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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeals No. 202, 203, 204 and 205 of 2014

Reserved on: 27.02.2026

Date of Decision: 01.04.2026.

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1. Cr. Appeal No. 202 of 2014

Pawan Kumar ...Appellant

Versus

State of Himachal Pradesh ...Respondent

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2. Cr. Appeal No. 203 of 2014

Brij Lal ...Appellant

Versus

State of Himachal Pradesh ...Respondent

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3. Cr. Appeal No. 204 of 2014

Kanchan Kumar ...Appellant

Versus

State of Himachal Pradesh ...Respondent

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4. Cr. Appeal No. 205 of 2014

Sanjeev Kumar @ Sanju ...Appellant

Verus

State of Himachal Pradesh ...Respondent

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Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellant(s) : Mr Rajiv Rai, Advocate, in all the appeals.

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

Rakesh Kainthla, Judge

The present appeals are directed against the judgment of conviction dated 28.04.2014, and order of sentence dated 30.04.2014 passed by learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P. (learned Trial Court) vide which the respondents (accused before the learned Trial Court) were convicted and sentenced as under: -

Sections	*Sentences*
363 read with Section 120-B of IPC	The accused were sentenced to undergo rigorous imprisonment for three years each, pay a fine of ₹5000/- each, and in default of payment of fine to undergo further simple imprisonment for six months each.
366 read with Section 120-B of IPC	The accused were sentenced to undergo rigorous imprisonment for five years each, pay a fine of ₹5,000/-

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

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	each, and in default of payment of the fine, to undergo further simple imprisonment for six months each.
Accused Sanjeev Kumar @ Sanju was also sentenced under Section 506 of IPC	The accused was sentenced to undergo rigorous imprisonment for three years, pay a fine of ₹5000/-, and in default of payment of fine, to undergo further simple imprisonment for two months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

(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 appeals are that the informant (PW1) is the father of the victim (name being withheld to protect her identity), who was studying in class 9th. He received a call on 16.08.2008 at 10:00 PM, and the caller expressed his intention to talk to the victim. The victim revealed that the caller was Pawan, a friend of Sanju. Another call was received on 17.08.2008 at about 11 PM, and this time the call was answered by victim's grandfather (PW9). When victim's grandfather enquired about the purpose of the call, the caller disconnected the phone call. The victim revealed on 18.08.2008 that Sanjeev @ Sanju used to ask her to marry him or he would kill

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his father. He had done bad acts with her. The victim was found missing from her home on 19.08.2008. The informant made a complaint (Ext.PW1/A) to the police, and the police registered an FIR (Ext.PW20/B). HC Hem Raj (PW17) investigated the matter. He searched the victim. One HRTC bus came from Shimla and halted at Brahmpukhar. The victim alighted from the bus at Brahmpukhar. The informant identified her. Memo of recovery (Ext. PW1/B) was prepared. The victim was brought to the hospital. An application (Ext.PW11/A) was filed for her medical examination. Dr D. Bhangal (PW11) examined the victim and found that she had not sustained any injury. The Medical Officer preserved the sample. She advised X-ray for age determination and referred the victim to a dental surgeon. She also sought the opinion from the gynaecologist. Dr Poojan (PW3) examined the victim at the KNH Shimla on 21.08.2008 and issued the MLC (Ext.PW3/A). As per his opinion, the possibility of sexual intercourse could not be ruled out. HC Hemraj (PW17) prepared the spot map (Ext.PW17/A) and handed over the victim's custody to her parents. Inspector Mool Raj (PW19) conducted further investigation. He visited the spot from where the victim was kidnapped and prepared a spot map (Ext.PW19/A). He arrested the

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accused P (a juvenile) and seized the clothes worn by him. These were put in a cloth parcel, and the parcel was sealed with eight seals of Seal 'T. The parcel was seized by vide memo (Ext.PW19/B). School leaving certificate of P (Ext. PW5/B) was seized vide memo (Ext. PW5/A). Inspector Mool Raj (PW19) filed an application (Ext.PW7/A) for obtaining the Pariwar Register and birth certificate of the victim. Shashi Kumar (PW13) issued a copy of the Pariwar Register (Ext.PW7/B). ASI Krishan Chand (PW18) investigated the matter. He arrested the accused Kanchan Kumar. He obtained the birth certificate of the victim (Ext.PW13/A). The birth certificate of the juvenile P (Ext.PW18/A) and the Pariwar register (Ext.PW18/B) confirmed that he was a juvenile. The samples were sent to SFSL for analysis, and as per the report (Ext.PW18/D), no blood and semen were detected on the exhibits. Dr D. Bhangal (PW11) issued a final opinion mentioning that it was not possible to rule out the possibility of rape. The X-ray films (Ext.PA to Ext.PE) were taken into possession, and the skeletal age of the victim was found to be between 16 and 18 years. An application (Ext.PW12/A) was filed for supplying the birth certificate from the victim's school. Nirmala Chauhan (PW12) supplied the school leaving certificate (Ext.PW12/B). The

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statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented in the Court of learned Chief Judicial Magistrate, Bilaspur, who committed it to the Court of learned Sessions Judge for trial. Learned Sessions Judge, Bilaspur, sent the matter to learned Additional Sessions Judge, Ghumarwin (learned Trial Court).

3. Learned Trial Court charged the accused Brij Lal, Pawan Kumar and Kanchan Kumar with the commission of offences punishable under Sections 120-B, 363 and 366 of IPC and the accused Sanjeev Kumar with the commission of offences punishable under Sections 120-B, 363, 366, 376 and 506 of IPC, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 26 witnesses to prove its case. The informant (PW1) had reported the matter to the police. Arun Kumar (PW2) took the X-rays of the victim. Dr Poojan (PW3) and Dr D. Bhangal (PW11) medically examined the victim. Victim (PW4) narrated the incident. HC Kishori Lal (PW5) witnessed the recovery. Roshan Lal (PW6), Shakuntala Devi (PW14) and Raj Kumar (PW21) did not support the prosecution's case. Shashi Kumar (PW7) produced a copy of the Pariwar Register of the

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victim. ASI Diwan Singh (PW8) obtained the printout of the call detail record of the mobile No. xxxx408 and xxxx271. Victim's grandfather (PW9) was using the mobile No. xxx 408. Dr Yuvraj Shori (PW10) medically examined the accused Sanjeev Kumar. Nirmala Chauhan (PW12) produced the school-leaving certificate of the victim. Shashi Kumar (PW13) supplied the birth certificate of the victim. HC Davinder Kumar (PW15) carried the case property to SFSL Junga. Inspector Megh Nath (PW16) prepared the challan. HC Hem Raj (PW17), SI Krishan Chand (PW18), and Inspector Mool Raj (PW19) investigated the matter. Taranjeet Singh (PW20) signed the FIR. HC Suresh Kumar (PW22) was working as MHC with whom the case property was deposited. Inspector Jasbir Singh (PW23) wrote the letter for obtaining the customer details of the mobile numbers xxx 408 and xxxx201. Kashmiri Lal (PW24) issued the certificate. Parkash Chand (PW25) obtained the opinion of the Medical Officer. Dr Dinesh Sharma (PW26) stated that he had not done anything in the present case.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. Accused Pawan Kumar stated that he was innocent, and a false case was registered against him due to enmity. Accused Sanjeev

Kumar @ Sanju stated that he was falsely implicated because of the land dispute. Accused Brij Lal and Kanchan Kumar claimed that they were innocent. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of the witnesses corroborated each other. The victim was proven to be a minor on the date of the incident, and she was incapable of consenting. The victim's testimony was duly corroborated by the medical evidence. She was taken out of the lawful guardianship of her father. All the accused were acting together. Accused Kanchan Kumar had accompanied the victim from Jukhala to Brahmpukhar. Accused Pawan Kumar and Brij Lal had called the victim's grandfather. They were forcing her to marry the accused Sanjeev Kumar. This proved that the accused had entered into a conspiracy. The failure to disclose the commission of rape by the victim to her parents was not material, considering the age of the victim. Therefore, the learned Trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed separate appeals.

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8. I have heard Mr Rajeev Rai, learned counsel for the appellants and Mr Lokender Kutlehria, learned Additional Advocate General for the respondents/State.

9. Mr Rajeev Rai, learned counsel for the appellants/accused, submitted that the learned Trial Court erred in appreciating the evidence on record. The victim was not proven to be a minor. She was travelling in the bus and had not protested or made any hue and cry, which showed her consent. The prosecution witnesses admitted the enmity between the accused and the family members of the victim, and the possibility of false implication could not be ruled out. There was no evidence of any conspiracy, and the learned Trial Court erred in holding that the charge of conspiracy was proved. The statements of the prosecution's witnesses contradicted each other on material particulars, which made the prosecution's case suspect. Hence, he prayed that the present appeals be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the date of birth of the victim was proved by the copy of the birth certificate and the certificate taken from the school. The opinion of the

Radiologist was not conclusive, and it had a margin of error. The learned Trial Court had rightly held that the victim was a minor and her consent was immaterial. The accused had taken the victim out of the lawful keeping of her guardian. The accused Sanjeev @ Sanju had raped her, and this fact was confirmed in the medical opinion. There was no reason for the victim to falsely implicate the accused. Learned Trial Court had taken a reasonable view, and no interference is required with the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeals be dismissed.

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

12. Informant (PW1) stated that the victim is his daughter. He had entered her name in the Panchayat record. She was studying in school and was aged 16 years. He stated in his cross-examination that he was married when he was 21 years of age. However, he did not remember the year of his marriage.

13. Shashi Kumar (PW7) stated that an application was filed by the police for issuing the birth certificate of the victim. He issued a copy of the Pariwar Register (Ext.PW7/B). He admitted in

his cross-examination that he had not made entries in the Pariwar Register and could not say who had made these entries.

14. The entry (Ext.PW7/B) shows that the victim was born on 02.08.1992. The year of birth of her parents was mentioned as 1970, which corroborates the statement of victim's father that he was married at the age of 21 years. The victim was born in the year 1992 when the informant was aged 22 years.

15. It was submitted that this witness had not made the entry in the Pariwar Register, and the entry was not proved as per the law. This submission is only stated to be rejected. It was laid down by this Court in ***Vidya Dhar vs. Mohan Lal (12.04.1978 - HPHC): MANU/HP/0030/1978*** that the family registers are maintained pursuant to the instructions issued by the Government, and entries made therein are admissible under Section 35 of the Indian Evidence Act. Therefore, there was no requirement to prove the Pariwar Register by examining the person who had made the entry.

16. Shashi Kumar (PW13) stated that he had prepared the birth certificate (Ext.PW13/A) showing that the victim was born on 02.08.1992. He stated in his cross-examination that the entry on

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page 44 of the Register pertains to the single hand. He did not know who had made the entry in page No. 44.

17. The copy of the birth certificate (Ext.PW7/B) also shows that the victim was born on 02.08.1992. This is a copy of the public record and is, per se, admissible. Hence, the admission made by Shashi Kumar (PW13) in his cross-examination that he was not aware as to who had made the entry in the original Register will not make the birth register doubtful.

18. The victim was studying in school. Nirmala Chauhan (PW12) issued the victim's school leaving certificate (Ext.PW12/B) showing that the date of the birth of the victim was 02.08.1992. She admitted in her cross-examination that the entries in the admission and withdrawal register were not made by her. This admission will not make any difference as the entry was made by a public official in discharge of the official duties. Therefore, the entry is *per se* admissible, and its proof was not required.

19. Therefore, the documents on record clearly showed that the victim was born on 02.08.1992 and was aged 16 years on the date of the incident.

20. Dr D. Bhangal (PW11) stated the skeletal age of the victim was found to be 16-18 years. It was submitted that there is

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a variation of two years, and the testimony of this witness shows that the victim might have been a major. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Bhoop Ram v. State of U.P., (1989) 3 SCC 1***, that the entry in the school register will prevail upon the certificate issued by a radiologist regarding the age. The birth certificate taken from the Panchayat and the school show the victim's date of birth as 02.08.1992. These entries have to be preferred to the opinion expressed by the radiologist based upon the radiological examination, and the opinion evidence cannot be used to discard the definite opinion regarding the date of birth of the victim.

21. Therefore, the learned Trial Court had rightly concluded that the victim was proved to be a minor on the date of the incident, and there is no infirmity in the findings recorded by the learned Trial Court.

22. The victim (PW4) stated that she was studying in class 9th in the year 2008. Her date of birth is 02.08.1992. Accused Sanjeev Kumar had illicit relations with her since she was 8-9 years of age. Accused Kanchan and Brij Lal used to call her on her grandfather's phone from a mobile number xxxx207, *inter alia*, compelling her to marry the accused Sanjeev Kumar. Her

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grandfather asked her about the relationship with the caller, and she narrated the truth. Her grandfather and family members asked the parents of the accused, Sanjeev Kumar, about the illicit relations. The parents of the accused started quarrelling with her family members. They said that she was telling a lie. She had gone to fetch drinking water in the evening when the accused Sanjeev met her on the way. He told her that the relationship between them was known to everybody, and he advised her to run away from home. He asked her to go to the house of her aunt and tell her falsely that she (the victim) had consumed poison. The accused also promised to pay money to her for running away from her home. She left her home at 7 PM and went to the house of the accused Sanjeev Kumar, who paid ₹800/- to her. She went to the house of her aunt and told her falsely that she had consumed poison, and she should accompany her to the hospital. However, her aunt refused to accompany her. The victim left the home of her aunt, but she was caught at some distance. She (aunt) went to her home to call the victim's parents. The victim ran away towards Jukhala. Accused Kanchan met her. She told the accused Kanchan that she wanted to return to her home, and she had committed the mistake by leaving her home. Accused Kanchan

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told her that Sanjeev would kill her if she returned to her home. He also slapped her. He took her towards Jukhala through Khad. He told her to call Pawan and get the number of P from him. She called P, but his phone was switched off. She called Kanchan from an STD booth, who told her to wait as he would be coming with P. After some time, P came and advised her to go to her home, but she declined. She, P, and Kanchan went towards Brahmpukhar. Accused Sanjeev @ Sanju came to the spot in a jeep and sent her and P to Shimla in a bus. Accused Kanchan and Sanjeev Kumar returned. Accused Sanjeev had advised her that he would contact P on his cell phone and would disclose the further plan. However, no call was received till 11 AM. P received a call from his home, and his parents told him that the victim's parents had reported the matter to the police. She and P returned in the HRTC Bus and she was apprehended at Brahmpukhar. P tried to run away, but he was caught by the police. She was taken to the hospital, where she was medically examined.

23. She stated that her sister was one year younger than her. She had cordial relations with the family of the accused. One year before the incident, she and her sister used to visit the house of the accused, Sanjeev Kumar. P was her class fellow, and she was

on talking terms with him. The mobile numbers of the accused were saved in the cell phone of her grandfather. She had attended the phone call of accused Kanchan, who had advised her to marry accused Sanjeev Kumar. His mother and the mother of P had an altercation regarding her disappearance. She had not disclosed anything to her aunt. She told the incident to her family members on 18.08.2008. Her statement was recorded in the Court. The accused Sanjeev had committed wrong acts with her for about 8 years. She denied that she was making a false statement, and she had voluntarily accompanied P to Shimla. She denied that she was incapable of maintaining a physical relationship.

24. The statement of this witness is duly corroborated by her aunt (PW14), who stated that the victim had come to her on 18.08.2008 and told her that she would stay in her home. She disclosed that she had consumed poison and requested that she be accompanied to fetch medicines. She told the victim that her husband would come shortly and she would take her to the Doctor. However, the victim left the home. She informed the victim's grandfather. She searched for the victim, but the victim could not be found. She was permitted to be cross-examined. She admitted that the accused Sanjeev @ Sanju is her brother-in-law. She

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admitted that the victim had told her to accompany her to fetch medicines. She denied in her cross-examination that the victim had not visited her home.

25. This witness supported the victim's version that she had gone to her aunt's house and disclosed to her about the consumption of the poison.

26. It was submitted that the victim had stated that she was apprehended by her aunt after she had left her home, and this witness had not supported this part of the victim's testimony. This submission will not help the accused. This witness admitted her relationship with the accused; therefore, she had a reason to favour the accused. The victim had made the statement on 29.09.2011 after the lapse of three years, and the memory was bound to fail with time. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

> "**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved

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principles for the appreciation of ocular evidence in a criminal case can be enumerated as under:

> *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
>
> *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*
>
> *III. When an eye-witness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.*
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> *IV. Minor discrepancies on trivial matters not touching the core of the case, a hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.*
>
> *V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between*

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the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

IX. By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.

XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events that take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing

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> *cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.*
>
> *XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness." [See* ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717*** and ***Tahsildar Singh v. State of UP (AIR 1959 SC 1012)"***

27. It was laid down by the Hon'ble Supreme Court in ***Karan Singh v. State of U.P., (2022) 6 SCC 52: (2022) 2 SCC (Cri) 479: 2022 SCC OnLine SC 253*** that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter. It was observed at page 60: -

> "**38.** From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]*** held: (SCC p. 446, para 24)

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

39. Referring to ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable, contradictions were not. In this case, there was no contradiction, only minor discrepancies.

40. In ***Kuriya v. State of Rajasthan [Kuriya v. State of Rajasthan, (2012) 10 SCC 433: (2013) 1 SCC (Cri) 202]***, this Court held: (SCC pp. 447-48, paras 30-32)

> "30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render credentials to the depositions. The improvements or variations must

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essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961]***.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case the Court has to consider whether the witness was stating the truth or not. [Ref. ***Sunil Kumar v. State (NCT of Delhi) [Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367: 2004 SCC (Cri) 1055]***].

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with medical aid and inform the police. The statements which are recorded

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

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

"*46*. Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses have given different timings as to when they had seen the scuffling and strangulation of the deceased by the accused. ... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

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49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statements of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused."

> ***42.*** In ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]***, this Court held: (SCC p. 446, para 24)
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> > "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."

28. Similar is the judgment in ***Anuj Singh v. State of Bihar, 2022 SCC OnLine SC 497: AIR 2022 SC 2817***, wherein it was observed: -

> "17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot, but the constant narrative of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this court in ***Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra, 2000 8 SCC 457***. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42

of the judgment reads as under:

> "42. Only such omissions which 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."

29. It was laid down by the Hon'ble Supreme Court in ***Achchar Singh vs. State of H.P., AIR 2021 SC 3426,*** that the testimony of a witness cannot be discarded due to exaggeration alone. It was observed:

> "24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines "exaggeration" as "the fact of making something larger, more important, better or worse than it is". Merriam-Webster defines the term "exaggerate" as to "enlarge beyond bounds or the truth". The Concise Oxford Dictionary defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an 'exaggerated statement' lies in a fact, to which fictitious additions are

made to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, the Advanced Law Lexicon defines "false" as "erroneous, untrue; opposite of correct, or true". Oxford Concise Dictionary states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differential between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction, is duty-bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that, in their separation, no real evidence survives that the whole evidence can be discarded. [***Sucha Singh v. State of Punjab, (2003) 7 SCC 643**, 18*.]

25. Learned State counsel has rightly relied on ***Gangadhar Behera** (Supra)* to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, a conviction can be based on it. This Court in ***Hari Chand v. State of Delhi, (1996) 9 SCC 112*** held that:

> "24. ...So far as this contention is concerned, it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses, the maxim *falsus in uno, falsus in omnibus* cannot apply, and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of the evidence has to be scrutinised with care and

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> the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon..."
>
> 26. There is no gainsaying that homicidal deaths cannot be left to judicium dei. The Court, in their quest to reach the truth, ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of the doubt is extended.
>
> 27. An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version."

30. It was laid down by the Hon'ble Supreme Court in ***Arvind Kumar @ Nemichand and others Versus State of Rajasthan, 2022 Cri. L.J. 374***, that the testimony of a witness cannot be discarded because he had made a wrong statement regarding some aspect. The principle that when a witness deposes falsehood, his entire statement is to be discarded does not apply to India. It was observed: -

> "48. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have a strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from

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> the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of the discrepancy in a given case. When the discrepancies are very material, shaking the very credibility of the witness, leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

31. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the statements of the witnesses cannot be discarded due to omissions, contradictions, or discrepancies. The Court must consider whether the discrepancies negatively affect the prosecution's case and whether they pertain to the core of the case rather than the details. In the present case, the discrepancy related to a detail, and is not sufficient to discard the prosecution's case.

32. The victim was confronted with a portion of her statement in her cross-examination; however, the Investigating Officer, HC Hem Raj (PW17) and Inspector Mool Raj (PW19) were not asked anything in the cross-examination about these confrontations. Therefore, the confrontations have not been proved as per the law. It was laid down by the 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."

33. 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."

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34. 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 before the police cannot

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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-

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> 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."

35. 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 only it amounts to putting the contradiction

to the witness and getting it proved through the Investigation Officer."

36. 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 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 Court witness state '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

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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 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 materia? 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)"

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37. 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

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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

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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.

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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*

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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-

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> 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 yet not 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."

38. It was laid down by the Hon'ble Supreme Court in ***Matadin v. State of U.P., 1980 Supp SCC 157,*** that the statement under Section 161 Cr.PC is not detailed and is meant to be brief. It does not contain all the details. It was observed at page 158:

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> "3. The learned Sessions Judge had rejected the evidence of the eyewitnesses on wrong, unconvincing and unsound reasons. The Sessions Judge appears to have been swayed by some insignificant omissions made by some of the witnesses in their statements before the police, and on the basis of these omissions, dubbed the witnesses as liars. The Sessions Judge did not realise that the statements given by the witnesses before the police were meant to be brief statements and could not take the place of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a court that the witnesses concerned are self-contained liars. We have carefully perused the judgment of the Sessions Judge, and we are unable to agree that the reasons that he has given for disbelieving the witnesses are good or sound reasons. The High Court was, therefore, fully justified in reversing the judgment passed by the trial court. We are satisfied that this is a case where the judgment of the Sessions Judge was manifestly wrong and perverse and was rightly set aside by the High Court. It was urged by Mr Mehta that, as other appellants except Matadin and Dulare do not appear to have assaulted the deceased, they should be acquitted of the charge under Section 149. We, however, find that all the appellants were members of the unlawful assembly. Their names find a place in the FIR. For these reasons, we are unable to find any ground to distinguish the case of those appellants from that of Matadin and Dulare. The argument of the learned counsel is overruled. The result is that the appeal fails and is accordingly dismissed. The appellants who are on bail will now surrender to serve out the remaining portion of their sentence."

39. Similar is the judgment in ***Esher Singh v. State of A.P.,*** ***(2004) 11 SCC 585: 2004 SCC OnLine SC 320,*** wherein it was held at page 601:

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"23. So far as the appeal filed by accused Esher Singh is concerned, the basic question is that even if the confessional statement purported to have been made by A-5 is kept out of consideration, whether residuary material is sufficient to find him guilty. Though it is true, as contended by learned counsel for the accused-appellant Esher Singh, that some statements were made for the first time in court and not during the investigation, it has to be seen to what extent they diluted the testimony of Balbeer Singh and Dayal Singh (PWs 16 and 32) used to bring home the accusations. A mere elaboration cannot be termed a discrepancy. When the basic features are stated, unless the elaboration is of such a nature that it creates a different contour or colour of the evidence, the same cannot be said to have totally changed the complexion of the case. It is to be noted that in addition to the evidence of PWs 16 and 32, the evidence of S. Narayan Singh (PW 21) provides the necessary links and strengthens the prosecution's version. We also find substance in the plea taken by learned counsel for the State that evidence of Amar Singh Bungai (PW 24) was not tainted in any way, and should not have been discarded and disbelieved only on surmises. Balbir Singh (PW 3), the son of the deceased, has also stated about the provocative statements in his evidence. Darshan Singh (PW 14) has spoken about the speeches of the accused Esher Singh, highlighting the Khalistan movement. We find that the trial court had not given importance to the evidence of some of the witnesses on the ground that they were relatives of the deceased. The approach is wrong. The mere relationship does not discredit the testimony of a witness. What is required is careful scrutiny of the evidence. If, after careful scrutiny, the evidence is found to be credible and cogent, it can be acted upon. In the instant case, the trial court did not indicate any specific reason to cast doubt on the veracity of the evidence of the witnesses whom it had described as the relatives of the deceased. PW 24 has categorically stated about the provocative speeches by A-1. No definite cross-examination on the provocative nature

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of speech regarding the Khalistan movement was made, so far as this witness is concerned."

40. This position was reiterated in ***Shamim v. State (NCT of Delhi), (2018) 10 SCC 509: 2018 SCC OnLine SC 1559,*** where it was held at page 513:

> "12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, a hypertechnical approach by taking sentences torn out of context here or there from the evidence, and attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and cannot take the place of evidence in court. Small/trivial omissions would not justify a finding by the court that the witnesses concerned are liars. The prosecution's evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtained in the evidence. In the latter, however, no such benefit may be available to it."

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41. Similar is the judgment in ***Kalabhai Hamirbhai Kachhot v. State of Gujarat, (2021) 19 SCC 555: 2021 SCC OnLine SC 347,*** wherein 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 which are sought to be projected are minor contradictions which 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 under: (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."

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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])***
>
> ***
>
> 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

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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."

42. Therefore, the testimony of the victim cannot be discarded simply because the learned defence counsel had confronted her with a portion of her statement after asking her whether she had deposed about what was told by her to the police.

43. It was submitted that the victim had a congenital malformation of the vagina, as per the opinion of the gynecologist and her testimony that the accused Sanjeev was

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maintaining physical relations with her is false. This submission is only stated to be rejected. Dr Poojan (PW3) specifically stated that, as per her opinion, the possibility of sexual intercourse could not be ruled out even with the patient of vaginal congenital agenesis/malformations because partial penetration is possible. Therefore, the medical expert has categorically stated that there was a possibility of a physical relationship, even if there was a malformation of the vagina, and the submission that the victim's testimony is to be discarded because of the malformation of her vagina cannot be accepted.

44. Raj Kumar (PW21) stated that no SIM was issued in his name. He used SIM number xxxx729. He was permitted to be cross-examined and denied that mobile number xxxx271 was issued in his name; he had lost it and had not reported the matter to the police.

45. It was submitted that the testimony of this witness made the prosecution's case doubtful, as the mobile number xxx271 was not connected to the accused. This submission will not help the accused. This witness was contradicted by his previous statement, wherein he had told the police that the SIM

belonged to him and that he had lost it. Thus, he had made two inconsistent statements: one before the police and one before the Court, which cannot stand together. Thus, his credit has been impeached under Section 155 (3) of the Indian Evidence Act. 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

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> discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

46. 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.

47. Hence, no reliance can be placed upon his testimony.

48. The victim deposed about the role of the accused Kanchan Kumar in taking her to Jukhala through Khad. Nothing was suggested in her cross-examination that she was having any motive to depose falsely against the accused Kanchan. Therefore, her testimony regarding the involvement of the accused Kanchan cannot be discarded.

49. The victim's father (PW1) stated that the HRTC Bus bound to Mandi from Shimla came to Brahmpukhar at about 4:30 PM, which was stopped by the police for checking. The victim was

found sitting in the bus with P. The victim was taken off the bus on his identification, and her custody was handed over to him.

50. HC Hem Raj (PW17) stated that he was searching for the victim. One HRTC bus came from Shimla and stopped at Brahmpukhar. The victim came out of the bus and was seen by her father. She was caught by her parents.

51. It was submitted that there is a discrepancy in the statement of these witnesses regarding the manner in which the victim was recovered. The victim's father stated that the victim was seen sitting inside the bus with a juvenile P, whereas HC Hem Raj stated that the victim was exiting the bus when she was spotted by the victim's parents. This discrepancy is minor and will not affect the prosecution's case. The core of these statements that the victim was travelling in the bus has remained unshaken. This is as per the victim's version that she was coming from Shimla with a juvenile P, and a minor discrepancy in the statements of the witnesses is not sufficient to discredit this version.

52. The victim stated that she had left her home at 7 PM when her parents were busy. It was submitted that there was no kidnapping from her lawful guardianship. This submission will

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not help the accused. The victim specifically stated that the accused, Sanjeev Kumar @ Sanju, had told her that their relationship was known to the whole world and she should run away from her home. He had promised to pay her the money. She also stated that she went to the house of the accused, and the accused paid ₹800/- to her. Therefore, it is apparent from her testimony that she was told that she was defamed and was promised the money. Therefore, her consent was not free. In any case, the victim was a minor, and her consent was immaterial. Section 361 of IPC defines kidnapping from lawful guardianship as under:

> 361. Kidnapping from lawful guardianship
>
> Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

53. This Section shows that the offence of kidnapping is committed against guardians, and the consent of the minor is immaterial. It was laid down by the Hon'ble Supreme Court in ***Prakash vs. State of Haryana (2004) 1 SCC 399*** that the offence of kidnapping is for the protection of the minor, and the only

consent of the guardian can take it out of the purview of section 361. It was observed:

> The object of this section seems to protect the minor children from being seduced for improper purposes, as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor ..... out of the keeping of the lawful guardian of such minor" in Section 361 are significant. The use of the word "Keeping" in the context connotes the idea of charge, protection, maintenance and control; further, the guardian's charge and control appear to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available whenever the necessity arises. On a plain reading of this section, the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent, which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person, which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian, would be sufficient to attract the Section."

54. This provision was also considered by the Hon'ble Supreme Court in ***Anversinha @ Kiransinh Fatesinh Zala vs. State of Gujarat 2021(3) SCC 12***, and it was held:

> 16. A bare perusal of the relevant legal provisions, as extracted above, shows that consent of the minor is immaterial for purposes of Section 361 of the IPC. Indeed, as borne out through various other provisions in the IPC

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> and other laws like the Indian Contract Act, 1872, minors are deemed incapable of giving lawful consent. [***Satish Kumar Jayanti Lal Dabgar vs. State of Gujarat, (2015) 7 SCC 359, 15.***] Section 361 IPC, particularly, goes beyond this simple presumption. It bestows the ability to make crucial decisions regarding a minor's physical safety upon his/her guardians. Therefore, a minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping.

55. Therefore, the consent of the victim is immaterial for the charge of kidnapping, and only the consent of the guardian of the victim can help the accused.

56. It was submitted that the victim had left her home on 18.08.2008 at about 9-9:30 pm, and the matter was reported to the police on 19.08.2008. There was a delay in reporting the matter, which made the prosecution’s case suspect. This submission cannot be accepted. The victim’s father stated that he had searched for the victim. This was a reasonable conduct as the victim’s father would not have rushed to the Police Station without making inquiries from his relatives and friends. Therefore, the delay in reporting the matter was properly explained by the victim’s father, and the prosecution’s case cannot be doubted due to the delay.

57. The victim’s statement showed that she left the home

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because the accused, Sanjeev, had paid her money. It was laid down by the Hon'ble Supreme Court in ***State of Haryana versus Raja Ram 1973 (1) SCC 544***, that where the victim was persuaded by the messages sent by the accused, the accused would be guilty of kidnapping the victim out of her father's lawful guardianship. The fact that the victim was easily persuaded would not make any difference. It was observed: -

> "9. In the present case, the evidence of the prosecutrix, as corroborated by the evidence of Narain Das, P.W. 1 (her father), Abinash Chander, P.W. 3 (her brother) and Smt. Tarawanti P.W. 4 (her mother) convincingly establishes beyond a reasonable doubt : (1) that Jai Narain had tried to become intimate with the prosecutrix and to seduce her to go and live with him, and an objection having been raised by her father, who asked Jai Narain not to visit his house. Jai Narain started sending messages to the prosecutrix through Raja Ram, respondent; (2) that Raja Ram, respondent, had been asking the prosecutrix to be ready to accompany Jai Narain; (3) that at about 12 noon on April 4 Raja Ram went to see the prosecutrix at her house and asked her to visit his house when he would convey Jai Narain's message to her : (4) that on the same day after some time Sona was sent by her father to the house of the prosecutrix to fetch her to his house where the prosecutrix was informed that Jai Narain would come that night and would take the prosecutrix away: and (5) that Raja Ram accordingly asked the prosecutrix to visit his house at about midnight so that she may be entrusted to Jai Narain. This evidence was believed by the learned Additional Sessions Judge who convicted the respondent, as already noticed. The learned single Judge also did not disbelieve her statement. Indeed, in the High Court, the learned

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counsel for Raja Ram had proceeded on the assumption that the evidence of the prosecutrix is acceptable, the argument being that even accepting her statement to be correct, no offence was made out against Raja Ram. Once the evidence of the prosecutrix is accepted in our opinion, Raja Ram cannot escape conviction for the offence of kidnapping her from her father's lawful guardianship. It was not at all necessary for Raja Ram to have himself gone to the house of the prosecutrix to bring her from there on the midnight in question. It was sufficient if he had earlier been soliciting or persuading her to leave her father's house to go with him to Jai Narain. It is fully established on the record that he had been conveying messages from Jai Narain to the prosecutrix and had himself been persuading her to accompany him to Jai Narain's place, where he would hand her over to him. Indisputably, the last message was conveyed by him to the prosecutrix when she was brought by his daughter Sona from her own house to his, and it was pursuant to this message that the prosecutrix decided to leave her father's house at midnight in question for going to Raja Ram's house for the purpose of being taken to Jai Narain's place. On these facts, it is difficult to hold that Raja Ram was not guilty of taking or enticing the prosecutrix out of the keeping of her father's lawful guardianship. Raja Ram's action was the proximate cause of the prosecutrix going out of the keeping of her father, and indeed, but for Raja Ram's persuasive offer to take her to Jai Narain, the prosecutrix would not have gone out of the keeping of her father, who was her lawful guardian, as she actually did. Raja Ram actively participated in the formation of the intention of the prosecutrix to leave her father's house. The fact that the prosecutrix was easily persuaded to go with Raja Ram would not prevent him from being guilty of the offence of kidnapping her. Her consent or willingness to accompany Raja Ram would be immaterial, and it would be equally so even if the proposal to go with Raja Ram had emanated from her. There is no doubt a distinction between taking and allowing a minor to accompany a person. But the present is not a case of the

> prosecutrix herself leaving her father's house without any inducement by Raja Ram, who merely allowed her to accompany him."

58. Similarly, it was held in **Anversinha @ *Kiransinh Fatesinh Zala*** (supra) that where the accused had the intent to marry the victim, her enticement was duly proved. It was observed:

> "14. Adverting to the facts of the present case, the appellant has unintentionally admitted his culpability. Besides the victim being recovered from his custody, the appellant admits to having established sexual intercourse and having the intention to marry her. Although the victim's deposition that she was forcefully removed from the custody of her parents might possibly be a belated improvement, the testimonies of numerous witnesses make out a clear case of enticement. The evidence on record further unequivocally suggests that the appellant induced the prosecutrix to reach at a designated place to accompany him."

59. In the present case, the accused and the victim knew each other. The accused had instigated the victim to leave her home, and the victim left the home after such instigation. Therefore, the statement of the victim that she had left the home on her own will not show that no offence of kidnapping was committed.

60. The learned Trial Court held that the accused Brij Lal used to call the victim and ask her to marry the accused Sanjeev

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Kumar @ Sanju, which showed his involvement. This finding cannot be sustained. The victim's grandfather (PW9) stated that he had received a call on his mobile on 16.08.2008 in the evening, and an enquiry was made about the victim. The caller's mobile number was displayed as xxxx271. The victim told him on enquiry that the call was made by Sanjeev @ Sanju. Thus, as per his testimony, only one call was made, and he had not handed over the mobile phone to the victim. Hence, the part of the testimony of the victim that accused Brij Lal used to call the victim and ask her to marry the accused Sanjeev @ Sanju was not proved beyond a reasonable doubt.

61. The accused Kanchan Kumar had accompanied her to Jukhala. He advised the victim to call Pawan and ask for his number. Pawan did not respond to the call. Therefore, the victim has only attributed the role of making a call to the accused, Pawan. Learned Trial Court held that the accused Pawan Kumar and the accused Brij Lal had repeatedly threatened the victim, which was not established from the victim's testimony. Therefore, the learned Trial Court erred in holding the accused Pawan Kumar and Brij Lal guilty of the commission of offences punishable under Section 120-B, 363 and 366 of the IPC.

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62. Accused Kanchan Kumar had accompanied the victim to Jukhala. He had helped her to board the bus to Shimla with the juvenile P. Accused Sanjeev @ Sanju had asked the victim to leave the home, and accused Kanchan Kumar had facilitated the victim after she had left the home. This conduct showed that he was acting at the behest of the accused Sanjeev @ Sanju, and the conspiracy to kidnap the victim was duly proved.

63. The victim specifically stated that the accused, Sanjeev, intended to marry her. There is no reason to doubt her testimony, and the ingredients of the commission of an offence punishable under Section 366 of the IPC were fully satisfied.

64. The victim stated that the accused, Sanjeev Kumar, threatened to kill her. This is corroborated by the fact that she had not narrated the incident to any person till calls were made to her home, and the learned Trial Court had rightly convicted the accused Sanjeev Kumar of the commission of an offence punishable under Section 506 of the IPC.

65. Learned Trial Court convicted the accused for the commission of offences punishable under Sections 363 and 366 of the IPC. Section 366 of IPC is an aggravated form of Section 363, and as per Section 71, a person being punished for the aggravated

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form cannot be punished for a minor offence. This position was recognised in ***Emperor v. Mahmud Ali Khan*, *1933 SCC OnLine All 54: ILR (1933) 55 All 557,*** wherein it was observed at page 561:

> "It seems to me unreasonable, when a man is found guilty of the major offence of illicitly manufacturing excisable articles, that he should also be severely punished for keeping in his possession materials for manufacturing those articles and for possessing them. The one offence includes all the others. Further, section 71 of the Penal Code, 1860, provides for this. It is there laid down that "Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided"; and also "Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences."

66. Hence, the learned Trial Court erred in convicting the accused of the commission of an offence punishable under Section 363 read with Section 120B of the IPC.

67. No other point was urged.

68. Therefore, the learned Trial Court had rightly held that the accused Sanjeev Kumar and Kanchan Kumar were guilty of committing the offences punishable under Section 366 read with Section 120-B of IPC, and the accused Sanjeev Kumar was

guilty of the commission of the offence punishable under Section 506 of IPC.

69. Learned Trial Court erred in convicting the accused Brij Lal and Pawan Kumar of the commission of offences punishable under Sections 363, 366 and 120-B of IPC. Learned Trial Court also erred in convicting the accused Sanjeev Kumar and Kanchan Kumar of the commission of an offence punishable under Section 363 of IPC when the conviction was recorded of the aggravated offence of Section 366 read with Section 120 B of the IPC. Hence, the judgment passed by the learned Trial Court is partly sustainable.

70. Learned Trial Court sentenced each accused for the commission of an offence punishable under Section 366 read with Section 120-B of IPC, for 5 years pay a fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for six months. The victim was a minor. She was threatened to leave her home. Hence, in these circumstances, the sentence of 5 years cannot be said to be excessive.

71. The learned Trial Court sentenced the accused Sanjeev Kumar to undergo rigorous imprisonment for three years, pay a fine of ₹5,000/- and in default of payment of fine to undergo

further simple imprisonment for two months. The victim consistently stated that she had been threatened since she was aged 8 years. She was forced to leave her home by the threats given by the accused. The accused was remotely related to her and was bound to protect her. However, he took advantage of the victim by intimidating her. Hence, the sentence of three years cannot be said to be excessive.

72. In view of the above, the appeals filed by accused Pawan Kumar, i.e., Cr. Appeal No. 202 of 2014 and accused Brij Lal, i.e., Cr. Appeal No. 203 of 2014 are allowed, and the judgment of conviction dated 28.04.2024 and order of sentence dated 30.04.2014 passed by the learned Trial Court qua them are ordered to be set aside. The appellants/accused Pawan Kumar and Brij Lal are acquitted of the commission of offences punishable under Sections 363 and 366 read with Section 120-B of the IPC. The fine amount, if deposited be refunded to them after the expiry of the period of limitation for filing an appeal, if no appeal is filed, and in case of appeal, it be dealt with as per the judgment of the Hon'ble Supreme Court.

73. Appeals filed by accused Sanjeev Kumar and Kanchan Kumar are partly allowed, and the conviction and sentence

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recorded for the commission of the offence punishable under Section 363 read with Section 120-B of IPC are ordered to be set aside. Subject to this modification, the rest of the judgment and sentence imposed upon accused Sanjeev Kumar and Kanchan Kumar are upheld.

74. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the appellants/accused Pawan Kumar and Brij Lal are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the 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 appellants/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

1st April, 2026
(Nikita)