

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 388 of 2016****Reserved on: 1.12.2025****Date of Decision: 1.1.2026.**

Rajinder Kumar and others**...Petitioners****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ Yes*****For the Petitioners : Mr H.S. Rangra, Advocate.****For the Respondent/State : Mr Lokender Kutlehria,
Additional Advocate General.**

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 7.11.2016, passed by learned Additional Sessions Judge-II, Mandi, Camp at Jogindernagar, District Mandi, H.P. (learned Appellate Court), vide which the judgment of conviction dated 22.12.2012 and order of sentence dated 27.12.2012, passed by learned Judicial Magistrate First Class, Jogindernagar, District Mandi, H.P. (learned Trial Court) were upheld and the appeal

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

filed by the petitioners (accused before the learned Trial Court) was dismissed. (*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 Section 379 read with Section 34 of the Indian Penal Code (IPC) and Sections 41 and 42 of the Indian Forest Act. It was asserted that HC Dharam Chand (PW11), Beat Officer Hardev Singh (PW3), Forest Guard Rattan Chand (PW1), Forest Guard Ram Singh (not examined), Vikram Singh, Sham Lal (not examined) Constable Vijay Kumar (PW8) and Constable Amar Singh (PW7) were present at Jhatingri in the official vehicle bearing registration No.HP-33-6973 on the intervening night of 28/29.1.2007. A vehicle bearing registration No. HP-29-2754 came to the spot at about 1.30 AM. The police signalled the driver to stop the vehicle. The driver identified himself as Rajinder Kumar. Three other persons were sitting in the truck besides the driver, who identified themselves as Ram Singh, Kamal Kishore and Dharminder Singh. Gunny sacks were loaded

in the truck. These were checked and found to contain *Dandasa* (walnut bark). A permit for transporting the *Dandasa* (walnut bark) was demanded, but no permit was produced. The police counted the gunny sacks and found them to be 97. The police seized the gunny sacks vide memo (Ex.PW1/A). Dharam Chand prepared the rukka (Ex.PW1/A) and sent it to the Police Station, where FIR (Ex.PW11/B) was registered. Dharam Chand investigated the matter. He prepared the site plan (Ex.PW11/C). *Dandasa* (walnut bark) could not be weighed on the spot for want of a weighing machine, and the gunny sacks were taken to the Range Office, Urla Range, where they were weighed. Their weight was found to be 1661 kilograms. Detail (Ex.PW2/A) was prepared. 96 gunny sacks were handed over to Hardev on Sapurdari vide memo (Ex.PW1/B). The total value of *Dandasa* (walnut bark) was found to be ₹2.00 lacs. A certificate (Ex.PW11/D) was prepared. The accused showed the place from where the walnut bark was loaded into the vehicle. Memo (Ex.PW7/A) and the Site plan (Ex.PW11/E) were prepared. The photographs of the proceedings (Ex.A1 to Ex.A6), whose negatives are Ex.A7 to A12, were taken. Statements of witnesses were recorded as per their version, and after the completion of

the investigation, a challan was prepared and presented before the Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under Section 379 read with Section 34 of the IPC and Sections 41 and 42 of the Indian Forest Act, to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. Rattan Chand (PW1), Hardev Singh (PW3), HHC Amar Singh (PW7) and Vijay Kumar (PW8) are the witnesses to recovery. Ami Chand (PW2) is the witness to the weighing of the *Dandasa* (walnut bark). Budhi Singh (PW4) produced the documents of the vehicle. Hardev Gupta (PW5) was working as the Range Officer to whom the *Dandasa* (walnut bark) was handed over on Sapurdari. ASI Jagroop (PW6) witnessed the recovery of the documents. Milap Chand (PW9) was working as MHC with whom the case property was deposited. Ghanshyam (PW10) did not support the prosecution's case. ASI Dharam Chand (PW11) investigated the matter.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. They claimed that they were innocent and were falsely implicated. They did not produce any evidence in defence.

6. Learned Trial Court held that the testimonies of the eye witnesses corroborated each other. They specifically stated that they had intercepted a truck carrying 97 sacks of *Dandasa* (walnut bark). The accused were travelling in the truck. They could not produce any document authorising them to transport the *Dandasa* (walnut bark). Minor contradictions in the statements of the prosecution witnesses were not sufficient to discard the prosecution's case, as the contradictions are bound to come with the passage of time. The non-production of the entry of the truck made at the Ghatasani barrier was not material. *Dandasa* (walnut bark) is a forest produce and is presumed to be the property of the Government unless proved to the contrary. The accused had pointed out a place from where the *Dandasa* (walnut bark) was loaded into the truck. This showed the conduct of the accused. Hence, the learned Trial Court convicted the accused of the commission of offences

punishable under Section 379 of the IPC and Sections 41 and 42 of the Indian Forest Act and sentenced them as under:-

Under Sections 41 and 42 of the Indian Forest Act.	To suffer simple imprisonment for six months each, pay a fine of ₹500/- each, and in default of payment of fine, to undergo simple imprisonment for five days each.
Under Section 379 of the IPC	To suffer simple imprisonment for six months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Mandi, Camp at Jogindernagar, District Mandi, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the police had intercepted the vehicle bearing registration No. HP-29-2754 carrying 97 sacks of *Dandasa* (walnut bark). The accused were present in the truck at the time of the recovery and would be in possession of the *Dandasa* (walnut bark). They failed to produce any document authorising them to transport the *Dandasa* (walnut bark). *Dandasa* (walnut bark) is a forest produce, and a

presumption under Section 69 of the Indian Forest Act would apply that it is a property of the State Government. The burden would shift upon the accused to rebut the presumption. They failed to rebut the presumption and the learned Trial Court had rightly convicted them. The sentence imposed upon them was adequate, and no interference was required with the sentence imposed by the learned Trial Court. Therefore, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the petitioners/accused have filed the present petition, asserting that the learned Courts below erred in appreciating the material placed on record. The testimonies of the prosecution witnesses were not carefully examined. They contradicted each other on material aspects, which made the prosecution's case suspect. No independent witness was associated to corroborate their testimonies. 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. I have heard Mr H.S. Rangra, learned counsel, for the petitioners/accused and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

10. Mr H.S. Rangra, learned counsel for the petitioners/accused, submitted that the learned Courts below erred in appreciating the material placed before them. The statements of prosecution witnesses contradicted each other on material aspects. The evidence regarding the checking of the gunny sacks is contradictory. There was no evidence that *Dandasa* (walnut bark) belonged to the State Government, and the learned Courts below erred in relying upon the presumption. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Trial Court be set aside.

11. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent State, submitted that the police intercepted a truck containing *Dandasa* (walnut bark) in the middle of the night. It was not possible to join any independent person at those odd hours. The prosecution's case cannot be doubted because of the failure to join the independent person.

Nothing was shown in the cross-examination of the prosecution witnesses that they were making false statements. Both the learned Courts below have concurrently held that the accused were found in the truck which was carrying 97 gunny sacks of *Dandasa* (walnut bark). These are pure findings of fact, and this Court should not interfere with the findings of fact recorded by the learned Courts below while exercising the revisional jurisdiction. Therefore, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in *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 is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

“10. Before advertng 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 which 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.

14. 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*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986, where the 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.

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 aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to

reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held

that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

16. This position was reiterated in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for

the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

17. This position was reiterated in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: *Bir Singh*(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GMBH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

18. The present revision has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

19. Learned Courts below relied upon the presumption contained in Section 69 of the Indian Forest Act to hold that the

Dandasa (walnut bark) belonged to the State. This was impermissible. It was laid down by this Court in *Prem Kumar Malik Versus State Of Himachal Pradesh 2000 (2) Shim. LC 520*, that the presumption under Section 69 of the Indian Forest Act cannot be used for convicting a person for the commission of offences punishable under Section 379 of the IPC. It was observed:-

“23. In *Sidheswar Panda v. The State, AIR 1954 Orissa 16*, the accused therein was found in possession of 31 pieces of Sal timber on 17.5.1951. The forester suspected that the same might have been removed from the Government forest and demanded the production of a permit from the accused. The accused pleaded that such logs were obtained by him from one Shri Naylor under a permit. However, the accused could not produce a permit. There was no hammer mark on the logs. There was no evidence by the prosecution to show that the seized timber was felled or removed from any Government forest. The Magistrate, relying upon the presumption under Section 69 of the Indian Forest Act, convicted the accused for the offence under Section 26(f) and (g) of the Act, read with Hindol (Assam) Forest Rules. On the matter being carried before the High Court, it was held that the rule contained in Section 69 of the Act at best raises a presumption that, in the absence of evidence, it shall be presumed that they are Government property, but this is only a rule of evidence, and the accused cannot be convicted on a mere presumption. It was the duty of the prosecution to establish that some timber was felled and/or removed from the Government forest and that the timber in possession of the accused corresponded to the logs illegally removed from the Government forest. It was

further held that it may well be that the accused had failed to explain wherefrom he had obtained the timber; such failure on the part of the accused to explain satisfactorily the source of the timber would not relieve the prosecution to prove that the timber constituted Government property and had been illegally removed.

24. In the present case as well, in the absence of evidence that theft of timber was committed and that the timber found in possession of the accused corresponded to the timber stolen, the accused could not have been convicted for the offence under Section 379, Indian Penal Code by merely raising the presumption under Section 69, Indian Forest Act, even though the accused could not explain the source from where he obtained such timber. The conviction and sentence of the accused for the offence under Section 379, Indian Penal Code, therefore, cannot be sustained.”

20. Therefore, the conviction could not have been recorded merely based on the presumption contained in Section 69 of the Indian Forest Act.

21. Learned Courts below also relied upon the fact that the accused had shown the place from where the walnut bark was loaded into the truck. There is no evidence that anything was discovered pursuant to the disclosure statement made by the accused. ASI Dharam Chand (PW11) stated in his cross-examination that he had made inquiries regarding the loading of *Dandasa* (walnut bark) in the truck, but could not find any independent witness to establish this fact. It was laid down in

Gajrani vs. Emperor, AIR 1933 Allahabad 394, that where the accused points to a place from where he had purchased something, it does not lead to the discovery of any fact. It was observed:

“We do not consider that the pointing out of the shop in this statement can be held to amount to the discovery of a fact, and consequently, we do not consider that this evidence is admissible under Section 27, Evidence Act.”

22. Similarly, in *H.P. Administration vs. Om Parkash*, AIR 1972 SC 975, the accused pointed out the witness from whom he had purchased the dagger. This was held to be outside the purview of Section 27 of the Indian Evidence Act. It was observed:

“12. Thereafter, on the information furnished by the accused that he had purchased the weapon from Ganga Singh, P. W. 11, and that he would take them to him, they went to the thari of P. W. 11, where the accused pointed him out to them. It is contended that the information given by the accused that he purchased the dagger from P. W. 11, followed by his leading the police to his thari and pointing him out, is inadmissible under Section 27 of the Evidence Act. In our view, there is a force in this contention. A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. To render the information admissible, the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger, but the dagger hidden under the stone, which is not known to the police.

(See *Pulukuri Kottaya v. King-Emperor*, 74 Ind App 65 = (AIR 1947 PC 67). But thereafter, can it be said that the information furnished by the accused that he purchased the dagger from P. W. 11 led to a fact discovered when the accused took the police to the thari of P. W. 11 and pointed him out. A single Bench of the Madras High Court in *Public Prosecutor v. India China Lingiah*, AIR 1954 Mad 433, and *In re Vellingiri*, AIR 1950 Mad 613, seems to have taken the view that the information by an accused leading to the discovery of a witness to whom he had given stolen articles is a discovery of a fact within the meaning of Section 27. In *Emperor v. Ramanuja Ayyanger*, AIR 1935 Mad 528 a full Bench of three Judges by a majority held that the statement of the accused "I purchased the mattress from this shop and it was this Woman (another witness) that carried the mattress" as proved by the witness who visited him with the police was admissible because the word 'fact' is not restricted to something which can be exhibited as a material object. This judgement was before *Pulukuri Kattaya's case*, when, as far as the Presidency of Madras was concerned law laid down by the Full Bench of the Court, In *Re Athappa Goundan*, ILR (1937) Mad 695 = (AIR 1937 Mad 618) prevailed. It held that where the accused's statement connects the fact discovered with the offence and makes it relevant, even though the statement amounts to a confession of the offence. It must be admitted because it is what has led directly to the discovery. This view was overruled by the Privy Council in *Pulukuri Kottaya's case*, and this Court had approved the Privy Council case in *Ramkishan Mithanlal Sharma v. The State of Bombay*, (1955) 1 SCR 903 = (AIR 1955 SC 104).

13. In the Full Bench Judgment of Seven Judges in *Sukhan v. The Crown*, ILR 10 Lah 283 = (AIR 1929 Lah 344) (FB) which was approved by the Privy Council in *Pulukuri Kotaya's case*, 74 Ind App 65 = (AIR 1947 PC 67) Shadi Lal C.J., as he then was speaking for the majority pointed out that the expression 'fact' as defined by Section 3 of the

Evidence Act includes not only the physical fact which can be perceived by the senses but also the psychological fact or mental condition of which any person is conscious and that it is in the former sense that the word used by the Legislature refers to material and not to a mental fact. It is clear, therefore, that what should be discovered is the material fact, and the information that is admissible is that which has caused that discovery to connect the information and the fact with each other as cause and effect.' That information, which does not distinctly connect with the fact discovered, or that portion of the information, which merely explains the material thing discovered, is not admissible under Section 27 and cannot be proved. As explained by this Court as well as by the Privy Council, normally Section 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the crime of which the informant is the accused. The concealment of the fact, which is not known to the police, is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden, sold or kept and which is unknown to the police, can be said to be discovered as a consequence of the information furnished by the accused. These examples, however, are only by way of illustration and are exhaustive. What makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him, hidden, or kept with him, which the police did not know until the information was furnished to them by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the information furnished by the accused, and the information that disclosed the identity of the witness will not be admissible.

23. It was held in *State of Maharashtra Versus Damu Gopinath Shinde*, AIR 2000 S.C. 169, that where the statement of the accused did not lead to the discovery of any fact, the same is not admissible. It was observed:-

“The information permitted to be admitted in evidence is confined to that portion of the information which 'distinctly relates to the fact thereby discovered.' But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of the information admitted should be consistent with understandability. In this case, the fact discovered by P.W. 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

38. How particular information led to the discovery of the fact? No doubt, the recovery of the dead body of Dipak from the same canal was antecedent to the information, which P.W. 44 obtained. *If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all.* But when the broken glass piece was recovered from that spot, and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.”
(Emphasis supplied)

24. In the present case, nothing was recovered under the statement made by the accused, and the statements made by the accused and subsequent pointing out the place will be inadmissible.

25. Rattan Chand (PW1) stated that the gunny sacks contained *Dandasa* (walnut bark). He stated in his cross-examination that no chemical test was conducted to determine that the substance was *Dandasa* (walnut bark), and he had disclosed this fact based on his experience. Hardev Singh (PW3) stated in his cross-examination that one or a half gunny sack was opened, and an estimate was made regarding the substance being *Dandasa* (walnut bark). Constable Vijay Kumar (PW8) stated in his cross-examination that nobody had told him that gunny sacks contained *Dandasa* (walnut bark). He and the Investigating Officer had checked it. He and the Investigating Officer had no experience in checking the *Dandasa* (walnut bark). The *Dandasa* (walnut bark) was identified by Beat Officer Hardev Singh (PW3) and Range Officer Hardev Gupta (PW5).

26. The statements of the witnesses do not prove that the gunny sacks contained *Dandasa* (walnut bark). Hardev Singh (PW3) stated that he had identified the *Dandasa* (walnut bark), but did not state whether gunny sacks were opened by him or not. This was important because Ami Chand (PW2) and Hardev Gupta (PW5) specifically stated in their cross-examination that the gunny sacks were not opened. Hardev Gupta (PW5) went on

to say that he conjectured that the gunny sacks might be containing walnut bark.

27. All the witnesses stated that the gunny sacks contained *Dandasa* (walnut bark). Significantly, Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 does not mention *Dandasa* in Annexure-D. Walnut bark is mentioned in Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 2013, in Schedule-II at Serial No.43 as *Juglans Regia*, with Local/Trade name (Akhrot/Khod) and prohibited plant part bark. No witness stated that the police had recovered the bark of the species *Juglans Regia*. This was essential because the prosecution relied upon the statements of the forest officials as experts. Therefore, they were required to prove that the article recovered had a botanical name mentioned in the schedule. It was laid down by the Hon'ble Supreme Court in *State of H.P. v. Jai Lal*, (1999) 7 SCC 280: 1999 SCC (Cri) 1184: 1999 SCC OnLine SC 885 that an expert is a person who has made a special study of the subject and he has to furnish the material to the Court to enable the Judge to form an independent opinion. The report should state the facts and the opinion.

“17. Section 45 of the Evidence Act which makes the opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity of handwriting, or finger impressions are relevant facts. Therefore, to bring the evidence of a witness as that of an expert, it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words, that he is skilled and has adequate knowledge of the subject.

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished, which form the basis of his conclusions.

19. The report submitted by an expert does not go into evidence automatically. He is to be examined as a witness in court and has to face cross-examination. This Court in the case of *Hazi Mohammad Ekramul Haq v. State of W.B.* [AIR 1959 SC 488: 1959 Supp (1) SCR 922] concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

28. This position was reiterated in *Ramesh Chandra Agrawal v. Regency Hospital Ltd.*, (2009) 9 SCC 709: (2009) 3 SCC

(Civ) 840: 2009 SCC OnLine SC 1625, wherein it was observed at page 715:

18. The importance of the provision has been explained in *State of H.P. v. Jai Lal* [(1999) 7 SCC 280: 1999 SCC (Cri) 1184]. It is held, that, Section 45 of the Evidence Act which makes the opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, of science, or art, or as to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert, it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words, that he is skilled and has adequate knowledge of the subject.

19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Alfred Robert Jones* [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact, and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished,

which form the basis of his conclusions. (See *Malay Kumar Ganguly v. Dr Sukumar Mukherjee* [(2009) 9 SCC 221: (2009) 10 Scale 675], SCC p. 249, para 34.)

21. In *State of Maharashtra v. Damu* [(2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691], it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In this regard, it has been observed in *State (Delhi Admn.) v. Pali Ram* [(1979) 2 SCC 158: 1979 SCC (Cri) 389: AIR 1979 SC 14] that “no expert would claim today that he could be sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him”.

22. In the article “Relevancy of Expert's Opinion, it has been opined that the value of expert opinion rests on the facts on which it is based and the expert's competency for forming a reliable opinion. The evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus, the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion, so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which an opinion is formed. The same is clear from the following inference:

“Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence, even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.”

29. Hence, it was essential for forest officials to state the botanical name and not the local name. The legislature has consciously used the botanical name with some purpose, and in

the absence of any evidence of the botanical name, the prosecution's version that the accused had violated the Rules framed under Section 41 and committed an offence punishable under Section 42 of the Indian Forest Act is not acceptable.

30. In view of the above, the present revision is allowed, and the judgments and the order passed by the learned Courts below are set aside. The accused are acquitted of the commission of offences punishable under Sections 41 and 42 of the Indian Forest Act and Section 379 of the IPC. The fine, if deposited, be refunded to the petitioners/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

31. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioners/accused are directed to furnish personal bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed

against this judgment, or on grant of the leave, the petitioners/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

33. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

1st January, 2026
(Chander)