2025 INSC 957

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 705 OF 2024

GURDEEP SINGH ... APPELLANT

VERSUS

THE STATE OF PUNJAB ... RESPONDENT

J U D G M E N T

R. MAHADEVAN, J.

1. This criminal appeal is directed against the judgment and order dated 04.05.2023 passed by the High Court of Punjab and Haryana at Chandigarh[1] in CRA-S-4900-SB-2014, whereby the High Court upheld the judgment of conviction and sentence dated 31.10.2014 rendered by the Additional Sessions Judge, Fast Track Court, Bathinda[2], in S.C. No. 55 of 10.09.2011, against the appellant / accused. The particulars of the conviction and sentence are as under:

[1] Hereinafter referred to as "the High Court"
[2] For short, "the Sessions Court"

Offence for which convicted	Sentence awarded
Section 307 r/w Section 120B IPC	Rigorous Imprisonment for three years and a fine of Rs.2,000/-, in default to undergo further RI for two months
Section 225 r/w Section 120B IPC	Rigorous Imprisonment for one year and a fine of Rs.500/-, in default to undergo further RI for two weeks
Section 186 r/w Section 120B IPC	Rigorous Imprisonment for two months and a fine of Rs.200/-, in default to undergo further RI for one week
Section 332 r/w Section 120B IPC	Rigorous Imprisonment for two years and a fine of Rs.1,500/-, in default to undergo further RI for one and half months
Section 353 r/w Section 120B IPC	Rigorous Imprisonment for one and half years and a fine of Rs.1,000/-, in default to undergo further RI for one month
Section 120B IPC	Rigorous Imprisonment for three years and a fine of Rs.2,000/-, in default to undergo further RI for two months

All the sentences were ordered to run concurrently.

2. The case of the prosecution is that on 30.11.2010, the Station House Officer, Police Station City Rampura, received information that Head Constables Harjit Singh (PW.2) and Hardial Singh (PW.1) had been admitted to Civil Hospital, Rampura, in an injured condition. Upon reaching the hospital and obtaining medical opinion, regarding their fitness to give a statement, the Station House Officer recorded the statement of Head Constable Harjit Singh.

2.1. According to Head Constable Harjit Singh, on that day, he, along with Head Constable Hardial Singh, was escorting undertrial prisoner Kuldeep Singh @ Deepi from Ludhiana to Talwandi Sabo for court proceedings in connection with FIR No. 59 dated 31.05.2008 by bus. The appellant, Gurdeep Singh, Assistant Superintendent of Central Jail, Ludhiana, also accompanied them. After attending court, while they were waiting at the main gate of the court complex, the appellant suggested that they travel back in a Tata Qualis bearing Registration No. PB-19L-8750 which was parked outside and allegedly belonged to persons known to him from Barnala. Despite initial hesitation, the Head Constables agreed based on his assurance. The appellant sat in the front seat with the driver; the two Head Constables and accused Kuldeep Singh sat in the middle row, while two young men (aged around 20 - 25 years) occupied the rear seat. On reaching near village Kutiwal, the appellant asked the driver to stop for a while to answer the call of nature. When the driver slowed down the vehicle, the two men in the back, threw red chilli powder into the eyes of the Head Constables. One of them then stabbed Head Constable Hardial Singh in the shoulder with a knife, while

the other picked up a *kirpan* and struck Harjit Singh on the head. Harjit Singh attempted to defend himself with his carbine, but was still injured. The assailants attempted to help the accused Kuldeep Singh escape; however, he failed, as he was handcuffed and chained to the complainant's belt. On raising an alarm, members of the public gathered, causing the two assailants and the appellant to flee. The injured were then taken to Civil Hospital, Rampura, by the driver of the vehicle, Balwinder Singh (PW.10). Accordingly, the crime was alleged to have been committed by Kuldeep Singh, in connivance with the appellant and the two unknown assailants, with the intention to facilitate escape from custody and to eliminate the escorting officers.

3. Based on the statement given by Head Constable Harjit Singh, FIR No. 65 of 2010 was registered for the offences under sections 307, 353, 332, 225, 186, and 120B of the Indian Penal Code, 1860[3] and Section 25 of the Arms Act, 1959. Accused Maan Singh @ Mana was declared a proclaimed offender on 22.04.2011. At the stage of preliminary investigation, the Deputy Superintendent of Police, Circle Maur, in his enquiry report dated 03.01.2011, declared the appellant innocent. Subsequently, the case against the accused Kuldeep Singh and Baldev Singh, was committed to the Sessions Court, *vide* order dated 27.08.2011. After committal, charges were framed against the accused for the offences under Sections 307, 186, 332, 353, 225 and 120B IPC, to which they pleaded not guilty

[3] For short, "IPC"

and claimed to be tried.

4. During trial, on an application moved by the prosecution under Section 319 of the Criminal Procedure Code, 1973[4] the appellant was summoned as an additional accused, as per order dated 06.07.2012, and his case was committed to the Sessions Court on 26.03.2014. He also pleaded innocence and alleged false implication.

5. The prosecution examined as many as 15 witnesses and marked exhibits and material objects collected during the course of investigation. On the side of the defence, DW1 to DW3 witnesses were examined and Exs.D1 to D4 documents were marked. After trial, the Sessions Court by judgment dated 31.10.2014, convicted all the accused and sentenced them for the offences as referred to above.

6. Challenging the aforesaid judgment, the appellant filed Criminal Appeal No. S-4900-SB-2014 which was dismissed by the High Court, along with the appeal preferred by the accused Baldev Singh @ Dev, by the judgment dated 04.05.2023. Feeling aggrieved, the appellant is before this Court by way of the present appeal.

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[4] For short, "Cr.P.C"

7. The learned counsel for the appellant assailed the concurrent findings of conviction recorded by both the Sessions Court and the High Court as being legally unsustainable and factually erroneous. It was contended that the appellant has been falsely implicated without any cogent or reliable evidence connecting him either to the alleged occurrence or to the alleged conspiracy with the co-accused.

7.1. It was submitted that the entire prosecution case rested solely on the testimony of PW.2, the complainant, who was admittedly an interested witness. In his cross-examination, PW.2 admitted that as per police rules, he was not permitted to escort an undertrial prisoner in a private vehicle, and that disciplinary action was liable to be taken against him for this lapse. Therefore, in an attempt to shield himself, he allegedly twisted the version and shifted the blame onto the appellant by claiming that it was on the appellant's suggestion that they boarded the said vehicle.

7.1.1. Furthermore, the other two material witnesses – PW.1 (Hardial Singh), the escorting officer, and PW.10 (Balwinder Singh), the vehicle driver – were declared hostile and did not support the prosecution's case. In particular, PW.10 who was present throughout the alleged occurrence, completely resiled from his earlier statement, thereby casting serious doubt on the prosecution version.

7.2. The learned counsel emphasized that no overt act was attributed to the appellant. The sole allegation was that he had suggested to use a particular vehicle for convenience. There was no evidence to show that the appellant had either

facilitated the presence of the assailants in the vehicle or had participated in any act of violence. No injury was attributed to him. His mere presence at the scene, without any criminal conduct or prior meeting of minds with the assailants, cannot sustain a charge of conspiracy under Section 120B IPC.

7.3. It was further submitted that there was no reliable, sufficient, or legal evidence to support the charge of criminal conspiracy against the appellant. The case was based purely on conjecture and surmise, rather than proof beyond reasonable doubt. Consequently, the conviction under section 120 B IPC is liable to be set aside and the conviction for other offences based solely on the application of Section 120B IPC is also unsustainable.

7.4. The learned counsel also submitted that the charge under Section 307 IPC was wholly untenable, particularly in the absence of any injury being declared grievous or dangerous to life. The theory of red chilli powder being thrown into the eyes of the complainant was neither supported by forensic or medial evidence, nor corroborated by PW.3 (Doctor), the medical witness. No traces of chilli powder were found in the vehicle or on the clothes of the complainant or other witnesses. Moreover, the prosecution case, at its core, is one of an attempted escape from custody by the undertrial prisoner, not an attempt to murder. These aspects were ignored by the Courts below, resulting in a miscarriage of justice.

7.5. It was further submitted that DW.3 (Gurmeet Singh), Deputy Superintendent of Police, Maur, who conducted a detailed preliminary enquiry, had categorically ruled out the involvement of the appellant in any criminal

conspiracy and found him to be innocent. The appellant was not named in the original charge sheet, and was subsequently summoned under Section 319 Cr.P.C on the basis of vague allegations and without any fresh or additional incriminating material, having emerged during trial. The summoning order dated 05.07.2012, was passed mechanically and without due application of mind. The High Court also erred in failing to examine the legality and correctness of this summoning order, while disposing of the appeal.

7.6. It was further pointed out that both courts below erroneously referred to the appellant as a police officer and as a supervisory official of the complainant, whereas he was an official of the Jail Department, deputed for a distinct purpose. This factual mischaracterization has led to manifest injustice and vitiated the approach adopted by the courts below.

7.7. Lastly, it was submitted that the appellant is a government servant with 35 years of unblemished service, and the conviction has resulted in harsh consequences including the forfeiture of his pensionary benefits.

7.8. In view of the foregoing, the learned counsel submitted that the concurrent judgement of conviction passed against the appellant, are perverse and deserve to be set aside.

8. The learned counsel for the State / respondent opposed the appeal and submitted that the conviction of the appellant is well-founded and supported by sufficient oral and circumstantial evidence. It was contended that the appellant,

though an official of the Jail Department, played an active role in facilitating the commission of the offence by deliberately selecting a vehicle that enabled the assailants to launch an assault on the complainant and attempt to free the undertrial prisoner.

8.1. It was further contended that the appellant persuaded the victims to board a vehicle in which two persons were already present along with the driver – all of whom were known to the appellant. Acting upon the appellant's instructions, the vehicle was stopped at a pre-designated location, whereupon the assailants carried out the attack. Notably, no injury was inflicted upon the appellant, suggesting his collusion. Despite hearing the cries for help, the appellant neither intervened nor made any effort to assist the victims. Rather, he absconded from the scene along with the accused persons and subsequently failed to report back or accompany the injured to the civil hospital, Rampura. Furthermore, he did not make any statement before the police, nor he examine or cite any independent witness from the vicinity who could support his version of events.

8.2. The learned counsel submitted that the overall conduct of the appellant including his failure to act during the violent assault, which involved the use of deadly weapons and red chilli powder, reveals his conscious participation in the criminal conspiracy. His behaviour was inconsistent with that expected of a government officer, and instead indicated deliberate alignment with the assailants' objective.

8.3. It was also emphasized that there existed no motive or reason for the complainant or the injured eyewitnesses – who were police officials themselves – to falsely implicate the appellant. The testimony of PW.1 Hardial Singh, an injured eyewitness, stood corroborated by the version set out in the FIR and by the deposition of PW.2 Harjit Singh, the complainant and another injured eyewitness. Their consistent narratives, coupled with the testimony of PW.7 Sukhchain Singh, the investigating officer, established the integrity of the prosecution case.

8.4. With respect to the charge under Section 307 IPC, it was submitted that the nature of the assault, the weapons used, and the intent to incapacitate the complainant, even if injuries were not ultimately grievous, attracted the ingredients of an attempt to commit murder. The use of red chilli powder in the eyes of the victims, especially in the context of a custodial escort operation, clearly demonstrated intent to commit a serious and premeditated offence.

8.5. The learned counsel further argued that the appellant's summoning under Section 319 Cr.P.C., was lawful and based on the clear and incriminating testimony of the complainant during the course of trial, which revealed the appellant's active participation in the offence. The mere exoneration of the appellant during the police investigation did not preclude the trial Court from invoking its power under Section 319 Cr.P.C., as the court is not bound by the opinion of the Investigating Officer and is competent to summon any person against whom evidence emerges during the course of trial.

8.6. In view of the above, it was urged that the findings of guilt recorded by the trial Court, as affirmed by the High Court, were based on a proper appreciation of the evidence on record and do not warrant any interference by this Court.

8.7. Therefore, the learned counsel submitted that the appeal is devoid of merit and deserves to be dismissed.

9. We have considered the rival submissions and perused the materials available on record.

10. It is not in dispute that originally, the appellant was not named in the FIR and that the preliminary investigation conducted by the Deputy Superintendent of Police, Maur, had opined that he was not involved in the offence. However, during the course of trial, based on the evidence that emerged, the prosecution filed an application under Section 319 Cr.P.C., pursuant to which the appellant was summoned as an accused.

11. To establish the guilt of the accused persons, the prosecution examined fifteen witnesses and also exhibited various documents, including the First Information Report, statements recorded under Section 161 Cr.P.C., medical reports, and seizure memos, as well as material objects collected during the course of investigation through the witnesses. In defence, the appellant examined three witnesses as DW.1 to DW.3, and relied upon four documents, marked as Exhibits D1 to D4.

12. At the outset, it would be appropriate to briefly survey the material evidence led by both sides.

12.1. PW.1 Hardial Singh deposed that on 30.11.2010, he, along with Head Constable Harjit Singh was assigned the duty of escorting undertrial accused Kuldeep Singh for production before the Court of Sh. L.K.Singla, SDJM, Talwandi Sabo. The accused was taken to Court by bus and the appellant also accompanied them in the same bus. At about 2.30 pm, after conclusion of the court proceedings, PW.1 and Head Constable Harjit Singh were standing at the main gate of the court complex. At that time, the appellant informed them that a Qualis vehicle was parked nearby, and he personally knew the persons sitting inside it, who were travelling to Barnala. The appellant suggested PW.1 and Harjit Singh to travel in that vehicle up to Barnala. On the appellant's assurance, they agreed and boarded the vehicle. According to PW.1, the appellant was sitting in the front passenger seat; PW.1, Head Constable Harjit Singh, and accused Kuldeep Singh sat on the middle seat, while two other persons were seated at the rear. When the vehicle reached near village Dhadda on the main highway, the appellant asked the driver to stop the vehicle, stating that he wanted to attend a nature call. As soon as the vehicle stopped, accused Kuldeep Singh and the two persons seated in the rear seat attacked PW.1 and Harjit Singh. Red Chilli powder was thrown into their eyes; one of the rear occupants assaulted PW.1 with a knife on his back, and the other struck Harjit Singh below the head with a kirpan. Upon raising alarm, some people gathered at the scene, at which

point the appellant, and the other two assailants fled from the spot. But, accused Kuldeep Singh was unable to escape, as he was handcuffed and tied with a belt of Head Constable Harjit Singh. Thereafter, PW.1 and Harjit Singh were taken to Civil Hospital, Rampura by the vehicle driver. PW.1 further stated that PW.7 Sukhchain Singh the Investigating officer, recorded his and Harjit Singh's statements. He stated that the incident was the result of a conspiracy hatched by Kuldeep Singh and others. However, in his deposition, PW.1 identified only accused Kuldeep Singh and did not identify the other assailants. To this extent, he was treated as a hostile witness and he was subjected to cross-examination by the prosecution. During cross-examination, PW.1 admitted that Kuldeep Singh had referred to one of the two other assailants as Mana Singh during their conversation.

12.2. PW.2 Harjit Singh, Head Constable, deposed that on 30.11.2010, he along with Head Constable Hardial Singh (PW.1) had brought undertrial accused Kuldeep Singh @ Deepi to be produced before the Court of Sh. L.K.Singla, SDJM, Talwandi Sabo in connection with FIR No. 59 dated 31.05.2008 under sections 341, 323, 148 and 149 IPC. The journey to Talwandi Sabo was undertaken by bus. After production in Court, around 2.30 pm., as they reached the main gate of the court complex, the appellant met them and suggested that they return to Barnala in a Qualis vehicle bearing Regn. No. PB 19C 8750. The appellant informed them that the persons seated in the said vehicle were known to him and that, it was headed towards Barnala. Although PW.2 initially

expressed a preference to return by the same bus, the appellant insisted, claiming that he had accompanied them earlier in the same bus. Thereafter, the appellant took the front passenger seat beside the driver, while PW.2, PW.1, and accused Kuldeep Singh occupied the middle seat. Two unknown persons were seated on the rear side of the vehicle. PW.2 further deposed that during the journey, accused Kuldeep Singh and the appellant conversed and referred to one of the rear occupants as 'Manna'. After they passed village Kutianwali, the appellant asked the driver to stop the vehicle that he wanted to attend a call of nature. As soon as the vehicle stopped, the two rear seat occupants threw red chilli powder into the eyes of PW.1 and PW.2. One of them inflicted a knife blow to the shoulder of PW.1, and the other attacked PW.2 with a small sword (Kirpan). PW.2 managed to partially shield himself with his carbine, which deflected the blow, but caused injury to his forehead. Upon raising an alarm, the appellant and the two assailants fled the scene. The attackers also attempted to help accused Kuldeep Singh escape. Whileso, Kuldeep Singh scuffled with the escorting officers in an attempt to flee custody, but ended in vain. Ultimately, PW.1 and PW.2 were taken to the Civil Hospital, Rampura, in the same Qualis vehicle, and accused Kuldeep Singh remained with them at that time.

12.2.1. PW.2 categorically stated that the incident was a result of a conspiracy between accused Kuldeep Singh and the appellant to facilitate the former's escape from lawful custody. His statement was recorded by the Police as Ex. PW2/A. In his supplementary statement, PW. 2 named the two other accused as Maan Singh

and Baldev Singh, and during trial, he identified both accused Kuldeep Singh and Baldev Singh. PW.2 also stated that on the day of the occurrence, when they saw Kuldeep Singh in the Central Jail, Ludhiana, he was in the company of the appellant, and all of them including appellant came to Talwandi Sabo by bus, although the appellant had no official connection with their duty. He admitted that as per police regulations, the custody of the undertrial was their sole responsibility, and it was improper to travel with the inmate in a private vehicle accompanies by strangers. He further admitted that they did not inform any senior officer about their decision to travel with the appellant, nor did they question the appellant about his presence in Talwandi Sabo. PW.2 further admitted that he could not identify the specific person who threw the red chilli powder into their eyes. However, he denied the defence suggestion that the incident occurred due to a quarrel following excessive consumption of liquor or that there was any collusion between him, PW.1 and the appellant to orchestrate the escape of Kuldeep Singh. He stoutly denied having made any false statement before the police.

12.3. PW.3 Dr. R.P. Singh, Medical Officer at Civil Hospital, Rampura, deposed that on 30.11.2010, he medically examined Head Constable Hardial Singh (PW.1) and found the following injuries:

(1) Incised wound measuring 1 ½ cm x ½ cm on the back, just below the neck; margins were clean cut with fresh bleeding present

(2) Redness of both eyes.

According to the doctor, both injuries were simple in nature and of probable duration within 12 hours. He opined that injury no.1 was caused by a sharp-edged weapon, whereas injury no.2 could have been caused by a blunt object.

12.3.1. On the same day, PW.3 also examined Head Constable Harjit Singh (PW.2) and recorded the following injuries:

(1) Incised wound measuring 1 cm x ½ cm on the forehead, located just below the hairline, with clean-cut margins and fresh bleeding.

(2) Abrasion on the back of the left elbow joint, reddish in colour

(3) Redness of both eyes.

He opined that all three injuries 1,2 and 3 were simple and of probable duration within 12 hours. Injury no.1 was caused by a sharp weapon, while injuries 2 and 3 were caused by blunt force.

PW.3 further deposed that upon an application moved by Sub Inspector Sukhchain Singh regarding the fitness of the victims for making statements, he certified that both were fit to make statements.

During cross examination, PW.3 stated that redness of eyes could be due to multiple causes, including excessive alcohol consumption, and he did not detect any specific contents of chilli powder in the victims' eyes. He acknowledged that all injuries were simple and none was dangerous to life.

12.4. PW.5 Ravinder Sharm, Junior Assistant in the office of the District Transport Office, deposed that he produced the official record pertaining to the Qualis vehicle bearing Regn. No. PB 19C 8750. As per the said record, on

29.01.2009, the Registration Certificate of the said vehicle was transferred in the name of Karamjit Kaur W/o. Kuldeep Singh, residence of Ward No.16, Barnala.

12.5. PW.7 Sukhchain Singh, who was serving as the Station House Officer, Police Station Balianwali during the relevant time, deposed that upon receipt of information regarding the incident on 30.11.2010, he, along with police party, proceeded to the Civil Hospital, Rampura. After obtaining medical opinion regarding the fitness of the injured persons, he recorded the statements of PW.1 Hardial Singh and PW.2 Harjit Singh. Based on their statements, the FIR (Ex.PW7/ C) was registered. He further deposed that he took into possession a blood-stained woolen shirt and a vest from Head Constable Hardial Singh. He also described the subsequent steps of investigation, including the arrest of accused Kuldeep Singh @ Deepi, the recovery of the Qualis vehicle, and the preparation of a rough sketch of the scene of occurrence. He also deposed regarding the arrest of accused Baldev Singh on 23.02.2011, and other follow-up procedures undertaken in the course of investigation. Additionally, he stated that on the same day i.e., 30.11.2020, Head Constable Harjit Singh produced one carbine along with 35 cartridges, one handcuff, and the custody warrant pertaining to accused Kuldeep Singh @ Deepi.

12.6. PW.10 Balwinder Singh deposed that he was the driver of the Qualis vehicle bearing Regn. No. PB19 C 8750 which was owned by Dial Singh @ Daya Singh. He stated that he used to regularly park the said vehicle at the taxi stand near Court Chowk, Barnala. According to his testimony, on 30.11.2010 at about

11.30 am, two Sikh men, hired his vehicle for travel to Talwandi Sabo. He specifically stated that those individuals were not police officials, and further deposed that he had no personal knowledge regarding the incident. In view of the apparent contradiction between his version and the prosecution case, the prosecution sought to declare him a hostile witness, alleging that he was suppressing the truth, and obtained permission to cross-examine him. However, even during cross-examination, PW.10 denied all material suggestions and did not support the prosecution case.

12.7. DW.1 Balbir Singh, employed as a Fitter in the Record Room of the Central Jail, Ludhiana, deposed that he was conversant with the official records maintained in the jail. He produced in evidence the notice issued to Superintendent, Central Jail, Ludhiana, by the Court of Sub Divisional Judicial Magistrate, Talwandi Sabo, requiring the production of the accused Kuldeep Singh on 30.11.2010. The said notice was marked as Ex. D1.

12.8. DW.2 Hardev Singh, who was working as Naib Reader, produced the enquiry report dated 03.01.2011 prepared by the Deputy Superintendent of Police, Maur, which was exhibited as Ex.DW2 /A. He admitted during cross examination that he was not posted in the office of the DSP at the relevant point and had no personal knowledge of the facts of the case. His deposition was based solely on the contents of the record available with him.

12.9. DW.3 Gurmeet Singh, the Deputy Superintendent of Police, deposed that he had conducted an enquiry into the incident and had recorded the statements of

the appellant as well as the driver of the vehicle. Based on the facts verified during the enquiry, he concluded that the appellant was innocent. According to his findings, the appellant neither attacked the policy party nor had any connection with the accused persons. He further stated that the appellant's presence at Talwandi Sabo on the date of the incident was pursuant to a notice issued by the Court to the Superintendent, Central Jail, Ludhiana, and that, the Superintendent deputed the appellant to attend court proceedings on 30.11.2010. During cross-examination, DW.3 admitted that he could not recall the date and time when he visited the spot of the occurrence.

12.10. Ex. D2 (dated 27.11.2010) - reply to notice and Ex. D3 (dated 29.11.2010) - letter are issued by the Superintendent, Central Jail, Ludhiana, addressed to the Divisional Judicial Magistrate, Talwandi Sabo, regarding the non-production of accused Kuldeep Singh @ Deepi before the Court on earlier dates.

13. In light of the oral testimonies and the documentary evidence brought on record, we shall now proceed to examine whether the judgment of conviction and sentence rendered by the Sessions Court, as affirmed by the High Court, is legally sustainable and warrants interference insofar as the appellant is concerned.

14. As already indicated, the prosecution examined as many as 15 witnesses, of whom, the principal witnesses are PW.1 (Hardial Singh), P.W.2 (Harjit Singh) and PW.10 (Balwinder Singh). PW.1, a member of the escort party, narrated the

sequence of events relating to the assault and attempted escape of undertrial prisoner Kuldeep Singh. However, he turned hostile to the extent of not identifying any of the accused, including the appellant, except Kuldeep Singh. PW.10, the driver of the vehicle and an alleged eyewitness, also turned hostile and denied any knowledge of the incident. As a result, the prosecution case primarily hinges on the testimony of PW.2, the complainant and injured escort officer, on whose statement the FIR was registered by PW. 7, the Investigating Officer.

15. The contentions of the learned counsel for the appellant are threefold: Firstly, the appellant had been declared innocent by the Deputy Superintendent of Police, Maur, during the preliminary inquiry, and therefore, his subsequent summoning under Section 319 Cr.P.C was unjustified; Secondly, there was no overt act attributed to the appellant nor was there any reliable, sufficient, or legally admissible evidence to establish his involvement in a criminal conspiracy under Section 120B IPC. It was contended that in the absence of concrete proof of conspiracy or any direct role in the assault or escape attempt, the conviction under Section 120B as well as for the substantive offences alleged to have been committed pursuant to the conspiracy is liable to be set aside. Thirdly, the prosecution's case rests solely on the testimony of PW.2, an allegedly interested witness, whereas other key witnesses either turned hostile, or failed to identify the appellant, thereby rendering the evidence insufficient to sustain conviction.

16. The first contention – that the appellant was declared innocent during the preliminary investigation – cannot be sustained in law. In ***Hardeep Singh v. State of Punjab***[5], the Constitution Bench of this Court authoritatively interpreted the scope and ambit of Section 319 Cr.P.C., holding that even a person not named in the FIR or chargesheet can be summoned to face trial if evidence recorded during the course of trial indicates his involvement in the offence. The Court emphasized that the opinion of the investigating agency is merely tentative and cannot override the Court's independent judicial assessment based on trial evidence. It further underscored that the power under Section 319 Cr.P.C is judicial in nature, independent of the police's conclusions. For better appreciation, the relevant portion of the judgment is extracted below:

> *"117. We accordingly sum up our conclusions as follows:*
> *Questions (i) and (iii)*
> *– what is the stage at which power under Section 319 Cr.P.C. can be exercised?*
> *AND*
> *– Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?*
> *Answer*
> *117.1. In Dharam Pal case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.*
> *117.2. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e., (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries*

[5] (2014) 3 SCC 92

under Sections 200, 201, 202 Cr.P.C, and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

117.3. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii) – Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv) – What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v) – Does the power under section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but

has not been charge sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh."

16.1. In the present case, the detailed, consistent, and credible testimony of PW.2, Harjit Singh, the injured escort officer, clearly implicates the appellant. His deposition categorically establishes that the appellant facilitated the use of a private vehicle – in which the assailants were already present – and deliberately orchestrated a stop at a vulnerable location under a false pretext, thereby enabling the assault and escape attempt. In light of this direct and incriminating evidence, the trial Court rightly exercised its jurisdiction under Section 319 Cr.P.C to summon the appellant to face trial.

16.2. The appellant's prior exoneration during the preliminary investigation, cannot invalidate the judicial findings recorded on the basis of substantive trial evidence. Even the deposition of DW.3, the Deputy Superintendent of Police, who conducted the preliminary inquiry, fails to inspire confidence. His testimony does not disclose the date, time, or precise details of the spot inspection, thereby casting doubt on the thoroughness and credibility of the investigation. Accordingly, the appellant's reliance on such vague and unsubstantiated findings is wholly misplaced.

17. As regards the second limb of the appellant's contention, it is well established that the offence of criminal conspiracy under section 120B IPC, by its very nature, is seldom capable of being proved by direct evidence. Being a clandestine agreement between two or more persons to commit an unlawful act, or a lawful act by unlawful means, conspiracy is typically established through circumstantial evidence, patterns of conduct, and the cumulative interferences drawn from the interactions of the accused persons.

17.1. In ***State (NCT of Delhi) v. Navjot Sandhu***[6], this Court underscored that conspiracy is inherently covert and rarely leaves behind direct traces. Its existence can be inferred from the surrounding facts and circumstances, the conduct of the accused before, during, and after the occurrence, and the manner in which the crime unfolds. It was further held that every conspirator need not commit an overt act to be held liable, the agreement itself constitutes the offence. What is required is a concert of purpose and unity of design. It was also emphasized that conspiracy is an independent offence and may be punishable even if the substantive offence contemplated by the conspirators does not ultimately materialize. The following paragraphs are pertinent in this regard:

> ***"97.*** *Mostly,* ***conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused*** *(per Wadhwa, J. in Nalini case [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] at p. 516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a*

[6] (2005) 11 SC 600

chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible" (Tanviben Pankajkumar case [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , SCC p. 185, para 45). G.N. Ray, J. in Tanviben Pankajkumar [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] observed that this Court should not allow suspicion to take the place of legal proof."

17.2. Similarly, in ***Ajay Aggarwal v. Union of India***[7], it was reiterated that conspiracy is a continuing offence, which begins with the formation of the unlawful agreement and continues until the common objective is either achieved or abandoned. The court clarified that the crime is complete with the agreement itself and that no overt act is necessary to sustain a conviction under Section 120B IPC. The relevant paragraphs of the said decision are usefully extracted below:

> ***"10.*** *In Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra [(1981) 2 SCC 443 : 1981 SCC (Cri) 477 : (1981) 3 SCR 68] it was held that for an offence under Section 120-BIPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : (1971) 1 SCR 119] it was held that Section 120-BIPC makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. If the offence itself is to commit an offence, no further steps are needed to be proved to carry the agreement into effect. In R.K. Dalmia v. Delhi Administration [(1963) 1 SCR 253 : AIR 1962 SC 1821 : (1962) 2 Cri LJ 805] it was further held that it is not necessary that each member of a conspiracy must know all the details of the conspiracy.* ***In Shivanarayan Laxminarayan Joshi v. State of Maharashtra [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] this Court emphasized that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."***

[7] (1993) 3 SCC 609

17.3. In ***Sudhir Shantilal Mehta v. CBI***[8]***,*** the Court again affirmed that due to the covert nature of conspiracies, courts must necessarily look to the overall circumstances, the acts of the accused, and the coherence of their conduct to infer a conspiracy. The presence of a common intention and the coordinated acts of multiple persons can give rise to a legitimate inference of an unlawful agreement. The relevant paragraphs read as under:

> ***"Criminal conspiracy***
> ***113.*** *Criminal conspiracy is an independent offence. It is punishable independent of other offences; its ingredients being:*
> *(i) an agreement between two or more persons.*
> *(ii) the agreement must relate to doing or causing to be done either*
> *(a) an illegal act;*
> *(b) an act which is not illegal in itself but is done by illegal means.*
> *It is now, however,* ***well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence.*** *While however doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be. As the question has been dealt with in some detail in Criminal Appeal No. 76 of 2004 (R. Venkatakrishnan v. CBI [(2009) 11 SCC 737]), it is not necessary for us to dilate thereupon any further."*
> *....*
>
> ***116.*** *In K.R. Purushothaman v. State of Kerala [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] this Court held: (SCC pp. 636-38, paras 11 & 13)*
> *"11. Section 120-A IPC defines 'criminal conspiracy'. According to this section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. In Major E.G. Barsay v. State of Bombay [AIR 1961 SC 1762 : (1962) 2 SCR 195] Subba Rao, J., speaking for the Court has said: (AIR p. 1778, para 31)*
> *'31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number*

[8] (2009) 8 SCC 1

of acts.'

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13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."
(See also P.K. Narayanan v. State of Kerala [(1995) 1 SCC 142 : 1995 SCC (Cri) 215] .)"

Thus, it is crystal clear that the offence of criminal conspiracy need not be proved by direct evidence, nor is it necessary that all conspirators participate in every stage of the commission of the offence. What is material is the existence of a prior agreement – express or implied – to commit an unlawful act, or a lawful act by unlawful means. Once such agreement is established, even by way of inference from circumstantial evidence, the legal consequences under Section 120B IPC

follow.

17.4. In the present case, the prosecution has convincingly established the existence of a prior concert of action between the appellant and the assailants. The use of a private vehicle associated with the appellant, the involvement of unidentified persons, the stop at a scheduled location under a false pretext, and the appellant's conspicuous inaction during the violent assault – despite being in a position of official authority – all form a continuous chain of incriminating circumstances that point toward his complicity in the conspiracy. His deliberate inaction, lack of any injuries, and subsequent disappearance from the scene further reinforce the inference of his active role. The appellant's conduct was not peripheral but integral to the execution of the plan to facilitate the escape of the undertrial Kuldeep Singh. His behaviour before, during, and after the incident establishes his culpability under section 120B IPC. Accordingly, his conviction for the substantive offences with the aid of Section 120B IPC is legally sustainable.

18. The third submission, which seeks to undermine the prosecution's case on the basis of hostile witnesses or minor inconsistencies, does not merit acceptance. As already noted, the prosecution case rests substantially on the testimony of PW.2 – the complainant and police escort – whose version remained consistent and unshaken. Although PW.1, another member of the police escort team, corroborated portions of PW.2's narrative, he turned hostile insofar as

identification of the accused persons other than Kuldeep Singh is concerned. It is a settled proposition of law that the evidence of a prosecution witness is not to be discarded in toto merely because the witness has turned hostile. Courts are entitled to rely upon any portion of such testimony which is found to be credible and corroborated by other evidence on record.

18.1. In ***Paulmeli v. State of Tamil Nadu***[9], the case involved the conviction of multiple accused under Section 302 IPC despite several prosecution witnesses turning hostile. The trial Court, and subsequently the High Court, relied upon consistent parts of their testimony, which this Court affirmed. The relevant paragraphs are extracted below for better appreciation:

> ***"20.*** *Paulmeli (PW 2) has supported the case of the prosecution so far as the present appellants are concerned. He was declared hostile when he did not name the other accused, who stood acquitted by the courts below and there could be no difficulty to accept his deposition to that extent.*
>
> ***21.*** *This Court in* ***Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777]*** *while dealing with the issue held : (S CC pp. 786-87, para 23)*
> *"23. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine 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 that their version is found to be dependable on a careful scrutiny thereof.'*
>
> ***[Vide Bhagwan Singh v. State of Haryana [(1976) 1 SCC 389 : 1976 SCC (Cri) 7], Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233 : 1976 SCC (Cri) 566], Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] and Khujji v. State of M.P. [(1991) 3 SCC 627 : 1991 SCC (Cri) 916] (SCC p. 635, para 6)]"***
>
> ***22.*** *In* ***State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360****, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour*

[9] (2014) 13 SCC 90

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 Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188] , Subbu Singh v. State [(2009) 6 SCC 462 : (2009) 2 SCC (Cri) 1106] , C. Muniappan v. State of T.N. [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] and Himanshu v. State (NCT of Delhi) [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] . Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and the relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

18.2. Similarly, in ***Rajesh Yadav v. State of UP***[10], this Court observed that the hostility of a witness does not completely efface their testimony from the evidentiary record. The Court emphasized that even partially reliable hostile testimony may serve as the basis for conviction, provided it is corroborated or otherwise trustworthy. The relevant paragraphs are reproduced below:

"*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 law. Some omissions, 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 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, an 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 : 1972 SCC (Cri) 819] , State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] , Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] , State of Rajasthan v. Om Prakash [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411] , Prithu v. State of H.P. [(2009) 11 SCC 588 : (2009) 3 SCC (Cri)

[10] (2022) 12 SCC 200

*1502], State of U.P. v. Santosh Kumar [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580] .***"**

18.3. In ***Goverdhan v. State of Chhattisgarh***[11], where several witnesses had turned hostile and the delay in recording the statement of the key eyewitnesses was highlighted, this Court reiterated that hostile testimony must be carefully sifted – usable portions may be retained, while tainted segments are to be discarded. Applying that principle, the Court ultimately modified the conviction from Section 302 IPC to Part I of Section 304 IPC, relying on consistent portions of the testimony of the deceased's mother. The relevant paragraphs are extracted below:

> ***"93.*** *However, it is also to be noted that merely because the witnesses turn hostile does not necessarily mean that their evidence has to be thrown out entirely and what is supportive of the prosecution certainly be used. In Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] , it was observed as following : (SCC pp. 392-93, para 15)*
>
> > *"15. To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526]. Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in*

[11] (2025) 3 SCC 378

uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P. [1957 SCC OnLine SC 42 : AIR 1957 SC 366]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab [1955 SCC OnLine SC 16 : AIR 1956 SC 460].) The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [1964 SCC OnLine SC 90 : AIR 1965 SC 277] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560] and Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which

> *a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220]. Accusations have been clearly established against the appellant-accused in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."*

> ***94.*** *To the same effect it was held in Raja v. State of Karnataka [(2016) 10 SCC 506 : (2017) 1 SCC (Cri) 158] as follows : (SCC p. 516, para 32)*

> > *"32. That the evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny was reiterated by this Court in Himanshu [Himanshu v. State (NCT of Delhi), (2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] by drawing sustenance of the proposition amongst others from Khujji v. State of M.P. [(1991) 3 SCC 627 : 1991 SCC (Cri) 916] and Koli Lakhmanbhai Chanabhai v. State of Gujarat [(1999) 8 SCC 624 : 2000 SCC (Cri) 13]. It was enounced that the evidence of a hostile witness remains admissible and is open for a court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record."*

> ***95.*** *We are also mindful of the position of law that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. However, in the present case, in spite of the untruthful and evasive testimony of the neighbours, the prosecution has been able to prove its case beyond reasonable doubt and the false plea of the appellants only strengthens the case of the prosecution."*

These decisions reaffirm the legal principle that a hostile witness's testimony need not be discarded in its entirety and that the Court must carefully evaluate whether portions of such evidence are credible and corroborated.

18.4. It is equally well settled that the testimony of a single eyewitness, if found trustworthy and credible, is sufficient to sustain a conviction. In ***Vadivelu Thevar v. State of Madras***[12], this Court held that if the sole witness is of a sterling quality

[12] (1957) SCR 981 : AIR 1957 SC 614 : 1957 Cri LJ 1000

and inspires confidence, a conviction can be safely based upon such testimony.

The following paragraphs are pertinent in this regard:

> *"...Section 134 of the Indian Evidence Act has categorically laid it down that " no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that " Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:*
> *(1) Wholly reliable.*
> *(2) Wholly unreliable.*
> *(3) Neither wholly reliable nor wholly unreliable.*
> *In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material*

particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

18.5. The above principle has been reiterated in ***Chittar Lal v. State of Rajasthan***[13], where the Court upheld a conviction under Section 302 IPC based on the credible and convincing evidence of a single eyewitness, notwithstanding certain inconsistencies and lack of corroboration. The Court held that if the witness is otherwise reliable and his testimony inspires confidence, a conviction is legally sustainable. The relevant paragraph reads as under:

"7. ... Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident, immediately after the investigation process was set into motion. Therefore, the

[13] (2003) 6 SCC 397

plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is Mohd. Sugal Esa Mamasan Rer Alalah v. R. [AIR 1946 PC 3 : 1946 All LJ 100] The Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in Vadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000] , Guli Chand v. State of Rajasthan [(1974) 3 SCC 698 : 1974 SCC (Cri) 222 : AIR 1974 SC 276] , Vahula Bhushan v. State of T.N. [1989 Supp (1) SCC 232 : 1989 SCC (Cri) 353 : AIR 1989 SC 236] , Jagdish Prasad v. State of M.P. [1995 SCC (Cri) 160 : AIR 1994 SC 1251] and Kartik Malhar v. State of Bihar [(1996) 1 SCC 614 : 1996 SCC (Cri) 188].

18.6. A similar view was taken in ***Kuna v. State of Odisha***[14], where the Court upheld a conviction solely on the basis of a trustworthy eyewitness, emphasizing that credible testimony alone is sufficient in law. The following paragraph is pertinent in this regard:

"19. *That conviction can be based on a testimony of a single eyewitness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important, have been propounded consistently in Anil Phukan [Anil Phukan v. State of Assam, (1993) 3 SCC 282 : 1993 SCC (Cri) 810], Ramji Surjya [Ramji Surjya Padvi v. State of Maharashtra, (1983) 3 SCC 629 : 1983 SCC (Cri) 748] , Patnam Anandam [State of A.P. v. Patnam Anandam,*

[14] (2018) 1 SCC 296

(2005) 9 SCC 237 : 2005 SCC (Cri) 1225] and Gulam Sarbar [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401 : (2014) 2 SCC (Cri) 195] with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise."

18.7. In the present case, although the appellant was not officially assigned to the escort duty undertaken by PW.1 and PW.2 on 30.11.2010, he was admittedly present at the court complex on the relevant day. The partial hostility of PW. 1 regarding the identification of the accused, does not undermine the testimony of PW.2 who remained firm, consistent, and unshaken on all material particulars. His account of the events is further corroborated by medical evidence and the surrounding circumstances. His description of the presence of unknown individuals, the seating arrangement in the vehicle, the appellant's inexplicable deviation from the designated route, and the subsequent attack by those individuals, is both detailed and coherent. As already discussed, conviction can rest on the testimony of a sole eyewitness, provided the Court finds it trustworthy and corroborated by other evidence. PW.2's evidence in the present case satisfies this threshold. His status as an injured witness further enhances the reliability of his version.

18.8. The defence suggestion that PW.2 had a motive to falsely implicate the appellant is wholly unsubstantiated. In the absence of any evidence of prior enmity or other animus, and considering that the appellant was PW.2's superior officer, the theory of false implication appears inherently implausible.

19. Thus, the prosecution evidence clearly demonstrates that the attack on the police escort team was not a spontaneous occurrence, but a carefully orchestrated plan. The appellant, holding the post of Assistant Superintendent of Jail, was fully aware of the security protocols applicable to undertrial escorts. Instead of upholding these procedures, he misused his position and familiarity with the escort personnel to subvert the established norms. He facilitated the use of a private vehicle, allegedly owned by an acquaintance, and persuaded the police officers to board it – himself occupying the front passenger seat. This was not an innocuous act but indicated prior arrangement and active complicity.

19.1. Furthermore, the presence of two unidentified persons already seated in the rear of the vehicle – where the undertrial and escort officers were also to be accommodated – not only constituted a grave breach of protocol but was inexplicable except by the appellant's active connivance. At an isolated location, the attack was launched: red chilli powder was thrown, followed by an assault using a knife and a kirpan. Kuldeep Singh attempted to escape and was prevented from doing so only by the handcuffs and the belt secured by the complainant. Throughout the incident, the appellant neither assisted the police escort nor resisted the assailants. He remained uninjured and vanished from the scene of incident thereafter.

19.2. The appellant's conduct during and after the incident is wholly inconsistent with that of a law-abiding officer. Rather, it reveals the mindset of a conspirator attempting to evade accountability. His role in arranging the vehicle, his

suspicious seating position, the unauthorized presence of outsiders, his passive stance during the attack, his disappearance thereafter, and his failure to report the incident together form an unbroken chain of incriminating circumstances. The prosecution has rightly characterized the entire episode as a premeditated conspiracy, in which the appellant played a key role.

20. This Court is compelled to express its strongest condemnation of the appellant's conduct. As a public servant entrusted with safeguarding the rule of law and the custody of prisoners, he did not merely default in his duties – he actively undermined the justice system. When public functionaries betray the institutional trust, the consequences are profound and far-reaching. In a constitutional democracy governed by the rule of law, custodial officers must be held to the highest standards of integrity. Any deviation amounts not only to legal delinquency, but to a grave institutional and moral breach. The findings recorded by the Sessions Court and affirmed by the High Court are based on cogent reasoning and unimpeachable evidence. The appellant has failed to make out any ground for interference under Article 136 of the Constitution.

21. Considering the nature and gravity of the offence committed by the appellant, and more so, keeping in view his position as an Assistant Superintendent of Jail – a role that demands the highest standards of integrity, responsibility and adherence to the rule of law – this Court finds no mitigating

factor to warrant any leniency in sentence. The conviction and sentence imposed are commensurate with the appellant's culpability and call for neither reduction nor interference.

22. Accordingly, the appeal stands dismissed. The appellant shall be taken into custody forthwith, to undergo the remaining period of imprisonment as awarded by the trial Court and affirmed by the High Court. The concerned authorities are directed to ensure the immediate execution of the sentence. If the fine amount has not yet been deposited, the same shall be recovered from the appellant in accordance with law, failing which, he shall undergo the default sentence as stipulated.

23. Pending application(s), if any, shall stand closed.

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[R. Mahadevan]

NEW DELHI;
AUGUST 11, 2025