(2025:HHC:31291)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 197 of 2013
Reserved on: 28.08.2025
Decided on: 12.09.2025

State of Himachal Pradesh
........Appellant

Versus

Rajesh Kumar
.....Respondent

Coram

The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr. Lokinder Kuthleria, Additional Advocate General.

For the Respondent : Mr. Digvijay Singh, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 27.09.2012 passed by learned Additional Sessions Judge, Fast Track Court, Ghumarwin, District Bilaspur (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 21.5.2011 passed by learned Judicial Magistrate, First Class, Court No.2, Ghumarwin, District Bilaspur, H.P. were ordered to be set aside. *(Parties shall*

1 *Whether the reporters of the local papers may be allowed to see the Judgment?Yes.*

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court for the commission of offences punishable under Sections 341 and 354 of the Indian Penal Code. It was asserted that the informant/victim (name being withheld to protect her identity) made a complaint asserting that she was coming to her home on 23.08.2008. The accused met her near Hatwar Bazar at about 7:45 P.M. The accused was intoxicated. He started teasing the informant. The victim protested, but the accused caught hold of her breasts and outraged her modesty. The informant bit the arm of the accused to save herself. During Scuffle a jeep stopped on the spot in which one person namely, Gogi was sitting. The accused ran away on seeing the jeep. The victim reported the matter to the President of Gram Panchayat, Hatwar, who advised her to report the matter to the police or the Court. The victim filed a complaint (Ex. PW1/A) before the learned Judicial Magistrate, First Class, Court No.1, Ghumarwin, which was sent to the police for investigation. F.I.R. (Ex. PW1/B) was registered in the police station. SI Tilak Chand (PW10) conducted the investigation. He visited the spot and prepared

the site plan (PW10/A). He recorded the statements of prosecution witnesses as per their version. After the completion of the investigation, the challan was filed before the Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 341 and 354 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven witnesses to prove its case. Informant (PW1) narrated the incident. Sulekha Thakur (PW2) is the Pardhan of the Gram Panchayat to whom a complaint was made. Ramesh Kumar (PW3) was travelling in the vehicle, and he rescued the victim. Ishwar Dass (PW4), Kirti Chand (PW5), Kishori Lal (PW6), Devi Ram (PW7) and Sudesh Kumar (PW8) did not support the prosecution's case. Ram Dass (PW9) signed the F.IR. SI Tilak Chand (PW10) conducted the investigation. Anju Devi (PW11) proved that the accused had also molested her on an earlier occasion.

5. The accused, in his statement recorded under Section 313 of Cr. P.C. stated that the victim deposed falsely

against him as she had borrowed ₹5000/-from him for the marriage of her daughter. He had filed a complaint against the Pardhan to the Deputy Commissioner, Bilaspur, and the witnesses deposed against him at the instance of the Pardhan. He tendered documents in his evidence.

6. Learned Trial Court held that the testimony of the informant was duly corroborated by Ramesh Chand (PW3) and Sulekha Thakur (PW2). It was duly proved on record that the accused had restrained the informant from proceeding further and had molested her. The defence taken by the accused that the victim had taken ₹5,000/- from him and she implicated him falsely to avoid the payment of ₹5,000/- was not probable. The complainant denied this fact in her cross-examination. The delay in reporting the matter to the police was duly explained. It was difficult to believe that the victim would have made a false complaint at the instance of Pardhan. There was no evidence to show any conspiracy between the victim and Pardhan. Hence, the learned Trial Court convicted and sentenced the accused as under: -

Sr. No.	Offence	Sentence Imposed
1.	341 IPC	To undergo simple imprisonment for a period of fifteen days, pay fine of ₹200/- and in default of the payment

		of fine, to further undergo simple imprisonment for a period of two days.
2.	354 IPC	To undergo simple imprisonment for a period of one year, pay fine of ₹500/- and in default of the payment of fine, to further undergo simple imprisonment for a period of fifteen days.
Both the substantive sentences of imprisonment were ordered to run concurrently.		

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Fast Tract Court, Ghumarwin, District Bilaspur, H.P. (learned Appellate Court). Learned Appellate Court held that the victim had improved upon her version materially in the Court. Learned Trial Court erred in holding that the delay was properly explained. The prosecution's version was not proved beyond a reasonable doubt. Hence, the judgment and order passed by the learned Trial Court were set aside, and the accused was acquitted of the charged offences.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court erred in acquitting

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the accused by giving undue importance to the minor contradictions, which were bound to come with the passage of time. Ramesh Kumar (PW3) and Kirti Chand (PW5) corroborated the prosecution's version that the accused had outraged the victim's modesty. Learned Appellate Court erred in reversing the well-reasoned judgment of the learned Trial Court. Therefore, it was prayed that the present appeal be allowed, and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr. Lokinder Kuthleria, learned Additional Advocate General for the appellant-State and Mr. Digvijay Singh, learned counsel for the respondent-accused.

10. Mr. Lokinder Kuthleria, learned Additional Advocate General for the appellant-State, submitted that the learned Appellate Court erred in acquitting the accused. The prosecution version was duly supported by Ramesh Chand (PW3), Kirti Chand (PW5) and Pardhan Sulekha (PW2). There is nothing in their cross-examination to show that they were making a false statement. The plea taken by the accused that the victim had taken ₹5,000/- from him and had made a false case to avoid the payment of the amount was not proved. The victim denied this

fact in her cross-examination, and the accused did not lead any evidence to establish this fact. Learned Trial Court had rightly held that there was no evidence of conspiracy between the victim and Pardhan to falsely implicate the accused. Learned Appellate Court failed to discard the reasons assigned by the learned Trial Court to convict the accused. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Mr. Digvijay Singh, learned counsel for the respondent-accused, supported the judgment passed by the learned Appellate Court and submitted that the learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with it. 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. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433*** that the Court can interfere

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with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

> "**23.** Recently, in the case of ***Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 SCC OnLine SC 4035***, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:
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> > "**38.** First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.
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> > 39. This Court in ***Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)
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> > > "*29.* After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (***Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325***], SCC p. 432, para 42)
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> > > > '*42.* From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an

appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973, puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having

secured his acquittal, the presumption of the accused's innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

40. Further, in ***H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748],*** this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

8. … 8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence.

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record.

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

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41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity.

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

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

15. The incident occurred on 23.08.2008, and the complaint was filed before the Court on 28.08.2008. It was stated in para 4 of the complaint that the victim could not go to the President of Gram Panchayat, Hatwar, on 24.08.2008, as she was working in a private concern, and she went to the panchayat house on 25.08.2008. This is no explanation. She and

Sulekha Thakur (PW2), Pardhan, Gram Panchayat, are residents of Hatwar, and the victim could have approached the Pardhan on the date of the incident or on the next morning before going to her work.

16. It was mentioned in para 6 of the complaint that the victim, being a poor lady, had no money with her, so she consulted her counsel on 28.08.2008 and filed a complaint in the Court. It is not explained why she did not approach the police if she was unable to arrange money to engage the counsel. The complaint to the police does not require any funds.

17. The victim stated in her cross-examination that she had visited the police station. This part of her statement is falsified by the statement of Ram Dass (PW9), who stated in his cross-examination that the victim had not made any complaint in the police station between 23.08.2008 and 30.08.2008.

18. It was laid down in ***Mehraj Singh v. State of U.P. (1994) 5 SCC 188*** that the delay in lodging FIR leads to embellishments, concoction and fabrication and therefore, the court should see the prosecution case with utmost care and caution in case of delay. It was observed:

> "FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence to appreciate the

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evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of the delay, the FIR not only gets bereft of the advantage of spontaneity, but danger also creeps in with the introduction of a coloured version or exaggerated story. With a view to determining whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of a copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. The prosecution has presented no evidence at all in this case. The second external check, equally important, is the sending of a copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution's case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution's story was still in an embryonic state and had not been given any shape, and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity, and it appears to us that the same has been ante-dated and had not been recorded till the inquest proceedings were over at the spot by PW 8."

19. This position was reiterated in ***P Rajagopal vs State of Tamil Nadu 2019 (5) SCC 40***, wherein it was observed: -

> "12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of a concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on the merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See ***Apren Joseph v. State of Kerala, (1973) 3 SCC 114; Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1***]."

20. A similar view was taken in ***Sekaran v. State of T.N., (2024) 2 SCC 176: (2024) 1 SCC (Cri) 548: 2023 SCC OnLine SC 1653,*** wherein it was observed at page 182:

> **"14.** We start with the FIR, to which exception has been taken by the appellant, urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version.
>
> **15.** In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to

> the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction."

21. Therefore, the prosecution's evidence is to be seen with due care and caution because of the delay in reporting the matter to the police.

22. It was specifically mentioned in the complaint that the informant bit the accused to save herself. No medical examination of the accused was conducted to verify whether he had any bite marks. The medical examination would have provided valuable corroboration to the informant's testimony, and its absence will make the prosecution's case suspect.

23. Kirti Chand (PW5) stated that he, Gogi and Ajay were going to fill petrol in the car. They saw that accused Rajesh Kumar was molesting the victim. He could not identify the accused present in the Court. He was permitted to be cross-examined. He stated in cross-examination by learned Assistant Public Prosecutor that he could not say that the accused was the same person who had molested the victim. He volunteered to

say that it was night, and sufficient time had elapsed from the date of the incident.

24. This witness has not supported the prosecution's case regarding the identity of the accused. His testimony only establishes that the victim was molested on the date of the incident.

25. Ramesh Kumar (PW3) stated that he, Ajay Kumar and Kirti Chand were going from Jahu towards their home. When they reached near Panchayat Ghar, Hatwar, they saw that the accused had caught hold of the informant, and he was molesting her. The accused ran away from the spot. The victim revealed the name of the accused as Rajesh Kumar. He did not know the name of the accused. The victim was dropped off near her home in the car. He stated in his cross-examination that he started from home at 6:30 P.M. They stayed at Jahu for thirty minutes. They had gone to Jahu to fill petrol in the car. Kirti Chand was driving the vehicle. He admitted that Hatwar was a heavily populated area. He had known the accused for about two years. He denied that the accused had not molested the victim, and he was making a false statement on the asking of the complainant and Pradhan.

26. The victim stated that she was going to her home at 8:30 P.M. The accused stopped her near Lower Hatwar. He caught hold of her breasts. The accused was saying that he would take her to his home. The accused was dragging her beneath the 'beed'. She shouted for help. A jeep reached the spot. The occupants of the jeep rescued her. The accused ran away from the spot after seeing the jeep. She made a complaint to the Police Station, Bharari, but no action was taken. Hence, she filed a complaint (Ex. PW1/A) before the Court. She stated in her cross-examination that she had not placed the copy of the complaint made to the police on record. She volunteered to say that she had made a complaint to the Panchayat. She admitted that the accused is a Ward Member of the Gram Panchayat, Hatwar. She was not aware that the accused did not have cordial relations with the Pardhan. She admitted that she did not have cordial relations with the accused, and she was not on talking terms with the accused.

27. The victim's testimony is contradicted on material aspects by the other evidence. Learned Appellate Court had rightly pointed out that she mentioned in the Court that the accused tried to drag her beneath the 'beed', which was not mentioned in the complaint. She claimed that she had reported

the matter to the police; however, this fact was not supported by SI Ram Dass (PW9), who specifically stated in his cross-examination that the victim had not made any complaint between 23.08.2000 and 30.08.2008. She claimed that she was rescued by the occupants of the jeep. However, Ramesh Kumar or Kirti Chand did not state that they had rescued the victim; they only claimed that the accused left the victim after seeing the jeep.

28. The victim claimed that a jeep had stopped, and the accused ran away after seeing the jeep, whereas the witness claimed that they were driving a Maruti 800. Learned Appellate Court had rightly held that there is a difference between the jeep and the Maruti car, and the discrepancy would make the prosecution's version regarding the arrival of Ramesh Chand and Kirti Chand on the spot doubtful.

29. The complaint (Ex.PW1/A) mentions that the incident had taken place at 7:45 P.M. The victim claimed that the incident occurred at about 8:30 P.M. Ramesh Kumar stated that the incident occurred at 7:30-7:45 P.M. Therefore, different witnesses have given different versions regarding the time, which would make their testimonies doubtful.

30. The informant admitted that she had an inimical relationship with the accused, and she was not on talking terms with the accused. Hence, her testimony was required to be seen with due care and caution, especially in view of the delay in reporting the matter to the police.

31. Devi Ram (PW7) stated that a panchayat meeting was convened on 25.08.2008, which continued from 11:00 A.M to 5:00 P.M. The victim came after the conclusion of the meeting, but she did not reveal anything. He was permitted to be cross-examined, but he denied the prosecution's case that the victim had made a complaint against the accused in the panchayat.

32. Sudesh Kumar (PW8), Panchayat Secretary, stated that the meeting of the Panchayat was convened, which continued till 5:00-6:00 P.M. The victim came to the meeting, but she did not make any complaint regarding the molestation.

33. Thus, these two witnesses have not supported the victim's case that she had reported the matter to the Pardhan, Gram Panchayat during the meeting of the Panchayat.

34. The prosecution examined Anju Devi (PW11) regarding the incident which had occurred with her; however,

this evidence is inadmissible in view of Section 14 of the Indian Evidence Act as evidence of a similar nature as mentioned in illustrations of (n), (o) and (p) of the Act. In ***Emperor v. Panchu Das and Goberdhone Singh***, ***1920 SCC OnLine Cal 24 : (1919-20) 24 CWN 501: AIR 1920 Cal 500: 1920 Cri LJ 849***, the prosecution adduced evidence to show that the accused had robbed the women on earlier occasions. This evidence was held to be inadmissible. It was observed at page 517:

> "It is plain that this section [14 of the Indian Evidence Act] is of no assistance. The existence of a state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards a person or the existence of a state of body or bodily feeling, was not and could not be in issue in the circumstances of the case. The defence was a complete denial, and no question of the character contemplated by sec. 14 did or could possibly arise. The first explanation to the section creates a further difficulty, because the relevant fact proved to show the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. The evidence introduced was plainly not of this description. The illustrations (*i*), (*j*), (*o*), and (*p*) clearly show that the evidence could not be admitted. Reference may particularly be made to the last two illustrations. A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B; but the fact that A was in the habit of shooting at people with the intent to murder them is irrelevant. A is tried for a crime; the fact that he said something indicating an intention to commit that particular crime is relevant, but the fact that he said something indicating a general disposition to commit

crimes of that class is irrelevant. These illustrate the elementary principle that evidence of general deposition, habit and tendencies is not relevant.

From the statement of the case by Mr. Justice Chaudhuri, it appears that secs. 14 and 15 were the only sections which had been referred to, and I have consequently considered, up till now, the question of their true construction. Upon a plain reading of these sections, I feel no doubt that they do not make the evidence admissible. This conclusion is supported by the decisions in ***Empress v. Moodeliar [I.L.R. 6 Cal. 655 (1881)]***, ***Baharuddin Mandal v. Emperor [18 C.L.J. 578 (1913)]*** and ***Emperor v. Abdul Wahid Khan [I.L.R. 34 All. 93 (1911)***. In the first of these cases, Sir Richard Garth, C.J., pointed out that sec. 141 applies to that class of cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, and added that the Court must be very careful not to extend the operation of the section to other cases where the question of guilt or innocence depends upon actual facts and not upon the state of a man's mind or feeling. Mr. Justice Mitter, if I have read his judgment correctly, did not really dissent from this view. The same line of reasoning was adopted in the second I case, where it was ruled that proof cannot I be offered of an independent offence to show I that by reason of such independent offence, I the accused is more likely to have committed the one for which he is on trial; in other words, evidence of such collateral offence cannot be received as substantive evidence of the offence on trial, though under sec. 14 evidence may be given of intention and like matters where the factum of such intention or like matters is relevant. The distinction between cases where intention is and cases where intention is not relevant is illustrated by the decisions in ***Emperor v. Debendra, Prosad [I.L.R. 36 Cal. 573: s.c. 13 C.W.N. 973 (1909)]*** and ***Emperor v. Abdul Wahid [I.L.R. 34 All. 93 (1911).]*** which lie on opposite sides of the dividing line. Reference may also be made to the decision of West, J., in ***R. v. Parbhudas [11 Bom. H.C.R. 90 (1874).]*** where he emphasised the inadmissibility of evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected, even though cognate crime. On behalf of the Crown, reliance was, however, placed upon the decisions in ***Mahin v. Attorney-General [[1894] A.C. 57]***, and R. ***v. Ball [[1911] A.C. 47 (52)].*** reversing ***R. v. Ball [5 Cr. App. Rep. 238 (1910). R. v. Smith [[1911] Cr. App. Rep. 229.], R. v. Bond [[1906] 2 K.B. 389.]*** and R. ***v. Thompson [[1917] 2 K.B. 630***: affirmed on H.***L. [1918] A.C. 221.]*** which has been affirmed by the House of Lords in ***Thompson v. The King [[1917] 2 K.B. 630***: affirmed on ***H.L. [1918] A.C. 221.]***. No useful purpose would be served by a detailed analysis of these decisions; most of them, along with other cases, were reviewed by this Court in ***Amritalal Hazra v. Emperor [I.L.R. 42 Cal. 957: s.c. 19 C.W.N. 676 (1915).]*** where the principles deducible therefrom as to the law administered in England were formulated in the following terms:—

> "Facts similar to but not part of the same transaction as the main fact are not, in general, admissible to prove either the occurrence of the main fact or the identity of its author. But evidence of similar facts, although in general inadmissible to prove the main facts or the connection of the parties therewith, is receivable, after evidence *aliunde* on these points has been given, to show the state of mind of the parties with regard to such fact; in other words, evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction, or his intent with respect thereto. In general, whenever it is necessary to rebut, even by anticipation, the defence of accident, mistake, or other innocent condition of mind, evidence that the Defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given. To admit evidence under this head, however, the other acts tendered must be of the same specific kind as that in question and not of a different character, and the acts tendered must also have been proximate in point of time to that in question."

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> I have re-examined these cases and I see no reason to doubt the accuracy of the above statement, which fully accords with the decisions of the Court of Criminal Appeal in the cases of ***R. v. Rodley [[1913] 3 K.B. 468; 9 Cr. App. Rep. 69; 23 Cox. 574 (1913).]*** and ***R. v. Ellis [[1910] 2 K.B. 746; 5 Cr. App. Rep. 41.]*** as also other recent cases, such as ***Thompson v. The King [[1917] 2 K.B. 630***: affirmed on H.L. [1918] A.C. 221.], *R.* v. *Fisher* [[1910] 2. K.R. 149.], *R.* ***v. Mason [111 L.T. 336.]***, ***R. v. Baird [84 L.J.K.B. 1785 (1915).]*** and ***Perkins v. Jeffery [[1915] 2 K.B. 702.]***. It is plain that the principles so enunciated are of no assistance to the prosecution. On the other hand, there is an important passage in the judgment of Kennedy, J., in the case of ***R. v. Bond [[1906] 2 K.B. 389 (405).]*** to which the attention of the Standing Counsel was drawn by the learned Chief Justice in the course of the argument, as destructive of his contention:—
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> > "The admissibility, not merely the weight, of the evidence depends upon the evidence of such conduct as would authorise a reasonable inference of a systematic pursuit of the *same* criminal object."

35. Similarly, it was held in ***Emperor vs. Gangaram Hari Pandit (05.07.1920 - BOMHC): MANU/MH/0102/1920*** that the evidence of previous murders committed by the accused was inadmissible. It was observed:

> "3. In the present case, there is no question as to whether the death of Dadu was accidental or intentional. It is the case on both sides that Dadu was murdered, and whoever assaulted Dadu intended to murder him. Whether the six persons mentioned by Gangaram actually committed the murder or whether some of the present accused committed it is the real question. But it cannot be said that there is any point as to the death of Dadu being accidental. It may be a part of the prosecution case that, in attacking the party, assuming for the sake of argument that the enemies of the present accused were

the assailants, the object was to go at Gangaram and not at Dadu. The fact remains that those who went at Dadu did murder him, i. e., they intended to do what their act would show they intended to do. Whether those persons were actuated by a desire to go to Gaugaram more than at Dadu or whether they went to Dadu by mistaking him for Gangaram, they undoubtedly murdered him, and there can be no doubt that they intended to do so. There is no question of the death being accidental. I may refer to the observations in ***Rex v. Boyte [1914] 3 K.B. 339***, which suggest the test to be adopted in determining whether evidence of similar acts is admissible under Section 15 or not in a particular case. Though there may be cases in which it may not be easy to determine whether the evidence is admissible under Section 15 or not, 1 do not think that in the present case there is any difficulty whatever. Though Section 9 of the Indian Evidence Act has not been relied upon on behalf of the Crown, I have considered it with reference to the question as to whether this evidence can be let in to explain the conduct of the persons who are said to have been falsely charged. I have already referred to this consideration so far as it can be said to fall within the scope of Section 8; and I am satisfied that to explain the conduct of those six persons in absconding when they received the news that their names were given as the assailants of Dadu, the belief on the part of some of them that on previous occasions false charges of that character had succeeded or had been brought would be relevant. There is evidence in this case to show that there was a belief in the village that the accused in Gangu's case were wrongly convicted; and that may be relevant to explain the conduct of the six persons in this case, but that belief might exist whether the accused in that case were rightly convicted or not. In my opinion, that would not entitle the prosecution in this case relating to the murder of Dadu to prove that on two previous occasions some of the accused were concerned in similar murders and in charging others falsely. Taking a broad and general view of this type of evidence, I feel that, in effect, it amounts to evidence of habit for committing a murder under circumstances as

> are now alleged to exist. That kind of evidence is not relevant. It seems to me that the second part of the illustration (o) to Section 14 clearly indicates that unless the evidence was particularly directed to show that on a previous occasion any one of the present accused made an attempt to murder any one of the six persons now said to have been falsely implicated, it would not be relevant. It is quite clear that the persons concerned in those two cases, the accused persons, were different. I also feel that there is some force in the argument urged on behalf of the defence as to such evidence being in substance evidence of bad character. Its net result is to create the impression on the mind of the Court that these persons are men of bad character and are in the habit of committing murders, and that, therefore, they must have committed murder on this occasion. That is a line of proof which, in my opinion, is excluded by the Indian Evidence Act and should not be allowed. We have, therefore, excluded from consideration only that evidence which has been adduced by the prosecution to show specifically that the charges in both those earlier murder cases were positively false and that the persons convicted in Gangu's case were innocent."

36. The Judicial Committee of the Privy Council also held in ***Noor Mohamed v. King*, *1948 SCC OnLine PC 76: (1949) 62 LW 530: AIR 1949 PC 161*** that the evidence of similar crimes is inadmissible in evidence. It was observed at page 532:

> "The first comment to be made on the evidence under review is that it plainly tended to show that the appellant had been guilty of a criminal act which was not the act with which he was charged. In ***Makin v. Attorney-General for New South Wales [(1894) A.C. 57 at p. 65.]*** Lord Herschell, then Lord Chancellor, delivering the judgment of the Board, laid down two principles which must be observed in a case of this character. Of these, the first was that:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried."

In 1934, this principle was said by Lord Sankey, then Lord Chancellor, with the concurrence of all the noble and learned Lords who sat with him, to be "one of the most deeply rooted and jealously guarded principles of our criminal law" and to be "fundamental in the law of evidence as conceived in this country." [***Maxwell v. The Director of Public Prosecutions [(1935) A.C. 309*** at pages 317, 320.].

The second principle stated in ***Makin's case [(1894) A.C. 57 at p. 65]***:

> "The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

The statement of this latter principle has given rise to some discussion. A plea of not guilty puts everything in issue which is a necessary ingredient of the offence charged, and if the Crown were permitted, ostensibly in order to strengthen the evidence of a fact which was not denied and perhaps could not be the subject of rational dispute, to adduce evidence of a previous crime, it is manifest that the protection afforded by the "jealously guarded" principle first enunciated would be gravely impaired.

This aspect of the matter was considered by the House of Lords in ***Thompson v. The King [(1918) A.C. 221]***. Their Lordships need not allude to the facts of that case. It is enough to say that the evidence there admitted was held

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to be relevant as one of the indicia by which the accused man's identity with the person who had committed the crime could be established. (See per Lord Parker of Waddington, at p. 231). In the words of Lord Atkinson, it rebutted the defence of an alibi which otherwise would have been open (pp. 230-1). Nothing of the kind can be suggested in the present case. The value of the case for the present purpose is that Lord Sumner dealt particularly with the difficulty to which their Lordships have referred, and stated his conclusion as follows:

> "Before an issue can be said to be raised, which would permit the introduction of such evidence so obviously prejudicial to the accused, it must have been raised in substance if not in so many words, and the issue so raised must be one to which the prejudicial evidence is relevant. The mere theory that a plea of not guilty puts everything material in issue is not enough for this purpose. The prosecution cannot credit the accused with fancy defences in order to rebut them at the outset with some damning piece of prejudice"

There can be little doubt that the manner of Ayesha's death, even without the evidence as to the death of Gooriah, would arouse suspicion against the appellant in the mind of a reasonable man. The facts proved as to the death of Gooriah would certainly tend to deepen that suspicion, and might well tilt the balance against the accused in the estimation of a jury. It by no means follows that this evidence ought to be admitted. If an examination of it shows that it is impressive just because it appears to demonstrate, in the words of Lord Herschell in ***Makin's case [(1894) A.C. 57.]*** "that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried", and if it is otherwise of no real substance, then it was certainly wrongly admitted. After fully considering all the facts which, if accepted, it revealed, their Lordships are not satisfied that its admission can be justified on any of the grounds which have been suggested or on any other ground. Assuming that it is consistent with the evidence relating to the death of Ayesha that she took her own life, or that she took poison accidentally (one of which assumptions must be made for the purposes of the Crown's argument at the trial), there is nothing in the circumstances of Gooriah's death to negate these possible views. Even if the appellant deliberately caused Gooriah to take poison (an assumption not lightly to be made, since he was never charged with having murdered her), it does not follow that Ayesha may not have committed suicide. As to the argument from similarity of circumstances, it seems on analysis to amount to no more than this, that if the appellant murdered one woman because he was jealous of her, it is probable that he murdered another for the same reason. If the appellant were proved to have administered poison to Ayesha in circumstances consistent with an accident, then proof that he had previously administered poison to Gooriah in similar circumstances might well have been admissible. There was, however, no direct evidence in either case that the appellant had administered the poison. It is true that in the case of Gooriah, there was evidence from which it might be inferred that he persuaded her to take the poison by a trick, but this evidence cannot properly be used to found an inference that a similar trick was used to deceive Ayesha, and so to fill a gap in the available evidence. The evidence which was properly adduced as to Ayesha shows her to have been acquainted, as were, it may be supposed, most of the inhabitants of the village in which the appellant lived, with the fact that suspicion rested on him in respect of Gooriah's death, and the theory that Ayesha was deceived into taking poison by a similar ruse to that which is supposed to have succeeded with Gooriah seems to their Lordships to rest on an improbable surmise. The effect of the admission of the impugned evidence may well have been that the jury came to the conclusion that the appellant was guilty of the murder of Gooriah, with which he had never been charged, and having thus adjudged him a murderer, were satisfied with something short of conclusive proof that he had murdered Ayesha. In these circumstances, the verdict cannot stand, notwithstanding the care with which the learned Judge summed up the case, and the fairness with which the trial was conducted in all other respects.

With all due deference to the Court of Criminal Appeal, their Lordships feel bound to say that they are not convinced that the method of approach which it thus approved has any advantage over that which it rejects as incorrect. The expression "logically probative" may be understood to include much evidence which English law deems to be irrelevant. Logicians are not bound by the rules of evidence which guide English Courts, and theories of probability sometimes cause a clash of philosophic opinion. It would no doubt be wrong to interpret the observations of the Court of Criminal Appeal as meaning that evidence can sometimes be admitted merely for the reason that it shows a propensity in the accused to commit crimes of the nature of that with which he is charged. It cannot be supposed that the Court intended to lay down a proposition which would conflict with principles which have been laid down, or approved, by the House of Lords. It may be assumed that it is still true to say, as Lord Sumner said thirty years ago:

> "No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime and even to a particular crime:" ***Thompson v. The King [(1918) A.C. 221 at p. 232.]***."

If all that the Court meant to say was that evidence of the kind specified in the first of the principles stated in ***Makin's case [(1894) A.C. 57.]***, may be admitted if it is relevant for other reasons, then the dictum has no novelty. It does seem, however, that the passage quoted was intended at least to bear the meaning that evidence ought to be admitted which is in any way relevant to a matter which can be said to be in issue, however technically, between the Crown and the accused, because a little later in the judgment the following passage occurs:

> "It is of the utmost importance for a fair trial that the evidence should be *prima facie* limited to matters relating to the transaction which forms the subject of

> the indictment and that any departure from these matters should be strictly confined."

37. Thus, no advantage can be derived from her testimony.

38. The prosecution's version was full of material contradictions in the present case. There was a delay in reporting the matter to the police. The testimony of the victim was contradicted on many aspects, and the learned Appellate Court was justified in doubting her testimony. The learned Appellate Court had taken a reasonable view, which could have been taken on the evidence led in the present case. This Court will not interfere with the reasonable view of the learned Appellate Court while acquitting the accused, even if another view is possible.

39. No other point was urged.

40. In view of the above, the present appeal fails and the same is dismissed. Pending applications, if any, also stand disposed of.

41. A copy of this judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

12 September 2025.
(yogesh)