**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No.4153 of 2013**
**Reserved on: 12.08.2025**
**Date of Decision:30.08.2025**

Khelo Ram ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

*Coram*
***Hon'ble Mr Justice Rakesh Kainthla, Judge.***
***Whether approved for reporting?[1] Yes***

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| For the Petitioner | : | Mr. Janesh Gupta, Advocate |
| For the respondent/ State | : | Mr. Lokender Kutlehria, Additional Advocate General. |

**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 02.7.2013 passed by learned Additional Sessions Judge, Chamba, District Chamba, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 30.07.2012, passed by learned Judicial Magistrate First Class, Dalhousie, District Shimla, H.P. (learned Trial Court), were upheld. *(The parties shall hereinafter be referred to in the same*

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

*manner as they were arrayed before the learned Trial Court for convenience.).*

2. Briefly stated, the facts giving rise to the present revision petition are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 452, 354, 324 and 323 of the Indian Penal Code (IPC). It was asserted that the victim (name being withheld to protect her identity) was alone in her home on 05.03.2007. Her husband had gone to attend a marriage. She was sleeping with her minor child, aged 4 years, in her room. She had not bolted the door. The light was switched on. She heard the door open at 11:30 p.m. and saw Khelo Ram inside the room. She asked the accused why he had entered her room. The accused asked her not to make any noise. The accused caught hold of her arm and started kissing her. He caught her breasts. She shouted for help. Her brother-in-law came to her room. The accused ran away after seeing the victim's brother-in-law. The victim reported the matter to the police. An entry (Ext.PW-4/A) in the daily diary was recorded, which was converted into an F.I.R. (Ext.PW-6/A). An application (Ext.PW-7/A) was filed for conducting the medical examination of the victim. Dr. Kavita Thakur (PW-3) conducted

the medical examination of the victim and found a bite mark over the cheek and pain and tenderness in the neck. She issued the MLC (Ext.PW3/A). SI Naroop Singh (PW-7) conducted the investigation. He visited the spot and prepared the site plan (Ext.PW-7/B). He arrested the accused and recorded the statements of witnesses as per their version. After the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Section 452, 354, 323 and 324 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. PW-1 is the brother-in-law of the victim (PW-5), who came to the spot after hearing the victim's noise. Surjeet Singh (PW-2) did not support the prosecution's case. Dr. Kavita Thakur (PW-3) conducted the medical examination of the victim. HHC Subhash Chand (PW-4) proved the entry in the daily diary. ASI Santosh Kumar (PW-5) signed the F.I.R. SI Naroop Singh (PW-6) investigated the case

5. The accused, in his statement recorded under Section 313 of Cr.P.C., stated that a false case was made against him due to enmity. He stated initially that he wanted to lead defence evidence, but made a statement subsequently that he did not want to lead any defence evidence.

6. Learned Trial Court held that the victim's testimony was duly corroborated by her brother-in-law and the medical evidence. The Medical Officer stated in her cross-examination that the injury suffered by the victim could have been self-inflicted, but this admission was unbelievable because no one can bite their cheek and mandible. The accused claimed that he was implicated because of enmity; however, nothing was suggested to the victim and her brother-in-law to show any enmity. Therefore, the learned Trial Court convicted and sentenced as under: -

| Sections | Sentence imposed |
|---|---|
| 451 of IPC | To undergo simple imprisonment for six months and was directed to pay a fine of ₹500/-, and in default of payment of the fine, the convict shall further undergo simple imprisonment for one month. |
| 354 of IPC | Simple imprisonment for six months |

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| 323 of IPC | Simple imprisonment for three months |
| 324 of IPC | Simple imprisonment for six months. |

The learned Trial Court directed that all the substantive sentences of imprisonment would run concurrently.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Chamba, District Chamba, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the victim's testimony was duly corroborated by the medical evidence and the statement of her brother-in-law. The victim reported the matter to the police on the same night. There was no reason for the victim to falsely implicate the accused. Therefore, the appeal filed by the accused was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below failed to notice the improvements made by the victim. She narrated many facts for the first time in the Court, and these improvements shattered her

credibility. There was no evidence to show that the accused had committed the offence. The victim's brother-in-law admitted that he could not identify the accused due to the darkness, and the Medical Officer admitted that the injuries could be self-inflicted, which made the prosecution's case highly suspect. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Court below be set aside.

9. I have heard Mr. Janesh Gupta, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

10. Mr. Janesh Gupta, learned counsel for the petitioner, submitted that the learned Courts below erred in appreciating the evidence. The victim materially improved upon her earlier version, and she was duly confronted with the improvements. The victim's brother-in-law was declared hostile by the prosecution. The learned Courts below erred in relying upon his testimony. Surjeet Singh (PW-2) did not support the prosecution's case, and he denied his previous statement recorded by the police. The arrival of the victim's brother-in-law on the spot was highly doubtful. The victim stated in her examination-in-chief that the accused

had tried to strangulate her child, but this fact was not mentioned in the initial report made to the police. All these circumstances made the prosecution's case highly suspect, and the learned Trial Court erred in convicting and sentencing the accused. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that both the learned Courts below have concurrently found that the accused trespassed into the victim's house and outraged her modesty. The matter was reported to the police immediately and contains the details of the incident. This rules out the concoction and fabrication. Learned Trial Court had rightly held that the statement of the Medical Officer in the cross-examination regarding the injury being self-inflicted was due to some error. There is no infirmity in the judgments and order passed by the learned Courts below. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

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

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

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The

object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

**15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

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

of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of a charge is a much-advanced stage in the proceedings under CrPC."

**16.** This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

"27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of

the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

*27.3.* The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in a conviction or not at the stage of framing of charge or quashing of charge.

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*27.9.* Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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*27.13.* Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

**17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

**13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

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

**14.** In the above case, also a conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its view. This Court set aside the High Court's order, holding that the

> High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

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

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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

18. Victim (PW-5) stated in his examination in chief that her husband had gone to attend a marriage. She was sleeping in her room with her child. She had not bolted the door. The light was switched on. She heard some noise at 11:30 p.m. She woke up and saw the accused, who tried to strangulate her and her child. He kissed and bit on her cheek. She shouted for help, and her

brother-in-law came to her room from the rear door because the front door was bolted by the accused. The accused ran away after seeing her brother-in-law. She reported the matter to the police. She was also medically examined on the same night. She stated in her cross-examination that she could not tell the distance between her house and the Police Post. She volunteered to say that the fare of ₹3/- was charged for covering the distance. They reached the Police Post at 11:00 p.m. The houses of other people are located near her house, and any cry in her house is audible in the neighbourhood. Her room has one window and one door. The window has wire mesh, and the window does not open. The accused is a resident of her village. The brother of the accused was working as a mason. She had mentioned in her statement that the accused had tried to strangulate her and her child and that he had bitten her cheek. She had also mentioned that her brother-in-law came to her room from the rear door. The accused remained in the room for 15-20 minutes, and she continued to shout. She volunteered to say that her voice was drowned in the music being played in the neighbourhood. She kicked the door and called her brother-in-law, who came on the spot. The accused used to visit

her brother-in-law. She denied that a false case was made because she was to pay money to the accused.

19. It was submitted that this witness had materially improved upon her version. She was duly confronted with the various improvements made by her, and these improvements shattered her credibility. This submission will not help the accused because HHC Subhash Chand (PW-4), who recorded the entry in the daily diary (Ext.PW-4/A) and SI Naroop Singh (PW-7), who recorded her statement under Section 162 of Cr. P.C. were not asked about these omissions. Proviso to Section 162 of Cr.P.C. permits the use of the statement recorded by the police to contradict a witness. It reads:

> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

20. Thus, it is apparent that the defence can use the statement to contradict a witness if the statement is proved. 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."

21. 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."

22. 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 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 above, the above procedure was not followed while cross-examining the witness to his previous statements, and, therefore, we have no alternative but to accept the statement given by this witness before the trial Court that he saw the accused Badaruddin lowering the gun from his chest to be his correct version."

23. 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 it, the statement 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 they 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."

24. 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: (2013) 3 Cal LT 193: (2013) 128 AIC 546: (2014) 2 RCR (Cri) 970: (2013) 3 DMC 760*** 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.
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> **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 is proper procedure. A witness may have stated in the statement under Section 161, Cr.P.C. that 'X murdered Y'. In the 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 statement under Section 161, Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion contradicted will be specified. The trial Court, in the event of contradiction, has to record as under.

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

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

25. Thus, the submission that the credibility of the victim has been shaken is not acceptable.

26. The victim reported the matter to the police on the same night at 01:45 a.m. The entry in the daily diary (Ext.PW-4/A) contains the details of the incident in the same manner in which it was mentioned in the Court. Learned Appellate Court had rightly held that the promptly lodged F.I.R. would rule out the possibility of concoction, fabrication and embellishment and provided substantial corroboration to the testimony of the victim. It was laid down by the Hon'ble Supreme Court in ***Goverdhan v. State of Chhattisgarh, (2025) 3 SCC 378: 2025 SCC OnLine SC 69*** that a promptly lodged FIR rules out the possibility of fabrication. It was observed at page 419:

> "**74.**...In our opinion, since the FIR was filed soon after the incident occurred and the names of the appellants were again mentioned in the medical record as the assailants within a very short span of time, there was hardly any scope for fabrication of evidence and falsely implicating the appellants in the case, as they were already named in the FIR...."

27. Victim's brother-in-law (PW-1) stated that he was present in his home. His sister-in-law and her child were sleeping in another room. She shouted for help. He opened his door and saw the accused. He was running away from the victim's

room. The accused was not present in the Court. The victim told him that the accused had molested her. He was permitted to be cross-examined. He admitted that the victim had told him that the accused had bitten her, and he had seen a tooth mark on the victim's cheek. He admitted that the accused had bolted the door from the outside. He came out of the rear door. He stated in his cross-examination that seven or eight houses are located adjacent to his house. He went to the room of the victim after 5-10 minutes. It was dark outside. The light was switched off. Many people were walking on the road. He did not see any person bolting the door. He was not on good terms with the family of the accused. He, the victim and two or three people went to the Police Post. He could not say who had run away from the spot.

28. It was submitted that, as per the victim, there was only one door. Therefore, this witness could not have come out of the rear door, and the whole prosecution case that he visited the victim's room after hearing the noise became doubtful. This submission is not acceptable. The victim deposed about the door to her room, whereas this witness deposed about the door to his room. Therefore, both witnesses were deposing about the

different rooms, and there are no contradictions in their testimonies.

29. It was submitted that this witness was declared hostile and no reliance can be placed upon his testimony. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***Selvamani v. State, 2024 SCC OnLine SC 837,*** that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

> "**9.** A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627: 1991 INSC 153***, relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana (1976) 1 SCC 389: 1975 INSC 306, Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka (1980) 1 SCC 30: 1979 INSC 126***, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.
>
> **10.** This Court, in the case of ***C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567: 2010 INSC 553***, has observed thus:
>
> > "**81.** It is a settled legal proposition that (***Khujji case***, SCC p. 635, para 6)

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

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

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

84. In the instant case, some of the material witnesses, i.e. B. Kamal (PW 86) and R. Maruthu (PW 51), turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with the law. Some omissions and improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is a settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and

improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide ***Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, BharwadaBhoginbhaiHirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State of U.P. v. Santosh Kumar, (2009) 9 SCC 626*** and ***State v. Saravanan, (2008) 17 SCC 587***"

**11.** In the case of ***Vinod Kumar v. State of Punjab (2015) 3 SCC 220: 2014 INSC 670***, this Court has observed thus:

"**51.** It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier, had given enough time for prevarication due to many a reason. A fair trial is to be fair to both the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever, it was deferred, and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 accepted the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that the amount had been recovered from the accused. He had also not stated in his statement that the accused and witnesses were taken to the Tehsil, and it was there that he had signed all the memos.

53. Reading the evidence in its entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the reexamination impel us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination, he stated that he had not gone with Baj Singh to the Vigilance Department at any time, and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of the entire evidence in the examination-in-chief and the re-examination.

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57. Before parting with the case, we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in

which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

**57.1.** Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination, and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for a grant of time, but the same is not taken note of.

**57.2.** As has been noticed earlier, in the instant case, the cross-examination has taken place after a year and 8 months, allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

**57.3.** There is no cavil over the proposition that there has to be a fair and proper trial, but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all, bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused, for his benefit, takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per the law. If adjournments are granted in this manner, it would be tantamount to a violation of the rule of law and eventually turn such trials into a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant an adjournment for non-acceptable reasons.

**57.4.** In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative that if the examination-in-

> chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours, the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of a proper and fair trial.
>
> **57.5.** The duty of the court is to see that not only the interest of the accused as per law is protected, but also the societal and collective interest is safeguarded. It is distressing to note that despite a series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to the trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."
>
> **12.** Relying on the aforesaid judgments, this Court has taken a similar view in the case of ***Rajesh Yadav v. State of Uttar Pradesh (2022) 12 SCC 200: 2022 INSC 148***."

30. In the present case, the victim's brother-in-law admitted that the prosecution's case after he was declared hostile. He was not contradicted with his previous statement, and he is not shown to have made inconsistent statements on two different occasions. His credibility has not been impeached under Section

155 (3) of the Indian Evidence Act. Therefore, his testimony was not shaken after he was declared hostile and was rightly relied upon by the learned Courts below.

31. It was submitted that he did not identify the accused in the Court, which made the prosecution's case suspect. This submission overlooks the fact that the accused was absent on 21.02.2011, the day of his examination and an application seeking exemption of the accused from his personal appearance was filed, which was allowed; therefore, it was not possible for this witness to identify the accused in the Court. The fact that the accused has sought the exemption and consented to the examination of the witnesses shows that the identity is not disputed. Thus, the submission that failure to identify the accused will make the prosecution's case suspect cannot be accepted.

32. This witness admitted in his cross-examination that there was darkness and he could not identify the accused. This has to be read with his examination–in–chief wherein he categorically stated that he saw the accused Khelo Ram running from the victim's room. He also stated that the victim told him that the accused had molested her. This statement was made in

the course of the same transaction and is admissible under Section 6 of the Indian Evidence Act. It was laid down by the Hon'ble Supreme Court in ***Sukhar v. State of U.P., (1999) 9 SCC 507: 2000 SCC (Cri) 419: 1999 SCC OnLine SC 1005*** that a contemporaneous statement is admissible under Section 6 of the Indian Evidence Act. It was observed at page 511:

> "**6.** Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts, and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule, as it is stated in ***Wigmore's Evidence Act,*** reads thus:
>
> > "Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example, that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."
>
> **7.** ***Sarkar on Evidence*** (15th Edn.) summarises the law relating to the applicability of Section 6 of the Evidence Act thus:

"*1.* The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover, the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto, unless such facts are part of a transaction which is continuous.

*2.* The declarations must be substantially contemporaneous with the facts and not merely the narrative of a past.

*3.* The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & and the declarations of all concerned in the common object are admissible.

*4.* Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated."

**8.** This Court in ***Gentela Vijayavardhan Rao v. State of A.P. [(1996) 6 SCC 241: 1996 SCC (Cri) 1290],*** considering the law embodied in Section 6 of the Evidence Act, held thus: (SCC pp. 246-47, para 15)

"*15.* The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue as to form part of the same transaction that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statements or facts admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such a fact or statement must be a part of the same transaction. In other words, such a statement must have been made

> contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication, then the statement is not part of res gestae."

**9.** In another recent judgment of this Court in ***Rattan Singh v. State of H.P. [(1997) 4 SCC 161: 1997 SCC (Cri) 525],*** this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: (SCC p. 167, para 16)

> "[T]he aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity in time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus:
>
> > '(*a*) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the bystanders at the beating, or so *shortly before* or after it as to form part of the transaction, is a relevant fact.' (emphasis supplied)
>
> Here the act of the assailant intruding into the courtyard during the dead of the night, the victim's identification of the assailant, her pronouncement that the appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence, it is admissible under Section 6 of the Evidence Act."

33. Therefore, the statement of this witness in the cross-examination that he was unable to identify the accused in the Court will not make the prosecution's case suspect.

34. Dr. Kavita Thakur (PW-3) conducted the medical examination of the victim and found bite marks over the right

cheek and below the right mandible. The colour of the abrasion was dark red. She also found pain and tenderness in the neck. She stated that the injury could have been caused within 12 hours during the molestation. She stated in her cross-examination that the injury could have been self-inflicted. She observed the imprints of the teeth on the injury, but no bite mark on the lip. She could not tell the name of the tooth which caused the bite mark.

35. Learned Trial Court had rightly pointed out that her cross-examination that the injury could have been self-inflicted was highly improbable because a person cannot cause a bite mark on the cheek by self-infliction. Her testimony, on the other hand, clearly shows that she had noticed the bite mark, and this substantially corroborates the statement of the victim.

36. It was submitted that the victim had not mentioned to the police that the accused tried to strangulate her child, which makes her testimony highly suspect. This submission is not acceptable. As already stated, the previous statement made by the victim was not proved by the Investigating Officer and the person who had recorded the entry in the daily diary. The victim

categorically stated that she had narrated these facts to the police, and there is nothing on record to contradict her. Therefore, her testimony cannot be discarded because of the failure of the police to record the facts mentioned by her.

37. It was submitted that the victim's brother-in-law is related to her, and he is an interested witness. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Laltu Ghosh v. State of W.B., (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC*** 2 that a related witness is not an interested witness and his testimony cannot be rejected on the ground of interestedness. It was observed:

> "**12.** As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see ***State of Rajasthan*** **v.** ***Kalki*** **[*State of Rajasthan* v. *Kalki*, *(1981) 2 SCC 752: 1981 SCC (Cri) 593]*; *Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590]*** and ***Gangabhavani v. Rayapati***

*Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]* ).

**13.** Recently, this difference was reiterated in *Ganapathi v. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793]*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793]*, SCC p. 555, para 14)

> "*14.* "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"...."

**14.** In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465]*, wherein this Court observed : (AIR p. 366, para 26)

> "*26.* A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

**15.** In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in ***Jayabalan v. State (UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966]***: (SCC p. 213, para 23)

> "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses, must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses, but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

38. It was laid down by the Hon'ble Supreme Court in ***Thoti Manohar vs State of Andhra Pradesh (2012) 7 SCC 723*** that the Court cannot discard the testimony of a witness on the ground of a relationship. It was observed:

> "31. In this context, we may refer with profit to the decision of this Court in ***Dalip Singh v. State of Punjab AIR 1953 SC 364***, wherein Vivian Bose, J., speaking for the Court, observed as follows: -
>
> > "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men

hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in ***Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)***."

32. In the said case, it was further observed that:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

33. In ***Masalti v. State of U.P. AIR 1965 SC 202***, it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

34. In ***Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82***, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to scrutiny and

accepted with caution. If, on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

35. In ***Kartik Malhar v. State of Bihar (1996) 1 SCC 614***, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or some other reason.

36. In ***Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh AIR 2006 SC 3010***, while dealing with the liability of interested witnesses who are relatives, a two-judge Bench observed that:

> "It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased if it is otherwise found to be trustworthy and credible."

The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If, on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon.

> "If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

39. This position was reiterated in ***Rajesh Yadav vs. State of Bihar 2022 Cr.L.J. 2986 (SC)*** as under:

> "28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a

natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstands the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness only when he is desirous of implicating the accused in rendering a conviction, on purpose.

29. When the court is convinced of the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in ***Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591***:

> "32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In ***Dalip Singh v. State of Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465***, Vivian Bose, J. for the Bench observed the law as under (AIR p. 366, para 26)
>
> > "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along

with the guilty, but the foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

33. In ***Masalti v. State of U.P., (1964) 8 SCR 133: AIR 1965 SC 202: (1965) 1 Cri LJ 226]***, a five-judge Bench of this Court has categorically observed as under (AIR pp. 209-210, para 14)

"14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence, whether or not the evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to the failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. The judicial approach has to be cautious in dealing with such

> evidence, but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

34. In ***Darya Singh v. State of Punjab [(1964) 3 SCR 397: AIR 1965 SC 328: (1965) 1 Cri LJ 350]***, this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised, but no corroboration is necessary for acceptance of his evidence. In ***Harbans Kaur v. State of Haryana [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199]***, this Court observed that: (SCC p. 227, para 6)

> "6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves with is ***Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773]***, wherein this Court, after observing previous precedents, has summarised the law in the following manner: (SCC p. 164, para 38)

> "38. ... it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If, on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the "sole" testimony of such a witness. A close relationship of the witness with the deceased or the victim is no grounds to reject his evidence. On the contrary, a close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

> 36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule, which remains the bulwark of this system and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desires to do so. Similarly, he may not be in a position to provide evidence in an impartial manner when it involves his interests. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are the most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case."
>
> 30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect, as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself, which extends the maximum discretion to the court."

40. Similar is the judgment in ***M Nageswara Reddy vs. State of Andhra Pradesh 2022 (5) SCC 791,*** wherein it was observed:

> "10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7."

41. It was laid down by the Hon'ble Supreme Court in ***Mohd. Jabbar Ali v. State of Assam, 2022 SCC OnLine SC 1440***, **holds** that merely because the witnesses are related to each other is no reason to discard their testimonies. The Court is required to see their testimonies with due care and caution. It was observed:

> **55.** It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court, in a number of cases, has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies

cannot be disregarded; however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinised with greater care and circumspection. In the case of ***Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381***, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

**56.** In ***Raju alias Balachandran*** **v.** ***State of Tamil Nadu***, ***(2012) 12 SCC 701***, this Court observed:

> "29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised, and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in ***Dalip Singh [AIR 1953 SC 364]*** and pithily reiterated in ***Sarwan Singh [(1976) 4 SCC 369***] in the following words: (***Sarwan Singh case [(1976) 4 SCC 369***, p. 376, para 10)
>
> > "10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require, as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth, such evidence could be relied upon even without corroboration."

**57.** Further delving into the same issue, it is noted that in the case of *Ganapathi* v. *State of Tamil Nadu*, (2018) 5 SCC 549, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

42. This position was reiterated in ***Baban Shankar Daphal v. State of Maharashtra, 2025 SCC OnLine SC 137,*** wherein it was observed:

> "**27.** One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased, and for prudence, the prosecution ought to have examined some other independent eyewitnesses as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses, who had also reached the place of the incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinised with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.
>
> **28.** In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinised. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.
>
> **29.** The distinction between "interested" and "related" witnesses has been clarified in *Dalip Singh* v. *State of*

*Punjab*,[3] where this Court emphasised that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

> **i.** *Md. Rojali Ali* v. *The State of Assam, Ministry of Home Affairs through secretary (2019) 19 SCC 567*;
>
> **ii.** *Ganapathi* v. *State of T.N. (2018) 5 SCC 549*;
>
> **iii.** *Jayabalan* v. *Union Territory of Pondicherry (2010) 1 SCC 199*.

**30.** Though the eyewitnesses who have been examined in the present case were closely related to the deceased, namely his wife, daughter and son, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitnesses has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.

43. In the present case, the incident took place inside the house, and the inmates of the house would be natural witnesses. Therefore, the testimony of the victim's brother-in-law cannot be discarded because he is related to her.

44. Surjeet Singh (PW-2) did not support the prosecution's case. He was contradicted by his previous statement and he denied the same. Inspector Naroop Singh (PW-7) proved that he had recorded the statement of Surjeet Singh (Ext.PW-7/C) as per his version. Therefore, Surjeet Singh (PW-2) is shown to have made two inconsistent statements- one before the police and another before the Court, and 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 discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

45. A similar view was taken in ***Ian Stilman versus. State 2002(2) Shim. L.C. 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".

46. In the present case, the statement of Surjeet Singh (PW-2) recorded in the Court has been wholly contradicted by his previous statement recorded by the police official. Hence, he stands thoroughly discredited and his testimony cannot be used to discard the prosecution case.

47. It was submitted that no neighbour had arrived on the spot, even though seven-eight houses are located in the vicinity,

which makes the prosecution's case suspect. This submission will not help the accused. The victim categorically stated that music was playing in the neighbourhood and her shouts were not audible. Thus, she has provided a valid explanation. Further, the incident had taken place during the night when people are usually sleeping. Therefore, the prosecution's case cannot be doubted because of the non-examination of the people in the vicinity.

48. The learned Courts below had rightly held that the accused entered the house of the victim and outraged her modesty. He has caused simple hurt to her with his teeth. It was laid down by the Delhi High Court in ***Neetu Bhandari v. State, 2019 SCC OnLine Del 11383,*** that the injury caused by the teeth does not fall within the definition of Section 324 of the IPC. It was observed:

> "**5.** This Court is of the view that the question whether human teeth fall within the scope of an instrument for cutting as mentioned under Section 324 of the IPC is no longer *res integra.* The Supreme Court in the case of ***Shakeel Ahmed v. State (Delhi), (2004) 10 SCC 103*** has authoritatively held that "*teeth of a human being cannot be considered as a deadly weapon as per the description of deadly weapon enumerated under Section 326 IPC*"
>
> **16.** Section 326 of the IPC set out below-
>
> > **"326. Voluntarily causing grievous hurt by dangerous weapons or means-**
> >
> > Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any

> instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

**17.** It is at once clear that the language of Section 326 of the IPC is almost identical to the language of Section 324 of the IPC. While Section 326 of the IPC relates to an offence of causing grievous hurt by means of instruments as specified therein, Section 324 of the IPC is attracted if the hurt caused by those instruments is not grievous. The essential ingredients of both the Section, apart from the nature of hurt, remain the same.

**18.** In ***Shakeel Ahmed*** (supra), the Supreme Court had considered a case where the assailant had bitten off the phalanx of the index finger of the injured. The injury caused fell within the description of grievous hurt and therefore, the appellant was convicted of an offence under Section 326 of the IPC. The Supreme Court held that the offence could not be considered as an offence under Section 326 of the IPC and, at best, had remained an offence punishable under Section 325 of the IPC. The Court reasoned that the teeth of a human being could not be considered as a deadly weapon as enumerated under Section 326 of the IPC.

**19.** In ***Khemchand Soni v. The State of Madhya Pradesh: Crl. Rev. No. 2411/2012, decided on 20.03.2013***, the High Court of Madhya Pradesh had proceeded on the basis that the question whether teeth could be considered as a cutting weapon or not would depend on the wound inflicted. The Court reasoned that if a thumb is chopped by teeth, then it would be considered a sharp cutting weapon. However, if a

bone was broken due to the pressure exerted by the teeth, then the injury could be considered as caused by a blunt object. This Court does not find the said reasoning persuasive. The question of whether the teeth are an instrument for cutting would not be dependent on the manner in which the teeth are used. Similarly, the question whether an instrument is for shooting or stabbing would not be dependent upon the manner in which it is used.

**20.** In this regard, it would be relevant to refer to the observations made by the Supreme Court in ***Anwarul Haq v. State of U.P., (2005) 10 SCC 581***. The Court had set out the provisions of Section 324 of the IPC and had observed as under:—

> "12....The expression "any instrument, which is used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this Section...."

**21.** In view of the above, the contention that the complaint did not indicate an offence punishable under Section 324 of the IPC is merited. The status report does indicate commission of an offence under Section 323 of the IPC. However, the said offence is not cognizable and therefore, the police authorities could not have investigated the same without the order of a Magistrate.

**22.** In view of the above, the FIR to the extent that it records commission of an offence under Section 324 of the IPC, is set aside. It would be open for respondent no. 2 to seek an appropriate order from the concerned Magistrate."

49. Madhya Pradesh High Court also took a similar view in ***Ramkesh v. State of M.P., 2019 SCC OnLine MP 2615,*** wherein it was observed:

**5.** Having heard learned counsel for the parties at length and gone through the judgment and order passed by both the Courts below and also perused the record, particularly the statement of Bhawanideen (PW-1) and Ganesh (PW-2) and the medical expert Dr. Surendra Sharma (PW-7), the finding of both the courts below that the applicant voluntarily caused simple injury to Ganesh (PW-2) and also caused injury on the cheek of Bhawanideen (PW-1) by biting are not required any interference. However, the injury caused by biting cannot be considered to be caused by a deadly weapon or a cutting weapon, as held by the Apex Court in the case of ***Shakeel Ahmed v. State of Delhi, (2004) 10 SCC 103***. Therefore, the applicant's conviction under Section 324 of the IPC is not sustainable. However, looking to the other evidence and concurrent findings of the trial court and appellate court, there is no hesitation to confirm the conviction under Section 323 of the IPC (on two counts). Accordingly, the conviction is modified.

50. A similar view was taken by the Madras High Court in ***Ponnusamy v. State, 2020 SCC OnLine Mad 13455,*** wherein it was observed:

> "**9.** The learned Counsel for the appellant/accused took a defence that teeth cannot be termed as a weapon. From the evidence of the Doctor [PW8] and the Accident Register [Ex. P5], it is clear that the victim [PW1] has sustained an avulsion injury in the thumb of the right hand with loss of pulp and nail, and it is a grievous injury due to amputation of the tip of the thumb. The thumb is a very important part of the body. Amputating a part of the body, no doubt, is a grievous one, but the offence has been committed by biting.
>
> **30.** Though several High Courts around the Country took different stands as to the definition of 'instrument' to attract the offence under Sections 324 and/or 326 IPC, the Hon'ble Supreme Court in ***Shakeel Ahmed v. State, Delhi, reported in (2004) 10 SCC 103***, has held as follows:

> "2. The appellant stands convicted under Section 326 read with Section 34 of the Penal Code, 1860. Injuries, no doubt, are grievous as the phalanx of the index finger has been snipped off. But the allegation is that the assailant had bitten the index finger and caused the said injury. The teeth of a human being cannot be considered as a deadly weapon as per the description of a deadly weapon enumerated under Section 326 IPC. Hence, the offence cannot escalate to Section 326. It can best remain only at Section 325 IPC. We, therefore, alter the conviction to Section 325 IPC read with Section 34 IPC."
>
> **31.** In view of the aforesaid pronouncement, irrespective of the nature of injury, ie., simple and grievous, tooth of a human being cannot be considered as deadly weapon, as such, the injury caused by human tooth cannot attract Sections 324 and/or 326 IPC, but, attract Sections 323 and/or 325 IPC."

51. Jammu and Kashmir High Court also held similarly in ***Satish Kumar v. State, 2025 SCC OnLine J&K 739*** as under:

> "**25.** Various High Courts across the country have taken the view that a human tooth may be described as an instrument of cutting and that causing a tooth bite injury on a delicate part of the body by the accused may fall under Section 324 or 326 of the Penal Code, depending upon the nature of the injury- 'simple' or 'grievous'. In this context, reference may be made to ***Jagat Singh v. State, 1984 Cri LJ 115, Rameshwar v. State of Rajasthan, 1990 WLN (UC) 59, Hari Chandra v. State of Madhya Pradesh, (2011) 104 AIC 755, Chaurasi Manji v. State of Bihar, AIR 1970 Pat 322, Chotta @ Akash v. State of Madhya Pradesh, dated 16.10.2015*** and ***Gopal Bhai Chhaganlal Soni v. State of Gujarat, (1972) 13 GLR 848***.
>
> **26.** Let us have a look at Sections 324 and 326 RPC: —
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> 324. **Voluntarily causing hurt by dangerous weapons or means**

"Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

326. **Voluntarily causing grievous hurt by dangerous weapons or means**

"Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

**27.** Sections 324 and 326 of the Penal Code respectively deal with causing 'hurt' or 'grievous hurt' by dangerous weapons or means. In view of the text and context in which the word "any instrument" is used in the aforesaid Sections, it cannot be considered a body part. The language employed in the provisions is voluntarily causing hurt or grievous hurt, "by means of any instrument for shooting, stabbing or cutting or any instrument which is used as a weapon of offence". A human bite, no doubt, is capable of

causing 'hurt' or 'grievous hurt', as it can sever a body part. However, it is evident from the plain language of the provisions and the context in which the expression "instrument" is employed that a body part cannot be treated as an instrument for shooting, stabbing or cutting or as a weapon of offence. It necessarily refers to an instrument other than a body part.

**28.** The prosecution's case on hand is that the appellant bit the complainant's right ear, and it got severed. In a similar fact situation, Hon'ble Supreme Court in ***Shakeel Ahmed v. State of Delhi, (2004) 10 SCC 103***, where the allegation was that the accused bit the index finger and a phalanx was snipped off, held that human teeth cannot be considered a deadly weapon within the meaning of Section 326 IPC and that such an offence would at best fall under Section 325 IPC. The relevant excerpt of the judgment for ease of reference is given below: —

> "The appellant stands convicted under Section 326 read with Section 34 of the Penal Code, 1860. Injuries, no doubt, are grievous as the phalanx of the index finger has been snipped off. But the allegation is that the assailant bit the index finger and caused the said injury. The teeth of a human being cannot be considered a deadly weapon as per the description of a deadly weapon enumerated under Section 326 IPC. Hence, the offence cannot escalate to Section 326. It can best remain only at Section 325 IPC. We, therefore, alter the conviction to Section 325 IPC read with Section 34 IPC."

**29.** It is evident from the afore-quoted observation of the Hon'ble Supreme Court that a human tooth does not fall under the definition of a dangerous weapon within the meaning of Section 324 or 326 of the Penal Code, and if grievous hurt is caused by a human bite, the offence would likely fall under Section 325 of the Penal Code. No doubt, the severity of the injury, particularly the chopping of a body part, is a relevant consideration, but the charge must be based on the means used, i.e., the teeth, which are a part of the human body and not a deadly weapon *per se*. Based on

the principle of law enunciated by the Apex Court in ***Shakeel Ahmed***, although a human tooth may be described as an instrument or weapon in a broad sense, but it cannot automatically be treated as a deadly weapon within the scope of Sections 324 or 326 of the Penal Code because human tooth being a natural part of the human body, cannot be equated with weapons specifically categorised as a dangerous weapons in law. Therefore, if "hurt" or "grievous hurt" is caused by a human bite, Sections 324 or 326 of the Penal Code would not be attracted, and the charge would fall within the limits of "hurt" and "grievous hurt" as envisaged under Section 323 or 325 of the Penal Code."

52. Bombay High Court also took a similar view in ***Tanaji Shivaji Solankar and Ors. vs. The State of Maharashtra and Ors. (04.04.2025 - BOMHC): MANU/MH/3261/2025*** and observed:

6. We would like to go by the contents of the First Information Report, statements of witnesses and other documents to consider whether the offence under Section 324 of the Indian Penal Code has been made out or not. The other offences, i.e. Sections 323, 504, 506, read with Section 34 of the Indian Penal Code, are non-cognizable in nature, and in that event First Information Report under Section 154 of the Code of Criminal Procedure will not be maintainable. First Information Report and statements of witnesses, especially the injured, would also show that when the informant had allegedly requested applicants not to transport bricks from the brick kiln till the decision of the case, she states that she was assaulted. She levels an allegation against applicant No. 1 that he took a bite (i.e. by using his teeth as a weapon) to the left forearm of her brother Laxman, and she also states that applicant No. 2 had taken a bite of her right hand. That means, she has levelled an allegation that applicants Nos. 1 and 2 both have used teeth as a weapon. As per the ingredients of Section 324 of

the Indian Penal Code, the hurt should be by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood etc. As aforesaid, the medical certificates of the informant and her brother show that there was simple hurt to both of them. Now, the weapon that is used is stated to be a hard and blunt object. The teeth marks were not noted by the Medical Officer, and he has given the description of injury as Contused Lacerated Wound. The dimensions given cannot match the injury that might be caused by human teeth. The natural curve in the case of a bite is not noted. Therefore, it is hard to believe that injuries which were noted on the person of the informant and her brother would have been caused by human teeth. Hon'ble Supreme Court in Shakeel Ahmed (supra), while considering the offence under Section 326 of the Indian Penal Code, observed that the teeth of a human being cannot be considered as a deadly weapon as per the description of a deadly weapon enumerated under Section 326 of the Indian Penal Code. If we consider Section 326 of the Indian Penal Code, then as compared to Section 324 of the Indian Penal Code, there is only the difference of the word 'hurt' and 'grievous hurt' in the respective sections and then the change in the sentence. Therefore, the observations in ***Shakeel Ahmed*** (supra) are applicable to the case under Section 324 of the Indian Penal Code also. In ***Shakeel Ahmed*** (supra) injury was grievous as the phalanx of the index finger was snipped off, and, therefore, it was considered under Section 325 of the Indian Penal Code. If we apply the same rule, then the injury would come down to Section 323 of the Indian Penal Code, which is non-cognizable in nature. Therefore, with this evidence, though there appears to be a cross case, yet, it would be an abuse of the process of law to ask the applicants to face the trial, as the ingredients of the offence under Section 324 of the

> Indian Penal Code are not attracted for the aforesaid reasons."

53. Thus, the predominant view of the High Courts in the country is that injury caused by teeth does not fall within the purview of Section 324 of the IPC. I respectfully agree with the same. Hence, the learned Trial Court erred in convicting and sentencing the accused of the commission of an offence punishable under Section 324 of the IPC.

54. The learned Trial Court had imposed a sentence of simple imprisonment for six months each for the commission of offences punishable under Sections 451 and 354, and three months for the commission of offence punishable under Section 323 of the IPC. This cannot be said to be excessive; rather, it appears to be lenient considering that the victim was alone in her house and the accused had taken advantage of this fact by entering her house. A house is considered to be the castle of a person, and trespassing into the house in the middle of the night was a grave offence. Therefore, the sentence of six months is not excessive.

55. In view of the above, the present appeal is partly allowed. The judgment and order passed by the learned Trial Court convicting and sentencing the accused of the commission of an

offence punishable under Section 324 of IPC is ordered to be set aside and the accused is acquitted of the commission of an offence punishable under Section 324 of IPC. Subject to this modification, the rest of the judgment and order passed by the learned Trial Court, as affirmed by the learned Appellate Court, are upheld.

56. A modified warrant be prepared accordingly.

57. A copy of this judgment, along with the records of the learned Courts below, be sent back forthwith. Pending applications, if any, also stand disposed of.

**(Rakesh Kainthla)**
**Judge**

30th August 2025
(*ravinder*)