



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal Nos. 475 and 476 of 2012
Reserved on: 20.06.2026
Date of Decision: 07.07.2026

1. Cr. Appeal No. 475 of 2012

Nirmala Devi & Anr. ...Appellants

Versus

State of H.P. ...Respondent

2. Cr. Appeal No. 476 of 2012

Bhagat Ram ...Appellant

Versus

State of H.P. ...Respondent

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

For the Appellants : M/s Naveen Kumar and Kiran Kumar, Advocates, in both the appeals.
For respondents/State : Mr Ajit Sharma, Deputy Advocate General, in both the appeals.

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

Rakesh Kainthla, Judge

The present appeals are directed against the judgment of conviction and order of sentence dated 03.11.2012 passed by the learned Additional Sessions Judge (Fast Track Court), Mandi (learned Trial Court) vide which the appellants (accused before the learned Trial Court) were convicted and sentenced as under:

Accused	Sections	Sentences
Bhagat Ram	304 Part-II of the Indian Penal Code	The accused was sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹10,000/-, and, in default of payment of the fine, to undergo simple imprisonment for three months.
Nirmala Devi	323 of the Indian Penal Code	The accused was sentenced to pay a fine of ₹1,000/-, and in default of payment of the fine, to undergo simple imprisonment for one month.
Sanjay Kumar	323 of the Indian Penal Code	The accused was sentenced to pay a fine of ₹1,000/-, and in default of payment of the fine, to undergo simple imprisonment for one month.

(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 302, 506, 323, read with Section 34 of the Indian Penal Code (IPC). It was asserted that Lal Chand, since deceased, was reading the newspaper on 04.09.2011. Accused Bhagat Ram started digging a drain. Lal Chand objected by saying that Bhagat Ram should not do anything till the land was partitioned. Bhagat Ram retorted by saying that Lal Chand had no share in the land. Kanta Devi (PW5) came to the spot and started throwing soil on the drain that was being dug by Bhagat Ram. Bhagat Ram dragged Kanta Devi to the courtyard and started beating her. The informant Vijay Kumar (PW4) and his sisters Jyoti Devi, Anita Devi and Sunita Devi (PW1) tried to rescue Kanta Devi. Accused Nirmala and Sanjay also came to the spot, and they also quarrelled with the informant party. Bhagat Ram inflicted a stick blow on the head of Lal Chand, who suffered a bleeding injury and fell. Nirmala instigated Bhagat Ram to kill Lal Chand. The informant tried to take away Lal Chand from the

spot, and Bhagat Ram inflicted a blow on the informant's head. Sanjay Kumar gave beatings to Kanta Devi and the informant's sisters. Lal Chand was taken to the hospital, where he was declared dead. An intimation was given to the police. The police recorded an entry (Ext.PW6/C) in the daily diary. SI/SHO Firoz Khan (PW10) went to the hospital, where he recorded the informant's statement (Ext.PW4/A) and sent it to the Police Station. An FIR (Ext.PW6/B) was registered in the police station. SI/SHO Firoz Khan (PW10) conducted the inquest on the dead body and prepared the reports (Ext.PW10/A and Ext.PW10/B). He filed an application (Ext.PW10/C) for conducting the post-mortem examination of Lal Chand. Dr J.S. Roodkee (PW11) conducted the post-mortem examination and found that the cause of death was acute coronary insufficiency in a case of hypertrophic heart disease due to sudden fear and anxiety as a result of assault. He issued the report (Ext.PW11/A). SI Firoz Khan (PW10) also filed an application (Ext.PW10/D) for conducting the medical examination of Vijay Kumar, Kanta and Jyoti Devi. Dr J.S. Roodkee (PW11) conducted their medical examination and found that they had sustained simple injuries which could have been caused within 6 hours of examination. He

issued MLCs (Ext.PW11/B to Ext.PW11/D). SI Firoz Khan (PW10) went to the spot and prepared the site plan (Ext.PW10/E). He seized the stick, prepared its sketch (Ext.PW10/F), put it in a cloth parcel, and sealed the parcel with 12 seals of seal impression 'K'. He also found broken pieces of bangles on the spot, put them in a cloth parcel, and sealed the parcel with four impressions of seal 'K'. He picked up the sample of soil from the spot, put it in a matchbox, put the matchbox in a cloth parcel, and sealed the parcel with four impressions of seal 'K'. He obtained a seal impression (Ext.PW2/A) on a separate piece of cloth. He seized all the articles vide memo (Ext.PW2/B). The spot was videographed, and the recording was transferred to the CDs (Ext.PW7/A and Ext.PW7/B). Sita Ram (PW8) prepared the *aks tatima* (Ext.PW8/A). The case property was sent to SFSL for analysis. The results of the analysis (Ext.PX, Ext. PY, and Ext.PZ) were issued, stating that human blood was found on the stick, but it was insufficient for further examination, the soil attached to the wooden log, broken bangles and a pair of bathroom slippers matched the soil packed in the parcel, and no alcohol/poison was found in the viscera. Statements of witnesses were recorded as per their version, and after the

completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate First Class Court No. 2, Sunder Nagar, District Mandi, who committed it to the Learned Sessions Judge, Mandi, for trial.

3. Learned Sessions Judge, Mandi, assigned the case to Learned Presiding Officer, Fast Track Court, Mandi (learned Trial Court) for trial.

4. Learned Trial Court charged the accused with the commission of offences punishable under Sections 302, 323 and 506 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

5. The prosecution examined 11 witnesses to prove its case. Sunita (PW1), Reeta Devi (PW2), Vijay Kumar (PW4) and Kanta Devi (PW5) are the eyewitnesses. Naveen Kumar (PW3) did not support the prosecution's case. HC Satya Prakash (PW6) signed the FIR, received the case property and sent it to the SFSL for analysis. Parma Nand (PW7) transferred the video recording to the CDs. Sita Ram, Patwari (PW8), prepared the *aks tatima*. Santosh Kumar (PW9) carried the injured to the hospital. Firoz Khan (PW10) investigated the matter. Dr J.S. Roodkee (PW11)

conducted the post-mortem examination of the deceased and the medical examination of the injured.

6. The accused, in their statements, recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the prosecution's case in its entirety. Accused Bhagat Ram stated that he was digging the trench in his own land. All six family members of the deceased's family entered his premises and quarrelled with him. The deceased fell and sustained injuries. The accused claimed that they were innocent. They did not produce any evidence in their defence.

7. Learned Trial Court held that the testimonies of prosecution witnesses corroborated each other. There was nothing in their cross-examination to show that they were making false statements or that they had any reason to falsely depose against the accused. A related person cannot be said to be an interested person, and there is no prohibition in acting upon his testimony. The presence of the prosecution witnesses was established by the injuries sustained by them. Dr J.S. Roodkee (PW11) proved that the deceased had died due to acute coronary insufficiency in a case of hypertrophied heart because of sudden

fear and anxiety as a result of assault. Thus, the cause of death was anxiety and fear, which was attributable to the act of the accused. There were minor contradictions in the testimonies of the witnesses, but these were not sufficient to doubt the prosecution's case. The enmity was not sufficient to discard the prosecution's case because the enmity is a double-edged weapon and can furnish a motive for the commission of a crime. Accused Bhagat Ram had given a single stick blow on the head without any premeditation. There was no intention to cause death. However, Bhagat Ram was aware of the fact that the injury caused to the head of the deceased would result in his death, and his acts satisfied the ingredients of the commission of an offence punishable under Section 304 Part II of the IPC. Accused Sanjay Kumar and Nirmala Devi did not share the common intention to cause the death of Lal Chand. Hence, the learned Trial Court convicted and sentenced the accused as mentioned above.

8. Being aggrieved by the judgment and order passed by the Learned Courts below, the accused have filed the present appeal asserting that the prosecution relied upon the testimonies of interested witnesses, which were not sufficient to

record the conviction. The informant party was the aggressor, and the incident would not have occurred but for Kanta Devi going to the courtyard of Bhagat Ram. The Medical Officer had noticed only simple injuries on the body of Lal Chand, and the ingredients of the commission of an offence punishable under Section 304 Part II were not satisfied. The statements of the prosecution witnesses contradicted each other on material particulars, and the learned Trial Court erred in relying upon the prosecution's case. Hence, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

9. I have heard M/s Naveen Kumar and Kiran Kumar, learned counsel for the appellants and Mr Ajit Sharma, learned Deputy Advocate General for the respondents/State.

10. M/s Naveen Kumar and Kiran Kumar, learned counsel for the appellants, submitted that the learned Trial Court erred in appreciating the material on record. The incident had taken place in the courtyard of Bhagat Ram, which supported the plea taken by the accused that the informant party was the aggressor. The accused had a right of private

defence to protect their property. The prosecution had implicated all members of the family because of the enmity. The Medical Officer had noticed a simple injury on the head which was not sufficient in the ordinary course of nature to cause death. Learned Trial Court erred in convicting the accused of the commission of an offence punishable under Section 304 Part II. The allegations made against the accused attracted the provisions of Section 323 and not Section 304-Part II of the IPC. He relied upon the judgments in *State of H.P. vs. Rakesh Kumar* 2024:HHC;2620, *Darshan Singh vs. State of Punjab* 2010(2) SCC 333 and *Vuvraj Laxmilal Kanther and another vs. State of Maharashtra* AIR 2025 SC 1515 in support of his submission. He has also filed written arguments, which have been perused by me.

11. Mr Ajit Sharma, learned Deputy Advocate General for the respondents/State, submitted that the accused, Bhagat Ram, admitted in his statement recorded under Section 313 of the Cr.P.C. that Lal Chand was suffering from heart disease. Therefore, he was aware of the fact that any injury caused to him could have resulted in his death and learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 304 Part II of the IPC. Minor

contradictions are bound to come with time and are not sufficient to discard the prosecution's case. There is no infirmity in the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

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

13. Informant Vijay Kumar (PW4) stated that his father, Lal Chand, was reading a newspaper in his verandah on 04.09.2011 at about 08.30 a.m. Accused Bhagat Ram started digging a trench with a spade. Lal Chand objected to the digging. The accused Bhagat Ram replied that the land belonged to him and the informant's father had no right, title or interest over it. Kanta Devi came and tried to fill up the trench. The accused Bhagat Ram dragged Kanta Devi to the verandah and gave her beatings. Lal Chand tried to save Kanta Devi, and Bhagat Ram inflicted a stick blow on Lal Chand's head. He fell. Sunita Devi, Anita Devi, Jyoti and the informant went to rescue Lal Chand. Accused Bhagat Ram inflicted a blow on the informant's head. Sanjay Kumar and his mother gave beatings to Kanta Devi and

her daughters. Lal Chand was taken to the hospital, where he died.

14. Informant Vijay Kumar (PW4) stated in his cross-examination that the trench being cleaned by the accused Bhagat Ram belonged to him. The bathroom and trench were constructed 5-6 years before the incident. He admitted that the informant party consisted of six family members, whereas the family of the accused consisted of 3 persons. He admitted that the fight could have been avoided had Kanta Devi not gone to fill up the trench, which was being cleaned. He admitted that his house was located on a higher elevation, and the house of the accused was at a lower elevation. He admitted that the scuffle had taken place in the courtyard of the house of the accused Bhagat Ram. He admitted that there was an exchange of blows for about 15-20 minutes. He admitted that the accused had not trespassed into his land, and the informant party had trespassed into the land of the accused. He admitted that when Kanta Devi forcibly tried to fill up the trench and all the other persons helped, the incident started. He admitted that Bhagat Ram had not used the spade, which was kept near the bathroom. He admitted the enmity between him and the accused. He stated

that the incident continued for 15-20 minutes, and no person from the vicinity came to the spot.

15. Kanta Devi (PW5) stated that her husband was reading a newspaper on 04.09.2011 at about 08.30 p.m. Accused Bhagat Ram came with a spade and started digging a trench to make a passage for the bathroom water. Part of the land upon which the trench was being dug belonged to her. Her husband objected. She went and tried to fill up the trench with mud. The accused dragged her to the verandah and started beating her. Her husband, son and daughters came to rescue her. Bhagat Ram inflicted a stick blow on Lal Chand's head. The informant tried to rescue Lal Chand, but Bhagat Ram inflicted injuries on him. She stated in her cross-examination that the bathroom was already constructed by the accused. The trench, which was being cleaned by the accused, was constructed for the passage of the bathroom water. Her house was located on a higher elevation, and the house of the accused was on a lower elevation. She had tried to fill up the trench with the mud. She admitted that they were six in number, whereas the accused were three in number. She admitted that the incident continued for 10-15 minutes. She went to the courtyard of the accused on her own to block the

passage of the bathroom water. She admitted that the incident would not have taken place, but for her going to the courtyard of the house of the accused. She admitted that her husband was suffering from acute coronary disease, and he was taken to Chandigarh for treatment. She volunteered to say that he used to drive a tractor and earn his livelihood after the treatment.

16. Sunita Devi (PW1) stated that her father, Lal Chand, was reading a newspaper in the courtyard on 04.09.2011 at about 08.30 a.m. Accused Bhagat Ram started diverting the flow of bathroom water with the help of a spade towards her land. Lal Chand objected. Kanta Devi came to the spot and tried to fill up the trench. Bhagat Ram dragged Kanta Devi towards his courtyard and started beating her. She, Lal Chand, Vijay, Anita and Jyoti went to the courtyard of the accused to rescue Kanta Devi. The wife and son of the accused Bhagat Ram also came to the spot, and they started beating the informant party. Accused Bhagat Ram picked up a stick and inflicted injury on Lal Chand's head. Lal Chand was taken to the hospital, where he was declared dead. She stated in her cross-examination that her house was located on a higher elevation, and the house of the accused was on a lower elevation. She admitted that the scuffle

had taken place in the courtyard of the house of the accused. She admitted that Bhagat Ram was dressing the old trench for the flow of the water because it was filled with mud during the rainy season. She admitted that Bhagat Ram could have easily caused injury by means of a spade, but he did not use the spade. She admitted that the sticks were lying in the courtyard. She admitted that the wife and son of the accused had not picked up any stick. She admitted that the relationship between her and the accused was strained. She admitted that her father was a patient with heart disease who used to take treatment from Chandigarh. She stated that no person had visited the spot, even though the houses of around 40 people were located adjacent to her house.

17. It was submitted that the testimonies of the prosecution's witnesses show that the incident had started when Kanta Devi went to the courtyard of the accused Bhagat Ram and started filling up the trench. The trench was not being freshly dug but had existed on the spot for about 5-6 years before the incident. Therefore, Kanta Devi had no business to enter the land of the accused and fill up the trench. The accused had a right of private defence, and this was not considered by

the learned Trial Court. This submission will not help the accused. Sections 103 and 104 of the IPC deal with the right of private defence. and provides the right of private defence in case of robbery, house breaking by night, theft, mischief or house trespass, under such circumstances that a reasonable apprehension would arise that death or grievous hurt would be the consequence. In the present case, the land was jointly owned, and the act of Kanta Devi in going to the courtyard of the house of the accused would not constitute a trespass. Further, the water was being diverted to the land of the accused, and Bhagat Ram was the aggressor. Kanta Devi was filling up the trench, and her act did not give rise to any apprehension that death or grievous hurt would be the consequence. She did not say anything to any person, but simply filled the trench with mud. Therefore, the submission that the accused were entitled to a right of private defence cannot be accepted, and the judgments in *Darshan Singh* (supra) and *Rakesh Kumar* (supra) will not apply to the present case.

18. It was submitted that the prosecution witnesses admitted that the informant's house was located on a higher elevation than the house of the accused. Therefore, the water

could not have moved towards the land of the informant, and this made the prosecution's case highly suspect that the accused Bhagat Ram was diverting the flow of water towards the house of the informant. This submission will not help the accused. No person stated that the water was being diverted towards the house of the informant; rather, the prosecution's version is that the water was being diverted towards the informant's land. Thus, the elevation of the houses would be immaterial.

19. It was submitted that six members of the informant party had entered into the courtyard, which showed that the informant party was the aggressor. This submission will not help the accused. It was consistently stated by the witnesses that the accused Bhagat Ram had dragged Kanta Devi to his courtyard, and the informant party went to the courtyard to rescue her from Bhagat Ram. Therefore, the informant party had not gone to the house of Bhagat Ram as aggressors but to save Kanta Devi from the accused, Bhagat Ram, who was dragging her towards her courtyard. Therefore, the informant party was not the aggressor.

20. It was submitted that no independent witness was examined, and the prosecution relied upon the testimonies of the interested witnesses. This submission will not help the accused. All the witnesses consistently admitted that no person from the vicinity came to the spot, and no person had raised any hue and cry. Thus, there is no evidence of the presence of any independent person, and no independent person could have been examined.

21. Learned Trial Court had rightly pointed out that a related person cannot be called an interested person. It was laid down by the Hon'ble Supreme Court in *Laltu Ghosh v. State of W.B.*, (2019) 15 SCC 344: (2020) 1 SCC (Cri) 275: 2019 SCC OnLine SC 2 that a related witness is not an interested witness and his testimony cannot be rejected on the ground of interestedness. It was observed:

“12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the

accused (for instance, see *State of Rajasthan v. Kalki*, (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 (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 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.”

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

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

“We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such

rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. The State of Rajasthan* (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)."

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

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

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

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

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

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

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

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

The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If, on such 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."

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

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

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

29. When the court is convinced of the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to 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 person. It is true when feelings run high, and there is a personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but the foundation must be laid for such a criticism, and the mere fact of relationship, far from being a foundation, is often a sure guarantee of truth.

However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

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

“14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence, whether or not the evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable, are all matters 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 rejected because it is partisan cannot be accepted as correct.”

34. In *Darya Singh v. State of Punjab* [(1964) 3 SCR 397: AIR 1965 SC 328: (1965) 1 Cri LJ 350], this Court held that evidence of an eyewitness who is a near relative of the victim should be closely scrutinised, but no

corroboration is necessary for acceptance of his evidence. In *Harbans Kaur v. State of Haryana* [(2005) 9 SCC 195: 2005 SCC (Cri) 1213: 2005 Cri LJ 2199], this Court observed that: (SCC p. 227, para 6)

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

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

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

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule, which remains the bulwark of this system and which determines the value of evidence derived from such sources, needs to be cautiously and

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

30. Once again, we reiterate with a word of caution 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.”

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

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

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

25. It was laid down by the Hon’ble Supreme Court in *Mohd. Jabbar Ali v. State of Assam*, 2022 SCC OnLine SC 1440, that 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 Orissa*, (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

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

“29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised, and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* [AIR 1953 SC 364] and pithily reiterated in *Sarwan Singh* [(1976) 4 SCC 369] in the following words: (*Sarwan Singh* case [(1976) 4 SCC 369, p. 376, para 10)

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require, as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth, such evidence could be relied upon even without corroboration.”

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

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

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

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

29. The distinction between “interested” and “related” witnesses has been clarified in **Dalip Singh v. State of Punjab 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:

i. *Md. Rojali Ali v. The State of Assam, Ministry of Home Affairs through secretary* (2019) 19 SCC 567;

ii. *Ganapathi v. State of T.N.* (2018) 5 SCC 549;

iii. *Jayabalan v. Union Territory of Pondicherry* (2010) 1 SCC 199.

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

27. Therefore, the testimonies of prosecution witnesses cannot be discarded on the ground that only related witnesses were examined. They were the natural witnesses because they were interested in trying to rescue Kanta Devi, who was being dragged towards the courtyard. Their presence on the spot is natural, and there is no reason to disbelieve their testimonies.

28. Dr J.S. Roodkee (PW11) examined Jyoti Devi, Vijay Kumar and Kanta Devi. He found that they had sustained simple injuries that could have been caused in a scuffle. He was only cross-examined regarding the injuries sustained by Lal Chand, and no question was asked regarding the injuries sustained by Vijay Kumar, Kanta Devi and Jyoti Devi, which means that the defence has not disputed his testimony that Vijay Kumar, Kanta Devi and Jyoti Devi had sustained injuries in the incident. It was held by the Hon'ble Supreme Court in *Neeraj Sharma v. State of Chhattisgarh*, (2024) 3 SCC 125: 2024 SCC OnLine SC 13 that the testimony of the injured witness has to be accepted as correct unless there are compelling circumstances to doubt his testimony. It was observed:

“22. The importance of an injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as extremely valuable evidence in a criminal trial.

23. In *Balu Sudam Khaldev.State of Maharashtra [Balu Sudam Khalde v.State of Maharashtra*, (2023) 13 SCC 365: 2023 SCC OnLine SC 355], this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows: (SCC para 26)

“26. When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles

enunciated by the Courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. *The evidence of the injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*

26.4. The evidence of the injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishment in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with the passage of time should be discarded.” (emphasis supplied)

29. This position was reiterated in *Rajan v. State of Haryana*, 2025 SCC OnLine SC 1952, wherein it was observed:

“33. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

“(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of an injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

34. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial yet

the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. (See: *Balu Sudam Khaldev.State of Maharashtra:(2023) 13 SCC 365*).

30. It was laid down by the Hon'ble Supreme Court in *State of Punjab vs. Hari Singh 1974 (3) SCR 725* that a person speaking on oath should be presumed to be a truthful witness unless there is something inherently improbable in his testimony. It was observed:

“The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility for the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them.”

31. It was laid down by the Hon'ble Supreme Court in *State of U.P. Versus Smt. Noorie Alias Noor Jahan and Others, (1996) 9 SCC 104*, that while assessing the evidence of an eyewitness, the Court must adhere to two principles, namely, whether, in the circumstances of the case, the eyewitness could be present and

whether there is anything inherently improbable or unreliable.

It was observed: -

“7. The High Court having acquitted the accused persons on appreciation of the evidence, we have ourselves scrutinised the evidence of PWs 1, 2, and 3. The conclusion is irresistible that their evidence on material particulars has been brushed aside by the High Court by entering into the realm of conjecture and fanciful speculation without even discussing the evidence, more particularly the evidence relating to the basic prosecution case. *While assessing and evaluating the evidence of eyewitnesses, the Court must adhere to two principles, namely, whether, in the circumstances of the case, it was possible for the eyewitness to be present at the scene, and whether there is anything inherently improbable or unreliable.* The High Court, in our opinion, has failed to observe the aforesaid principles and, in fact, has misappreciated the evidence, which has caused a gross miscarriage of justice. The credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is created by his evidence, taken insofar as the context of the case, and not by entering into the realm of conjecture and speculation. On scrutinising the evidence of PWs. 1, 2 and 3, we find they are consistent with one another so far as the place of occurrence, the manner of assault, the weapon of assault used by the accused persons, the fact of dragging of the dead body of the deceased from the place to the grove and nothing has been brought out in their cross-examination to impeach their testimony. The aforesaid oral evidence fully corroborates the medical evidence. In that view of the matter, we unhesitatingly conclude that the prosecution has been able to establish the charge against the accused persons and the High Court committed an error in acquitting the three respondents, namely Inder Dutt, Raghu Raj, and Bikram.” (emphasis supplied).

32. In the present case, the presence of the witnesses was established by the injuries sustained by them, and the learned Trial Court had rightly accepted their testimonies.

33. It was submitted that the learned Trial Court had convicted the accused, Nirmala Devi and Sanjay Kumar, of the commission of an offence punishable under Section 323 of the IPC, which suggests that the prosecution had exaggerated its version. This submission will not help the accused. The Learned Trial Court found that Bhagat Ram had picked up a stick all of a sudden and inflicted the injury upon Lal Chand. The stick was lying on the spot and was not brought by the accused Bhagat Ram with him. The other accused could not have been aware of the fact that Bhagat Ram would be using the stick. This was an interpretation of the evidence, which can differ from person to person. The Learned Trial Court has not found that the witnesses' version was false; rather, the learned Trial Court had accepted their version and thereafter proceeded to hold that the statements of the witnesses were not sufficient to establish the common intention of the accused. Thus, the finding recorded by the learned Trial Court does not show any exaggeration on the part of the prosecution.

34. It was submitted that no specific role was attributed to the accused Nirmala and Sanjay Kumar. This submission cannot be accepted. The witnesses consistently stated that the accused, Nirmala and Sanjay Kumar gave beatings to Jyoti, Sunita, and Kanta Devi. This is duly corroborated by the injuries sustained by Kanta Devi and Jyoti. No person stated that these injuries were caused by Bhagat Ram. Thus, the learned Trial Court had rightly accepted the testimonies of the witnesses that Nirmala and Sanjay Kumar had inflicted injuries to Jyoti, Sunita and Kanta.

35. Dr J.S. Roodkee (PW1) stated that the cause of death was acute coronary insufficiency in the case of hypertrophic heart disease due to sudden fear and anxiety as a result of assault. He admitted in his cross-examination that the injury sustained by Lal Chand was simple in nature. It was a lacerated wound deep in nature. The injury that he had found on the body of the deceased cannot solely lead to the death. This statement shows that the death would not have been caused by the stick blow, and the proximate cause of the death was coronary heart disease.

36. It was submitted on behalf of the State that Bhagat Ram knew that Lal Chand was suffering from heart disease, and that knowledge can be attributed to him that any injury to Lal Chand would result in his death. This submission cannot be accepted. Kanta Devi admitted in her cross-examination that Lal Chand had received treatment from PGI Chandigarh. She claimed that Lal Chand was working normally. He used to drive a tractor and earn his livelihood. Therefore, an inference could not have been drawn from the activities of Lal Chand that he had a heart disease to such an extent that any fear would result in his death. The accused cannot be held liable for the commission of the murder in the absence of knowledge of the medical condition of the deceased. Illustration (b) of Clause (iv) of Section 300 of IPC, provides that if the offender knows that the victim is labouring under such disease that a blow is likely to cause his death, strikes him to cause bodily injury and the victim dies in consequence of the blow, the offender is guilty of murder although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if the offender, not knowing that the victim is labouring under any disease, gives him such a blow as would

not, in the ordinary course of nature, kill a person in a sound state of health, and the victim dies, the offender is not guilty of murder. Thus, the accused can be held liable for the murder only if he knew that the deceased was suffering from a disease and the blow was likely to cause his death. In *Emperor Vs. Saberali Sarkar*, AIR 1920 Calcutta 401, the accused gave beatings to a person by kicks and blows to teach him a lesson, which resulted in his death caused by the rupture of an enlarged spleen. It was held that the accused cannot be convicted of murder in the absence of any evidence that he knew about the enlarged spleen of the deceased, and he could be convicted of an offence punishable under Section 323.

37. In *Ramakrishna Panicker vs. State of Kerala* (17.12.1958 - KERHC): MANU/KE/0128/1959,, the deceased died due to rupture of an enlarged spleen. There was no evidence that the accused was aware of this condition. It was held that he could not be held liable for the commission of an offence punishable under section 302 of the IPC, but only under section 323 of the IPC. It was observed:

“8. Earlier in this judgment, we have stated that according to the medical evidence in the case, rupture or

damage to the spleen would not have occurred but for the fact that that organ was diseased. There is no evidence that accused 1 was aware of that diseased condition. A fist in the abdominal region would not ordinarily cause any damage to a normal spleen. That is the effect of the medical evidence in the case. Accused 1 would not have intended to give Devassia anything more than a beating or a thrashing to teach him a lesson, as it were, for his impudence in using foul language against a police officer, while they happened to meet on the public road.

It is in the circumstances of the case difficult to attribute to accused 1 any intention to cause death or any intention to cause such bodily injury as would in the ordinary course of nature cause death. Nor could accused 1 be taken to have even intended or known it to be likely that the hurt which he was causing would be grievous, even though, on account of the diseased condition of the spleen, it got ruptured. Explanation to Section 322, Penal Code shows that a person cannot be said to have voluntarily caused grievous hurt except when he both causes grievous hurt and intends or knows himself likely to cause grievous hurt.

In other words, a person can be convicted of grievous hurt only when the result and intention correspond -- see Gour's Penal Law of India (VI Edition, Vol. II, p. 1472) From the circumstances of the case, nothing more than a simple hurt could reasonably be thought likely to ensue from the fists given to Devassia and as such, even though the spleen got ruptured, accused 1 could not be convicted for any offence more serious than for causing simple hurt. The law is well settled that when the injury is not serious, and there was no intention to cause death or grievous hurt, nor had the accused knowledge that it was likely to cause grievous hurt or death, a man is guilty of causing hurt and not death, even though death is caused.

At p. 701 of Ratanlal's Law of Crimes (19th Edition), the commentaries refer to a line of cases where death ensued as a result of hurt caused to diseased spleen or other

diseased organs, and convictions were entered for causing simple hurt. The commentary under the heading 'Hurt' may usefully be quoted here:

"Where the accused, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down, slapped her with his open hand, and the woman died on account of rupture of her spleen, which was diseased, it was held that the accused was guilty of causing hurt. Similarly, when a wife died from a chance kick in the spleen inflicted by her husband on provocation given by her, the husband not knowing that the spleen was diseased, he was held guilty of causing hurt: The accused, dissatisfied and irritated by the lazy and inefficient manner in which a punkah cooly was managing a punkah, went up to him and struck him one or more blows. The cooly was suffering from a diseased spleen and died from the injuries he had received. It was held that the accused was guilty of causing hurt. When the accused threw a piece of a brick at the diseased, which struck him in the region of the spleen and ruptured it, the spleen being diseased, it was held that he was guilty of causing hurt. The accused was charged with having caused the death of one N by kicking him in the region of the spleen, being enraged at the latter having allowed his goats to stray into his fields. The medical evidence showed that the spleen of the deceased was enormously large, and slight injuries over the region of the spleen would be sufficient to cause its rupture, which generally ended fatally. It was held that in the absence of satisfactory evidence to prove knowledge of the state of health of the deceased on the part of the accused, the conviction should be for hurt only."

The cases cited by the learned author are: *Queen v. Runchanun Tantee* 5 Suth WR (Cri) 97; *Queen v. Bysagoo Nosbyo* 1867 8 Suth WR (Cri) 29; *Empress of India v. Fox* ILR AH 522; *Empress of India v. Randhir Singh* ILR All 597; *Aiman* 1 All LJ 162. To this list may be added 'the decisions in *Emperor v. Sabaralio* AIR 1920 Cal 401: 21 Cri LJ 666; *Bhajan Das v. Emperor* AIR 1924 Lah 218; and *In re Marana Goundan* MANU/TN/0326/1940: AIR 1941 Mad 560. Ratanlal's commentary at pp. 812 and 813 under the caption 'Spleen Cases' may also usefully be referred to in this context. Gour deals with this topic at p. 1463 of Vol. II of the Penal Law of India (VI Edition).

9. We have not, however, overlooked cases or commentaries dealing with instances of persons causing hurt to a diseased spleen or heart or brain and death ensuing in consequence of being convicted for causing grievous hurt or even under Section 304(2). Ratanlal's commentaries at pp. 700 to 701 under the caption 'Death due to Diseased Spleen or Heart' (1) 'Grievous Hurt' refer to several such instances. The commentaries at p. 818 under the heading 'Diseased Spleen or Heart' may also be referred to for such cases. An examination of the facts of those cases would, however, show that those are cases where the court was able to infer that the offender intended to cause grievous hurt and such hurt also resulted from the action of the offender.

Some of those are also cases where weapons such as sticks or lathis were used, or where there have been fractures of ribs or other bones, but which fractures did not cause or lead to death. With a view to finding out whether the case on hand would fall under that category of cases, we have examined the decisions cited in the commentaries, and we have no hesitation in holding that the line of cases cannot be taken to govern the present case. The decisions we have in mind and some of which are referred to in the commentaries at the page mentioned are *Queen v. Megha Meeach* 2 Suth WR Cri 39; *Empress of India v. O'Brien* ILR All 766; *Empress of India v. Jdu Beg* ILR All 776; *Mahabir v. Emperor* 19 All LJ 295; *Bharat*

Singh v. Emperor AIR 1932 Oudh 279; Munni Lal v. Emperor MANU/UP/0047/1943 and Basant Singh v. State MANU/PH/0062/1953.

10. Conformably to the principles enunciated earlier and following the lead of the first batch of cases referred to in this judgment, we alter the conviction of accused 1 from that under Section 304(2) to one under Section 323. The sentence has necessarily to be altered, but regard being had to the fact that accused 1 was misusing his position as a police officer to assault a helpless person whom he had taken into custody, we think it proper to sentence him to the maximum sentence prescribed for the offence under Section 323, namely, rigorous imprisonment for 1 year. We award him that sentence. His appeal succeeds to the extent of mitigating the offence and reducing the sentence as above.

38. In *Putti Lal v. State, 1968 SCC OnLine All 323: 1969 Cri LJ 531*, the deceased was suffering from an enlarged heart. The accused pushed him, due to which he (the deceased) fell and died. There was no evidence that the accused knew about the medical condition of the deceased. It was held that the accused could be held liable for the commission of an offence punishable under section 325 of the IPC. It was observed:

“13. As regards the second submission, it has some force. The doctor (S.N. Gupta), who conducted the post-mortem examination, in his evidence, clearly said that the heart of the deceased was enlarged and flabby. The death had resulted from a rupture of the heart. The injuries found on the person of the deceased could have been caused by a single fall. He further stated that the rupture of the heart of the deceased on account of his old age was possible even by an ordinary injury. He added that this, however,

could not have occurred in the case of a normal, healthy man. It was also clear from the medical evidence that the ribs of Asharfi had been broken. There was nothing on the record to show that the appellant had any knowledge that the deceased had a badly enlarged heart, on account of which he died.

14. On behalf of the appellant, reliance has been placed on the case reported in (1880) ILR 2 All 766, *Empress of India v. O'Brien*. Their Lordships observed:

“There is no reason to doubt that the act was not done with the intention of causing death, or of causing such bodily injury as the accused knew was likely to cause the death of the old man, nor was the act done with the intention of causing bodily injury to the man, nor was the bodily injury intended to be inflicted sufficient in the ordinary course of nature to cause death, nor did the accused, when striking the man, knew that his act so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. The offence, therefore, of culpable homicide was not committed. But I think that there can be no doubt that the accused committed the offence of voluntarily causing grievous hurt. He struck the deceased on the ribs with a stick and inflicted a hurt which not only endangered his life but caused his death and which he must have known was likely to break a rib if it did no worse injury.....”

15. A similar view was expressed in another case reported in (1881) ILR 3 All 776, *Empress of India v. Idu Beg*.

16. In the instant case, it was clear that the appellant had no intention or knowledge to cause the death of Asharfi. But he caught him by his neck, bodily lifted and threw him on the ground. He was an old man, and his ribs were fractured. It could not be doubted that he was thrown from some distance and with sufficient force. So, it could be reasonably presumed that the appellant possessed the requisite knowledge that by his act, grievous hurt could be caused to the victim. He is only guilty of the charge

under Section 325, Penal Code, 1860. His conviction under Section 304, Part II, I.P.C., is clearly erroneous and must be set aside. As regards the sentence, in my opinion, three years' rigorous imprisonment would amply meet the ends of justice."

39. In *Sri Prakash Vs. State*, 1990 CrLJ 486 (All.), the accused gave a beating to a child having an enlarged spleen, which resulted in his death. There was no evidence to prove that the accused knew about the enlarged spleen of the deceased. The accused was found guilty under Section 323 of the IPC.

40. In *Mahender vs. The State (N.C.T. of Delhi)* (11.10.2013 - DELHC): MANU/DE/3652/2013, the deceased suffered from cirrhosis of the liver and jaundice. The accused gave him beatings, leading to his death. It was held that he could not be held liable for the commission of an offence punishable under section 304 (2) of IPC, but section 323 of IPC in the absence of any knowledge of the condition of the accused. It was observed:

"2.. The evidence available on record does not point out any such injury that was so grievous as to constitute 'knowledge' in the mind of the accused persons that by the infliction of such injuries they were likely to cause the death of the deceased. True, death was the resultant, but this resultant could not be attributed to the knowledge of the accused persons because of the obvious fact that the alleged injuries found on the person of the deceased were not such as to constitute knowledge on the part of the accused persons. In an offence punishable under Section

304 Part-II IPC, 'knowledge' is an important element that is missing in the instant case, and hence, it remains simpliciter an offence of 'voluntarily causing hurt' as defined under Section 321 IPC and punishable under Section 323 IPC. The injuries found on the body of the deceased were neither sufficient in the ordinary course of nature to result in death nor were they likely to cause death. The death did not take place as a result of the injuries received by him, but took place due to the shock consequent to cirrhosis of the liver and jaundice after about ten days of the incident. The appellants can, therefore, only be held guilty of hurt under Section 323 IPC and not under Section 304 Part-II IPC.

3. In '*State of Karnataka vs. Shivalingaiah*', MANU/SC/0293/1987: 1988 CrL. L.J. 394, the conviction was ultimately maintained by the Supreme Court under Section 325 IPC on the ground that the act of the accused in squeezing the testicles of a person would be an offence of voluntarily causing grievous hurt under Section 325 IPC. In the said case, there was a categorical statement by the doctor that the act was dangerous to human life and had led to the cardiac arrest of the deceased, which was instantaneous. In '*Bal Krishan Sita Ram Pandit vs. State*', MANU/DE/0214/1986: 1987 CrL. L.J. 479, the cause of death given by the autopsy surgeon was heart failure due to coronary artery disease. He further opined that shock could also cause death if the person has a weak heart or is an emotional type of person. The deceased has a diseased heart, and the danda blows might have produced a shock, aggravating the heart attack. This Court held that the death was not necessarily caused on account of a danda blow, and it could be a simple cause of a heart attack on account of Mehtab Rai Jain having become emotional.

41. A similar view was taken in *Balwinder Singh v. State of Punjab*, 1988 SCC OnLine P&H 838, wherein it was held:

10. The question then arises as to whether, during the course of this incident, all the accused shared the common intention of each other to commit the murder of Bachittar Singh or merely to give him grievous injuries. In this regard, it is noteworthy that the very factum of the accused having come unarmed to the house of the deceased clearly shows that they were intending to lodge a protest only, because in case they had intended to kill him, they would have armed themselves with effective weapons like Gandasas, kirpan, etc., which are usually available with the villagers. It appears that during the course of lodging a protest, some unbecoming words or exchange of hot words took place between the accused and Sukhdev Singh and others, which resulted in their entering the courtyard of the house of the deceased and hurling brick bats on them, after picking the same from near the hand-pump. Thus, at the most, it can be said that all the accused shared the common intention of each other to cause grievous hurt to Bachittar Singh and not to kill him, especially when the possibility of hitting the brick bats at the chest of the victim by his movement cannot be ruled out, even though the accused may not have aimed at the same target at his chest. The evidence of Dr Harmit Pal Singh (PW 1) that injury No. 2 was individually sufficient to cause death in the ordinary course of nature is not acceptable, as he had not ruled out the possibility of the victim being already suffering from some heart disease. Thus, it could not be said with certainty that the cardiac arrest was the result of injury No. 2. Under these circumstances, even if it is taken that Balwinder Singh appellant had caused injuries on the chest of the victim, the offence at the most would fall under section 325, Penal Code, 1860, as the accused never intended to cause the death of Bachittar Singh or had the necessary knowledge that the pelting of brick bats would result in his death. He cannot even be attributed with the remote knowledge that pelting of brick bats would result in cardiac arrest of the victim. Thus, he is held guilty for the offence under section 325/34, Penal Code, 1860 and section 448, Penal Code, 1860 and his conviction for the offence under section 449 and 302, Penal Code, 1860, is hereby set aside, being not legally sustainable. In view of the fact that the State has not filed any appeal against the acquittal of the

remaining two accused for the offences under section 302/34 of the Penal Code, 1860, there is no need to comment upon their liability.

42. A similar view was taken by the Rajasthan High Court in *Dhula Ram v. State*, 2021 SCC OnLine Raj 4561, wherein it was held:

17. In the present case, as has been noted above, all the injuries caused to the deceased were superficial and simple in nature. None of the internal organs of the deceased were effected by the injuries. So far as the sharp injuries are concerned, none of the prosecution's eye-witnesses gave convincing evidence to establish that any of the accused used a sharp weapon while assaulting Shanker Lal. There exist grave contradictions in the statements of the prosecution's eye-witnesses on this aspect of the case. Thus, none of the eight clauses of Section 320 IPC applies to the injuries caused to the victim of the case at hand. We, therefore, are of the firm opinion that the trial court committed a grave factual error while convicting the accused-appellants for the offence under Section 302/34 IPC. The findings so recorded in the impugned judgment are perverse on the face of the record and cannot be sustained. As a result of the foregoing discussion, the impugned judgment dated 16.03.2019 passed by the learned Additional Sessions Judge No. 2, Udaipur, in Sessions Case No. 39/2017 (387/2015) is set aside. The accused-appellants are acquitted of the charge under Section 302 read with Section 34 IPC, and instead, they are convicted for the offence under Section 323 IPC and are sentenced to imprisonment for one year and a fine of Rs. 1,000/- each: In default of payment of fine, they shall further undergo 15 days simple imprisonment. The accused-appellants Dhula Ram and Varda Ram have been in custody for more than five years, whereas the accused-appellant Banshi Lal has been in custody for the last one year and ten

months. They shall be released from custody forthwith upon depositing the amount of the fine if not wanted in any other case.

43. Delhi High Court in *Bal Krishan Sita v. State*, 1986 SCC OnLine Del 25, that where the death was not caused by the stick blow and could have been a case of heart attack, the accused cannot be held liable. It was observed:

(C) Dr Bharat Singh (PW 14) made the following statement on cross-examination:

“In this particular case, the cause of death was heart failure due to coronary artery disease. Shock can also cause death if a person has a weak heart or is an emotional type of person. The deceased was having a diseased heart, and the danda blow may have produced a shock, aggravating the heart attack.”

It is apparent from the above that the death was not necessarily caused on account of any *danda* blow, and it could be a simple case of a heart attack on account of Mehtab Rai Jain having become emotional. Therefore, the medical report does not fully corroborate the version of the prosecution that the appellant had caused the death of Mehtab Rai Jain by causing injury with a *danda*.

44. In the present case, there is no evidence that the accused Bhagat Ram was aware of the hypertrophic condition of the heart or that death would have resulted from inflicting a blow by means of a stick. Thus, he could not have been held liable for the commission of an offence punishable under Section 304 Part-II of the IPC, and the learned Trial Court erred in holding so. Hence, the judgment in *Yuvraj* (supra) dealing

with the ingredients of Section 304 Part-II will not apply to the present case.

45. Therefore, the judgment passed by the learned Trial Court convicting the accused Bhagat Ram for the commission of an offence punishable under Section 304 Part II of the IPC cannot be sustained and is to be set aside, whereas the judgment convicting and sentencing the accused Nirmala Devi and Sanjay Kumar for the commission of an offence punishable under Section 323 read with Section 34 of the IPC is sustainable. Hence, the present appeal is partly allowed. The judgment and order of the learned Trial Court convicting and sentencing the accused Bhagat Ram of the commission of an offence punishable under Section 304, Part II of IPC, are ordered to be set aside, and he is convicted of the commission of an offence punishable under Section 323 of IPC. Subject to this modification, the rest of the judgment and order are upheld.

44. Let the accused Bhagat Ram be produced for hearing him on the quantum of sentence on 13.07.2026.

(Rakesh Kainthla)
Judge

7th July, 2026
(Nikita)