir Rana and Subhash Rana were injured by beatings. Therefore, the defence never doubted the fact that the injuries were caused by means of beating. Hence, the admission made by the Medical Officer in her cross-examination that the injuries can be caused by a fall will not make the prosecution's case suspect.

51. Tanuj Kumar (PW-1) did not support the prosecution's case. He stated that he was not aware of the facts of the case. He was

permitted to be cross-examined by the learned APP, and he admitted in his cross-examination that he had gone to the temple. He had not witnessed anything. He denied the previous statement recorded by the police. ASI Mehar Deen (PW-4) specifically stated that he had written the statement of Tanuj Kumar (Ext. PW 4/A) as per his version. This was not suggested to be incorrect in the cross-examination, which means that this part of his testimony has been accepted as correct. Hence, Tanuj Kumar is shown to have made two inconsistent statements, one before the police that he had witnessed the incident and the other before the Court that he had not witnessed any incident. Therefore, his credit has been impeached under Section 155 (3) of the Indian Evidence Act, and no reliance can be placed upon his testimony. 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."

52. 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. Thus, his testimony cannot be used to discard the prosecution's version.

53. Tara Chand (PW-2) is the witness to recovery. He did not support the prosecution's case and stated that no recovery was made in his presence. He admitted in his cross-examination that he had signed the memo after acknowledging its correctness, and his signature was not obtained forcibly. He also denied the previous statement recorded by the police. ASI Mehar Deen proved that he had recorded the statement of Tara Chand (Ext. Pw 4/D) as per his version. Therefore, Tara Chand is also shown to have made two inconsistent statements and his credit has been impeached.

54. Even if the recovery of the sticks is not proved, the same will not make the prosecution's case suspect. It was laid down by the Hon'ble Supreme Court in ***Anwarul Haq v. State of U.P., (2005) 10 SCC 581: 2005 SCC OnLine SC 865*** that the failure to recover the weapon of offence will not be fatal to the prosecution. It was observed at page 585:

> **"15.** Eyewitnesses in the present case have described the knife, and merely because the knife has not been recovered during the investigation, the same cannot be a factor to discard the evidence of PWs 1 and 2. Wounds noticed by the doctor (PW 3) also throw considerable light on this aspect. The doctor's opinion about the weapon, though theoretical, cannot be totally wiped out. In that view of the matter, the appellant has been rightly convicted under Section 324 IPC."

55. Therefore, the prosecution's case cannot be doubted simply because the recovery of sticks was doubtful.

56. It was submitted that the prosecution has not proved the motive in the incident, which makes the prosecution's case doubtful. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Subhash Aggarwal v. State (NCT of Delhi)*, *(2025) 8 SCC 440: 2025 SCC OnLine SC 808*** that failure to prove motive is not sufficient to record acquittal. It was observed at page 449:

> "**29.** The declaration in the cited decisions and the decisions relied on therein is to the effect that if the case is built solely upon circumstantial evidence, the absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction. Likewise, when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis, the total absence of a motive will be of no consequence.
>
> **30.** We extract para 17 from a three-Judge Bench decision, ***Jan Mohammad v. State of Bihar [Jan Mohammad v. State of Bihar, (1953) 1 SCC 5***], which also is of vintage flavour, succinctly putting forth the proposition: (SCC p. 12)
>
> > "*17.* Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present, where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial,

the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed. [sic]"

31. ***Suresh Chandra Bahri v. State of Bihar [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60]*** held that in a case based on circumstantial evidence, proof of motive would "supply a link in the chain of circumstances" but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 reads as follows: (SCC p. 95)

"*21.* At the very outset, we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime, and therefore, the motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something that prompts a person to form an opinion or intention to do a certain illegal act or even a legal act, but with illegal means, with a view to achieve that intention. *In a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime*." (emphasis supplied)

32. ***Sukhpal Singh v. State of Punjab [Sukhpal Singh v. State of Punjab, (2019) 15 SCC 622 : (2020) 1 SCC (Cri) 460]*** found that if prosecution establishes motive, it will undoubtedly strengthen the prosecution case, but to say that absence of motive will be fatal to the prosecution, irrespective of other

material before the court in the form of circumstantial evidence is far-fetched. Para 15 reads as follows: (SCC p. 627)

> "*15.* The last submission that we are called upon to deal with is that there is no motive established against the appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. *But the question is whether, in a case of circumstantial evidence, the inability on the part of the prosecution to establish a motive is fatal to the prosecution's case. We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the court by way of circumstantial evidence be fatal to the prosecution*. In such circumstances, on account of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and the same shall stand dismissed." (emphasis supplied)
>
> **33.** Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted."

57. In the present case, the testimonies of the witnesses are found to be reliable, and the absence of the motive will not make the prosecution's case doubtful.

58. It was submitted that the police had not recovered the clothes of the injured, which makes the prosecution's case doubtful. This submission cannot be accepted. It has been noted above that the testimonies of injured witnesses are reliable; hence, they do not require any corroboration. The recovery of the clothes would have only provided the corroboration, and the non-recovery of torn clothes will not make the prosecution’s case doubtful.

59. In the present case, the prosecution evidence establishes that the accused Vishal Thakur and Suman Thakur, along with some persons, had attacked and beaten the injured. The prosecution has failed to prove the identity of those persons, but that will not make the prosecution's case suspect that 4-5 persons had attacked Sudhir Rana and Subhash Rana. Therefore, Sections 147 and 149 will continue to apply.

60. The prosecution evidence proved that the accused Vishal Thakur and Suman Thakur along with other persons had wrongfully restrained the informant Sudhir Rana and Subhash Rana and caused simple hurt to Sudhir Rana and grievous hurt to Subhash Rana in furtherance of the common object of wrongfully restraining and causing hurt to the informant party, therefore, they were rightly

convicted of the commission of offences punishable under Sections 341, 323, 325, 147 read with Section 149 of IPC.

61. Learned Trial Court convicted the accused of the commission of an offence punishable under Section 506 of the IPC. This conviction was upheld by the learned Appellate Court. Criminal intimidation is defined in Section 503 of the IPC as under: -

> **503. Criminal intimidation**
>
> Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
>
> Explanation- A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

62. Section 503 requires that the threat of injury should have been made with an intent to cause alarm to a person, to do an act, which a person is not legally bound to do or omit to do any act which he is legally entitled to do. It was laid down by this Court in ***Inder Pratap Singh Versus State of Himachal Pradesh 2003 (1) Crimes 345 (HC)*** that the complainant should have been alarmed by the threat advanced by the accused to attract section 506 of IPC. It was observed:

> "21. Similarly, before an offence of criminal intimidation can be made out, it must be established prima facie that the accused persons (like petitioners in the present case) intended to cause an alarm to the complainant party, i. e., Jasbeer Singh. Mere threats, as alleged by him, extended by the petitioners, with a view to deter the complainant from interfering with what the petitioner believed to be his exclusive property, would not constitute an offence of criminal intimidation."

63. Similar is the judgment of Hon'ble Supreme Court in ***Vikram Johar v. State of U.P.*, *(2019) 14 SCC 207: (2019) 4 SCC (Cri) 795: 2019 SCC OnLine SC 609*** wherein it was held at page 209: -

> "**25.** Now, reverting back to Section 506, which is an offence of criminal intimidation, the principles laid down by ***Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715*** have also to be applied when the question of finding out as to whether the ingredients of the offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients that have to be proved by the prosecution? *Ratanlal & Dhirajlal on Law of Crimes*, 27th Edn., with regard to proof of offence, states the following:
>
> "*... The prosecution must prove:*
>
> (*i*) *That the accused threatened some person.*
>
> (*ii*) *That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested*;
>
> (*iii*) *That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled*

> *to do as a means of avoiding the execution of such threat.*" (emphasis supplied)
>
> A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

64. Therefore, it is necessary to prove that the accused had caused an alarm to the informant or had caused him to do anything, which he would not have done or omitted to do anything which he would have done but for the threat.

65. Sudhir Rana and Subhash Chand have not stated that the intimidation had caused alarm to them. Sudhir Rana (PW-8) stated that the accused had told him not to depose against them; otherwise, they would be killed. Subhash Rana (PW-9) stated that the accused left the spot and threatened them. Therefore, no witness has stated that they were alarmed by the threats advanced by the accused; hence, they cannot be convicted of the commission of an offence punishable under Section 506 read with Section 149 of the IPC.

66. The learned Trial Court had sentenced the accused to undergo simple imprisonment for one year for the commission of an offence punishable under Section 325 of the IPC and pay a fine of ₹ 1000/-, and in default of payment of fine to undergo simple imprisonment for two months. The rest of the sentences were less than this sentence. Considering that the accused had gathered together and

given beatings to the informant party in the temple premises, a public place, resulting in grievous hurt to Subhash Rana, the punishment of one year cannot be said to be excessive. The other sentences are less than one year and cannot be said to be harsh. Therefore, no interference is required with the sentences imposed by the learned trial court as affirmed by the learned Appellate Court.

67. In view of the above, the Criminal Revision No. 83 of 2015 is allowed and accused Nagesh Awasthi, Gopal Singh and Arvind Katoch are acquitted of the commission of the offences, with which, they were charged and Criminal Revision No. 86 of 2015 is partly allowed and accused Vishal Thakur & accused Suman Thakur are acquitted of the commission of offences punishable under Section 506 read with Section 149 of the IPC.

68. The fine amount be refunded to the accused after the period of appeal in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court.

69. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioners Nagesh Awasthi, Gopal Singh and Arvind Katoch are directed to furnish bail bonds in the sum of ₹50,000/- with one

surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/ learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the petitioners on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

70 A copy of the judgment, along with the record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

03 June 2026. (meera)