

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 116 of 2013****Reserved on: 24.8.2026****Date of Decision: 09.9.2026****Rakesh Kumar****...Appellant****Versus****State of H.P.****...Respondent*****Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.***

For the Appellant : Mr N.K. Thakur, Senior Advocate, with Mr Divya Raj Singh, Advocate.

For the Respondent/State : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 14.3.2013, passed by the learned Additional Sessions Judge, Fast Track Court, Una, District Una (learned Trial Court), vide which the appellant (accused before the learned Trial Court) was convicted and sentenced as under:

Conviction	Sentence
Section 325 of IPC	To undergo rigorous imprisonment for three years, pay a fine of ₹5,000/- and, in default of payment of the fine, to undergo rigorous imprisonment for two months.

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

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 452, 326, 353, 333, and 506 of the Indian Penal Code (IPC). It was asserted that the informant, Om Parkash (PW-1), was working as a Forest Guard. He had gone to Joh Khad Reserve Forest on 4.11.2011. He found a tractor loading stones in the khad at about 1:00 PM. The accused Rocky Sharma was the owner of the tractor. A driver and another person were present at the spot. The informant told the driver that it was illegal to transport stones from the khad. The driver and the other person left the spot. The informant was washing utensils in his room at about 8:00–8:15 PM. Rocky Sharma came to the room and caught the informant by his neck. He inquired who the informant was to stop the tractor. The accused picked up the pressure cooker and inflicted a blow on the informant's face. The informant shouted for help. Vyas Dev (PW-2) and Gurdev (PW-4) came to the spot and rescued the informant. The accused threatened to kill the informant. The informant was taken to the hospital. The matter

was reported to the police, and an entry (Ex. PW-9/A) was registered at the police station.

3. ASI Manmohan Singh (PW-14) visited the hospital and filed an application (Ex. PW-8/B) for obtaining the medical opinion regarding the informant's fitness to make the statement. Dr Sandeep Narula (PW-8) found the informant fit to make a statement. He found an incised wound on the left cheek, with fresh blood oozing profusely from the wound. He admitted the informant to the hospital. Subsequently, the informant developed trismus, which raised suspicion that he might have a fracture associated with the underlying bone, for which he was advised to have an X-ray and CT scan. Dr R.K. Sharma (PW-7) performed the CT scan of the informant's face. He found a fracture of the left zygomatic arch at three places with depression of the central fragment. He also found a fracture of the lesser wing of the sphenoid on the left side. He issued the report (Ex. PW-7/A). The nature of the injury was grievous, and it could have been caused by the pressure cooker (Ex. P-1). Dr Sandeep Narula (PW-8) issued a final opinion (Ex. PW-8/A) stating that the nature of the injury was grievous, which could have been caused by means of the pressure cooker (Ex. P-1). ASI

Manmohan Singh recorded the informant's statement (Ex. PW-1/A) and sent it to the police station, where FIR (Ex. PW-11/A) was registered.

4. HC Yashpal Singh (PW-13) investigated the matter. He visited the spot and prepared the site plan (Ex. PW-13/A). Vijay Anand (PW-5) took photographs (Ex. PW-5/A to Ex. PW-5/F). Gurdev Dutt handed over the pressure cooker lifted from the spot, which was put in a cloth parcel. The parcel was sealed with three seals of seal 'K'. A seal impression (Ex. PW-13/B) was taken on a separate piece of cloth. The seal was handed over to Om Parkash after use. The pressure cooker was seized vide memo (Ex. PW-1/B). The informant produced his blood-stained kurta-pyjama, undervest, and underwear (Ex. P-2 to Ex. P-5), which were put in a cloth parcel, and the parcel was sealed with three seals of impression 'M'. A seal impression (Ex. PW-13/F) was taken on a separate piece of cloth. HC Yashpal seized the tractor vide memo (Ex. PW-9/B). An application (Ex. PW-14/A) was filed for obtaining the discharge card, and the discharge card (Ex. PW-14/B) was obtained. An application (Ex. PW-14/C) was filed for obtaining the certificate regarding the informant's duty and his appointment letter. The certificate (Ex. PW-14/D) and

appointment letter (Ex. PW-14/E) were taken into possession. Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate First Class, Court No. 2, Amb, District Una, who committed it to the learned Sessions Judge.

5. The learned Sessions Judge assigned the case to the learned Additional Sessions Judge, Fast Track Court, Una (learned Trial Court).

6. The learned Trial Court charged the accused with the commission of offences punishable under Sections 452, 326, 333, 353, and 506 of the IPC, to which the accused pleaded not guilty and claimed to be tried.

7. The prosecution examined 17 witnesses to prove its case. Informant Om Parkash (PW-1) narrated the incident. Vyas Dev (PW-2) and Gurdev Dutt (PW-4) are the eyewitnesses. Rakesh Kumar (PW-3) witnessed the recovery. Vijay Anand (PW-5) took the photographs. Arun Kumar (PW-6) and Deepak Rana (PW-10) did not support the prosecution case. Dr R.K. Sharma (PW-7) examined the CT scan of the informant's face. Dr Sandeep Narula (PW-8) examined the informant. Constable

Jarnail Singh (PW-9) proved the entry in the Daily Diary and witnessed the recovery. Jatinder Kumar (PW-11) prepared the challan. SI Ram Ditta (PW-12) signed the FIR. HC Yashpal (PW-13) and ASI Manmohan Singh (PW-14) investigated the matter. Devender Nath (PW-15) produced the appointment order of the informant. HC Ravi Dutt (PW-16) was working as MHC, with whom the case property was deposited. HHG Rakesh Kumar (PW-17) brought the case property to the police station.

8. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he had produced the tractor along with the documents. He denied the rest of the prosecution case. He stated that witnesses deposed falsely against him because they were related to the informant's landlord. The informant had sustained injuries while he was patrolling in the daytime after having a scuffle with the driver. He claimed that he was innocent and was falsely implicated. He did not produce any evidence in his defence.

9. The learned Trial Court held that the informant's testimony was duly corroborated by the medical evidence and the statement of Gurdev. There was no evidence to conclude that the accused had made preparations for causing hurt to the

informant. The injuries were caused to the informant when he was not discharging his official duties. No person deposed that injuries were caused to deter the informant from discharging official duties. The informant had sustained a grievous injury, but it was caused by a pressure cooker, which is not a sharp-edged or dangerous weapon. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 325 of the IPC and sentenced him as mentioned above.

10. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court failed to properly appreciate the evidence on record. The prosecution failed to prove that the accused is the owner of the tractor or that he had deputed anyone to pick up stones from the khad. Deepak Rana (PW-10), the driver of the tractor, did not support the prosecution case. He claimed that he and the informant had a scuffle and the informant sustained injury by way of a fall. This version was discarded by the learned Trial Court without any justification. The informant's testimony was not credible and should not have been relied upon. The benefit of the Probation of

Offenders Act was not granted to the accused. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

11. I have heard Mr N.K. Thakur, learned Senior Advocate, assisted by Mr Divya Raj Singh, learned counsel for the appellant/accused, and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

12. Mr N.K. Thakur, learned Senior Advocate for the appellant/accused, submitted that the learned Trial Court erred in appreciating the evidence on record. The informant's statement was not corroborated in material particulars. Vyas Dev (PW-2) did not support the prosecution case that the informant had stopped the driver of the tractor. The accused was not the owner of the tractor, and the prosecution version that the accused had beaten the informant because he had objected to the transportation of the stone was doubtful. Deepak Rana (PW-10) stated that he had a scuffle with the informant and the informant fell, causing injuries to him. This was a probable version, and the learned Trial Court erred in rejecting this version. When two versions appear on record, the version in favour of the accused should have been preferred to the version in favour of the

prosecution. The learned Trial Court erred in not extending the benefit of the Probation of Offenders Act to the accused. Hence, he prayed that the present appeal be allowed and the judgment and sentence passed by the learned Trial Court be set aside.

13. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the accused had caused grievous injuries by means of a pressure cooker on the informant's face. The accused admitted that he had produced the tractor and the documents; therefore, the possession of the tractor was not in dispute. There is no infirmity in the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

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

15. Informant Om Parkash (PW-1) stated that he was posted as a Forest Guard in Joh. He was patrolling Joh Khad on 4.11.2011. He noticed a tractor parked in the khad at about 1:00–1:30 PM. Two persons were loading stones into the tractor. He asked them not to load the stones, and they left the spot. He was washing utensils in his room at about 8:00–8:15 PM when the accused came to the room and caught him by his neck. The

accused lifted the cooker which the informant was cleaning and hit it on the informant's left cheek. Blood started coming out of the injury. He (the informant) shouted for help. Vyas Dev and Gurdev came to the spot and rescued him from the accused. The accused asked about his capacity to intercept the tractor. He was taken to the hospital. He stated in his cross-examination that the daily patrolling routine is not entered in any document. He was posted under the Range Officer, Bharwain. The distance between Prithipur and Joh was about 1 kilometre. He was not aware of the name of the tractor driver and the labourer. He had reported the matter to the Block Officer at Prithipur, who visited the hospital during the night. He had not impounded the tractor. He had to report the matter to higher authorities the next morning and had informed Rakesh Kumar telephonically about this fact. He denied that the reserve khad fell under the jurisdiction of the Mining Department. He volunteered to say that the khad in the reserve forest fell within the jurisdiction of the Forest Department. He reached his residence at about 5:00–6:00 PM. He admitted that there are many residential houses near his house. Many people had gathered on the spot. He had identified the accused before the police. He was not aware that Mukesh was the owner of the

tractor. He denied that he had sustained injuries during the scuffle and had made a false complaint against the accused.

16. Gurdev Dutt (PW-4) stated that the informant is residing near his house. He was present in his house when he heard the noise of cries coming from the informant's house. He went to the informant's house and found the accused having an altercation with the informant. Blood was coming out of the informant's left cheek, and his clothes were stained with blood. The accused left the spot on his tractor. He stated in his cross-examination that the informant had talked about the interception of a tractor during the daytime. He admitted that the informant had told him about the beatings given to him during the daytime. He stated in his cross-examination by learned counsel for the defence that his house is situated at a distance of 60–70 meters from the informant's room. There were about 40–45 houses in the neighbourhood. 14–15 people had gathered on the spot. No person had given beatings to the informant in his presence. He was not aware whether the accused was the owner of any tractor. The cooker was inside the room. The police came to the spot at about 9:00 PM on the same day. He denied that the informant had not disclosed any fact to him. Nobody had tried to

catch the accused on the spot. He had produced the cooker before the police because the informant had disclosed about suffering injuries by means of a cooker. He denied that nothing had happened in his presence and that he was making a false statement.

17. The statement of this witness corroborates the informant's statement in material particulars. This witness saw the accused present on the spot and the informant bleeding from his cheek. This provides valuable corroboration to the informant's testimony that the accused had caused injuries to him by means of a cooker.

18. It was submitted that this witness has not supported the prosecution version and he was declared hostile; therefore, his testimony should not be relied upon. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Dadu v. State of M.P.*, 2025 SCC OnLine SC 2733 that the statement of a witness cannot be rejected because he was declared hostile. It was observed:

19.....The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this

Court in *State of U.P. v. Ramesh Prasad Misra* (1996) 10 SCC 360: 1996 SCC (Cri) 1278 wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny, and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW-4 in the manner aforesaid is contrary to the law laid down by this Court.

19. It was laid down by the Hon'ble Supreme Court in *Selvamani v. State*, 2024 SCC OnLine SC 837, that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

“9. A 3-Judge Bench of this Court in the case of *Khujji @ Surendra Tiwari v. State of Madhya Pradesh* (1991) 3 SCC 627: 1991 INSC 153, relying on the judgments of this Court in the cases of *Bhagwan Singh v. State of Haryana* (1976) 1 SCC 389: 1975 INSC 306, *Sri Rabindra Kuamr Dey v. State of Orissa* (1976) 4 SCC 233: 1976 INSC 204, *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30: 1979 INSC 126, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.

10. This Court, in the case of *C. Muniappan v. State of Tamil Nadu* (2010) 9 SCC 567: 2010 INSC 553, has observed thus:

“81. It is a settled legal proposition that (*Khujji case*, SCC p. 635, para 6)

‘6.... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.’

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360, this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543, *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516, *Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450, *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence.”

20. Therefore, the testimony of a witness cannot be discarded simply because he was declared hostile.

21. 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.”

22. 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.

23. In the present case, Gurdev Dutt was contradicted only with that part of the statement wherein he had told the police about what was disclosed by the informant to him during the day. Such a statement was otherwise hearsay in nature and inadmissible in evidence. Therefore, even if this witness has not supported the prosecution version regarding what was disclosed by the informant to him, the same would not have any effect because of the evidence being inadmissible.

24. Dr Sandeep Narula (PW-8) examined the informant. He found fresh blood oozing profusely from the wound on the left cheek. Subsequently, the informant developed trismus. A CT scan was advised. Dr R.K. Sharma (PW-7) went through the CT scan and found a fracture of the left zygomatic arch at three places with depression of the central fragment. The injuries noticed by Dr Sandeep Narula could have been caused by means of a cooker (Ex. P-1). Dr Sandeep stated in his cross-examination that it was a rare possibility that injury on the person of the

informant, which was localised and on the left cheek only with the fracture of underlying bone, could be caused by a person falling on a hard surface and striking against a sharp object. The cross-examination of this witness rules out the possibility of sustaining injury by way of a fall. Therefore, the defence version that the informant had sustained injuries during the daytime when he had a scuffle with the driver of the tractor is not proved on record.

25. Heavy reliance was placed upon the statement made by Dr R.K. Sharma in the cross-examination that injury could be caused by way of a fall on a hard surface. However, he had not examined the patient after the incident, but had only carried out the CT scan of the informant. Therefore, his opinion cannot be preferred to the opinion of Dr Sandeep Narula, who had examined the patient immediately after the incident.

26. Vyas Dev (PW-2) stated that he heard the noise from the informant's room and he went to the spot. He saw a quarrel between accused Rakesh Kumar and the informant. The informant's clothes were stained with blood, and the informant had sustained injuries. He was permitted to be cross-examined. He admitted that Om Parkash and Gurdev had also reached the

spot. He denied that he had separated the informant and the accused, or that the accused had left the spot on his tractor. He denied that he made inquiries from the informant and that the informant disclosed the incident that had occurred during the daytime. He was confronted with the previous statement, and he denied the same. He stated in his cross-examination that no quarrel or beating had taken place in his presence. Blood was oozing out of the informant's injuries, and his clothes were stained with blood. He could not say who had caused injuries to the informant. He volunteered to say that except the accused and 3-4 local persons, no outsider was present on the spot. He could not say that the informant had sustained injuries outside and somebody had brought the informant to his room. He denied that he made a false statement against the accused.

27. The statement of this witness corroborates the informant's version regarding the presence of the accused on the spot. The mere fact that he has not supported the prosecution version that he had separated the informant and the accused does not shake the prosecution version. Further, the fact that he has not disclosed what was told to him by the informant is also not material because such evidence is inadmissible in nature.

However, his testimony establishes the presence of the accused on the spot, the injuries sustained by the informant on his face, and the blood coming out of the injuries.

28. The fact that blood was coming out of the injuries of the informant, which was even noticed by the Medical Officer, shows that the injuries were fresh. Thus, the defence version that the injuries were caused during the daytime by a fall during a scuffle cannot be believed.

29. Deepak Rana (PW-10) stated that he used to drive the tractor of Mukesh Kumar. He was permitted to be cross-examined. He denied that he had gone to Joh Khad for taking stones on the tractor; the informant came to the spot and asked him not to pick up stones from the spot. He denied the previous statement recorded by the police. He stated in his cross-examination by learned counsel for the defence that he had loaded stones from the dump of Mukesh Kumar which were to be taken to the village. He admitted that he had gone to the village through the reserve forest, where the informant met him. He admitted that the informant had asked whether stones were picked up from the reserve forest, and he denied it. The informant compelled him to admit the lifting of stones from the

reserve forest, and when he refused, the informant had a scuffle with him. He pushed the informant, and the informant fell and sustained injuries from the fall. He admitted that he had informed the owner of the tractor about this incident.

30. The statement of this witness shows that he was transporting the stones in the tractor and the tractor was intercepted by the informant. Thus, the informant's version that the tractor was transporting stones and he had objected to it is duly corroborated by the statement of this witness. Therefore, the fact that witnesses Vyas Dev and Gurdev have not supported the statement about the revealing of the incident to them will not make any difference to the prosecution case.

31. The accused admitted in his statement recorded under Section 313 of the CrPC that he had produced the tractor and documents before the police. Therefore, the prosecution version that the accused was having control of the tractor was duly corroborated by the admission made by the accused. It was laid down by the Hon'ble Supreme Court in *State of Maharashtra v. Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421 that the Courts can rely upon the statement of the

accused recorded under Section 313 of the Cr.P.C. It was observed at page 742:

“51. That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:

“313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See *State of Maharashtra v. R.B. Chowdhari* (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95. This Court, in the case of *Hate Singh Bhagat Singh v. State of M.B.* 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468, held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678: (1964) 1 Cri LJ 730, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is

material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him*, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety." (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforesaid observations apply with equal force."

32. It was laid down by the Hon'ble Supreme Court in

Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See *Nishi Kant Jha v. State of Bihar* (1969) 1 SCC 347: AIR 1969 SC 422: (SCC pp. 357-58, para 23)

“23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negates both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram

Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one, as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.*” (emphasis supplied)

33. It was laid down in *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution’s case, can be used against him for recording a conviction. It was observed at page 275: -

“52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law.”

34. This position was reiterated in *Ashok Debbarma v.*

State of Tripura, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

24. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh* [(1992) 3 SCC 700: 1992 SCC (Cri) 705] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court, in *Hate Singh Bhagat Singh v. State of Madhya Bharat*, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933, held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab* (1964) 1 Cri LJ 730: (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in *Mohan Singh v. Prem Singh* (2002) 10 SCC 236: 2003 SCC (Cri) 1514 held that: (SCC p. 244, para 27)

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be

taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla* (2005) 9 SCC 15; 2005 SCC (Cri) 1185 and *Bishnu Prasad Sinha v. State of Assam* (2007) 11 SCC 467; (2008) 1 SCC (Cri) 766. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.”

35. It was duly proved by the medical evidence that the informant had sustained injuries that could have been caused by means of a pressure cooker (Ex. P-1). The injuries are not stated to have been caused by way of a fall. It was held by the Hon’ble Supreme Court in *Neeraj Sharma v. State of Chhattisgarh*, (2024) 3 SCC 125; 2024 SCC OnLine SC 13 that the testimony of the injured witness has to be accepted as correct unless there are compelling circumstances to doubt his testimony. It was observed:

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

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

“26. When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. *The evidence of the injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*

26.4. The evidence of the injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishment in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration, and

discrepancies which normally creep due to loss of memory with the passage of time should be discarded.” (emphasis supplied)

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

“33. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

“(a) *The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

(b) Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of an injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

34. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in 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 Khaldev.State of Maharashtra: (2023) 13 SCC 365*).

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

“The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility for the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them.”

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

“7. The High Court having acquitted the accused persons on appreciation of the evidence, we have ourselves scrutinised the evidence of PWs 1, 2 and 3. The conclusion is irresistible that their evidence on material particulars has been brushed aside by the High Court by entering into the realm of conjecture and fanciful speculation without even discussing the evidence, more particularly the evidence relating to the basic prosecution case. *While assessing and evaluating the evidence of eyewitnesses, the Court must adhere to two principles, namely, whether, in the circumstances of the case, it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable.* The High Court, in our opinion, has failed to observe the aforesaid principles and, in fact, has misappreciated the evidence, which has caused a gross miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is created by his evidence, taken insofar as the context of the case, and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3, we find they are consistent with one another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-examination to impeach their

testimony. The aforesaid oral evidence fully corroborates the medical evidence. In that view of the matter, we unhesitatingly come to the conclusion that the prosecution has been able to establish the charge against the accused persons and the High Court committed an error in acquitting the three respondents, namely Inder Dutt, Raghu Raj and Bikram.” (emphasis supplied)

39. In the present case, the injuries sustained by the informant show his presence on the spot. There is nothing in the cross-examination of the informant to show that he was making a false statement or that he had any motive to depose against the accused. Therefore, the learned Trial Court had rightly relied upon the informant’s testimony.

40. The informant was shown to have sustained a grievous injury by means of a pressure cooker. Thus, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 325 of the IPC.

41. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused, and the learned Trial Court erred in denying such benefit. This submission cannot be accepted. The injuries were caused to the informant because he had objected to picking up stones from the reserve forest. Thus, the intent of the accused was to teach the informant a lesson for doing his duties. It was laid down by the

Hon'ble Supreme Court in *Siyasaran v. State of M.P.*, 1994 SCC OnLine SC 4: 1995 Cri LJ 2126 that the benefit of the Probation of Offenders Act cannot be granted to a person for using force on a government servant. Further, the accused had used a pressure cooker to cause injury to the informant on his face, which was grievous in nature. It was laid down by the Hon'ble Supreme Court in *Karamjit Singh v. State of Punjab*, (2009) 7 SCC 178: (2009) 3 SCC (Cri) 330: 2009 SCC OnLine SC 1233 that where the accused had caused grave injuries to the victim, the benefit of Probation cannot be granted. It was observed at page 185:

26. In *Manjappa v. State of Karnataka* [(2007) 6 SCC 231 : (2007) 3 SCC (Cri) 76: JT (2007) 7 SC 226] this Court considered the scope of grant of relief under the provisions of Section 361 CrPC or under the provisions of the Probation of Offenders Act, 1958 reconsidering earlier judgment of this Court in *Om Prakash v. State of Haryana* [(2001) 10 SCC 477: 2003 SCC (Cri) 799], and held that such a relief should be granted where the offence had not been of a very grave nature and in certain cases where mens rea remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC. Where the High Court itself reduces the sentence substantially, such beneficial provisions should not be given effect to.

27. In the instant case, the High Court reduced the sentence from three years to one year, and as the instant case is of a very grave nature as there had been a large number of injuries, we are not inclined to grant leave sought by the appellant.

42. Therefore, the benefit of the Probation of Offenders Act could not have been granted to the accused, and there is no error in not extending the benefit of the Act to the accused.

43. The learned Trial Court had sentenced the accused to undergo simple imprisonment for three years and pay a fine of ₹5,000/- with a default clause for the commission of an offence punishable under Section 325 of the IPC. The offence under Section 325 of the IPC is punishable with imprisonment which may extend to seven years. Thus, considering the circumstances of the case and the nature of the injuries, the sentence of three years cannot be said to be excessive, requiring any interference from this Court.

44. No other point was urged.

45. In view of the above, the present appeal fails, and it is dismissed, so also the pending applications, if any.

46. The record of the learned trial Court be sent back forthwith.

(Rakesh Kainthla)
Judge

9th September, 2026
(Chander)