

Rajesh Kumar vs State Of H.P on 13 October, 2026

2026:HHC:44756

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 344 of 2014

Reserved on: 01.10.2026

Date of Decision: 13.10.2026.

Rajesh Kumar

...Petitioner

Versus

State of H.P.

of

...Respondent

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

For the petitioner : Mr Dewa Nand Sharma,
Advocate.

For the Respondent/State : Mr Tarun Pathak, Deputy
Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 08.09.2014 passed by learned Sessions Judge (Forest) Shimla (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 24.08.2009 passed by learned Judicial Magistrate First Class, Court No. 7, Shimla (learned Trial Court) were upheld. (The parties shall hereinafter be 1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2026:HHC:44756 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 petition are that the police filed a charge sheet before the learned Trial Court against the accused for the commission of an offence of punishable under [Section 354](#) of the Indian Penal Code ([IPC](#)). It was asserted that the informant and the accused were the rt neighbours in a government accommodation allotted to them.

The victim disclosed to her mother on 08.10.2003 that the accused had taken her into a room when his wife was not present in the house. The accused bolted his children in the kitchen and took the victim to a room. He removed her salwar and ejaculated upon her. The victim also disclosed that the accused had done so with her 4-5 times before this incident. The matter was reported to the police. The police registered an FIR (Ext.PW1/A). Inspector Nutan Sharma (PW5) investigated the matter. He visited the spot and prepared the site plan (Ext.PW5/A). He recorded the statements of the witnesses as per their version. The challan was filed before the Court after the completion of the investigation.

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3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of .

accusation was put to him for the commission of an offence punishable under [Section 354](#) of IPC, to which he pleaded not guilty and claimed to be tried.

of

4. The prosecution examined six witnesses to prove its case. The informant had reported the matter to the police. The rt victim (PW2) narrated the incident. Inspector Sunil Negi (PW3) prepared the challan. SI Prem Chand (PW4) signed the FIR.

Inspector Nutan Sharma (PW5) investigated the matter. The victim's cousin (PW6) was initially told about the incident, and she had advised the victim to narrate it to her parents.

5. The accused, in his statement recorded under [Section 313](#) of the Code of Criminal Procedure ([CrPC](#)), denied the prosecution case in its entirety. He claimed that he is innocent and he was falsely implicated because of enmity. He examined his wife Sushma (DW1) in his defence.

6. Learned Trial Court held that the victim's testimony was duly corroborated by the statements of her cousin and the informant. The defence taken by the accused that he was falsely ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 4
2026:HHC:44756 implicated because of the enmity was not probable. The statement of the defence witness was not sufficient to discard the .

prosecution version. Hence, the learned trial Court convicted and sentenced the accused as under:

Section

Sentence

[Section 354](#) of IPC

of
To undergo simple imprisonment
for one year.

7.

rt

Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Sessions Judge (Forest), Shimla (learned Appellate Court). The learned Appellate Court

concurred with the findings recorded by the learned Trial Court that the informant's testimony was duly corroborated by the testimonies of her cousin and her father. The victim's testimony appeared natural and trustworthy. The reason furnished by the accused that a false case was made because of the quarrel between the wife of the accused and the informant's mother was highly improbable, as no prudent person would put an allegation of outraging the modesty of a girl because of a petty dispute. The statement of the wife of the accused was not believable, and the learned Trial Court had rightly rejected it. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the .

appeal was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present of revision asserting that there are discrepancies in the statements of the witnesses. The prosecution had not proved its case beyond reasonable doubt. The defence taken by the accused that a false case was made against him because of a dispute between his wife and the informant's mother was highly probable, and the learned Courts below erred in rejecting such a defence. There was a delay in reporting the matter to the police, which was not properly explained. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Dewa Nand Sharma, learned counsel for the petitioner/accused, and Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State.

10. Mr Dewa Nand Sharma, learned counsel for the petitioner/accused, submitted that the petitioner is innocent and he was falsely implicated. The informant's testimony was wrongly relied upon by the learned Trial Court. There was a delay .

in reporting the matter to the police, which made the prosecution case highly doubtful. The testimony of the wife of the accused that she had a dispute with the informant's wife and a false case was made against her husband was ignored without any of justification. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Tarun Pathak, learned Deputy Advocate General for the respondent/State, submitted that the victim's testimony was reliable and it was duly corroborated by the testimonies of her cousin and the informant. There is no reason to disbelieve her testimony. The defence taken by the accused that a false case was made against him because of the dispute between the informant's mother and the wife of the accused was highly improbable and learned Courts below had rightly rejected it. This Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485 that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

rt "7. Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. [Section 397](#) of the Criminal Procedure Code, 1973 (now, [Section 438](#) of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court.

The said Section is extracted as hereunder:

"438. Calling for records to exercise powers of revision.--(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. --All Magistrates, whether Executive or Judicial, and whether exercising original or appellate ::: Downloaded on - 13/10/2026 21:45:05 ::CIS 8 2026:HHC:44756 jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of [section 439](#).

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same of person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section rt whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the [State of Maharashtra v. Jagmohan Singh Kuldeep Singh Anand](#), (2004) 7 SCC 659: 2004 SCC (Cri) 2003, observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High ::: Downloaded on - 13/10/2026 21:45:05 ::CIS 9 2026:HHC:44756 Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the .

merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, of especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible rt unless a glaring contradiction is apparent on the face of the record. In [State of Kerala v. Puttumana Illath Jathavedan Namboodiri](#), (1999) 2 SCC 452: 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

"5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court

which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

- i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly of unreliable or untenable in law.
- ii. The lower court has passed the impugned order after re-considering immaterial or irrelevant material or no material at all.
- iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in [Sanjabij Tari v. Kishore S. Borcar](#), 2025 INSC 1158, in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under [Section 138](#) of NI Act, while setting aside the impugned order, observed as under:

"27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in [Southern Sales & Services v. Sauermilch Design and Handels GMBH](#), (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High Court

has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The present revision has to be decided as per the parameters [laid down by](#) the Hon'ble Supreme Court.

15. The victim (PW2) stated that the accused was residing in her neighbourhood. The accused used to bolt his children inside the kitchen and take her to his room, where he would untie her salwar and ejaculate upon her. Once, her cousin had visited her home, and she was playing with her. The accused called her (victim) along with her cousin. She asked her cousin not to go to the room of the accused because the accused used to behave indecently. She (the victim's cousin) advised her to narrate the incident to her parents. She (the victim) narrated the incident earlier because the accused had threatened her. She stated in her cross-

examination that she and the daughter of the accused were of the same age. She admitted that her mother and the wife of the accused used to quarrel with each other. She admitted that she would not go to the house of the accused after the quarrel. She of stated in response to the Court's question that her mother used to ask the wife of the accused to take care of her (the victim). She rt denied that the kitchen of the house of the accused did not have any door. She denied that she was tutored by her father to depose against the accused and that she was making a false statement at the instance of her parents.

16. Her statement was duly corroborated by her cousin (PW6), who stated that she had visited the victim's house in October, 2003. One day she and the victim were playing. The accused came to them and told them that he had a firecracker.

She told the accused to give the firecracker to her. The accused told her to come to his room to take the firecracker. The victim told her that the accused behaved indecently with her (the victim). She (victim's cousin) advised the victim to narrate the incident to her parents, and the victim narrated the incident to ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 13 2026:HHC:44756 her parents. She stated in her cross-examination that she had visited the victim's house on 08.10.2003. Her statement was .

recorded by the police in the victim's home. She was duly confronted with her previous statement wherein it was not mentioned that the accused had asked her to visit the room to get the firecracker. She admitted that her attendance was marked in of the school at Amb on 08.10.2003. She volunteered to say that she could not understand the question and that her attendance was rt not marked. She was not aware that the informant's mother and the wife of the accused used to quarrel with each other. The victim had not narrated the incident to her before that day. She admitted that her family had a cordial relationship with the victim's family. She denied that she had made the statement at the instance of the victim's parents.

17. It was submitted that there are discrepancies in the statements of this witness and the victim because they had narrated different reasons for calling the victim to the room of the accused. This submission will not help the defence. The victim was aged only 6 years on the date of the incident, and she would not have sufficient maturity to disclose the facts surrounding the incident. Hence, her testimony cannot be ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 14 2026:HHC:44756 rejected because of some discrepancy between her statement and the statement of her cousin. The core of the testimonies of these .

two witnesses remains the same: that the accused had called the victim and her cousin to his room, and the victim had disclosed to her cousin about the acts of the accused. These facts were consistently stated by the victim and her cousin, and the learned of Courts below had rightly accepted them.

18. rt It was submitted that the relationship between the victim's family and the family of the victim's cousin is cordial and the testimony of the victim's cousin cannot be relied upon.

This submission cannot be accepted. The relationship would show that the victim's cousin had a reason to be present in the victim's house. It was [laid down by](#) the Hon'ble Supreme Court in [Laltu Ghosh v. State of W.B.](#), (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2 that a related witness is not an interested witness and his testimony cannot be rejected on the ground of interestedness. It was observed:

"12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested"

witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 15 2026:HHC:44756 cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would .

mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see [State of Rajasthan v. Kalki](#), (1981) 2 SCC 752: 1981 SCC (Cri) 593; [Amit v. State of U.P.](#), (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590 and [Gangabhavani v. Rayapati Venkat Reddy](#), (2013) 15 SCC 298 : (2014) 6 SCC of (Cri) 182).

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

(2018) 2 SCC (Cri) 793), SCC p. 555, para 14)

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

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in [Dalip Singh v. State of Punjab](#), 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, wherein this Court observed: (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually :: Downloaded on - 13/10/2026 21:45:05 :: CIS 16 2026:HHC:44756 means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to .

screen the real culprit and falsely implicate an innocent person."

15. In the case of a related witness, the Court may not treat his or her testimony as inherently tainted and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in [Jayabalan v. State \(UT of Pondicherry\)](#), (2010) 1 SCC 199: (2010) 2 SCC (Cri) 966 (SCC p. 213, para 23) "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses, must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses, but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

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

"31. In this context, we may refer with profit to the decision of this Court in [Dalip Singh v. State of Punjab](#) AIR 1953 SC 364, wherein Vivian Bose, J., speaking for the Court, observed as follows: -

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2026:HHC:44756 "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye- witnesses requires corroboration. If the foundation .

for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured of to dispel in [Rameshwar v. The State of Rajasthan](#) (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page

59)."

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

rt "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely.

Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high, and there is a personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such criticism, and the mere fact of relationship, far from being a foundation, is often a sure guarantee of truth."

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

34. In [Hari Obula Reddi and others v. State of Andhra Pradesh](#) AIR 1981 SC 82, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground :: Downloaded on - 13/10/2026 21:45:05 :: CIS 18 2026:HHC:44756 for discrediting or rejecting sworn testimony. It can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a .

material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to scrutiny and accepted with caution. If, on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction of thereon.

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

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

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

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

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

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20. This position was reiterated in [Rajesh Yadav vs. State of Bihar](#) 2022 Cr.L.J. 2986 (SC) as under:

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"28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstands the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness only when he is desirous of implicating the accused in rendering a conviction, on purpose.

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

"32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of a related witness. In [Dalip Singh v. State of Punjab](#), 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, Vivian Bose, J., for the Bench, observed the law as under (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted, and that usually means unless the witness has a cause, such as an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 20 2026:HHC:44756 person. It is true when feelings run high, and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness .

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

33. In [Masalti v. State of U.P.](#), (1964) 8 SCR 133: AIR 1965 SC rt 202: (1965) 1 Cri LJ 226, a five-judge Bench of this Court has categorically observed as under (AIR pp. 209-210, para 14) "14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence, whether or not the evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable, are all matters that must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to the failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. The judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 21 2026:HHC:44756 rejected because it is partisan cannot be accepted as correct."

34. In [Darya Singh v. State of Punjab](#) [(1964) 3 SCR 397: AIR .

1965 SC 328: (1965) 1 Cri LJ 350], this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised, but no corroboration is necessary for acceptance of his evidence. In [Harbans Kaur v. State of Haryana](#) [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199], this Court observed that: (SCC p. 227, para 6) of "6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is it raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves with is [Namdeo v. State of Maharashtra](#) (2007) 14 SCC 150: (2009) 1 SCC (Cri) 773, wherein this Court, after observing previous precedents, has summarised the law in the following manner: (SCC p. 164, para 38) "38. ... It is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If, on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, a conviction can be based on the "sole" testimony of such a witness. A close relationship of the witness with the deceased or the victim is no ground to reject his evidence. On the contrary, a close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with ::: Downloaded

on - 13/10/2026 21:45:05 :::CIS 22 2026:HHC:44756 those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule, which remains the bulwark of this system .

and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desires to do so. Similarly, he may of not be in a position to provide evidence in an impartial manner when it involves his interests. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and rt provide favourable colour. These are the most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case."

30. Once again, we reiterate with a word of caution that the trial court is the best court to decide on the aforesaid aspect, as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself, which extends the maximum discretion to the court."

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

"10. Having gone through the deposition of the relevant witnesses -eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 23 2026:HHC:44756 hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all .

interested witnesses, being relatives of the deceased.

Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7."

of

22. It was [laid down by](#) the Hon'ble Supreme Court in [Mohd. Jabbar Ali v. State of Assam](#), 2022 SCC OnLine SC 1440, that rt relationship is no reason to discard the witnesses' testimonies.

The Court is required to see their testimonies with due care and caution. It was observed:

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

settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded; however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinised with greater care and circumspection. In the case of [Gangadhar Behera v. State](#) of :::: Downloaded on - 13/10/2026 21:45:05 :::CIS 24 2026:HHC:44756 Orissa, (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

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

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

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

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23. This position was reiterated in [Baban Shankar Daphal v. State of Maharashtra](#), 2025 SCC OnLine SC 137, wherein it was .

observed:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased, and for prudence, the prosecution ought to have examined some other of independent eyewitnesses as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses, who had also reached the place of the incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinised with care and caution. It has been held by this Court in the catena of judgments that merely because a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinised. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

29. The distinction between "interested" and "related"

witnesses has been clarified in [Dalip Singh v. State](#) of ::: Downloaded on - 13/10/2026 21:45:05 :::CIS 26 2026:HHC:44756 Punjab 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465, where this Court emphasised that a close relative is usually the last person to falsely implicate an innocent .

person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

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

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

24. Thus, the testimony of the victim's cousin cannot be discarded because the relationship between her family and the victim's family was cordial.

25. It was submitted that the victim's cousin was duly confronted with the improvement made by her that the accused
::: Downloaded on - 13/10/2026 21:45:05 ::CIS 27 2026:HHC:44756 had shown her the firecracker and her testimony is doubtful. This submission will not help the accused because the Investigating .

Officer was not asked about the confrontation, and the contradiction was not properly proved. It was [laid down by](#) the Hon'ble Bombay High Court about a century ago in [Emperor vs. Vithu Balu Kharat](#) (1924) 26 Bom. L.R. 965 that the previous statement has to be proved before it can be used. It was observed:

rt "The words "if duly proved" in my opinion, clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness; and the provisions of [Section 67](#) of the Indian Evidence Act apply to this case, as well as to any other similar case. Of course, I do not mean to say that, if the particular police officer who recorded the statement is not available, other means of proving the statement may not be availed of, e.g., evidence that the statement is in the handwriting of that particular officer."

26. It was [laid down by](#) the Hon'ble Supreme Court in *Muthu Naicker and Others, etc. Versus State of T.N.* (1978) 4 SCC 385, that if the witness affirms the previous statement, no proof is necessary, but if the witness denies or says that he did not remember the previous statement, the investigating officer should be asked about the same. It was observed: -

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2026:HHC:44756 "52. This is the most objectionable manner of using the police statement, and we must record our emphatic disapproval of the same. The question should have been .

framed in a manner to point out that, from amongst those accused mentioned in examination-in-chief, there were some whose names were not mentioned in the police statement and if the witness affirms this, no further proof is necessary and if the witness denies or says that she does not remember, the investigating officer should have been questioned about it."

of

27. The Gauhati High Court held in [Md. Badaruddin Ahmed v. State of Assam](#), 1989 SCC OnLine Gau 35: 1989 Cri LJ 1876, rt that if the witness denies having made the statement, the portion marked by the defence should be put to the investigating officer and his version should be elicited regarding the same. It was observed at page 1880: -

"13. The learned defence counsel has drawn our attention to the above statement of the Investigating Officer and submits that P.W. 4 never made his above statement before the police and that the same, being his improved version, cannot be relied upon. With the utmost respect to the learned defence counsel, we are unable to accept his above contention. Because, unless the particular matter or point in

the previous statement sought to be contradicted is placed before the witness for explanation, the previous statement cannot be used in evidence. In other words, drawing the attention of the witness to his previous statement sought to be contradicted and giving all opportunities to him for explanation are compulsory. If any authority is to be cited on this point, we may conveniently refer to the case of [Pangi Jogi Naik v. State](#) reported in AIR 1965 Orissa 205: (1965 (2) Cri LJ 661). Further, in the case of [Tahsildar Singh v. State of U.P.](#), ::: Downloaded on - 13/10/2026 21:45:05 ::: CIS 29 2026:HHC:44756 reported in AIR 1959 SC 1012: (1959 Cri LJ 1231), it was also held that the statement not reduced to writing cannot be contradicted and, therefore, in order to show that the .

statement sought to be contradicted was recorded by the police, it should be marked and exhibited. However, in the case at hand, there is nothing on the record to show that the previous statement of the witness was placed before him and that the witness was given the chance for explanation. Again, his previous statement was not marked and exhibited. Therefore, his previous statement of before the police cannot be used. Hence, his evidence that when he turned back, he saw the accused Badaruddin lowering the gun from his chest is to be taken as his correct version.

rt

14. The learned defence counsel has attempted to persuade us not to rely on the evidence of this witness on the ground that his evidence before the trial Court is contradicted by his previous statement made before the police. However, in view of the decisions made in the said cases, we have been persuaded irresistibly to hold that the correct procedure to be followed, which would be in conformity with [S. 145](#) of the Evidence Act, to contradict the evidence given by the prosecution witness at the trial with a statement made by him before the police during the investigation will be to draw the attention of the witness to that part of the contradictory statement which he made before the police, and question him whether he did, in fact, make that statement. If the witness admits having made the particular statement to the police, that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the accused as establishing the contradiction. However, if, on the other hand, the witness denies to have made such a statement before the police, the particular portions of the statement recorded should be provisionally marked for identification as B-1 to B-1, B-2 to B-2 etc. (any identification mark) and when the investigating officer who had actually recorded the statements in question ::: Downloaded on - 13/10/2026 21:45:05 ::: CIS 30 2026:HHC:44756 comes into the witness box, he should be questioned as to whether these particular statements had been made to him during the investigation by the particular witness, .

and obviously after refreshing his memory from the case diary the investigating officer would make his answer in the affirmative. The answer of the Investigating Officer would prove the statements B-1 to B-1, B-2 to B-2, which are then exhibited as Ext. D. 1, Ext. D. 2, etc. (exhibition mark) in the case and will go into evidence, and may, thereafter, be relied on by the accused as contradictions. In of the case in hand, as was discussed in above, the above procedure was not followed while cross-examining the witness to his previous statements, and, therefore, we have no alternative but to accept the statement given by rt this witness before the trial Court that he saw the accused Badaruddin lowering the gun from his chest to be his correct version."

28. Andhra Pradesh High Court held in Shaik Subhani v.

State of A.P., 1999 SCC OnLine AP 413: (1999) 5 ALD 284: 2000 Cri LJ 321: (1999) 2 ALT (Cri) 208 that putting a suggestion to the witness and the witness denying the same does not amount to putting the contradiction to the witness. The attention of the witness has to be drawn to the previous statement, and if he denies the same, the same is to be proved by the investigating officer. It was observed at page 290: -

"24... As far as the contradictions put by the defence are concerned, we would like to say that the defence Counsel did not put the contradictions in the manner in which it ought to have been put. By putting suggestions to the witness and the witness denying the same will not amount to putting contradiction to the witness. The contradiction ::: Downloaded on - 13/10/2026 21:45:05 ::: CIS 31 2026:HHC:44756 has to be put to the witness as contemplated under [Section 145](#) of the Evidence Act. If a contradiction is put to the witness and it is denied by him, then his attention has to .

be drawn to the statement made by such witness before the Police or any other previous statement, and he must be given a reasonable opportunity to explain as to why such contradiction appears, and he may give any answer if the statement made by him is shown to him and if he is confronted with such a statement and thereafter the said contradiction must be proved through the Investigation of Officer. Then, it only amounts to putting the contradiction to the witness and getting it proved through the Investigation Officer."

29. The Calcutta High Court took a similar view in Anjan rt [Ganguly v. State of West Bengal](#), 2013 SCC OnLine Cal 22948: (2013) 2 Cal LJ 144 and held at page 151: -

"21. It was held in [State of Karnataka v. Bhaskar Kushali Kothakar](#), reported as (2004) 7 SCC 487, that if any statement of the witness is contrary to the previous statement recorded under [Section 161](#), Cr.P.C. or suffers from omission of certain material particulars, then the previous statement can be proved by examining the Investigating Officer who had recorded the same. Thus, there is no doubt that to prove the previous statement, the Investigating Officer ought to be examined, and the statement of the witness recorded by him can only be proved by him, and he has to depose to the extent that he had correctly recorded the statement, without adding or omitting, as to what was stated by the witness.

23. Proviso to [Section 162\(1\)](#), Cr.P.C. states in clear terms that the statement of the witness ought to be duly proved. The words, if duly proved, cast a duty upon the accused who wants to highlight the contradictions by confronting the witness to prove the previous statement of a witness through the police officer who has recorded the same in :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 32 2026:HHC:44756 the ordinary way. If the witness in the cross-examination admits contradictions, then there is no need to prove the statement. But if the witness denies a contradiction and .

the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be proved by the police officer. In case the prosecution fails to call the police officer in a given situation, the Court can call this witness, or the accused can call the police officer to give evidence in defence. There is no doubt that unless the statement as per proviso of to sub-section (1) of [Section 162](#), Cr.P.C. is duly proved, the contradiction in terms of [Section 145](#) of the Indian Evidence Act cannot be taken into consideration by the Court.

rt

24. To elaborate on this further, it will be necessary to reproduce [Section 145](#) of the Indian Evidence Act.

"[S. 145](#). A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

25. Therefore, it is appropriate that before the previous statement or statement under [Section 161](#), Cr.P.C. is proved, the attention of the witness must be drawn to the portion in the statement recorded by the Investigating Officer to bring to light the contradiction, a process called confrontation.

26. Let us first understand what the proper procedure is. A witness may have stated in the statement under [Section 161](#), Cr.P.C. that 'X murdered Y'. In court, the witness states, 'Z murdered Y'. This is a contradiction. Defence Counsel or the Court, and even the prosecution if the witness is declared hostile, having resiled from a previous statement, is to be confronted to bring the contradiction on record. The attention of the witness must be drawn to :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 33 2026:HHC:44756 the previous statement or statement under [Section 161](#), Cr.P.C., where it was stated that 'X murdered Y'. Since [Section 145](#) of the Indian Evidence Act uses the word being .

proved, therefore, in the course of examination of the witness, a previous statement or a statement under [Section 161](#), Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion contradicted will be specified. The trial court, in the event of contradiction, has to record as under.

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

28. Now, a reference to the explanation to [Section 162](#), Cr.P.C., which says that an omission to state a fact or circumstance may amount to contradiction. Say, for instance, if a witness omits to state in Court that 'X murdered Y', what he had stated in a statement under [Section 161](#), Cr.P.C., will be material? contradiction, for the Public Prosecutor, as the witness has resiled from the previous statement, or if he has been sent for trial for the charge of murder, omission to state 'X murdered Y' will be a material omission, and amount to contradiction so far as the defence of 'W is concerned. At that stage also, attention of the witness will be drawn to a significant portion of the statement recorded under [Section 161](#), Cr.P.C., which the witness had omitted to state, and note shall be given that attention of the witness was drawn to the portion A to A wherein it is recorded that 'X murdered Y'. In this way, the omission is brought on record. The rest of the procedure stated earlier, qua confrontation, shall be followed to prove the statement of the witness and the fact .

stated by the witness.

29. Therefore, to prove the statement for the purpose of contradiction, it is necessary that the contradiction or omission must be brought to the notice of the witness. His or her attention must be drawn to the portion of the previous statement (in the present case statement under [Section 161](#), Cr.P.C)"

of

30. A similar view was taken in [Alauddin v. State of Assam](#), 2024 SCC OnLine SC 760, wherein it was observed:

rt "7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under [Section 161\(1\)](#) or [Section 164](#) of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under [Section 161\(1\)](#) or [Section 164](#) of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to [Section 162](#) CrPC indicates that an omission may amount to a contradiction when it is significant and relevant.

Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test [laid down in](#) the explanation under [Section 162](#). Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of [Section 162](#) must be followed for contradicting witnesses in the cross- examination.

8. As stated in the proviso to sub-Section (1) of [Section 162](#), the witness has to be contradicted in the manner ::: Downloaded on - 13/10/2026 21:45:05 ::CIS 35 2026:HHC:44756 provided under [Section 145](#) of the Evidence Act. [Section 145](#) reads thus:

"145. Cross-examination as to previous statements .

in writing.--A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be of used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his rt previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-

examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. [Section 145](#) provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown :: Downloaded on - 13/10/2026 21:45:05 :: CIS 36 2026:HHC:44756 to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having .

made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, of that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-

examination of the concerned police officer. The object of this requirement in [Section 145](#) of the Evidence Act, of confronting the witness by showing him the relevant part of his prior statement, is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of [Section 155](#) of the Evidence Act, which reads thus:

"155. Impeaching credit of the witness. -- The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him--

(1) (2) (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

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2026:HHC:44756 It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or .

contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially.

What is a material contradiction or omission, depending upon the facts of each case? Whether an omission is a contradiction also depends on the facts of each case.

of

10. We are tempted to quote what is held in a landmark decision of this Court in the case of *Tahsildar Singh v. State of U.P.* 1959 Supp (2) SCR 875. Paragraph 13 of the said decision reads thus:

rt"13. The learned counsel's first argument is based upon the words "in the manner provided by [Section 145](#) of the Indian Evidence Act, 1872" found in [Section 162](#) of the Code of Criminal Procedure. [Section 145](#) of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of

this contention, reliance is placed upon the judgment of this Court in [Shyam Singh v. State of Punjab](#) [(1952) 1 SCC 514: 1952 SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under [Section 145](#) of the Evidence Act, thus at p. 819:

Resort to [Section 145](#) would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then [Section 145](#) requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement of which no further proof is :::

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It is unnecessary to refer to other cases wherein a .

similar procedure is suggested for putting questions under [Section 145](#) of the Indian Evidence Act, for [the said decision](#) of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under [Section 162](#) of the Code of Criminal Procedure. [Section 145](#) of the Evidence Act is in two parts:

of the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the rt cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to [Section 162](#) of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by [Section 145](#) of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross- examining a witness within the meaning of the first part of [Section 145](#) of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of [Section 145](#) of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of [Section 145](#) of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that ::: Downloaded on - 13/10/2026 21:45:05 ::CIS 39 2026:HHC:44756 part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he .

does not admit it, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as a of contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a rt record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of [Section 162](#) of the Code. The second fallacy is that, by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon [Section 145](#) of the Evidence Act is, therefore, not of any

relevance in considering the express provisions of [Section 162](#) of the Code of Criminal Procedure." (emphasis added) :: Downloaded on - 13/10/2026 21:45:05 :: CIS 40 2026:HHC:44756 This decision is a locus classicus, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' .

prior statements based on which they were sought to be contradicted in the cross-examination."

31. It was submitted that the statement of the Investigating Officer was recorded before the statement of the victim's cousin and therefore the defence had no opportunity to of prove the confrontation with the previous statement. This submission is only stated to be rejected. It was [laid down by](#) the rt Hon'ble Supreme Court in [State of Rajasthan v. Teja Ram](#), (1999) 3 SCC 507; 1999 SCC (Cri) 436; 1999 SCC OnLine SC 315 that the defence can always summon the investigating officer to prove the former statement. It was observed at page 516:

"32. One of the permitted modes of impeaching the credit of a witness is proof of former statements which are inconsistent with any part of his testimony, as indicated in [Section 155\(3\)](#) of the Evidence Act. But the mode of using such former statements for the purposes of contradicting the witness is prescribed in [Section 145](#) of the Evidence Act. It cannot be contended that the aforesaid former statement was not available for the defence to confront PW 15 (Mota Ram) with since the Head Constable PW 8 was examined later. It was open to the defence to request for recalling the witness for the purpose of further cross-

examination to impeach his veracity on the strength of the alleged former statement which came on record subsequently (vide Naba Kumar Das v. Rudra Narayan Jana [AIR 1923 PC 95: 28 CWN 589]). In this case, PW 15 was not asked anything about what he had told or not told PW 8, :: Downloaded on - 13/10/2026 21:45:05 :: CIS 41 2026:HHC:44756 Head Constable. We are unable to appreciate the contention of the learned counsel on that score. In view of the retracing made by PW 8 during the latter part of the .

cross-examination, we are not disposed to give any further opportunity to the accused to confront PW 15 with that material."

32. In the present case, no application for recall of the Investigating Officer was filed, and the defence cannot take of advantage of the fact that the statement of the Investigating Officer was recorded before the statement of the victim's cousin.

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

"3. The learned Sessions Judge had rejected the evidence of the eyewitnesses on wrong, unconvincing and unsound reasons. The Sessions Judge appears to have been swayed by some insignificant omissions made by some of the witnesses in their statements before the police, and on the basis of these omissions, dubbed the witnesses as liars. The Sessions Judge did not realise that the statements given by the witnesses before the police were meant to be brief statements and could not take the place of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a court that the witnesses concerned are self- contained liars. We have carefully perused the judgment of the Sessions Judge, and we are unable to agree that the reasons that he has given for disbelieving the witnesses are good or sound. The High Court was, therefore, fully justified in reversing the judgment passed by the trial :: Downloaded on - 13/10/2026 21:45:05 :: CIS 42 2026:HHC:44756 court. We are satisfied that this is a case where the judgment of the Sessions Judge was manifestly wrong and perverse and was rightly set aside by the High Court. It was .

urged by Mr Mehta that, as other appellants except Matadin and Dulare do not appear to have assaulted the deceased, they should be acquitted of the charge under [Section 149](#). We, however, find that all the appellants were members of the unlawful assembly. Their names find a place in the FIR. For these reasons, we are unable to find any ground to distinguish the case of those appellants of from that of Matadin and Dulare. The argument of the learned counsel is overruled. The result is that the appeal fails

and is accordingly dismissed. The appellants who are on bail will now surrender to serve out the remaining portion of their sentence."

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

"23. So far as the appeal filed by accused Esher Singh is concerned, the basic question is that even if the confessional statement purported to have been made by A-5 is kept out of consideration, whether residuary material is sufficient to find him guilty. Though it is true, as contended by learned counsel for the accused-appellant Esher Singh, that some statements were made for the first time in court and not during the investigation, it has to be seen to what extent they diluted the testimony of Balbeer Singh and Dayal Singh (PWs 16 and 32) used to bring home the accusations. A mere elaboration cannot be termed a discrepancy. When the basic features are stated, unless the elaboration is of such a nature that it creates a different contour or colour of the evidence, the same cannot be said to have totally changed the complexion of the case. It is to be noted that in addition to the evidence of PWs 16 and 32, the evidence of S. Narayan Singh (PW 21) provides the :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 43 2026:HHC:44756 necessary links and strengthens the prosecution's version. We also find substance in the plea taken by learned counsel for the State that evidence of Amar Singh Bungai (PW 24) .

was not tainted in any way, and should not have been discarded and disbelieved only on surmises. Balbir Singh (PW 3), the son of the deceased, has also stated about the provocative statements in his evidence. Darshan Singh (PW 14) has spoken about the speeches of the accused Esher Singh, highlighting the Khalistan movement. We find that the trial court had not given importance to the evidence of some of the witnesses on the ground that they were relatives of the deceased. The approach is wrong. The mere relationship does not discredit the testimony of a witness. What is required is careful scrutiny of the evidence. If, after careful scrutiny, the evidence is found to be credible and cogent, it can be acted upon. In the instant case, the trial court did not indicate any specific reason to cast doubt on the veracity of the evidence of the witnesses whom it had described as the relatives of the deceased. PW 24 has categorically stated about the provocative speeches by A-1. No definite cross-examination on the provocative nature of speech regarding the Khalistan movement was made, so far as this witness is concerned."

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

"12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 44 2026:HHC:44756 to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, a hypertechnical approach by taking sentences torn out of .

context here or there from the evidence, and attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and cannot take the place of evidence in court. Small/trivial omissions would not justify a finding by the court that the witnesses concerned are liars. The prosecution's evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtained in the evidence. In the latter, however, no such benefit may be available to it."

36. Similar is the judgment in [Kalabhai Hamirbhai Kachhot v. State of Gujarat](#), (2021) 19 SCC 555: 2021 SCC OnLine SC 347, wherein it was observed at page 564:

"22. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs 18 and 19. The contradictions that are sought to be projected are minor contradictions that cannot be the basis for discarding their evidence. The judgment of this Court in [Mohar \[Mohar v. State of U.P.\]](#), (2002) 7 SCC 606: 2003 SCC (Cri) 121], relied on by the learned counsel for the respondent State, supports the case of the prosecution. In the aforesaid judgment, this Court has held that convincing evidence is required to :: Downloaded on - 13/10/2026 21:45:05 :: CIS 45 2026:HHC:44756 discredit an injured witness. Para 11 of the judgment reads as follows: (SCC p. 611) "11. The testimony of an injured witness has its own

efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy that does not affect of the prosecution's case materially cannot create any infirmity. In the instant case, the discrepancy in the name of PW 4 appearing in the FIR and the cross- examination of PW 1 has been amply clarified. In cross- rt examination, PW 1 clarified that his brother Ram Awadh had three sons: (1) Jagdish, PW 4, (2) Jagarnath, and (3) Suresh. This witness, however, stated that Jagarjit had only one name. PW 2, Vibhuti, however, stated that at the time of occurrence, the son of Ram Awadh, Jagjit alias Jagarjit, was milking a cow, and he was also called as Jagdish. Balli (PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish."

23. The learned counsel for the respondent State has also relied on the judgment of this Court in [Naresh \[State of U.P. v. Naresh\]](#), (2011) 4 SCC 324: (2011) 2 SCC (Cri) 216]. In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paras 27 and 30 of the judgment, which are relevant, read as under: (SCC pp. 333-

34) "27. The evidence of an injured witness must be given due weight, being a stamped witness; thus, his presence cannot be doubted. His statement is generally considered to be very reliable, and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has :: Downloaded on - 13/10/2026 21:45:05 :: CIS 46 2026:HHC:44756 sustained injuries at the time and place of occurrence, and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of

an injured witness is accorded a special status in law.

The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and of discrepancies therein. (Vide [Jarnail Singh v. State of Punjab \[Jarnail Singh v. State of Punjab\]](#), (2009) 9 SCC 719:

(2010) 1 SCC (Cri) 107], [Balraje v. State of Maharashtra \[Balraje v. State of Maharashtra\]](#), (2010) 6 SCC 673: (2010) rt 3 SCC (Cri) 211] and [Abdul Sayeed v. State of M.P. \[Abdul Sayeed v. State of M.P.\]](#), (2010) 10 SCC 259: (2010) 3 SCC (Cri) 1262)] ***

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental dispositions such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness, and other witnesses also make material improvements while deposing in court, such evidence cannot be safely relied upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

'9. Exaggerations, per se, do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version when the entire :: Downloaded on - 13/10/2026 21:45:05 :: CIS 47 2026:HHC:44756 evidence is put in a crucible for being tested on the touchstone of credibility.' [Ed.: As observed in [Bihari Nath Goswami v. Shiv Kumar Singh](#), (2004) 9 SCC 186, p.

192, para 9: 2004 SCC (Cri) 1435] Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars, i.e. go to the root of the case/materially affect the trial or core of the of prosecution's case, render the testimony of the witness liable to be discredited. (Vide State v. Saravanan [State v. Saravanan, (2008) 17 SCC 587: (2010) 4 SCC (Cri) 580], Arumugam v. State [Arumugam v. State, (2008) 15 SCC rt 590: (2009) 3 SCC (Cri) 1130], Mahendra Pratap Singh v. State of U.P. [Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334: (2009) 3 SCC (Cri) 1352] and Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657: (2011) 2 SCC (Cri) 375]"

24. Further, in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in a criminal trial. In the aforesaid judgment, it is held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under: (SCC p. 483) "42. Only such omissions that amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier :: Downloaded on - 13/10/2026 21:45:05 :: CIS 48 2026:HHC:44756 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 of the testimony of such witness."

37. In the present case, the detail about the firecracker is a minor detail, and its omission is not sufficient to make the rt testimony of the victim's cousin doubtful.

38. The informant also corroborated the victim's version.

He stated that the victim told her on 08.10.2003 that the accused had acted indecently with her. The accused had taken her to his room, removed her salwar and ejaculated upon her. The informant went to the house of the accused, and the accused went away with his family members. The victim was aged 6 years at the time of the incident. The matter was reported to the police, and the police registered the FIR. He stated in his cross-

examination that 10-12 families resided in the neighbourhood.

He admitted that the accused had young children and his daughter was of the same age as the victim. He denied that his wife and the wife of the accused used to quarrel with each other.

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2026:HHC:44756 He had consulted the Deputy Secretary, Law and Law Officers about the future course of action. He admitted that this fact was .

not mentioned in the FIR. He denied that a false case was made against the accused because of the enmity.

39. This witness has clearly stated in the cross-

of examination that the incident had not taken place in his presence, and he was stating before the Court what was revealed rt to him by his daughter, which shows that he is a credible witness and has not exaggerated the incident.

40. It was submitted that there is a delay in reporting the matter to the police. The incident had taken place on 08.10.2003, whereas the matter was reported to the police on 09.10.2003. The informant has provided a valid explanation that he had consulted his officers in the office, who had advised him to report the matter to the police. He was posted as a Peon in the office, and it would have been natural for him to consult his superiors about the course of action to be taken. Further, the delay in the matters of sexual assault is not significant because the victim's family had to consult various persons before taking recourse to law, considering the drastic consequences which can affect the victim :: Downloaded on - 13/10/2026 21:45:05 :: CIS 50 2026:HHC:44756 by taking recourse to law. It was laid down by the Bombay High Court in [Nandakumar Sukumar Panicker v. State of Maharashtra](#), .

2026 SCC OnLine Bom 8792, that the delay in sexual assault cases cannot be a reason to doubt the prosecution case. It was observed:

of "10....The F.I.R. has been filed after a period of 21 days, and there is no Explanation given therein for the said delay.

The reasons for delay may vary, and in such cases there can be various reasons for the delay. In such cases, it attached to them as a social stigma and on many occasions, the complainant may take some time to gather the courage to file a complaint, anticipating uncomfortable questions and social stigma. Only because a delay of a few days is not explained cannot be a ground to throw out a criminal prosecution. For delay to be considered as a ground to throw out a criminal prosecution, the delay has to be considerably long and unexplained. It is important to keep in mind that the delay has to be understood, considered and construed, keeping in mind the offence. The manner in which unexplained delay is to be viewed to a large extent depends on the nature of the offence, the age of the victim, and the social strata to which the victim belongs. In my opinion, it cannot be a straight jacket formula. In offences like the present one under [Section 354 IPC](#), the sexual offences or any other offence under the [Protection of Children from Sexual Offences Act, 2012](#) (for short, "POCSO Act"), or even a offence under [Section 498-A IPC](#), the delay will have to be construed and considered in the facts and circumstances in which the offence takes place. In a traditional society like ours, unfortunately many families find it exceedingly and extremely difficult to initiate even a genuine criminal prosecution when such nature of offences are involved....."

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41. A similar view was taken in [Shreekant Sharma v. State of W.B.](#), 2023 SCC OnLine Cal 1961 wherein it was observed:

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20. Next, the issue under consideration for this Court is whether a delay in filing FIR by the victim should be a cogent reason for quashing the investigation against the accused and the co-accused. This Court is inclined to answer in the negative, as there is a catena of judgments by the Supreme Court, as well as High Courts, which hold of that delay in filing F.I.R. in cases of sexual assault should not be equated with other cases to quash proceedings or hold an accused not guilty. The Supreme Court, in [Satpal Singh v. State of Haryana](#) reported in (2010) 8 SCC 714, held it that:

"13. In a rape case the prosecutrix remains worried about her future. She remains in a traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathy for her. The family remains concerned about its honour and reputation of the prosecutrix. After only a cool thought, it is possible for the family to lodge a complaint in sexual offences. (Vide [Karnel Singh v. State of M.P.](#) (1995) 5 SCC 518 : AIR 1995 SC 2472; and [State of Punjab v. Gurmeet Singh](#) (1996) 2 SCC 384 : AIR 1996 SC 1393).

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, but the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted

story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to :: Downloaded on - 13/10/2026 21:45:05 :: CIS 52 2026:HHC:44756 be filed more promptly, and if there is any delay, the prosecution must furnish a satisfactory explanation for the same, for the reason that in case the substratum of .

the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [vide [State of Andhra Pradesh v. M. Madhusudhan Rao](#) (2008) 15 SCC 582].

15. However, no straight jacket formula can be [laid down in](#) this regard. In case of sexual offences, the criteria may be different altogether. As the honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide [Satyapal v. State of Haryana](#) (2009) 6 SCC 635: AIR 2009 SC 2190].

21. In [State of Himachal Pradesh v. Prem Singh](#) reported in (2009) 1 SCC 420: AIR 2009 SC 1010, the Supreme Court considered the issue at length and observed as under:--

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

22. The Bombay High Court in [State of Maharashtra v. Savala Sagu](#) 1997 Bom CR Cri, 1997 Cri LJ 786 observed that:

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2026:HHC:44756 "15. We wish to emphasise that any unmarried girl, on account of her bashfulness and the circumstance that not only her own honour but that of her family was at .

stake, would have been extremely reluctant and loath to disclose to the police her traumatic experience of being raped. It is only after efflux of time, when she is able to get over a part of her trauma, that she thinks of lodging the FIR. In our view, no mathematical time limit in lodging an FIR can be fixed in cases of rape. Courts in such cases should adopt a realistic approach of rather than one which is unimaginative and theoretical. After all, our conduct in life is governed by brass realities."

23. In *X v. State of Kerala* CrI. A. No. 649 of 2021, decided on 01-07-2022, the Kerala High Court observed that:

"The delay in a case of sexual assault cannot be equated with a delay in a case involving other offences since several factors weigh on the mind of the victim and members of her family. In a tradition-bound society like ours, particularly in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there was a delay in lodging the FIR."

24. In the Supreme Court's decision of [Tulsidas Kanolkar v. State of Goa](#), (2003) 8 SCC 590, where the victim of rape was a mentally challenged person, and there was a delay in reporting the crime, the Court took into consideration the unusual circumstances while holding the accused guilty and observed that:

"We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if :: Downloaded on - 13/10/2026 21:45:05 :: CIS 54 2026:HHC:44756 any explanation has been offered for the delay. Once

it is offered, the Court is to only see whether it is satisfactory or not. In a case where the prosecution fails .

to satisfactorily explain the delay, and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was of totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle."

rt

42. The victim's wife Sushma (DW1) stated that the accused used to serve in the office from 10:00 am to 5:00 PM. She used to reside in the house. The victim never visited her house.

The victim's mother used to quarrel with her (Sushma). The victim's mother would threaten her and her husband. She admitted in her cross-examination that she used to leave the home to purchase vegetables and other household articles. She denied that she was making a false statement to save her husband. She admitted that no complaint was ever made by her regarding the threats.

43. Learned Courts below had rightly held that the testimony of this witness could not be accepted. It is difficult to believe that the victim's parents would have asked the victim to :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 55 2026:HHC:44756 make a false statement simply because there used to be a quarrel between the victim's mother and the wife of the accused. If the .

family members of the victim were bent upon to falsely implicate, they would have implicated the wife of the accused who used to quarrel with the victim's mother and not the accused with whom they did not quarrel. Thus, the learned Courts below of had rightly rejected the testimony of this witness.

44. rt The testimony of the victim is natural. She was aged 6 years at the time of the incident and would have been unable to comprehend much of what was happening to her and narrated the incident to her parents. She only narrated the incident when she was advised by her cousin to do so. Therefore, the victim's conduct was natural, and the victim's testimony was rightly accepted by the learned Courts below.

45. It was submitted that the accused had a daughter who was of the same age as the victim and he would not have done any indecent act with the victim. This submission is only stated to be rejected. There is no universal law that a person having a minor daughter would not act indecently with another. The history and law books are filled with incidents where such events :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS 56 2026:HHC:44756 have occurred, and there is nothing inherently improbable in the act of the accused.

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46. The testimony of the victim proved that the accused had outraged her modesty and the learned Trial Court had rightly convicted him of the commission of an offence punishable under of [Section 354](#) of the IPC.

47. The learned Trial Court had sentenced the accused to rt undergo simple imprisonment for one year. Considering the age of the victim and that the accused took advantage of his being the neighbour of the victim, the sentence of one year cannot be said to be excessive, requiring any interference from the Court.

48. No other point was urged.

49. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

50. A copy of the judgment, along with records of the learned Courts below, be returned forthwith.

(Rakesh Kainthla) Judge 13th October, 2026 (Nikita) :::: Downloaded on - 13/10/2026 21:45:05 ::::CIS