IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 411 of 2023
Reserved on: 29.05.2025
Date of Decision: 25.06.2025

Vatan Singh ...Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioner : Mr. Divya Raj Singh, Advocate.
For the Respondent : Mr. Jitender K. Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 02.09.2023 vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') and was sentenced to undergo rigorous imprisonment for five

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

years, pay a fine of ₹ 25,000/- and in default of payment of fine to undergo further simple imprisonment for two months for the commission of aforesaid offence. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of an offence punishable under Section 15 of the NDPS Act. It was asserted that PSI-Mukul Sharma (PW8), HC Dalip Singh (PW2), HC-Virender Singh, HC Shamim Akhtar (PW1), and Constable Navraj (PW12) had gone towards Badripur Bhuppur on 13.06.2014 in a vehicle bearing registration No. HP-17C-1222 being driven by HHC Manoj Kumar under the supervision of ASP/SHO Rohit Malpani. PSI Mukul received a secret information at Bhuppur near Baweja petrol pump that Vatan Singh was selling poppy husk from his tea stall, and in case of a search of the tea stall, a huge quantity of poppy husk could be recovered. The information was credible. Ramjani (PW3) and Surinder Kumar were associated with the raiding party. Report under Section 42(2) of the NDPS Act (Ext. PW1/A) was prepared and was handed over to HC-Shamim Akhtar with a direction to deliver it to SDPO/Dy.S.P. PSI Mukul

went to the tea stall of the accused. The accused tried to run away after seeing the police. The police apprehended him, and he identified himself as Vatan Singh. The police apprised him of the information received by them. He was told that he had a right that his tea stall should be searched before the Magistrate or the Gazetted Officer. The accused consented to be searched by the police. Memo (Ext. PW8/A) was prepared. Police Officials and witness Ramjani gave their search to the accused; however, nothing incriminating was found in their possession. Consent Memo (Ext. PW2/A) was prepared. The search of the tea stall was conducted during which one transparent polythene tied with a knot (Ext. 'PB') was found in the wooden cabinet of the shop. PSI Mukul untied the polythene and found the poppy husk (Ext. PC) in it. He prepared the identification memo (Ext. PW8/B). He weighed the poppy husk with the help of a weighing scale and found its weight to be 5 kg 700 grams. The polythene bag containing poppy husk was tied with a knot, and it was put in a cloth parcel (Ext. PA). The parcel was sealed with four impressions of the seal 'T'. Sample seal 'T' (Ext. PW8/C) was taken on a separate piece of cloth. The NCB-I form (Ext. PW6/C) was filled in triplicate, and the seal impression was put on the NCB-I form. The seal was handed over

to Constable Navraj after its use. Memo (Ext. PW8/D) was prepared. The cloth parcel, NCB-I form and sample seal were seized vide memo (Ext. PW8/E). PSI-Mukul prepared the rukka (Ext. PW8/F) and handed it over to Constable Navraj with a direction to carry it to the police station. FIR (Ext. PW8/G) was registered at the police station. ASI-Mukul conducted the investigation. He prepared the site plan (Ext. PW8/J) and recorded the statement of witnesses as per their version. HC Dalip took the photographs (Ext. PW2/A1 to Ext. PW2/A5) which were transferred to CD (Ext. PW2/A6). The accused was arrested vide memo (Ext. PW8/L). The case property was produced before SHO Bhisham Thakur (PW11), who checked the parcel and re-sealed it with four impressions of seal 'H'. He obtained a sample seal on a piece of cloth (Ext. PW11/A), filled columns Nos 9 to 11 of NCB-I form (Ext. PW6/C) and put the seal 'H' on the form. He issued a re-sealing certificate (Ext. PW11/B) and handed over the case property to HHC Narayan Singh (PW6). HHC Narayan Singh (PW6) made an entry in Register No.19 at Sr. No.214 (Ext. PW6/A) and deposited the case property in the malkhana. PSI Mukul Sharma prepared the special report (Ext. PW5/A) and sent it to SDPO, Paonta Sahib, through Constable Tara Singh. SDPO Yogesh Rolta made an endorsement on the report

under Section 42(2) of the NDPS Act and the special report and handed them over to his Reader, HHC Subhash Chand (PW5). HHC-Subhash Chand made an entry at Sr. No.2221 and retained the documents on record. HHC-Narayan Singh handed over the case property, sample seal, NCB-I form and documents to HHC-Jitender Sharma (PW7) on 16.06.2014 with a direction to carry them to FSL Junga. HHC Jitender Singh deposited all the articles at FSL Junga and handed over the receipt to HHC Narayan Singh on his return. The result of the analysis (Ext. PW8/N) was issued, in which it was mentioned that the exhibit, stated as poppy husk, was a sample of poppy straw. The statements of remaining witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and was presented before the learned Trial Court.

3. The learned Trial Court charged the accused with the commission of an offence punishable under Section 15 of the NDPS Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses to prove its case. HC Shamim Akhtar (PW1) accompanied the police party and

carried the information under Section 42(2) to the SDPO from the spot. HC-Dalip Singh Tomar (PW2) and HC Navraj (PW12) are the official witnesses to the recovery. Ramjani (PW3) is an independent witness who did not support the prosecution's case. HC Rajesh Kumar (PW4) proved the entry in the daily diary. HHC Subhash Chand (PW5) was posted as Assistant Reader to SDPO. HHC Narayan Singh (PW6) was posted as MHC with whom the case property was deposited. HHC Jitender Singh (PW7) carried the case property to FSL Junga. SI Mukul (PW8) conducted the investigation and effected the recovery. Sanjay Singhal (PW9) issued the certificate. Constable Tara Justa (PW10) carried the special report to the SDPO. Bhisham Thakur (PW11) was posted as SHO, who resealed the case property.

5. The accused in his statement recorded under Section 313 of Cr.P.C. denied the prosecution's case in its entirety. He stated that he did not have a tea stall. He was called to the police station. He was taken to a place where his photographs were taken. He was made to sign some blank papers in the police station, and thereafter, he was put in the lockup. Statement of Siphai Mahta (DW1) was recorded in defence.

6. Learned Trial Court held that the statements of official witnesses corroborated each other. There were no major contradictions in the statements. The mere fact that Ramjani did not support the prosecution's case is not sufficient to discard the prosecution's case. Statement of Siphai Mahta (DW1) was not satisfactory and could not be relied upon. The testimonies of police officials could not be discarded simply because they happened to be police officials. The non-production of the seal was not material and could not be used to reject the prosecution's case. The report of the analysis proved that the substance recovered from the tea stall of the accused was poppy straw; therefore, the accused was convicted and sentenced as aforesaid.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court erred in convicting and sentencing the accused. The evidence was not properly appreciated. The independent witness did not support the prosecution's case, which made it doubtful. Seal was not produced in the Court, and the non-prosecution of the same is fatal to the prosecution's case. The testimony of the defence witness demolished the case of the prosecution. The discrepancies in the

statements were sufficient to discard the prosecution's case. The contraband was not produced before the learned Magistrate, and this is fatal to the prosecution's case. The report of the FSL was not proved as per the law. The integrity of the case property was not established; therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr. Divya Raj Singh, learned counsel for the appellant/accused and Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State.

9. Mr. Divya Raj Singh, learned counsel for the appellant/accused, submitted that the learned Trial Court erred in convicting and sentencing the accused. The independent witnesses did not support the prosecution's case, and there were material contradictions in the statements of the official witnesses. PSI Mukul Sharma stated that he had received the information near the petrol pump through the informer, whereas HC Navraj (PW12) specifically stated that no person met the police party at the Petrol Pump except witnesses. This made the prosecution's case doubtful that the police had received secret information regarding the sale

of the poppy husk by the accused, and that is why the police went to the tea stall of the accused. Sanjay Singhal (PW9) stated in his cross-examination that he had not issued any certificate and could not say from where the certificate was brought by the police. This certificate was relied upon by the prosecution to prove the ownership of the tea stall. Once, the certificate was not properly proved, the prosecution's version that the accused is the owner of the tea stall and had kept the poppy husk inside it is not believable. The integrity of the case property was not established. The case property was not produced before the learned Judicial Magistrate, and there is a violation of Section 52A of the NDPS Act; therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. He submitted in the alternative that, as per the prosecution, the police recovered 5 kg 700 grams of poppy husk. The learned Trial Court awarded a sentence of five years, which is disproportionate. The Court has to consider the principle of proportionality while imposing the sentence, and the learned Trial Court failed to adhere to this principle; hence, he prayed that the sentence be reduced in the alternative.

11. Mr. Jitender K. Sharma, learned Additional Advocate General, for the respondent State, submitted that the police officials supported the prosecution case. The mere fact that independent witnesses had not supported the prosecution's case is not sufficient to discard it. Learned Trial Court had properly appreciated the evidence and there is no infirmity in the judgment and order passed by the learned Trial Court; hence, he prayed that the present appeal be dismissed.

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

13. Ramjani (PW3) did not support the prosecution's case. He stated that he was called by the police to the police station in Paonta Sahib. The police obtained his signatures on some written papers and some blank papers. He was neither associated with the police, nor search of the stall of the accused was conducted in his presence. No contraband was recovered in his presence. He was permitted to be cross-examined by the learned Public Prosecutor. He denied the previous statement recorded by the police; however, he admitted his signatures on the report (Ext. PW1/A), consent memo (Ext. PW2/A), entrustment memo (Ext. PW8/D) and the

seizure memo (Ext. PW2/A). He stated in his cross-examination that police called him to the police station along with one Surinder Kumar. The police asked him to witness the personal search of the accused. Nothing was recovered from the accused except for some currency notes. The police took him and Surinder to the Baweja Petrol Pump and took some photographs. No contraband was recovered in his presence. The police obtained his signatures on the papers and the cloth at the police station. He denied the previous statement recorded by the police.

14. PSI-Mukul (PW8) specifically stated in his examination-in-chief that he had recorded the statements of witnesses, including the statement of Ramjani (Ext. PW8/K), as per his version. This was not suggested to be incorrect in the cross-examination which means that this part of his testimony is accepted to be correct; hence, Ramjani is shown to have been made two inconsistent statements; one before the police and one before the Court and his credit has been shaken under Section 155(2) of 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 discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

15. This Court has also laid down in ***Ian Stilman versus. State 2002(2) Shim. L.C. 16*** that where a witness has been cross-examined by the prosecution with the leave of the Court, his statement cannot be relied upon. 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".

16. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri. L.J. 4254,*** that the prosecution's version cannot be discarded because the independent witnesses did not support it. It was observed:

> "Though the independent witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross-examined, however, the law in respect of appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court in ***Sudru versus State of Chhattisgarh, (2019) 8 SCC 333***, relying upon ***Bhajju versus State of M.P., 2010 4 SCC 327***, has again reiterated the well-settled principle that evidence of a hostile witness can be relied upon by the prosecution version. Merely because a witness has turned hostile, the same does not render his evidence or testimony inadmissible in a trial, and such a conviction can be based upon such testimony, if it is corroborated by other reliable evidence.
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> In a case titled ***Raja and Others versus State of Karnataka, (2016) 10 SCC 506*** the Apex Court observed that the evidence of a hostile witness cannot be altogether discarded and as such it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.
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> In a case titled ***Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police, (2015) 2 SCC 662*** the Apex Court has observed that in a situation/case, wherein, the

witness deposes false in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court held that a conviction can be recorded believing the testimony of such a witness given in examination-in-chief; however, such evidence is required to be examined with great caution.

In ***Ashok alias Dangra Jaiswal versus State of Madhya Pradesh, (2011) 5 SCC 123***, it has been held as under: -

> "The seizure witness turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trials, particularly in cases relating to the NDPS Act."

17. Therefore, the accused cannot be acquitted simply because the independent witnesses have turned hostile.

18. Surinder Kumar, another witness, was given up by the prosecution. It was submitted that an adverse inference should be drawn against the prosecution for his non-examination. This submission cannot be accepted. It was held in ***Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490: 2000 SCC (Cri) 1416: 2000 SCC OnLine SC 1311*** that the Public Prosecutor is not obliged to examine a witness who will not support the prosecution. It was observed at page 495:

> "**13.** When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case.

At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that anyone among that category would not support the prosecution version, he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor fairly. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

15. A four-judge Bench of this Court had stated the above legal position thirty-five years ago in ***Masalti v. State of***

U.P. [AIR 1965 SC 202: (1965) 1 Cri LJ 226]. It is contextually apposite to extract the following observation of the Bench:

> "It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court."

16. The said decision was followed in ***Bava Hajee Hamsa v. State of Kerala [(1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902]***. In ***Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033]*** Krishna Iyer J., speaking for a three-judge Bench had struck a note of caution that while a Public Prosecutor has the freedom "to pick and choose" witnesses he should be fair to the court and the truth. This Court reiterated the same position in ***Dalbir Kaur v. State of Punjab [(1976) 4 SCC 158: 1976 SCC (Cri) 527***].

19. It was laid down by Hon'ble Supreme Court in ***Pohlu v. State of Haryana, (2005) 10 SCC 196***, that the intrinsic worth of the testimony of witnesses has to be assessed by the Court and if the testimony of the witnesses appears to be truthful, the non-examination of other witnesses will not make the testimony doubtful. It was observed: -

> "**[10]** It was then submitted that some of the material witnesses were not examined and, in this connection, it was argued that two of the eye-witnesses named in the FIR, namely, Chander and Sita Ram, were not examined by the prosecution. Dharamvir, son of Sukhdei, was also not examined by the prosecution, though he was a material

> witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses if it prefers to rely upon the evidence of eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eye witnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained."

20. This position was reiterated in ***Rohtash vs. State of Haryana 2013 (14) SCC 434,*** and it was held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. It was observed:

> 14. A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses, is whether the prosecution is bound to examine all the listed/cited witnesses. This Court, in ***Abdul Gani & Ors. v. State of Madhya Pradesh, AIR 1954 SC 31***, has examined the aforesaid issue and held, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to and no doubt would take into consideration the absence of witnesses whose testimony

would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.

15. In ***Sardul Singh v. State of Bombay, AIR 1957 SC 747***, a similar view has been reiterated, observing that a court cannot normally compel the prosecution to examine a witness which the prosecution does not choose to examine and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are necessary for the purpose of disclosing the story of the prosecution with all its essentials.

16. In ***Masalti v. the State of U.P., AIR 1965 SC 202***, this Court held that it would be unsound to lay down as a general rule, that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised. In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 540 Cr. P.C.

(See also: ***Bir Singh & Ors. vs. State of U.P., (1977 (4) SCC 420***)

17. In ***Darya Singh & Ors. v. State of Punjab, AIR 1965 SC 328***, this Court reiterated a similar view and held that if the eye-witness(s) is deliberately kept back, the Court may draw an inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

18. In ***Raghubir Singh v. State of U.P., AIR 1971 SC 2156***, this Court held as under:

> "10. ... Material witnesses considered necessary by the prosecution for unfolding the prosecution's story alone need to be produced without unnecessary and redundant multiplication of witnesses. The appellant's counsel has not shown how the prosecution's story is

rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally, we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version....."

19. In ***Harpal Singh v. Devinder Singh & Ann, AIR 1997 SC 2914***, this Court reiterated a similar view and further observed:

"24. ... Illustration (g) in Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse inference merely on the strength of non-examination of a witness even if it is a material witness....."

20. In ***Mohanlal Shamji Soni v. Union of India &Anr., AIR 1991 SC 1346***, this Court held:

"10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence, and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. Nonetheless, if either of the parties withholds any evidence which could be produced and which, if produced, would be unfavourable to the party withholding such evidence, the Court can draw a presumption under illustration (g) to Section 114 of the Evidence Act.

.. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or

another proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

21. In ***Banti @ Guddu v. State of M.P. AIR 2004 SC 261***, this Court held:

"12. In trials before a Court of Session, the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1973 enjoins him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused.....If that version is not in support of the prosecution's case, it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for the prosecution.

13. When the case reaches the stage envisaged in Section 231 of the Code, the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution's case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the presences cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects.....This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same

> point but also help the Court considerably in lessening the workload. The time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.
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> 14. It is open to the defence to cite him and examine him as a defence witness."

22. The said issue was also considered by this Court in ***R. Shaji (supra)***, and the Court, after placing reliance upon its judgments in ***Vadivelu Thevar v. State of Madras; AIR 1957 SC 614***; and ***Kishan Chand v. State of Haryana JT 2013 (1) SC 222***, held as under:

> "22. In the matter of the appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence, that is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus the quality and not quantity which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this does not carry any weight."

23. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined, witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution, and "the court will not interfere with the exercise of that

discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive." In an extraordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. The evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.

21. This position was reiterated in ***Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 SCC OnLine SC 150***, wherein it was observed at page 224: -

Non-examination of the witness

34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials, sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. The onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

35. The aforesaid settled principle of law has been laid down in ***Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: 1976 SCC (Cri) 646]***: (SCC pp. 377-78, para 13)

"*13.* Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the "pakodewalla", hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. *The onus of proving the prosecution's case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecution's case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters.* In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted, a large crowd had gathered

and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country, there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness in a murder or any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes." (emphasis supplied)

36. This Court has reiterated the aforesaid principle in ***Gulam Sarbar v. State of Bihar [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401: (2014) 2 SCC (Cri) 195]***: (SCC pp. 410-11, para 19)

"*19.* In the matter of the appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy or otherwise. The legal system has laid emphasis on the value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide ***Vadivelu***

> ***Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCR 981: AIR 1957 SC 614], Kunju v. State of T.N. [Kunju v. State of T.N., (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331], Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], Mahesh v. State of M.P. [Mahesh v. State of M.P., (2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singh v. State of Punjab [Prithipal Singh v. State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1]*** and ***Kishan Chand v. State of Haryana [Kishan Chand v. State of Haryana, (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807]*** .)"

22. Thus, no adverse inference can be drawn from the non-examination of Surinder Kumar.

23. HC Dalip Singh Tomar (PW2), PSI Mukul Sharma (PW8) and Constable Navraj (PW12) supported the prosecution case in their examination-in-chief. They categorically stated about the receipt of the information, the visit of the police party with the witnesses to the tea stall of the accused, the recovery of the contraband from the tea stall, its seizure, and the arrest of the accused.

24. Inspector Mukul Sharma (PW8) stated in his cross-examination that somebody personally gave him secret information at Baweja Petrol Pump, where the police had stopped their vehicle. HC Navraj (PW12), on the other hand, stated that no person met the police party near Baweja Petrol Pump except the

witnesses-Ramjani and Surinder. It was submitted that these statements made the receipt of secret information near Baweja Petrol Pump doubtful. This submission cannot be accepted. The incident occurred on 13.06.2014. Inspector Mukul made the statement on 02.09.2022, and HC Navraj made a statement on 02.09.2022 after eight years after the incident. The contradictions were bound to come with time due to the failure of memory and cannot be used to discard the prosecution's case. It was laid down by the Hon'ble Supreme Court in ***Goverdhan Vs. State of Chhattisgarh (2025) SCC Online SC 69*** that the discrepancies are not sufficient to discard the prosecution case unless they are material. It was observed: -

> "**51.** As we proceed to examine this crucial aspect, it may be apposite to keep in mind certain observations made by this Court relating to discrepancies in the account of eyewitnesses.
>
> In ***Leela Ram (Dead) through Duli Chand v. State of Haryana, (1999) 9 SCC 525***, it was observed as follows:
>
> > "9. Be it noted that the High Court is within its jurisdiction, being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses, unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same

should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in ***State of U.P. v. M.K. Anthony [(1985) 1 SCC 505: 1985 SCC (Cri) 105]***. In para 10 of the Report, this Court observed: (SCC pp. 514-15)

> '10. 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 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 witness 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, hypertechnical 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because the power of observation, retention and reproduction differ with individuals.'

10. In a very recent decision in ***Rammi v. State of M.P. [(1999) 8 SCC 649: 2000 SCC (Cri) 26],*** this Court observed: (SCC p. 656, para 24)

'24. When an eyewitness is examined at length, it is quite possible for him to make some discrepancies. No true witness can escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. 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. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

This Court further observed: (SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is an inconsistency in evidence, it is not sufficient to impair the credit of the witness. No doubt, Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by

proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

> "**155. Impeaching the credit of a 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;"

26. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Only such an inconsistent statement, which is liable to be "contradicted", would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness, the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only a limited purpose, i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent, it would not be helpful to contradict that

witness (vide ***Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012: 1959 Cri LJ 1231]***)."

52. Further, this Court also cautioned about attaching too much importance to minor discrepancies of the evidence of the witnesses in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217*** as follows:

"5. ... We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Ordinarily, a witness cannot be expected to recall accurately the sequence of events which 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.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so 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—perhaps it is a sort of psychological defence mechanism activated on the spur of the moment."

53. To the same effect, it was also observed in ***Appabhai v. State of Gujarat 1988 Supp SCC 241*** as follows:

"13. ... The court, while appreciating the evidence, must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution's case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court, by calling into aid its vast experience of men and matters in different cases, must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such a witness, the proper course is to

> ignore that fact only unless it goes to the root of the matter to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version, perhaps for fear that their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in ***Sohrab v. State of M.P. [(1972) 3 SCC 751: 1972 SCC (Cri) 819***] observed : [SCC p. 756, para 8: SCC (Cri) p. 824, para 8]
>
> > '8. ... This Court has held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered....'"

25. Therefore, this contradiction by itself is not sufficient to discard the prosecution's case.

26. The prosecution relied upon the certificate (Ext. PW9/A) in which it was mentioned that Vattan General Store is a respectable registered member of Vyopar Mandal, Paonta Sahib. The Vyopar Mandal should be taken into confidence before carrying out the inspection or taking the samples so as to protect

the rights of the parties. Sanjay Singhal (PW9) stated that the certificate was issued in the name and style of M/s Vatan General Store by the office. The certificate had his signature at point 'A'. The shop is located at Paonta Sahib. He stated in his cross-examination that the police had not collected this document from him, and he did not know from where the police obtained this certificate.

27. This witness categorically stated in his examination-in-chief that the certificate bears his signatures and the shop was located at Paonta Sahib; therefore, the mere fact that this certificate was not collected from him does not mean that the certificate is false. He categorically affirmed the correctness of the certificate by saying that it bears his signature. Thus, not much advantage can be derived by the defence from the part of his testimony wherein he stated that he did not know from where the certificate was taken by the police.

28. Siphai Mahta (DW1) stated that he had been running a shop at Ranbaxy Chowk since 2004. There are two shops adjacent to his shop, which are occupied by Sonu Motors. There was no tea shop adjacent to his shop. The police never visited the premises. He

stated in his cross-examination that the father of the accused used to run a Kariyana Shop at Taruwala, and he used to purchase goods on a credit basis. He produced the registration certificate (Ext. D1/DW1) of his shop, which shows the location of his shop as Kedarpur near Sabu. He denied that the accused was running a tea stall at Ranbaxy Chowk. He admitted that he had appeared in the Court because the father of the accused, Mahinder Singh, used to give goods on a credit basis to him.

29. This witness admitted that he had appeared in the Court because the father of the accused used to supply the goods to him on credit. Learned Trial Court had rightly held that the credibility of this witness was suspect because of this admission, and no reliance could be placed upon his testimony. Further, the registration certificate of his shop shows the place of business as near Sabu, which is not shown to be the place of incident; therefore, his testimony could not have been used to reject the prosecution's case.

30. In any case, the ownership of the shop is not material. The police officials categorically stated that they went to the tea stall where the accused was present, who tried to run away after

seeing the police; therefore, the presence of the accused in the tea stall was duly established by their testimonies. The recovery was effected from the cupboard kept inside the tea stall. Since the accused was present in the tea stall; hence, he was in possession of the cupboard and the articles lying inside it. Thus, even if the ownership of the shop was not established, the accused cannot claim acquittal in the present case.

31. HC Dalip Singh Tomar (PW2) admitted in his cross-examination that the contraband was recovered from an open wooden cabinet. It was submitted that the recovery from the open shelf/cabinet does not show the exclusive possession of the accused. This submission cannot be accepted. The cupboard was accessible to the accused, and it was in his possession. Learned Trial Court had rightly pointed out that the presumption of possession can be drawn from the recovery as per Sections 35 and 54 of the NDPS Act. The accused simply denied the possession and did not claim that it was put by some other person without his knowledge; therefore, the plea taken by him that the substance was not in possession cannot be accepted.

32. It was suggested to the police officials that they had falsely implicated the accused. The accused also claimed that he was taken to the police station, where he was made to put his signature on some blank papers, and thereafter, he was taken to the spot where the photographs were taken. He has not explained why the police should falsely implicate him. He did not attribute any enmity to the police officials and learned Trial Court had rightly discarded this defence of the accused.

33. Learned Trial Court held that the testimonies of the police officials cannot be discarded because they happened to be police officials. The presumption that an official act is done regularly applies to the acts done by police officials as well. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri.L.J.4254*** that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

> "11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law, which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise

trustworthy. Rule of prudence may require more careful scrutiny of their evidence. Wherever, the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

34. Similar is the judgment in ***Karamjit Singh versus State*** ***AIR 2003 S.C 3011*** wherein it was held:

"The testimony of police personnel should be treated in the same manner as a testimony of any other witness and there is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down." (Emphasis supplied)

35. This position was reiterated in ***Sathyan v. State of Kerala,*** ***2023 SCC OnLine SC 986*** wherein it was observed:

22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy then basing the conviction thereupon, cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar*** **v.** ***State (Govt. of NCT of Delhi) 2013 (6) SCC 588***

13. This Court, after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC***

229 : (2007) 2 SCC (Cri) 626] has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that the quality of the evidence weighs over the quantity of evidence.

23. Referring to ***State (Govt. of NCT of Delhi)* v. *Sunil 2001 (1) SCC 652***, in ***Kulwinder Singh v. State of Punjab (2015) 6 SCC 674*** this court held that: —

> "**23.** ... That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note, that in the former it was observed: —

> "21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person

> was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. Recently, this Court in ***Mohd. Naushad*** **v.** ***State (NCT of Delhi) 2023 SCC OnLine 784*** had observed that the testimonies of police witnesses, as well as pointing out memos do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason" which, quite apparently is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW - 1 and PW - 2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police witnesses as undertaken by the trial court and is confirmed by the High Court vide the impugned judgment, cannot be faulted with."

36. The learned Trial Court found the testimonies of the prosecution witnesses credible. It was laid down by the Hon'ble Supreme Court in ***Goverdhan*** (supra) that the Appellate Court should not interfere with the findings regarding the credibility of the witnesses recorded by the learned Trial Court unless there is some illegality in it. It was observed: -

> "**83.** The trial court, after recording the testimony of the PW-10, and on consideration of the same, found her

evidence trustworthy and credible. We see no reason to question the assessment about the credibility of the witness by the Trial Court, which had the advantage of seeing and hearing the witness and all other witnesses. Nothing has been brought to our notice of any serious illegality or breach of fundamental law to warrant taking a different view of the evidence of PW-10.

In this regard, we may keep in mind the valuable observations made by this Court in ***Jagdish Singh v. Madhuri Devi, (2008) 10 SCC 497***, in the following words:

> **"28.** At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in the appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.
>
> **29. .....**
>
> 30. In ***Sara Veeraswami v. Talluri Narayya [(1947-48) 75 IA 252: AIR 1949 PC 32]*** the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated [*Quoting from* ***Watt v. Thomas, [1947] 1 All ER 582***, pp. 583 H-584 A.] : (IA p. 255)
>
> > "... but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the

> appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of the first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing how their evidence is given."

37. Nothing was shown in the cross-examination of the prosecution's witnesses to shake their credibility, and the finding of the learned Trial Court regarding the credibility of the witnesses is to be accepted as correct.

38. It was submitted that the case property was not produced before the learned Magistrate, which is violative of the mandatory provisions of Section 52A of the NDPS Act. This submission is not acceptable. It was laid down in ***Sandeep Kumar Vs State of H.P., 2022 Law Suits (HP) 149***, that the provisions of Section 52-A of the NDPS Act is not mandatory and its non-compliance is not fatal to the prosecution case. It was observed:-

> "24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the NDPS Act and thus

cast a shadow of doubt on its story. The contention raised on behalf of the appellants is that the rules framed for investigations under the NDPS Act are mandatory and have to be strictly followed. Neither the required sample was taken on the spot, nor were the samples preserved by complying with Section 52-A of the Act. It has been argued that compliance with Section 52-A of the Act is mandatory.....

xxxxxx

27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the prosecution's case under the NDPS Act. On the other hand, in ***State of Punjab vs. Makhan Chand, 2004 (3) SCC 453***, the Hon'ble Supreme Court, while dealing with the question of the effect of non-compliance of Section 52-A, has held as under: -

> 10. This contention, too, has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as

> certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for the search of an accused but only deals with the disposal of seized narcotic drugs and psychotropic substances.
>
> 11. Secondly, when the very same standing orders came up for consideration in ***Khet Singh v. Union of India, 2002 (4) SCC 380***, this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules, as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

39. Therefore, the prosecution's case cannot be discarded due to the non-compliance with the provisions of Section 52A of the NDPS Act.

40. It was submitted that the seal was not produced before the Court, and the same is fatal to the prosecution's case. This submission is not acceptable. It was laid down by this Court in ***Fredrick George v. State of Himachal Pradesh*, *2002 SCC OnLine HP 73: 2002 Cri LJ 4600*** that there is no requirement to produce the seal before the Court. It was observed at page 4614:

> "**62.** It is a fact that the seals used for sealing and re-sealing the bulk case property and the samples have not been produced at the trial. In ***Manjit Singh's case (2001 (2) Cri LJ***

(CCR) 74) (supra), while dealing with the effect of non-production of the seal, this Court held as under:

> "In the absence of any mandatory provision in the law/Rules of procedure relating to sealing of the case property, that the seal used in sealing the case property must be produced at the trial, it cannot be said that failure to produce such seal at the trial will be fatal to the case of the prosecution. It will depend on the facts and circumstances of each case whether, by non-production of the seal at the trial, any doubt is raised about the safe custody of the case property or not."

63. In view of the above position in law and the conclusion we have already arrived at hereinabove that there is unchallenged and trustworthy evidence that the case property was not tampered with at any stage, the non-production of the seals used for sealing and re-sealing of the bulk case property of the samples is also of no help to the accused."

41. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the Court is not fatal. It was observed:-

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it into writing and sent the same to PW8, Shri Jaipal Singh, Dy. S.P., C.I.D., Shimla. At 3.05 P.M., PW7, Head Constable Surender Kumar, stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar, travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his Scooter, which contained varying quantities of 'charas'. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla, who had arrived by then, gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. Each were taken from the two Gunny Bags and sealed with the seal 'S' and given to PW5. PW2, Jaswinder Singh, the

> Malkhana Head Constable, resealed it with the seal 'P'. The conclusion of the Trial Court that the seal had not been produced in the Court is, therefore, perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner."

42. It was specifically held in ***Varinder Kumar (supra)*** that when the sample seals were produced before the Court, the conclusion of the Trial Court that the seals were produced before the Court was perverse.

43. In the present case, the seal impression was obtained on the NCB-I form. The sample seals were also produced before the Court. The Court had the sample seals and the NCB-I form to compare the seal impression with the seal impression put on the parcels. Learned Trial Court noticed during the examination of PSI Mukul Sharma (PW8) that the parcel was sealed with seal impressions 'T' and 'H' at four places and seal impression 'FSL' at four places, and the seals were intact. Thus, the learned Trial Court satisfied itself regarding the correctness of the seal impression, and the failure to produce the seal cannot be held to be material.

44. It was submitted that the integrity of the case property has not been established. This submission is also not acceptable. Report of analysis (Ext. PW8/N) shows that one sealed parcel

bearing four seals of 'T' and four seals of seal 'H' was received in the laboratory. The seals were intact and were tallied with the specimen seals signed by the forwarding authority and the seal impression on the form NCB-I. This report establishes the integrity of the case property. It was held in ***Baljit Sharma vs. State of H.P 2007 HLJ 707,*** that where the report of analysis shows that the seals were intact, the case of the prosecution that the case property remained intact is to be accepted as correct. It was observed:

> "A perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner, and the sample seal was separately sent, tallied with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the expert also."

45. Similar is the judgment in ***Hardeep Singh vs State of Punjab 2008(8) SCC 557,*** wherein it was held:

> "It has also come to evidence that to date, the parcels of the sample were received by the Chemical Examiner, and the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage, and the sample received by the analyst for chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant."

46. In ***State of Punjab vs Lakhwinder Singh 2010 (4) SCC 402,*** the High Court had concluded that there could have been tampering with the case property since there was a delay of seven days in sending the report to FSL. It was laid down by the Hon'ble Supreme Court that the case property was produced in the Court, and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of tampering. It was observed:

> "The prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk, and accordingly, the same were seized after taking samples therefrom, which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put in the samples were in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination, when it could not be proved that the seal of the sample was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been recorded in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.
>
> 17. We may at this stage refer to a decision of this Court in ***Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557*** in which there was a delay of about 40 days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable

evidence that the opium was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.

18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with."

47. Similar is the judgment of the Hon'ble Supreme Court in ***Surinder Kumar vs State of Punjab (2020) 2 SCC 563***, wherein it was held: -

"10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such, link evidence, was incomplete. In this regard, it is to be noticed that Yogi Raj, SHO, handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13. The concerned Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar, till further orders. Since Joginder Singh, ASI, was not in possession of the seals of either the SHO or the Investigating Officer, the question of tampering with the case property by him did not arise at all.

11. Further, he has returned the case property, after

> production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh did not, in any way, affect the case of the prosecution. *Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample tallied with the sample seals. In that view of the matter, the chain of evidence was complete.*" (Emphasis supplied)

48. Therefore, the submission that the integrity of the case property has not been established cannot be accepted.

49. Thus, the learned Trial Court had rightly held that the prosecution's case was proved beyond a reasonable doubt for the commission of an offence punishable under Section 15 of the NDPS Act, and the conviction recorded by the learned Trial Court cannot be faulted.

50. Learned Trial Court sentenced the accused to undergo rigorous imprisonment for five years and to pay a fine of ₹25,000/-. The accused was found in possession of 5 kg 700 grams of poppy straw. As per the notification issued by the Central Government, the small quantity of poppy straw has been defined as 1000 kg, whereas the commercial quantity has been defined as 50 kg, which means that a person possessing 50 kg can be sentenced to 10 years imprisonment. It was laid down by the Hon'ble

Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8 SCC 109: 2023 SCC OnLine SC 755*** that the Courts have to apply the principle of proportionality while imposing sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719]*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence.*" The Court also held that imposing "*meagre sentences*" *merely on account of lapse of time* would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712]*** while advocating that sentencing should be fact dependent exercises, the Court also emphasised that : (***Jameel case [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712***], SCC p. 535, para 15)
>
> > "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.*"
>
> (emphasis supplied)
>
> **11.** Again, in ***Guru Basavaraj v. State of Karnataka [Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734: (2012) 4 SCC***

(Civ) 594 : (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189] the Court stressed that: (SCC p. 744, para 33)

> "*33. ... It is the duty of the court to see that an appropriate sentence is imposed, regard being had to the commission of the crime and its impact on the social order*"
>
> (emphasis supplied)

and that sentencing includes "*adequate punishment*". In ***B.G. Goswami v. Delhi Admn. [B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85: 1973 SCC (Cri) 796 : (1974) 1 SCR 222]***, the Court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In ***Sham Sunder v. Puran [Sham Sunder v. Puran, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662]***, the appellant-accused was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that : (SCC p. 737, para 8)

> "*8. ... The court, in fixing the punishment for any particular crime, should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced.*"
>
> (emphasis supplied)

> This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has emphasised, in that sentencing depends on the facts, and the adequacy is determined by factors such as "*the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected*" [***Ravada Sasikala v. State of A.P. [Ravada Sasikala v. State of A.P., (2017) 4 SCC 546: (2017) 2 SCC (Cri) 436: (2017) 2 SCR 379]***]. Other decisions, like: ***State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1 : (2014) 9 SCR 467]; Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159 : (2013) 5 SCR 979] and State of Punjab v. Saurabh Bakshi [State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182 : (2015) 2 SCC (Cri) 751 : (2015) 3 SCR 590]*** too, have stressed on the significance and importance of imposing appropriate, "adequate" or "proportionate" punishments.

51. If this principle is applied to the present case, the sentence of five years is excessive. Learned Trial Court noticed that the appropriate sentence should be proportionate to the contraband recovered but failed to specify how the possession of 5 kg will be proportionate to five years when possession of 50 kg can lead to the imprisonment of 10 years, therefore, the sentence imposed by learned Trial Court is to be interfered with.

52. The accused has been in custody since 02.09.2023. Hence, in these circumstances, the accused is sentenced to undergo imprisonment already undergone by him and pay a fine of ₹10,000/-, and in default of payment of fine, to further undergo

simple imprisonment for three months for the commission of an offence punishable under Section 15 of the NDPS Act.

53. In view of the above, the present appeal is partly allowed and the appellant/accused is sentenced to undergo imprisonment for the period already undergone by him and to pay a fine of ₹ 10,000/- and in default of payment of fine to further undergo simple imprisonment for three months for the commission of an offence punishable under Section 15 of NDPS Act. Subject to this modification, the rest of the judgment passed by the learned Trial Court is upheld.

54. The modified warrant be prepared accordingly.

55. Records of the learned Trial Court be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

25th June, 2025
(*Saurav pathania*)