(2025) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Revision No. 88, 89 Of 2014

Akshya Kumar Alias Ankush And Others		APPELLANT
	Vs	
State Of HP		RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 34, 380, 457
- Code Of Criminal Procedure, 1973-Section 100, 100(4), 100(5), 161, 313, 380, 397, 398, 399, 400, 401, 482
- Evidence Act, 1872-Section 26, 27, 134

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Ashok Kumar, Karan Singh Kanwar, Lokender Kutlehria

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. Present revisions have arisen out of the common trial and judgment; therefore, they are being taken up together for disposal.

2. The present revisions are directed against the judgment dated 24.1.2014, passed by learned Sessions Judge, Sirmour District at Nahan, HP (learned Appellate Court), vide which the judgment of convic ion dated 7.5.2012 and order of sentence dated 11.5.2012, passed by learned Chief Judicial Magistrate, Sirm ur District at Nahan, HP (learned Trial Court) were partly upheld. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

3. Briefly stated, the facts giving rise to the present petitions are that the police presented a challan against the accused before the learned Trial Court for the

commission of offences punishable under Sections 457 and 380 read with Section 34 of the Indian Penal Code (IPC). It was asserted that Rahil Khan (PW1) was running a shop in the name and style of Rahil Communications at Ranital, Nahan. He closed his shop on 16.2.2007 at 10.30 PM. He returned to the shop on 17.2.2007 at about 6.45 AM and found that the lock of the shutter was broken and the shutter was open. He went inside the shop and found that the articles were scattered. He checked the articles and found that accessories of mobile, mobile batteries, mobile covers, mobile coupons worth ₹12,000/- and currency notes of ₹14,000/- were missing. The matter was reported to the police. An entry (Ex.PW4/A) was recorded in the Police Station. HC Ranjeet Singh (PW7) visited the spot and recorded the statement of Rahil Khan (Ex.PW1/A), which was sent to the Police Station, where FIR (Ex.PW7/A) was registered. HC Ranjeet Singh investigated the matter. He prepared the site plan (Ex.PW7/C) and took t e photographs (Ex.PX1 and Ex.PX2) with the help of an official camera. He found a hammer (Ex.P2), a broken rod (Ex.P1), and a broken lock (Ex.P3). He seized them vide memo (Ex.PW1/B). HC Ranjeet Singh (PW7) received information that a person was selling recharge coupons near Delhi Gate. He asked the informant to visit Delhi Gate. The police reached Delhi Gate and found that one person was selling recharge coupons at a discount. The police apprehended him. He revealed his name as Akshay alias Ankush. The police searched him and found four coupons (Ex. P4 to Ex. P7), a Top-up recharge (Ex. P8 and Ex.P9), two coupons of smart recharge (Ex.P10 and Ex.P11) and one Nokia battery (Ex.P12) in sealed condition. Rahil Khan identified them as the stolen articles. They were put in a parcel, and the parcel was sealed with seal impression A. The parcel was seized vide memo (Ex.PW1/C). Akshay disclosed the involvement of Prince, who was also arrested. Akshay made a disclosure statement that he had concealed recharge coupons, Audio CDs, Charger, Batteries, Computer Speaker and Amplifier, etc. in a shop which co ld be got recovered by him. Statement (Ex.PW1/D) was reduced to writing. Prince made a disclosure statement (Ex.PW1/E) that he had concealed Audio CDs, Batteries, C arger, and Recharge Coupon in his home, which could be got recovered by him. Prince led the police to his home and got recovered the stolen articles, which were seized vide memo (Ex.PW1/G). Akshay led the police to his home and got recovered the stolen articles, which were seized vide memo (Ex.PW1/F). The site plans of the shop (Ex.PW7/D) and the house (Ex.PW7/E), from where stolen articles were recovered, were prepared. The accused revealed in the interrogation that he had purchased a mobile with the stolen money, which was produced by the mother of the accused and was seized vide memo (Ex.PW1/H). The photographs (Ex.P3 to Ex.P9) were taken at the time of the recovery, whose negatives are Ex.P10 to Ex. 18. The 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 Trial Court.

4. The learned Trial Court f und sufficient reasons to summon the accused. When he accused appeared, they were charged with the commission of offences punishable

under Sections 457 and 380 read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

5. The prosecution examined seven witnesses to prove its case. Ra il Khan (PW1) is the informant. Musharaf Khan (PW2) and Anjuman Sheikh (PW3) witnessed various recoveries. Constable Hemant Kumar (PW4) proved the entry in the daily diary. Usha Devi (PW5) is the mother of the accused Akshay Kumar, who produced the mobile phone before the police. Mohinder Arora (PW6) sold the mobile phone to the accused Akshay. HC Ranjeet (PW7) investigated the matter.

6. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecutions case in its entirety. They claimed that the police filed a false case against them in connivance with the informant. The witnesses falsely deposed against them. They did not produce any defence evidence.

7. Learned Trial Court held that the theft in the informants shop was proved. The accused made disclosure statements and got the stolen articles recovered. They could not explain the possessi n f the stolen articles. Hence, the accused were convicted for the commission of offences punishable under Sections 457 and 380 read with Section 34 of the IPC and were sentenced as under: -

Under Section 457 read with Section 34 of IPC	To suffer rigorous imprisonment for a period of two years each, pay a fine of ₹500/- each and in default of payment of fine, to undergo simple imprisonment for two months each.
Under Section 380 read with Section 34 of IPC	To suffer rigorous imprisonment for a period of one year each, pay a fine of ₹500/- each and in default of payment of fine, to undergo simple imprisonment for two months each.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

8. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Sessions Judge, Sirmour District at Nahan, H.P. (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statement of Rahil Khan (PW1) pr ved the theft. Stolen articles were recovered from the personal search of Akshay and pursuant to the disclos re statement made by Akshay Kumar and Prince. Learned Trial Court had rightly convicted the accused of the commission of offences punishable under Sections 457 and 380 read with Section 34 of IPC,

however the sentence awarded by learned Trial Court was harsh and it was reduced from two years to one year for the commission of offence punishable under Section 457 of IPC and from one year to six months for the commission of offence punishable under Section 380 of IPC.

9. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revisions, asserting that the learned Courts below have not properly appreciated the evidence on record. The prosecution failed to join any independent witness. The testimonies of police officials were highly improbable. The investigation was not fair, and the prosecutions story is unbelievable. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

10. I have heard Mr Ashok Kumar, learned vice counsel representing the petitione s/accused, and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

11. Mr Ashok Kumar, learned vice counsel representing the petitioners/accused, submitted that the learned Courts below erred in appreciating the evidence on record. The prosecutions version is highly improbable. Photographs placed on record do not show that the informant could have kept a sum of ₹14,000/-. The informant has not provided any basis for identification. The prosecution failed to join any independent person. Therefore, he prayed that the present petitions be allowed and the judgments and order passed by the learned Courts below be set aside.

12. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the informant had identified the stolen property as his own. There is nothing in the cross-examination of the witnesses to show that they were deposing falsely. Both the learned Courts below have concurrently found that the accused had stolen the articles. This Court should not interfere with the c ncurrent findings recorded by the learned Courts below. Therefore, he prayed that the present revisions be dismissed.

13. I have given c nsiderable thought to the submissions made at the bar and have gone through the records carefully.

14. It was laid down by the Honble Supreme Court in Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207:-

10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed

to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short CrPC) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse th se findings.

15. This position was ei era ed in State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was bserved at page 695:

14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15.It would be apposite to refer to the judgment of this Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are n t exhaustive classes, but are merely indicative. Each case would have to be determined on i s own merits.

13. Another well-accepted norm is that the revisional j risdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it sh uld n t be against an interim or interlocutory order. The Court has to keep in mind that the exercise of

revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.

16. It was held in Kishan Rao v. Shankargouda, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. In its revisional jurisdiction, the igh Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdicti n is ne of supervisory jurisdiction exercised by the High Court for correcting a misca riage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it w uld n t be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence.

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

14. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The wh le purp se of the revisional jurisdiction is to preserve the p wer in the court to do justice in accordance wi h the principles of criminal jurisprudence. The evisional power of the court under Sections 397 to 401 C PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is so ght to be revised, is shown to be perverse r untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.

17. This position was reiterated in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.

18. This position was reiterated in Sanjabij Tari v Kishore S. Borcar, 2025 SCC OnLine SC 2069, wherein it was observed:

27. It is well settled that in exercise of revisional juris-diction, the High Court does n t, in the absence of perver-sity, upset concurrent factual findings [See: Bir Singh (supra)]. This Court is of he view that it is not for the Re-visional Court to e-analyse and re-interpret the evidence on record. As held by this Court in Southern Sales & Ser-vices v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457, it is a well-established principle of law that the Revisi nal C urt will not interfere, even if a wrong order is passed by a C urt having jurisdiction, in the absence of a jurisdictional error.

28. onsequently, this Court is of the view that in the ab-sence of perversity, it was not open to the High Court in t e present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

19. The present revisions have to be decided as per the parameters laid down by the Honble Supreme Court.

20. Informant Rahil Khan (PW1) stated that he had locked his shop on 16.2.2007 at about 10.30 PM. He returned to the shop the next morning at about 6.45 AM and found the shop to be open. He went inside the shop and saw that the articles were scattered. The lock was broken. He checked the articles in the shop and found that accessories of mobile, mobile batteries, mobile covers, recharge coupons and ₹14,000/- were stolen He reported the matter to the police. The police visited the spot and recorded his statement. The police seized the broken lock, hammer and the iron rod. He stated in his cross-examination that houses, shops, the office of HPSEB, and the residence of the Superintendent of Police were located near the shop. The people continuously moved on the road. The shop of the scooter mechanic was located adjacent to his shop. The hammer and the iron rod are available from the mechanic. His shop was at some distance from the main road. The residence of the Superintendent of Police and the office of HPSEB were visible from is s op. A chowkidar remains present in the office of HPSEB.

21. It was submitted that the statement of this witness admitted the existence of shops and houses in the vicinity, and it is difficult to believe that any person would have broken the lock by taking a risk of being seen by inmates of the houses and the shops. This submission will not help the petitioners. The fact that the theft had taken place in the shop is duly corroborated by the statement of HC Ranjeet Singh (PW7), who visited the spot and found that the lock was broken. He recovered a hammer and the iron rod. He also took the photographs (Ex.P1 to Ex P3) showing the articles lying scattered inside the shop and the shutter open. There is no evidence that breaking the lock would have generated noise attracting the attention of the neighbours. Thus, the submission that it would not be possible to break the lock without attracting the neighbours attention is without any basis and cannot be used to discard he prosecutions case.

22. HC Ranjeet Singh (PW7) stated that he received information that a b y was selling recharge coupons near Delhi Gate. He went to the spot and inquired about the name of the boy in the presence of Anjuman Sheikh and Rahil Khan. The boy revealed is name as Akshay. His search was conducted, and rechar e coupons and a battery were found in his possession, which were seized by the police. Anjuman Sheikh (PW3) supported his version. He stated that police searched Akshay Kumar in his presence and in the informants presence. The police found recharge coupons and a Nokia battery. The informant identified the articles belonging to him. He stated in his cross-examination that informant Rahil Khan was his cousin. He could not tell the number of recharge coupons recovered by the police. The police had already apprehended the accused. The police showed the articles to Rahil Khan, and he identified them as his own. He denied that he was making a false statement.

23. It was submitted that he is related to the informant and an interested witness. Learned Courts below erred in relying upon his testimony. This submissi n is n t acceptable. It was laid down by the Honble Sup eme 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 fr m 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 he 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 suspici us f such evidence. The primary endeavour of he court must be to look for consistency. The evidence of a witness cannot be ignored or th own out solely because it comes from the mo th of a person who is closely related to the victim.

24. It was laid d wn by the Honble 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 cl se 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 the e is a personal cause for enmity, there is a tendency to d ag in an innocent person against whom a witness has a grudge along with the guilty, but the fo ndation 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 the 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 hat evidence of a witness cannot be discarded me ely on the ground that he is either partisan or inte ested 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.

25. 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 p siti n law has been well laid down in Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591:

32. Coming back to he appreciation of the evidence at hand, at the outset, our a en ion is drawn to the fact that the witnesses we e inte elated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciati n f evidence of a related witness. In Dalip Singh v. State f Punjab, 1954 SCR 145: AIR 1953 SC 364: 1953Cri 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 he evidence, whether or not the evidence strikes he court as genuine, whether or not the story disclosed by the evidence is probable, are all matters that m st be taken into account. But it would, we think, be unreasonable to contend that

evidence given by witnesses should be discarded only on the gr und 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 hat 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 f each case.

30. Once again, we ei e a e with a word of caution, 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 t wards the truth can be seen better through the eyes f the trial judge. In fact, this is the real objective behind the enactment itself, which extends the maximum discretion to the court.

26. Similar is the judgment in M Nageswara Reddy vs. State of And ra 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.

27. It was laid down by the Honble 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 testim nies with due care and caution. It was observed:

55. It is noted that g eat weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the af resaid fact that this Court has examined the credibility f 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 ot er. 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 co rts require, as a rule of prudence, not as a r le 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.

28. 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 nly warrants that their evidence should be scru inised 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 th se 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, daugh er and son, their testimonies are consistent with espect 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.

29. In the present case, no reason was elucidated as to why he would depose against the accused. Therefore, learned Courts below had rightly accepted his

testimony.

30. It was submitted that no independent witness was associated, and this would make the prosecutions case suspect. This submission cannot be accepted. It was laid down by the Honble Supreme Court in Rajesh Yadav Vs State of U.P., 2022 Cri. L.J. 2986 that non-examination of the witnesses will not vitiate the prosecution. It was observed: -

31. A mere non-examination of the witness, per se, will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and their importance. If the court is satisfied with the explanation given by the prosecution, along with the adequacy of the materials, sufficient to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the ther side in support of its case, no adverse inference can be drawn. The onus is on the part of pa ty that alleges that a witness has not been produced delibe ately to prove it. The aforesaid settled principle of law has been laid down in Sarwan Singh v. State f P njab, (1976) 4 SCC 369:

13. An ther circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the pakodewalla, hotel walls, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion, the comments of the Additional Sessions Judge are based on a serious misconception of the correct legal position. The onus of proving the prosecutions case rests entirely on the prosecution, and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness, even on minor points, would undoubtedly lead to rejection of the prosecutions case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for the unfolding of the pr secuti n narrative. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of he court that the witnesses who had been withheld we e eyewitnesses who had actually seen the occ rrence and were therefore

material to prove the case. It is not necessary for the pr secuti n to multiply witness after witness on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted, a large crowd had gathered, and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore, nobody wants to be a witness to a murder or any serious offence if they can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down the bus, there is no suggestion that any of those persons stayed on to witness the occurrence They may have proceeded to their village homes

32. This Court has reiterated the aforesaid principle in Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401:

19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number f witnesses is to be examined to prove/dispr ve a fact. It is a time-honoured principle hat evidence must be weighed and not counted. The est is whether the evidence has a ring of t uth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on the value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that the production of more witnesses does not carry any weight. Thus, the conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide Vadivelu Thevar v. State of Madras [AIR 1957 SC 614: 1957 Cri LJ 1000], Kunju v. State of T.N. [(2008) 2 SCC 151: (2008) 1 SCC (Cri) 331], Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91: (2011) 2 SCC (Cri) 150: AIR 2010 SC 3638], Mahesh v. State of M.P. [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singh v. State of Punjab [(2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and Kishan Chand v. State of Haryana [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807: JT (2013) 1 SC 222].)

31. In Appabhai and another Vs. State of Gujarat AIR 1988 SC 696, the incident had taken place at the bus stand. It was contended that independent witnesses were not examined, and the prosecutions case was doubtful. It was held by the Honble Supreme Court that the prosecutions case cannot be doubted due to the non-examination of independent persons. It was observed:

11. In light of these p inciples, we may now consider the first contention u ged by the learned counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several such witnesses. But the prosecutions case cannot be thrown out or doubted on that ground alone. The experience reminds us that civilised people are generally insensitive when a crime is committed, even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that a crime like a civil dispute is between two individuals or parties, and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere, whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecutions case for want of an independent witness, must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."

32. Therefore, the prosecutions case cannot be doubted because of the non-examination of independent persons.

33. Rahil Khan (PW1) stated that he was called by the police at Delhi Gate. The search of Akshay alias Ankush was conducted, and recharge coupons and a Nokia battery were recovered from him. The police seized these articles. He used to put a mark with a black pen for iden ification. He stated in his cross-examination that he had handed over the bills to the police, but he did n t remember the value of the stolen articles. He identified the articles recovered by the police. The police prepared the documents, put the articles in a cloth parcel and sealed t em. He admitted that many shopkeepers were selling coupons and mobile accessories.

34. It was submitted that the testimony of this witness regarding the identification is highly suspect. The recharge coupons and mobile accessories were available from every shopkeeper, and there was no reason for the informant to identify the articles shown to him. This submission cannot be accepted. The informant specifically stated in his examination- in-chief that he had marked the recharge coupon belonging to him with the black pen. Thus, he could easily identify his articles by the mark, and his identification cannot be doubted.

35. It was submitted that he has not deposed that the articles recovered from the accused contained the black mark put by him which made his identi ication doubtful. This submission cannot be accepted. The inf rmant specifically stated in his examination-in-chief hat he used to put the black mark on the coupons belonging to him, and the coupons were produced in the C urt; it was for the defence to shake his credit by showing that the coupons did not contain the black mark as deposed by him. However, no such question was put to him, and his testimony cannot be doubted by this Court because he had not deposed about the identification mark put by him on the coupons.

36. HC Ranjeet Singh (PW7) stated that the accused Akshay disclosed the name of Prince. The police arrested him. The accused made disclosure statement during the custody. Akshay Kumar stated that he had kept recharge coupons, audio CDs, chargers, a computer, a speaker, a mobile, an amplifier, etc. in his shop, which he could get recovered. Prince made a statement that he had concealed Audio CDs, Charger, Batteries, and recharge coupons in his home, which he could get recovered. Prince led the police to his home and recovered stolen articles. Akshay led the police to his shop from where the recovery was effected.

37. The informant, Rahil, stated that the police arrested Akshay. He made a disclosu e s a ement (Ex.PW1/D) stating that he had kept the Recharge Coupons, Audio CDs, Batteries, Computer Speaker and M bile covers in his shop, which he could get recovered. Prince also made a statement (Ex.PW1/E) that he had kept Audio Ds, Batteries, chargers and Coupons in his home w ich could be recovered by him. The accused Akshay led the police to his shop from where the police recovered recharge coupons, batteries, mobile covers, audio CDs, a computer, a speaker, etc. He (informant) identified the stolen articles as his own. Prince led the police to his house and got recovered the articles, which were identified by him (informant) as his own. He stated in his cross-examination that the police had called him to the Police Post. He and Shakeel had accompanied the police and the accused. He admitted that articles were taken from the shop of the accused.

38. It was submitted that the police had not joined any independent person at the time of the disclosure statement and the consequent recoveries. Therefore, the prosecutions case is suspect. This submission cannot be accepted. The question regarding the association of independent witnesses during the disclosure statement was conside ed by the Hon'ble Supreme Court in State Versus S nil 2001 (1) SCC 652. In the said case, the recovery was discarded by the High Court on the ground that no independent witness had signed the memo, and it was signed only by an interested person. It was held by the Hon'ble Supreme Court that there is no requirement under Section 27 of the Indian Evidence Act or Section 161 of Cr.P.C. to obtain the signatures of independent witnesses. The requirement of independent witnesses is when the recovery is effected under Section 100(4) of the Cr.PC and not when the recovery is effected pursuant to the disclosure statement. It was further

observed that statements of police officials cannot be doubted because they are official witnesses. It was observed: -

17. Recovery of the nicker is evidenced by the seizure memo Ext. PW-10/G. It was signed by PWlO-Sharda beside its author PW17-Investigating Officer. The Divi-sion Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo, but it was signed only by "highly interested persons". The observation of the Division Bench in that regard is extracted below:

"It need hardly be said that in order to lend assur-ance that the investigati n has been proceeding in a fair and honest manner, it w uld be necessary for the Investigating Officer to take independent wit-nesses to the discovery under Section 27 of the In-dian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the dis-c very w uld render the discovery, at least, not free fr m doubt."

18. In this context, we may point out that there is no re-quirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure to obtain the signature of independent witnesses on the record in which the statement of an accused is written. The legal obligation to call Independent and re-spectable inhabitants of the locality to attend and wit-ness the exercise made by the police is cast on the po-lice officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such a search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or another person, "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reason-able suspicion or some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches, the team that conducts the search would have to meddle with lots of other articles and documents also and in such a process, many such arti-cles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two in-dependent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But the re-covery of an object pursuant to the information sup-plied by an accused in cust dy is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in he Transport Commissioner, Andhra Pradesh, Hyde abad & Anr. v. S. Sardar Ali & Ors. Following observations of Chinnappa Reddy, J. can be used to support the said

legal proposition :

"Section 100 of the Criminal Procedure Code, to which reference was made by the counsel, deals with searches and not seizures. In the very nature of things, when the property is seized and not re-covered during a search, it is not possible to com-ply with the provisions of subsections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure (under the Motor Vehicles Act), there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself."

19. Hence, it is a fallacious impression that when re-covery is effected pursuant to any statement made by the accused, the document prepared by the Investigat-ing Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to the recovery of any article, it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his sig-nature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the re-covery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

20. We feel that it is an archaic notion that the actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during he British period, and policemen also knew about it. I s hangover persisted during post-independent yea s, but it is time now to start placing at least initial tr st in the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are un-trustw rthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence, when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused, it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the ac-cused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least un-safe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the

reason that police did not collect signa- tures of independent persons in the documents made contemporaneous with such actions.

39. This question was also considered by the Hon'ble Supreme Court in Praveen Kumar Versus State of Karnataka (2003) 12 SCC 199, in which a contention was raised that the statement recorded by the police under Section 27 of the Indian Evidence Act was not witnessed by any independent witness, and the same should be rejected. It was held that there is no requirement to associate independent witnesses at the time of the disclosure statement. It was observed: -

20. The learned counsel for the appellant, however, contended that the alleged statement, Ext. P-35 was made to PW 33, not in the presence of any independent witness; hence, the same should be rejected. He also contended that the said statement was made on 2-3-1994, but the recovery was made only on 3-3-1994; therefore, the said recovery cannot be correlated to the statement, if any, made by the accused on 2-3-1994. He also challenged the fact of recovery, stating that the panch witnesses for the said recovery cannot be be-lieved.

21. Section 27 does not lay down that the statement made to a police officer should always be in the pres-ence of independent witnesses. Normally, in cases where the evidence led by the prosecution as to a fact depends solely on the police witnesses, the courts seek corroboration as a matter of caution and not as a mat-ter of rule. Thus, it is only a rule of prudence that makes the court seek corroboration from an independent source, in such cases, while assessing the evidence of the police. But in cases where the court is satisfied that the evidence of the police can be independently relied upon, then in such cases, there is no prohibition in law that the same cannot be accepted without independent corroboration. In the instant case, nothing is brought on record to show why the evidence of PW 33 10 should be disbelieved in regard to the statement made by the accused as per Ext. P-35. Therefore, the argument that the statement of the appellant as per Ext. P-35 should be rejected because the same is not made in the pres-ence of an independent witness has to be rejected.

40. The Full Bench of Honble Rajasthan High Court has also considered this question in State of Rajasthan vs. Mangal Singh, AIR 2017 Raj. 68 and gave the following reasons for not insisting upon the presence of independent witnesses during the disclosure statements:

22. We are of the firm opinion that the insistence to keep attesting witnesses present when the Investigat-ing Officer records the information supplied by the ac-cused under Section 27 of the Evidence Act is absolutely unwarranted and rather amounts to a direct infringe-ment of the confidentiality of the investigation. There are strong reasons behind this conclusion. We sum-marise a few illustrations to

fortify the same:

(a) Investigation commences the moment an F.I.R. is registered for a cognizable offence. An Investigating Officer, having custody of the accused, cannot predict in advance the precise moment when the accused would decide to reveal the information, which could lead to the discovery of an incriminating fact. Thus, if attestation of the information by an independent witness is persisted upon, as a direct corollary thereto, the Investigating Officer would be required to keep the witnesses in attendance right from the moment the accused is arrested till the information is elicited. This would lead to an absolutely absurd situation and is likely to frustrate the investigation. The very sanctity of investigation and the privilege available to the Investigating Officer to keep the investigation secluded from prying eyes would be compromised.

(b) Another possible situation may be that the accused might divulge the information under Section 27 of the Evidence Act to the Investigating Officer at a particular p int in time when independent witnesses are not available. For adhering to the procedure of seeking attestation by independent wi nesses, the Investigating Officer would then be equired to summon independent witnesses and request the accused to repeat the information in their presence. At this point in time, the accused may either refuse to divulge the inf rmati n given earlier or may oblige the Investigating Officer with the information, which would then be taken down in writing in the presence of the independent attesting witnesses. However, there is a fundamental glitch in adopting this procedure, which would certainly make the information, if any, received the second time around in the presence of the witnesses, inadmissible in evidence. Law is well settled by a catena of decisions of the Hon'ble Supreme Court, including the judgment in the case of Aher Raja Khima v. The State of Saurashtra, reported in AIR 1956 SC 217, that information of a fact already known to the Investigating Officer is inadmissible in evidence. Thus, in case the Investigating Officer, while making an investigation of the accused in his custody, is provided information under Section 27 of the Evidence Act and soon thereafter, calls the Panchas and records the same in their presence, then he would be recording the memorandum of information already known to him. Such information would be inadmissible at the outset, and thus, the entire endeavour would become nothing short of an exercise in futility.

(c) There is yet another risk involved, which could severely prejudice the accused if the information provided by the accused under Section 27 is recorded in the presence of independent witnesses. The information under Section 27 of the Evidence Act often comprises two parts: one being confessional, which has to be excluded and the other, which leads to the discovery of an incriminating fact and is admissible in evidence to the extent of he discovery made in pursuance thereof. In case independent witnesses are kept present when the information is given by the accused, the prosecution may make an endeavour to pr ve even the confessional

part of the information as being an extra-judicial confession made in the presence of independent witnesses. There may even arise a situation where the independent witness present to attest to the memorandum prepared under Section 27 of the Evidence Act is a Magistrate. In such a case, the confessional part of the information under Section 27 of the Evidence Act would almost assume the character of a confession under Section 26 of the Evidence Act, thereby condemning the accused to face severe consequences. There is a high probability of this situation arising in cases involving the recovery of narcotics, where the Investigating Officer gives an option to the accused that can be searched in the presence of a Magistrate or a Gazetted Officer. Contemplating that option to be searched in the presence of a Magistrate is given, and a search of the accused is conducted, and during the process, he is also questioned in the presence of the Magistrate. At this time, the accused may provide information under Section 27 of the Evidence Act to the Investigating Officer, which is partly confessional in nature and is taken down in writing and witnessed by the Magistrate by adhering to the requirement of attestation. In such a situation, the accused would be faced with severe consequences because the prosecution would then, by lifting the prohibition contained in Section 26 of the Evidence Act, insist on proving the whole of the information as amounting to a confession made in the presence of a Magistrate. Thus, the requirement seeking attestation of the mem randum prepared under Section 27 of the Evidence Act does not have any logic or rationale behind it.

41. Therefore, the disclosure statement cannot be discarded on the gro nd that independent witnesses were not associated.

42. Therefore, the prosecution had proved on record that the stolen articles were recovered at the instance of the accused. Section 114 illustration (a) provides that a man in possession of the stolen goods soon after the theft is either a thief or a receiver of stolen goods unless he can account for their possession. In the present case, the accused failed to provide any explanation for the possession of stolen articles. Thus, a presumption can be drawn that the accused had committed the theft, and the learned Courts below were justified in holding the accused guilty.

43. Prosecution also relied upon the recovery of the mobile phone. However, the mobile phone is not connected to the theft. Usha Devi (PW5) stated in her cross-examination that she had purchased the mobile with her own money Mohinder Arora (PW6) admitted in his cross-examination that the mobile phone was purchased by Akshays mother, and she had paid ₹7800/-. These witnesses were not re-examined, which means that their testimonies were accepted as correct by the prosecution. Since the mother of the accused stated that she had purchased the mobile phone with her money, and the shopkeeper also c rr b rated this version; therefore, the phone is not shown to have been purchased with the stolen currency notes. However, this will not make any difference because other articles were connected to the theft.

44. Learned Appellate Court had reduced the sentence to one year for the commission of an offence punishable under Section 457 of IPC and six months for the commission of an offence punishable under Section 380 of IPC. The sentences imposed by the learned Appellate Court are reasonable and do not require any interference.

45. No other point was urged.

46. In view of the above, the present revisions fail and are dismissed.

47. Records be sent back to the learned Courts below forthwith, along with a copy of the judgment.