IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 314 of 2015
Reserved on: 14.10.2026
Date of Decision: 04.11.2026

Shyam Lal **.... Appellant**

Versus

State of H.P. **.... Respondents**

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

For the Appellant	**:**	**Mr J.R. Poswal, Advocate.**
For the Respondents	**:**	**Mr Jitender Sharma, Additional Advocate General.**

Rakesh Kainthla, Judge.

The present appeal is directed against the judgment of conviction and order of sentence dated 30.05.2015, passed by learned Special Judge, Ghumarwin, District Bilaspur, H.P. (Camp at Bilaspur) (learned trial Court), vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 15 (b) of the Narcotic Drugs and Psychotropic Substance Act (NDPS Act) and

was sentenced to undergo rigorous imprisonment for four years, pay a fine of ₹25,000/- and in default of payment of fine, to undergo simple imprisonment for six months for the commission of the aforesaid offence. (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience*).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a Challan before the learned trial Court against the accused for the commission of an offence punishable under Section 15 of the NDPS Act. It was asserted that ASI Om Parkash (PW-1), Constable Lalit Kumar, HC Naseeb Khan (PW-7), and Constable Suman Kumar (PW-6) were present at Chharol on 9.03.2013, at about 6:00 p.m. in the official vehicle bearing registration number HP-69-0128 being driven by Constable Avtar Singh. ASI Ram Lal received secret information that accused Shyam Lal, who was running a shop at Dohati, Charrol, dealt in the sale and purchase of poppy straw, which could be recovered by searching the shop. The information was credible, and any delay in procuring the search warrant would have led to the destruction of the case property; hence, the information was reduced to writing (Ext. PW-4/C) and was sent

to the Supervisory Officer through Constable Suman Kumar. The police joined Rajesh Kumar (PW-5) and Suresh Kumar and proceeded towards the shop of the accused, where he was found present. The police gave their personal search to the accused, but nothing incriminating was found in their possession. Memo (Ext. PW-5/A) was prepared. The accused was informed that he could be searched in the presence of a Magistrate or a Gazetted Officer, and the accused opted to be searched by the police vide memo (Ext. PW-7/A). The police searched the shop of the accused in the presence of the witnesses and the accused. One khaki bag (Ext. P-2) was found kept beneath the showcase. It was opened and was found to contain nine polythene packets (Ext. P-3 to Ext. P-11) containing poppy straw (Ext. P-12). These were weighed in the shop of the accused with the help of weights of 1.5 Kilograms and 100 grams, and the total weight of poppy straw was found to be 1.6 kilograms. The poppy straw was put in the plastic bags from which they were recovered, and the plastic bags were put in the khaki packet, where they were earlier kept. The packet was put in a cloth parcel (Ext. P-1), and the parcel was sealed with seven impressions of seal 'L'. NCB-1 form (Ext. PW-8/C) was prepared, and the seal impression was put on the

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form. A sample seal (Ext. PW-5/C) was taken on a separate piece of cloth, and the seal was handed over to witness Suresh Kumar after use. The parcel was seized vide memo (Ext. PW-5/B). The photographs of the accused and the shop (Ext. P-13 to Ext. P-19) were taken with the help of an official digital camera. Rukka (Ext. PW-7/C) was prepared and was handed over to HC Naseeb Khan with the direction to carry it to the police station, where FIR (Ext. PW-8/A) was registered. ASI Ram Lal investigated the matter. He prepared the site plan (Ext. PW-10/C), arrested the accused vide memo Ext. PW-10/D and recorded the statements of witnesses as per their version. He produced the accused, case property, and the case file before Inspector Raj Kumar (PW-8), who resealed the parcel with three seals bearing the seal impression 'T'. He obtained the specimen seal 'T' on a separate piece of cloth (Ext. PW-8/B), filled column numbers 9 to 11 of the NCB-1 form (Ext. PW-8/C) and put the seal impression on the NCB-1 form. He issued the certificate of resealing (Ext. PW-8/D) and deposited the case property with MHC Ajay Kumar (PW-3), who made an entry in the Malkhana register at serial no. 23 (Ext. PW-3/A) and deposited the case property in the Malkhana. He handed over the parcel, NCB-1 form in triplicate, docket, copies

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of seizure memo and FIR, and sample seal to Constable Hans Raj (PW-2) on 11.03.2013 with a direction to carry them to FSL, Junga vide road certificate (Ext. PW-3/B). Constable Hans Raj deposited all the articles in safe condition at FSL, Junga and handed over the receipt to HC Ajay Kumar on his return. Special report (Ext. PW-2/A) was prepared and was handed over to Dy.S.P., Headquarters on 10.03.2013, who made an entry in the register of special report (Ext.PW-4/A) and retained the special report on record. The result of analysis (Ext. PW-1/A) was prepared stating that the exhibit stated as *chura post* was a sample of poppy straw. The statements of remaining witnesses were recorded as per their version, and after the completion of investigation, the challan was prepared and presented before the learned trial Court.

3. The learned trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 10 witnesses to prove its case. Inspector Om Parkash (PW-1) prepared the challan. Constable Hans Raj (PW-2) carried the special report to Dy.S.P. Headquarters and the parcel to the FSL. HC Ajay Kumar (PW-3) was working as MHC, with whom the case property was deposited. HC Hem Raj (PW-4) was working as a Reader to Dy.S.P., Headquarters, who retained the special report. Rajesh Kumar (PW-5) did not support the prosecution's case. Constable Suman Kumar (PW-6) carried the information under Section 42(2) of the NDPS Act to Dy.S.P., Headquarters. HC Naseeb Khan (PW-7) and HC Lalit Kumar (PW-9) witnessed the recovery. Inspector Raj Kumar (PW-8) resealed the parcel. ASI Ram Lal (PW-10) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case. He claimed that a false case was planted against him and that he was innocent. He examined Shyam Lal (DW-1) in his defence.

6. Learned trial Court held that the statements of prosecution witnesses corroborated each other. The minor

contradictions in the statements of the witnesses and the fact that the independent witness had not supported the prosecution case were not sufficient to discard the prosecution's version because the credit of the witness was impeached with reference to his previous testimony. The testimonies of police officials cannot be discarded merely because of their official status. The recovery was made from a packet lying in the shop, and Section 50 of the NDPS Act did not apply to the present case. The integrity of the case property was duly established. The difference in the weight of the poppy straw on the spot and in the laboratory was due to the difference in scales. The prosecution had proved its case beyond reasonable doubt; hence, the learned trial Court convicted and sentenced the accused as mentioned above.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused has filed the present appeal asserting that the learned trial Court erred in appreciating the evidence on record. There are material contradictions in the statements of the witnesses, which made the prosecution case highly suspect. There was non-compliance with Sections 42 and 50 of the NDPS Act. The independent witnesses did not support

the prosecution case. The learned trial Court had imposed a harsh sentence. Therefore, it was prayed that the present appeal be allowed and the judgment be set aside.

8. I have heard Mr J.R. Poswal, learned counsel for the appellant-accused, and Mr Jitender Sharma, learned Additional Advocate General for the respondent-State.

9. Mr J.R. Poswal, learned counsel for the appellant-accused, submitted that the learned trial Court erred in convicting and sentencing the accused. The statements of prosecution witnesses contradicted each other on material aspects. The entries in the general diary were not supported by a certificate under Section 65B of the Indian Evidence Act, and the learned trial Court erred in relying upon them. The independent witness did not support the prosecution version, which made the prosecution version highly doubtful. The learned trial Court imposed a harsh sentence. Hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

10. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the statements

of prosecution witnesses corroborated each other. The mere fact that one independent witness has not supported the prosecution case is not sufficient to discard it. The minor contradictions are bound to come with time and cannot be used for discarding the prosecution version. There is no infirmity in the judgment and order passed by the learned trial Court; hence, he prayed that the present appeal be dismissed.

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

12. Rajesh Kumar (PW-5) did not support the prosecution case. He stated that he was called by the police at the shop of the accused on 09.03.2013. The police had gone to the backyard of the shop. He was called to the police station where he was shown some articles and was made to sign some documents. No recovery was effected in his presence. He was permitted to be cross-examined. He admitted that the accused is running a shop at the spot. He admitted that he and Suresh Kumar were called by the police to the shop of the accused. He admitted his signatures on the memo (Ext. PW-5/A). He admitted that the shop of the accused was searched in his

presence. He denied that the police had recovered poppy straw weighing 1 kg 600 grams. He denied that the police had sealed the poppy straw in a parcel and seized it vide memo (Ext. PW-5/B). He denied his previous statement (Mark 'RK') recorded by the police.

13. ASI Ram Lal (PW-10) specifically stated that he had recorded the statement of Rajesh Kumar (Ext. PW-10/A), as per his version. This was not challenged in the cross-examination and is deemed to be accepted.

14. Learned trial Court had rightly pointed out that the credit of Rajesh Kumar (PW5) was impeached under Section 155(3) of the Indian Evidence Act, as he is shown to have made two inconsistent statements: one before the police that recovery was effected in his presence, and the other before the Court that no recovery was effected in his presence. Both these statements cannot stand together, and he was completely discredited. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous statement, his statement cannot be relied upon. However, when

he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

> "52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

15. This Court also took a similar view in ***Ian Stilman versus State 2002(2) ShimLC 16*** wherein it was observed:

> "12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In ***Jagir Singh v. The State (Delhi Administration), AIR 1975 Supreme Court 1400***, the Apex Court observed:

> "It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony.

16. It was laid down by the Hon'ble Supreme Court in ***Mahesh v. State of Maharashtra*, *(2008) 13 SCC 271; (2009) 3 SCC (Cri) 543; 2008 SCC OnLine SC 656*** that where the witness had made an inconsistent statement before the police, his testimony before the Court cannot be relied upon. It was observed at page 289:

> **"49.** It is the evidence of PW PSI Dhimole that portion marked "A" appearing in the statement of PW 1 was recorded by him correctly. The defence has not brought on record any evidence to show why the investigating officer had recorded the portion marked " A " of the statement of PW 1 incorrectly. If PW 1, the maker of the complaint, has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness, for no plausible and tenable reasons pointed out on record, will give rise to doubt as to the testimony of the investigating officer, who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution."

17. It was held in ***Paramjeet Singh v. State of Uttarakhand*, *(2010) 10 SCC 439: 2010 SCC OnLine SC 1087***that where a witness makes different statements at different times, he does not have any regard for truth, and his testimony should be seen with due care and caution. It was observed at page 448:

> **"16.** The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times has no regard for the truth. His evidence has to be read and considered as a whole with a view to finding out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide ***State of Rajasthan v.Bhawani[(2003) 7 SCC 291: 2003 SCC (Cri) 1628]***.)

18. Therefore, the learned Trial Court had rightly discarded the testimony of Rajesh Kumar.

19. It was submitted that the prosecution's version is made doubtful by the fact that Rajesh Kumar has not supported it. This submission cannot be accepted. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri. L.J. 4254,*** the prosecution's version cannot be discarded because the independent witnesses had not supported it. It was observed:

Though the independent witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross-examined, the law in respect of appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court in ***Sudru versus State of Chhattisgarh, (2019) 8 SCC 333***, relying upon ***Bhajju versus State of M.P., 2010 4 SCC 327***, has again reiterated the well-settled principle that evidence of a hostile witness can be relied upon by the prosecution version. Merely because a witness has turned hostile, the same does not render his evidence or testimony inadmissible in a trial, and such a conviction can be based upon such testimony if it is corroborated by other reliable evidence.

In a case titled ***Raja and Others versus State of Karnataka (2016) 10 SCC 506***, the Apex Court observed that the evidence of a hostile witness cannot be altogether discarded, and as such, it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.

In a case titled ***Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police, (2015) 2 SCC 662***, the Apex Court has observed that in a situation/case wherein the witness deposes falsely in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court held that a conviction can be recorded believing the testimony of such a witness given in examination-in-chief; however, such evidence is required to be examined with great caution.

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

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

20. Thus, the learned trial Court had rightly held that the testimony of Rajesh Kumar is insufficient to make the prosecution case doubtful.

21. HC Naseeb Khan (PW-7) supported the prosecution version in his examination-in-chief, which is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that nine polythene packets along with their contents were weighed together. All nine packets were kept in the plastic bag. The information was handed over to Constable Suman Kumar, who had not returned to the spot. He (Naseeb Khan) carried the ruka from the spot at 7:00 PM and reached the police station at 8:35 PM. He admitted that the distance between the spot and the police station is about 25 kms. He returned from the police station at about 9:00 PM. No entry in the daily diary was recorded regarding his departure. He denied that the accused was not present in the shop and that a false case was made against him.

22. HC Lalit Kumar (PW-9) also supported the prosecution version in his examination-in-chief, which is not being reproduced to avoid prolixity and repetition. He stated in

his cross-examination that the police had left the police station at about 4:35 PM for patrolling. They had received the secret information at about 1 km from the shop of the accused. This information was provided in the presence of all the police officials. The information was reduced to writing and was sent from the spot itself. He could not tell how the person carrying the information came to Bilaspur. The witnesses met them at Chharol, and they were associated before searching the shop of the accused. He admitted that the witnesses had their shops adjacent to the shop of the accused. The police had reached the shop of the accused at 6 p.m. The accused was called out of the shop, and the proceedings were conducted thereafter. He denied that all the shops had a common veranda. He denied that the accused was not present in the shop and that he was falsely implicated.

23. ASI Ram Lal (PW-10) has also supported the prosecution version in his examination-in-chief, which is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that the police had started from the police station at 4:30 PM. An entry was recorded in the daily diary regarding this fact. Secret information was received at

Chharol at about 6:00 PM near the shop of the accused at a distance of about 100 meters. The information was given personally and not telephonically. The police official left the spot with the report under Section 42 at 6:15 PM. The witnesses met them near the shop of the accused. He admitted that both the witnesses had their shops adjacent to the shop of the accused. He denied that a false case was made against the accused and that the accused was not present in the shop.

24. ASI Ram Lal (PW-10) stated that he had received the secret information at Chharol at 6:00 PM near the shop of the accused at a distance of about 100 meters. HC Lalit Kumar (PW-9), on the other hand, stated that secret information was received at about 1 km from the shop of the accused. It was submitted that this discrepancy in the statements of the witnesses renders the prosecution case highly suspect. This submission cannot be accepted. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

"**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as follows:

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

to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

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

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

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

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

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

XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events that take place in rapid succession or in a short time span. A witness is

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

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

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

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

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

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

> "*30.* This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or

improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render the depositions inadmissible. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961]***.

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

> *32.* These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 people can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to ***Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350: (2011) 1 SCC (Cri) 266]*** and ***Shivlal v. State of Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561: (2011) 3 SCC (Cri) 777]***.

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

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

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

42. In ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]***, this Court held: (SCC p. 446, para 24)

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

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

"17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed to the hand or foot, but the constant narrative

of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury to informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this Court in ***Narayan Chetanram Chaudhary &Anr. Vs. State of Maharashtra, 2000 8 SCC 457***. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under:

> "42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, would not cause any dent in the testimony of PW 2. Even if there is a contradiction of a statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

27. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the statements of the witnesses cannot be discarded due to omissions, contradictions, or discrepancies.

The Court must consider whether the discrepancies negatively affect the prosecution's case and whether they pertain to the core of the case rather than the details.

28. The contradiction regarding the distance is not significant, as no person measures the distance and gives an estimate of the distance, which may or may not be precise. Therefore, the discrepancy regarding the distance cannot be used to discard the prosecution case.

29. The incident had occurred in the past on 09.03.2023, and the statements were recorded in the year 2015 after the lapse of two years. The memories fail with time and it is difficult to remember the incident photographically. Thus, the minor contradictions regarding the time of receipt of the information and the distance from the shop are not significant enough to discard the prosecution version.

30. Nothing was suggested in the cross-examination of the witnesses as to why they would falsely implicate the accused. The learned trial Court had rightly pointed out that the testimonies of police officials cannot be discarded simply because of their official position. It was laid down by the Hon’ble

Supreme Court in ***Kripal Singh v. State of Rajasthan*, *(2019) 5 SCC 646: (2019) 2 SCC (Cri) 680: 2019 SCC OnLine SC 207,*** that the testimonies of the police officials cannot be ignored because they are police officials. It was observed at page 656:

> **"21.** The submission of the learned Senior Counsel for the appellant that recovery has not been proved by any independent witness is of no substance for the reason that, in the absence of an independent witness to support the recovery, in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials, unless supported by an independent witness, is unworthy of acceptance or that the evidence of police officials can be outrightly disregarded."

31. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri.L.J.4254*** that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

> "11. It is a settled proposition of law that the sole testimony of the police official, which, if otherwise, is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law that lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. The rule of prudence may require more scrutiny of their evidence. Wherever the evidence of a police officer, after scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction, and the absence of some

> independent witness of the locality does not in any way affect the creditworthiness of the prosecution's case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

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

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

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

> **22.** Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable and trustworthy, then basing the conviction thereupon cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar* v. *State (Govt. of NCT of Delhi) 2013 (6) SCC 588***after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their

testimony should always be treated with suspicion. Ordinarily, the public at large shows its disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer to be unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the police department should be viewed with distrust. This is also based on the principle that the quality of the evidence outweighs the quantity of evidence.

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

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

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

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

> person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."
>
> **25.** Recently, this Court in ***Mohd. Naushad* v. *State (NCT of Delhi)* *2023 SCC OnLine 784*** had observed that the testimonies of police witnesses, as well as pointing out memos, do not stand vitiated due to the absence of independent witnesses.
>
> **26.** It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses cannot be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason", which, quite apparently, is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW-1 and PW-2, which the courts below have found absolutely to be inspiring confidence. Therefore, basing the conviction on the testimony of the police witnesses as undertaken by the trial court and confirmed by the High Court vide the impugned judgment, cannot be faulted with."

34. Thus, there is no error in accepting the testimonies of the police officials.

35. The police gave an option to the accused to be searched before a Magistrate or the Gazetted Officer; however, the accused opted to be searched by the police. It was submitted that the consent of the accused to be searched by the police

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shows that a third option was also given to the accused and there is a violation of Section 50 of the NDPS Act. This submission will not help the accused. The recovery was effected from a plastic bag kept in the shop of the accused, and no recovery was effected from the personal search. It was laid down by the Hon'ble Supreme Court in ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473; (2020) 1 SCC (Cri) 22: 2019 SCC OnLine SC 1408,*** that where the recovery was effected from the bag, briefcase, etc., non-compliance with section 50 is not fatal. It was observed at page 480:

> **13.** The law is thus well settled that an illicit article seized from the person during a personal search conducted in violation of the safeguards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contraband. But the question is, if there be any other material or article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance?
>
> **14.** At this stage, we may also consider the following observations from the decision of this Court in ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746: (2010) 2 SCC (Cri) 475***: (SCC pp. 752-53, para 15)
>
> > "*15.* The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply while searching the bag, briefcase, etc., carried by the person, and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It

requires to be noted that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where a search of a person is involved, and the said section is not applicable or attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc., does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of the search of a person only. Secondly, the section speaks of taking the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue, in our considered opinion, is no longer res integra in view of the observations made by this Court in ***Madan Lal v. State of H.P., (2003) 7 SCC 465: 2003 SCC (Cri) 1664;*** the Court has observed: (SCC p. 471, para 16)

> '*16*. A bare reading of Section 50 shows that it only applies in the case of a personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see ***Kalema Tumba v. State of Maharashtra, (1999) 8 SCC 257: 1999 SCC (Cri) 1422***], State ***of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080]*** and ***Gurbax Singh v. State of Haryana, (2001) 3 SCC 28: 2001 SCC (Cri) 426***). The language of Section 50 is implicitly clear that the search has to be in relation to a person, as contrasted with a search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in State ***of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080***. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

36. This position was reiterated in ***Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197: 2021 SCC OnLine SC 1223,*** and it was observed at page 204: -

> "**16.** Simultaneously, the arguments advanced by the appellant regarding non-compliance with Section 50 of the NDPS Act are bereft of any merit because no recovery of contraband from the person of the accused has been made, to which compliance with the provision of Section 50 of the NDPS Act has to follow mandatorily. In the present case, in the search for a motorcycle in a public place, the seizure of contraband was made, as revealed. Therefore, compliance with Section 50 does not apply in the present case. It is settled in ***Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609 : (2011) 1 SCC (Cri) 497*** that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563 : (2020) 1 SCC (Cri) 767]*** and ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473 : (2020) 1 SCC (Cri) 22***. Considering the facts of this case, the argument of non-compliance with Section 50 of the NDPS Act advanced by the counsel is hereby repelled."

37. Similar is the judgment in ***Dayalu Kashyap v. State of Chhattisgarh, (2022) 12 SCC 398: 2022 SCC OnLine SC 334,*** wherein it was observed at page 400: -

> "**4.** The learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-section (1) of Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said section to the accused. To support his contention, he has relied upon the judgment of ***State of Rajasthan v. Parmanand, (2014) 5 SCC 345: (2014) 2 SCC (Cri) 563***, more specifically, SCC para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172:***

> ***1999 SCC (Cri) 1080*** to conclude that if a search is made by an empowered officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned, not being part of the statute, could not have been offered to the appellant, and thus, the recovery from him is vitiated.
>
> **5.** In the conspectus of the facts of the case, we find that the recovery was in a polythene bag which was being carried on a kanwad. The recovery was not in person. The learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by a violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus cannot be relied upon. We cannot give such an extended view as is sought to be contended by the learned counsel for the appellant.

38. This judgment was followed in ***Ranjan Kumar Chadha v. State of H.P., 2023 SCC OnLine SC 1262***: ***AIR 2023 SC 5164,*** and it was observed:

> **"126.** As such, there is no direct conflict between ***SK. Raju*** (supra) and ***Baljinder Singh*** (supra). It is pertinent to note that in ***SK. Raju*** (supra), the contraband was recovered from the bag that the accused was carrying, whereas in ***Baljinder Singh*** (supra), the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being "inextricably linked to the person". ***Parmanand*** (supra) relied upon the judgment in ***Dilip*** (supra) while taking the view that if

> both the person of the accused as well as the bag are searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that *Dilip* (supra) has not taken into consideration ***Pawan Kumar*** (supra), which is of a larger Bench. It is also pertinent to note that although in *Parmanand* (supra) the Court looked into ***Pawan Kumar*** (supra), yet ultimately it followed ***Dilip*** (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the larger Bench in ***Pawan Kumar*** (supra). ***Baljinder Singh*** (supra), on the other hand, says that ***Dilip*** (supra) does not lay down good law.
>
> **127.** In the facts of the present case, there is no scope for applying the ratio of ***Parmanand*** (supra) and ***SK. Raju*** (supra). At the cost of repetition, we may state that in the case at hand, there is nothing to indicate that the search of the person of the accused was also undertaken along with the bag that he was carrying on his shoulder.
>
> **128.** We do not propose to say anything further as regards ***SK. Raju*** (supra) as well as ***Baljinder Singh*** (supra). We adhere to the principles of law as explained by the Constitution Bench in ***Baldev Singh*** (supra) and the larger Bench answering the reference in ***Pawan Kumar*** (supra)."

39. Therefore, the requirement of Section 50 of the NDPS Act does not apply to the present case.

40. The police had reduced the secret information to writing and had specifically stated that the delay in procuring the search warrant would have led to the destruction of the case property. This information was immediately sent to the DySP

(headquarters). Thus, there was sufficient compliance with the provisions of Section 42 of the NDPS Act.

41. It was submitted that the FIR (Ext. PW-8/A) was wrongly exhibited and no certificate under Section 65B of the Indian Evidence Act was appended to it. This submission will not help the accused. The FIR (Ext. PW-8/A) was proved by Inspector Raj Kumar (PW-8), and no objection was raised regarding the mode of proof while recording his statement. Therefore, it is impermissible to raise this objection at this stage. It was held in ***Chandrabhan Sudam Sanap v. State of Maharashtra, (2025) 7 SCC 401: (2025) 3 SCC (Cri) 259 : 2025 SCC OnLine SC 174,*** that when no objection regarding the absence of the certificate under Section 65B of the Indian Evidence Act was taken during the trial, such an objection cannot be raised before the Appellate Court. It was observed at page 426:

> **47.** In ***Sonu v. State of Haryana [Sonu v. State of Haryana, (2017) 8 SCC 570: (2017) 3 SCC (Cri) 663]***, (delivered on 18-7-2017) the following paragraphs, being crucial, are extracted hereinbelow: (SCC pp. 583-85, paras 30-32)
>
> > "*30*. In ***R.V.E. Venkatachala Gounder [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752]***, this Court held as follows: (SCC p. 764, para 20)

'20. ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (*i*) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. *The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because, by his failure, the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of a finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode*

> *or method of proof and thereby removing the objection raised by the opposite party is available to the party leading the evidence*. Such practice and procedure is fair to both the parties. Out of the two types of objections referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior court.'

31. It would be relevant to refer to another case decided by this Court in ***P.C. Purushothama Reddiar v. S. Perumal [P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9]***. The earlier cases referred to are civil, while this case pertains to police reports being admitted in evidence without objection during the trial. This Court did not permit such an objection to be taken at the appellate stage by holding that: (SCC p. 15, para 19)

> '*19*. Before leaving this case, it is necessary to refer to one of the contentions taken by Mr Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility....'

32. It is nobody's case that CDRs, which are a form of electronic record, are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of

> marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity to rectify the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."(emphasis in original)

48. As rightly pointed out by Mr Raja Thakare, learned Additional Solicitor General, it was held in ***Sonu [Sonu v. State of Haryana, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663]*** that objection about Section 65-B(4) of the Indian Evidence Act, not being complied with, cannot be taken at the appellate stage since that will deny an opportunity for the prosecution or the opposite party to rectify the defect. It was also held that the documents were not inherently inadmissible in evidence.

42. Therefore, it is impermissible to raise an objection before this Court that the FIR could not have been exhibited

without the certificate under Section 65B of the Indian Evidence Act.

43. ASI Ram Lal stated that he had produced the case property before Inspector Raj Kumar (PW-8), who had resealed it. Inspector Raj Kumar (PW-8) stated that ASI Ram Lal produced the case property; he resealed the parcel with seal impression 'T' and obtained the seal impression 'T' on a separate piece of cloth. This was not challenged in the cross-examination and is deemed to be accepted. The report of analysis (Ext. PW-1/A) mentions that the parcel was bearing seven seals of seal 'L' and three seals of seal 'T'. The seals were found intact and were tallied with the specimen seals sent separately and with the seal impression impressed on the NCB-1 form. Thus, the result of analysis shows that there was no tampering with the case property. It was held in ***Baljit Sharma vs. State of H.P. 2007 HLJ 707*** that the report of analysis that the seals were intact proves the prosecution's claim that the case property remained intact. It was observed:

> "A perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner, and the sample seal was separately sent and tallied with the specimen impression of a seal taken

> separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the expert also."

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

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

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

> "The prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk and accordingly the same were seized after taking samples therefrom, which were properly sealed. The defence has not been able to prove

> that the aforesaid seizure and seal put on the samples were in any manner tampered with before they were examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination, when it could not be proved that the seal of the sample was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been recorded in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.
>
> 17. We may at this stage refer to a decision of this Court in ***Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557*** in which there was a delay of about 40 days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution's case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.
>
> 18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with."

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

> 10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to

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

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

47. Therefore, the prosecution's version was rightly accepted by the learned Trial Court that the case property remained intact till its analysis at SFSL, Junga, H.P.

48. It was submitted that the seal was not produced before the Court, and this is fatal to the prosecution's case. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the court is not fatal. It was observed: -

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it to writing and sent the same to PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla. At 3.05 P.M., PW7, Head Constable Surender Kumar, stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar, travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his scooter, which contained varying quantities of 'charas'. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla, who had arrived by then, gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. each were taken from the two Gunny Bags and sealed with the seal 'S', and given to PW5. PW2, Jaswinder Singh, the Malkhana Head Constable, resealed it with the seal 'P'. The conclusion of the Trial Court that the seal had not been produced in the Court is therefore perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner."

49. In the present case, the prosecution had produced the seal impression 'L' (Ext. PW-5/C) and the seal impression 'T' (Ext. PW-8/B) before the Court. The seal impressions were also

put on the NCB-1 form (Ext. PW-8/C). Therefore, the Court had the sample seals and the specimen seal impressions on the NCB-1 form to compare the seal impressions on the parcel. The learned trial Court had noticed while recording the statement of HC Naseeb Khan that the parcel was sealed with seven seal impressions of seal 'L', three seal impressions of seal 'T', and four seal impressions of the seal of FSL too. The seals were intact. Thus, the learned trial Court had satisfied itself regarding the correctness of the seal impressions, and the non-production of the seals before the Court was not material.

50. It was submitted that there was a difference in weight, inasmuch as the weight of poppy straw was found to be 1 kg 600 grams on the spot, but was found to be 1.702 kgs in the laboratory. This submission will not help the accused. The police had used weights of 1 kg, 500 gm, and 100 gm to weigh the poppy straw on the spot, whereas the laboratory had used an electronic weighing scale. The weight on the spot was approximate, whereas the weight in the laboratory was precise. Thus, the difference in the two weights is due to the difference in scales and will not make the prosecution case suspect.

51. Thus, the learned trial Court had rightly held that the accused was found in possession of 1.702 kilograms of poppy straw.

52. It was submitted that the samples were not drawn and the bulk was sent, which is a violation of Section 52-A of the ND&PS Act, and the prosecution's case became doubtful. This submission will not help the accused. It was laid down by this Court in ***Narayan Singh v. State of H.P. 2023 HHC 9715*** that the provision of Section 52-A will not apply when the samples were not drawn, and the entire contraband was sent to the FSL for analysis. It was observed: -

> 19. After going through the aforesaid judgments, we are of the considered view that the same does not apply to the facts of the instant case. It would be noticed that in all the earlier judgments, the Hon'ble Court was dealing with cases where samples had been drawn from the bulk and then samples had been sent for chemical analysis, and the residue or bulk sample remained with the investigating agency. However, this is not the fact of the obtaining situation in the instant case. Here, the entire contraband had been sent for chemical analysis, to be done on the very next date of its recovery. In such circumstances, there could be no better and primary evidence for the purpose of the trial.

53. Similarly, it was laid down in ***Sandeep Kumar Vs State of H.P., 2022 Law Suits (HP) 149***, that the provisions of Section

52-A are not mandatory and non-compliance with Section 52-A is not fatal to the prosecution case. It was observed: -

> "24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the NDPS Act and thus cast a shadow of doubt on its story. The contention raised on behalf of the appellants is that the rules framed for investigations under the NDPS Act are mandatory and have to be strictly followed. Neither the required sample was taken on the spot nor were the samples preserved in compliance with Section 52-A of the Act. It has been argued that compliance with Section 52-A of the Act is mandatory.....
>
> xxxxxx
>
> 27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the prosecution's case under the NDPS Act. On the other hand, in ***State of Punjab vs. Makhan Chand, 2004 (3) SCC 453***, the Hon'ble Supreme Court, while dealing with the question of the effect of non-compliance with Section 52-A, has held as under: -
>
> > 10. This contention, too, has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure

> prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for the search of an accused but only deals with the disposal of seized narcotic drugs and psychotropic substances.
>
> 11. Secondly, when the very same standing orders came up for consideration in ***Khet Singh v. Union of India, 2002 (4) SCC 380***, this Court took the view that they were merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules, as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

54. It was laid down in ***Bharat Aambale v. State of Chhattisgarh, 2025 SCC OnLine SC 110,*** that non-compliance with Section 52-A of the ND&PS Act does not vitiate the trial. It was observed:

"**50.** We summarise our conclusion as under: —

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner, it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotic substances after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in the presence of a gazetted officer would not constitute sufficient compliance with the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall, as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance with the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in the original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in

charge of the investigation, and as such, what is required is substantial compliance with the procedure laid therein.

(V) Mere non-compliance with the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully, keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary, inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can, without hesitation, proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to draw an adverse inference against the prosecution; however, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been a lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the

> NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.
>
> **(IX)** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance with Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
>
> **(X)** Once the foundational facts laid indicate non-compliance with Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

55. Therefore, the non-compliance with Section 52-A of the ND&PS Act will not make any difference to the present case.

56. The learned trial Court had sentenced the accused to undergo rigorous imprisonment for four years and pay a fine of ₹25,000/-. The Central Government has notified 50 Kilograms of poppy straw as the commercial quantity, which means that a person possessing 50 kilograms of poppy straw can be sentenced to 10 years' imprisonment. It was laid down by the Hon'ble Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8***

SCC 109: 2023 SCC OnLine SC 755, that the Courts have to apply the principle of proportionality while imposing a sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719],*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence.*" The Court also held that imposing "*meagre sentences*" *merely on account of lapse of time* would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532: (2011) 1 SCC (Cri) 582: (2009) 15 SCR 712]*** while advocating that sentencing should be fact dependent exercises, the Court also emphasised that: (***Jameel case [Jameel v. State of U.P., (2010) 12 SCC 532: (2011) 1 SCC (Cri) 582: (2009) 15 SCR 712***], SCC p. 535, para 15)
>
> > "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.*" (emphasis supplied)
>
> **11.** Again, in ***Guru Basavaraj v. State of Karnataka [Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189]*** the Court stressed that : (SCC p. 744, para 33)

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

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

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

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

This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has

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

57. If the principle of proportionality is applied to the present case, the sentence of four years is excessive and requires interference.

58. Keeping in view the quantity of the poppy straw and the fact that the recovery was effected in the year 2013, the accused is sentenced to undergo rigorous imprisonment for a period of 8 months and to pay a fine of ₹8,000/-, and in default of payment of fine, to undergo simple imprisonment for 3 months for the commission of an offence punishable under Section 15(b) of the NDPS Act. He is entitled to the benefit of set-off for the period of imprisonment already undergone by him during the trial and appeal, if any.

59. In view of the above, the appeal is partly allowed. The sentence imposed by the learned trial Court is modified, and the accused is sentenced to undergo rigorous imprisonment for 8 months and pay a fine of ₹8,000/-. Subject to this modification, the rest of the judgment and sentence are upheld.

60. The record of the learned Court below be sent back with a copy of this judgment for the information of the learned trial Court.

61. Appeal stands disposed of along with pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

04th November,2026.
(Ravinder)