(2026) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Appeal No. 272 Of 2024

Sameel Deenn		APPELLANT
	Vs	
State Of H.P		RESPONDENT

Date of Decision: Dec. 15, 2026

Acts Referred:

- Indian Penal Code, 1860-Section 302, 307, 324, 326, 376
- Code Of Criminal Procedure, 1973-Section 161(1), 162, 162(1), 164, 201, 313
- Evidence Act, 1872-Section 6, 145, 155(3)
- Code Of Criminal Procedure, 1898-Section 236, 237

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Jagan Nath, Ajit Sharma

Final Decision: Partly Allowed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment of conviction dated 21.3.2024 and order of sentence dated 27.3.2024, passed by learned Sessions Judge, Chamba, District Chamba, H.P., (learned Trial Court), vide which the appellant (accused before learned Trial Court) was convicted of the commission of an offence punishable under Section 307 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for seven years, pay a fine of ₹25,000/- and in default of payment of fine, to undergo further simple imprisonment for one year. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the c mmission of offences punishable under Sections 307, 324 and 326 of the Indian

Penal Code (IPC). It was asserted that the informant/victim Rani Begum (PW1) is the wife of the accused. Three children were born to her. They were married and settled. The informant and accused were residing together in the house. She was watching the television on 8.6.2021 at about 9.00 PM, and the accused was sitting in t e verandah. She heard the noise of the utensils in the k tchen. She thought that the accused might be taking the food. The accused came to the place where the informant/victim was sitting. He inquired from the informant as to what she was doing. The informant replied that the weather was hot. The accused inflicted a blow with a knife on the informants chest. He again inflicted a blow of the knife on the informants neck. The informant tried to catch hold of the knife and sustained injuries on her hand. She shouted for help. Vandana (PW2) and her son reached the spot. She was bleeding from the neck, chest and fingers. Shukra Begum (PW4) and Monu alias Rajdeen, took her to the hospital. An intimation was given to the police, and Entry No.21 was recorded in the Police Station. ASI Yash Pal (PW14), HC Daleep Singh, Constable Upmanayu and HHG Pawan Kumar were sent for the verification of the information. ASI Yash Pal (PW14) filed an application (Ex.PW6/A) bef re the Medical Officer for seeking his opinion regarding he fi ness of the injured to make the statement. Dr Prachi Chambiyal (PW6) certified that the victim was fit to make the statement. She also conducted the medical examination of the victim and found that she had suffered multiple injuries which could have been caused by means of s arp-edged weapon like knife within 24 hours of the examination. She issued the MLC (Ex.PW6/D). ASI Yash Pal (PW14) recorded the statement (Ex.PW1/A) of Rani Begum and sent it to the Police Station, where FIR (Ex.PW9/B) was registered. ASI Yashpal (PW14) went to the spot and prepared the site plan (Ex.PW14/A). HC Dalip Singh took the photographs (Ex.PW14/B1 to Ex.PW14/B/3). ASI Yash Pal (PW14) found blood stains and a blood-stained knife (Ex. P3) on the floor of the room, and a blood-stained bed sheet (Ex. P4). He measured the knife and found it to be 11 inches in length, having a handle of 4 inches and a steel blade of 7 inches. He prepared the sketch of the knife (Ex.PW2/B). He put the knife in a paper and thereafter put it in a cloth parcel (Ext.PW2/C). He sealed the parcel with four impressions of the seal CG. ASI Yash Pal (PW14) scraped the blood stains from the floor of the room with the help of a blade and put them in a paper packet. He put the paper packet in a parcel and sealed the parcel wi h four seal impressions of seal CG. He put the bed sheet in a cloth parcel and sealed the parcel with four impressi ns f the seal CG. He obtained the sample seal (Ex.PW2/) on a separate piece of cloth and handed over the seal to Kuldeep Singh (PW3) after use. ASI Yash Pal (PW14) seized the parcel vide memo (Ex.PW2/A). He arrested the accused vide memo (Ex.PW14/C). He conducted the personal search of the accused and prepared the memo (Ex.PW14/D). The accused produced blood-stained under vest (Ex. P8) and Pyjama (Ex. P9), which were worn by him at the time of the incident. ASI Yash Pal (PW14) put the undervest and pyjama in a cloth parcel and sealed the parcel with four seals of seal TE. He obtained the sample seal (Ex.PW5/B) on a separate piece of cloth. He seized the clothes vide seizure memo (Ex.PW5/A). The injured produced her blood-stained shirt

(Ex. P1). ASI Yash Pal (PW14) put it in a cloth parcel and sealed the parcel with four seals of seal CG He obtained the seal impression (Ex.PW14/E) on a separate piece of cloth. He seized the parcel vide memo (Ex.PW1/B) The blood sample of the accused was obtained. An application (Ex.PW7/A) was filed to obtain the revenue record of the place of the incident. Rajni Devi (PW7) produced the copies f Jamabandi (Ex.PW7/B) and Tatima (Ex.PW7/C). ASI Yash Pal (PW14) filed an application (Ex.PW14/F) for obtaining the medical examination of the accused and obtained MLC f the accused (Ex.PW14/G). ASI Yash Pal (PW14) photographed and videographed the proceedings and transferred them to the CD (Ex.PW14/H). The samples were sent to t e SFSL, and the result (Ex.PX) was issued mentioning that human blood of Group B was found in the blood lifted from the spot, the shirt, the undershirt, and the pyjama of the accused, the shirt and blood sample of victim Rani Begum (PW1), the bed sheet and the dagger. The statements of remaining witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate First Class, Dalhousie, District Chamba, HP, who committed it to the learned Sessions Judge, Chamba, for trial.

3. Learned Sessions Judge, Chamba, charged the accused with the commission of an offence punishable under Section 307 of IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 15 witnesses to prove its case. Rani Begum (PW1) is the informant/victim. Bandana (PW2) and Shukra Begum (PW4) reached he spot after hearing the cries of the informant. Kuldeep Singh (PW3) and HC Sanjeev Kumar (PW5) witnessed the vario s recoveries. Dr Prachi Chambiyal (PW6) medically examined the victim. Rajni Devi (PW7) produced copies of Jamabandi and Tatima. Dr Banit Thakur (PW8) issued the discharge slip of the victim. Sudesh Kumar (PW9) signed the FIR. HC Naresh Kumar (PW10) was posted as MHC with whom the case property was deposited. Dr Mast Ram (PW11) treated the victim. Constable Suneel Kumar (PW12) carried the case property to RFSL, Dharamshala. HHC Krishan Lal (PW13) brought the result of the analysis and the case property from RFSL Dharamshala to the police station. ASI Yash Pal (PW14) investigated the matter. LC Jyoti (PW15) proved the entries in the daily diary.

5. The accused, in his statement recorded under Section 313 of Cr.PC denied the prosecution's case in its entirety. He stated that the witnesses deposed against him falsely. He had not committed any offence. He did not produce any evidence in defence.

6. Learned Trial Court held that the victims testimony was duly corroborated by the statements f Bandana (PW2) and Shukra Begum (PW4), who had reached the spot after hearing the victims cries and found her bleeding on the spot. The medical evidence also proved that the victim had sustained injuries with a sharp-edged weapon, which could have been caused by means of the knife recovered by the

police. The defence version that the relationship between the accused and the victim was strained and the accused was falsely implicated was not bel evable. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for seven years, pay a fine of ₹25,000/- and to undergo simple imprisonment for one year in default of payment of fine.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court erred in appreciating the evidence on record. The prosecution had failed to prove the guilt of the accused beyond a reasonable doubt. The relationship between the accused and the victim was not cordial The victim had earlier pulled away the ladder, and the accused fell, causing injuries to his legs. The accused asked the victim to serve food, which she refused. A scuffle took place between the victim and the accused. The victim fell on the dressing table, its mirror was broken, and the victim sustained injuries from the broken mirror. The accused had also s stained injuries to his leg and head in the scuffle. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I ave heard Mr Jagan Nath, Advocate, learned Legal A d Counsel for the appellant/accused, and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

9. Mr Jagan Nath, learned Legal Aid Counsel for the appellant/accused, submitted that the learned Trial Court erred in appreciating the evidence on record. The relationship between the accused and the victim was strained. The ingredients of Section 307 of IPC were not satisfied, and the learned Trial Court erred in convicting the accused of the commission of an offence punishable under Section 307 of IPC. The sentence imposed by the learned Trial Court is excessive. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Ajit Sharma, learned Deputy Advocate General for the respondent State, submitted that the enmity between the parties will not help the accused because enmity is a double-edged weapon: while it fu nishes the motive for false implication, it also furnishes the motive for the commission of crime. In the present case, the enmity was a motive for the commission of crime. The statement of the victim was duly corroborated by the medical evidence. The report was made to the police immediately, which corroborated the victims statement. The statements of Bandana (PW2) and Shukra Begum (PW4) also corroborated the victims version. The defence taken by the accused that the accused and the victim had a scuffle, the victim fell on the dressing table, and sustained injuries, is not supported by any material on record. No broken glass was found by the Investigating Officer on the spot, which falsifies the defence version. Hence, he prayed that the present appeal be dismissed.

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

12. The informant/victim Rani Begum (PW1) stated that she was lying on her bed on 8.6.2021. She heard the noise of utensils. She thought that the accused was taking meals in the kitchen. The accused came to her room and inquired as to what had happened. She replied nothing. The accused stabbed her in her chest. He again attempted to stab the victim on her neck, but she caught the knife with her hands. She sustained injuries to her neck and hands. She shouted for help, and Bandana (PW2) came to the spot. Many other people also reached the spot. She was shifted to t e hospital, where she was medically examined.

13. She stated in her cross-examination that her husband had three brothers. Her children were settled at Ambala. The houses of the brothers of the accused were located in the vicinity. They were residing with their families in those houses. Her mother-in-law was residing with one of the brothers of the accused. Bandana (PW2) was her immediate neighbour, and voices from the houses of each other could be heard easily. She was lying on the bed at the time of the arrival of Bandana (PW2). She admitted that the accused was running an eatery at Kandaghat and used to stay at Kandaghat for a long time She admitted that the accused had to close his eatery and return to Chamba because of the lockdown caused by COVID-19. She admitted that the relationship between her and the accused was not cordial. She volunteered to say that the accused was violent by nature. She denied that she had pulled the ladder when the accused was working. She denied hat the accused asked her for food, and when she did not provide the food, they had a scuffle. She stated that she was shifted to the hospital and did not walk to the hospital.

14. It was submitted that there are various contradictions in her statements. She stated in the Court that she was lying on the bed, whereas she had stated in the earlier statement (Ex.PW1/A) that she was watching television after preparing the food. She stated in the Court that the accused asked her as to what had happened, and she did not reply to this question, whereas she had stated to the police that she had told the accused that the weather was hot. She stated in her cross-examination that she was shifted to the hospital and did not walk to the hospital, which is contrary to the statement of Dr Mast Ram (PW11), who had treated her at RPGMC, Tanda. This submission will not help the accused. The attention of the victim was not drawn towards the previous statement recorded by the police. It was laid down by the Honble Supreme Court in Binay Kumar Singh Versus State of Bihar, 1997 (1) SCC 283, that if a witness is to be contradicted with his previous statement, his attention must be drawn towards it. It was observed: -

11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Co rt. This principle is delineated in S. 155 (3) of the Evidence Act, and it must be borne in mind when reading S. 145, which consists of two limbs. It is provided in the first limb of S.145 that a

witness may be cross-examined as to the previous statement made by him without such writing being shown to him but the second limb provides that "if it is intended to contradict him by the writing his attention must before the writing can be provided, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination, even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145.

12. In Bhagwan Singh's case (AIR 1952 SC 214), Vivian Bose, J., pointed out in paragraph 25 that during the cross-examination of the witnesses concerned, the formalities prescribed by S. 145 are complied with. The cross-examination, in that case, indicated that every circumstance intended to be used as a contradiction was put to him point by point and passage by passage Learned Judges were called upon to deal with an argument that witnesses' attention should have been specifically drawn to that passage in addition thereto. Their Lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with S. 145, and hence held that all that is required is that the witness must be treated fairly and must be afforded a reas nable opportunity of explaining the contradic ions after his attention has been drawn to them in a fair and reasonable manner. On the facts of that case, the e is no dispute with the proposition laid therein.

13. So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-10 (Nawal Kishore Prasad), we are not persuaded to reject the evidence of PW-32 that he gave Ex. 14 statement at the venue of occurrence and that he had not given any other statement earlier thereto.

15. A similar view was taken in Alauddin v. State of Assam, 2024 SCC OnLine SC 760, wherein it was observed:

7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted

to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162CrPC indicates that an omission may amount to a contradiction when it is significant and relevant Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub- Section (1) of section 162, the witness has to be c ntradicted in the manner provided under Section 145 f the Evidence Act. Section 145 reads thus:

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

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness f r contradicting him has to be recorded in he cross -examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved

through the Investigating Officer by asking whether the witness made a statement that was sh wn to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act, in confronting the witness by showing him the relevant part of his prior statement, is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

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

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

(1) .

(2)

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

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A min r r trivial omission or contradiction brought to the rec rd is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission, depending upon the facts f each case? Whether an omission is a contradicti n also depends on the facts of each case.

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

13. The learned counsel's first argument is based upon the words in the manner provided by Section145of the Indian Evidence Act, 1872 found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in Shyam Singh v. State of Punjab [(1952) 1 SCC 514:1952

SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act, thus at p. 819:

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

It is unnecessary to refer to other cases wherein a similar procedure is suggested f r putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Cour , and similar decisions were not considered he p ocedure in a case where the statement in w iting was intended to be used for contradiction nder Section 162 of the Code of Criminal Proced re. Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to aprevious statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement were allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it, subject to proof by the police officer. On the ther hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, Did you say before the police officer

that you saw a gas light? and he answers, Yes, then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure. (emphasis added)
This decision is a locus classicus, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination.

16. It was held in Anees v. S a e (NCT of Delhi), 2024 SCC OnLine SC 757 that the Courts cannot suo motu take cognisance of the contradiction and the same has to be brought on record as per the law. It was observed:

64. The court cannot suo motu make use of statements to the police that have not been proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words if duly proved are used in Section 162Cr. P.C.clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can it be looked into, but they must be duly proved for contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction, but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as follows:

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

66. Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to c ntradict the witness is brought to the notice of the witness in his cr ss-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examina ion by reproducing it. If the witness admits the pa t intended to contradict him, it stands proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it must be mentioned in the dep siti n. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for contradiction; it will then be proved in the deposition of the Investigating Officer, who, again, by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out the part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction. [See: V.K. Mishra v. State of Uttarakhand: (2015) 9 SCC 588]

17. Since in the present case, the attention of the victim was not drawn towards the previous statement, therefore, her credit has not been impeached as per the law, and the contradictions pointed out by the learned counsel for the defence cannot be looked into.

18. Dr. Prachi Chambiyal (PW6) examined the victim in CHC Samote on 8.6.2021. She stated in her cross-examination that the victim was brought to her on a stretcher. Thus, the statement of this witness corroborates the version of the victim that she was taken to the hospital. She had provided first aid to the victim and thereafter referred her to the higher institution. Dr Mast Ram (PW11) examined the

informant/victim on 9.6.2021 on the next day of the incident at RPGMC, Tanda. The condition of the victim would have improved by then, and the statement made by him in his cross-examination does not contradict the statement of the victim that she was taken to the hospital and had not walked to the hospital.

19. It was submitted that the relationship between the accused and the victim was strained, and the victim falsely implicated the accused to get rid of him. This submission cannot be accepted. It was rightly submitted on behalf of the State that enmity is a double-edged weapon; while it furnishes the motive for false implication, it also furnishes the motive for crime. In the present case, the enmity is not shown to have furnished a motive for false implication, and no advantage can be derived from the inimical relationship between the victim and the accused.

20. It was submitted that a scuffle had taken place between the accused and the victim when she had not provided the food to the accused. She fell on the dressing table and sustained injuries from the broken mirr r. This submission is only stated to be rejected. It was not suggested to the victim that she had fallen on a dressing table and sustained injuries from the broken mirror. ASI Yash Pal (PW14) denied that the victim had sustained injuries fr m falling on the mirror of the dressing table. He took photographs of the room where the incident had taken place. However, no dressing table is visible in those photograp s. One almirah is visible, but that is at a distance from the place where the blood was found. Thus, the defence version is not supported by any material on record and cannot be relied upon.

21. Bandana (PW2) corroborated the informants statement. She stated that she had heard the cries of Rani Begum (PW1) on 8.6.2021 at around 9.00 PM. She went to the spot and saw that the accused was holding the head of Rani Begum between his knees, and Rani Begum was bleeding. The accused was holding a knife in his hand. Rani Begum was shifted to the hospital thereafter. She stated in her cross-examination that the village has 60-70 houses. The houses of the brother of the accused were adjacent to his house. The mother of the accused also resides in the same village. Many people gathered after her arrival. She admitted that the accused had returned to his home after the lockdown was imposed because f COVID-19. She could not say that the accused and he vic im had a scuffle, and the victim sustained injuries from the broken pieces of the mirror.

22. There is n thing in her cross-examination to show that she was making a false statement. Nothing was suggested to her that she had any motive to depose falsely against the accused or to favour t e victim. Thus, her testimony was rightly accepted by the learned Trial Court.

23. Shukra Begum (PW4) stated that she heard the cries of Rani Begum at around 9.00 PM. She went to the victims house and saw that Bandana (PW2) was already present in the house. Rani Begum had suffered bleeding injuries. She asked Rani Begum about the injuries, who told her that the accused had stabbed her on her

neck and chest. She shifted Rani Begum (PW1) to Civil Hospital, Samote in a vehicle. She stated in her cross-examination that 8-10 people had gathered at the time of her arrival. She admitted that the accused and the victim used to quarrel. She admitted that the accused had fallen from the ladder and sustained injuries to his leg. He revealed that the victim had pulled the ladder, due to which he had fallen. Rani Begum (PW1) was taken to the hospital in a vehicle.

24. This witness stated hat she made inquiries to the victim, and the victim narrated the incident. Thus, the statement was not made by the victim vol ntarily. It was laid down by the Madhya Pradesh High C urt in Pratapsingh and another Versus State of Madhya Pradesh 1971 Cr. L. J. 172, that a statement made in response to a question does not fall within the scope of Section 6 of the Indian Evidence Act, it was observed:

11. Section 6 of the Evidence Act and some of the succeeding Sections embody the rule of admission of evidence relating to what is commonly known as res gestae. They are in the nature of exceptions to the "hearsay" rule. Section 6 permits proof of collateral statements which are so connected with the facts in issue as to form part of the same transaction. Whether the statement made by a witness was a part of the same transaction or not is to be considered in the light of the circumstances of each case. The principle is that it should be so intimately connected with the fact in issue as to be a spontaneous utterance inspired by the excitement of the occasion or a spontaneous reaction thereof, there being no opportunity for deliberately fabricating the statement. In other words, the statement, which is a part of res gestae, does not narrate a past event, but it is the event itself speaking through a person, thus excluding the possibility of any design behind it.

12. In Chhotka v. State, AIR 1958 Cal. 482, it was held that the requirement of S. 6 is that the statement must have been made contemporaneously with the act or immediately after it and not at such an interval of time as to make it a narrative of past events or to allow time for fabrication. We agree with this view.

13. In the instant case, the statement of Ms Mahadevi in question does not at all appear to be spontaneous and appears to have been made sometime after the incident in answer to a query. Sa f aj Beg (P.W. 1) testified that at about 10 or 10.15 p.m. that night, he heard some row from his house, which is at a distance of about 400 yards from the house of appellant Pratap. He says that he went towards the h use of Pratap, near which a large crowd had collected. Ong ing inside the house, he found a dead body with fresh wounds from a sword. According to him, Mst. Mahadevi (P.W. 10) wife of the appellant Pratap, was there, and when she was questioned about the murder, she stated that her husband and brother had run away after committing the murder. As the statement was in answer to a query and was made after a lapse of some time

after the murder, it cannot be treated either as spontaneous or as part of the transaction of the murder. If no one had asked her how it happened, perhaps she would not have made any statement at all. We, therefore, hold that the statement made by Mst. Mahadevi to Sarfraj Beg (P.W. 1) is not admissible in evidence under S. 6 and as such has got to be excluded from consideration.

25. Thus, the statement made by the victim to this witness cannot be used as part of res gestae and will not be admissible.

26. Heavy reliance was placed upon the admission made by this witness that the accused had told her regarding the pulling of the ladder by the victim to submit that the statement proves that relationship between the parties is strained This submission will not help the accused, because, as stated above, the strained relationship cuts both ways. Therefore, her statement will not help the defence in any manner.

27. Dr Prachi Chambiyal (PW6) medically examined the victim. She found multiple inju ies out of which injuries Nos. 3, 4 and 5 could have been ca sed by a sharp-edged weapon like the knife (Ex. P3) sh wn to her. This knife was recovered by the Investigating Officer from the spot and was found to contain the victims blood group, as per the report of the analysis. Thus, medical evidence corroborates the victims testimony that the njury was caused by a knife to her.

28. Dr Prachi Chambiyal (PW6) admitted in her cross-examination that the injuries mentioned at Serial Nos. 3, 4 and 5 were possible because of a fall on the broken glass. However, that is an alternative hypothesis not supported by any material placed on record and is not sufficient to discard the prosecutions case. It was laid down by the Honble Supreme Court in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2003 SCC OnLine SC 1086 that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative possibilities is not sufficient to discard the prosecutions case. It was observed at page 404:

22. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is n t accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the impor ance and primacy of the quality of the trial process. Eyewi nesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the s le touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the credit of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative

evaluation.

29. The matter was reported to the police, and the statement of the victim was recorded on 8.6.2021 at 11.30 PM within 2½ hours of the incident. It contains the details of the incident in the same manner as were deposed in the Court. The contents of the statement made to the police corroborate the information regarding the infliction of injuries by the accused. It was laid down by the Honble Supreme Court in Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577: 2003 SCC OnLine SC 756 that the fact that the first information report was given almost immediately rules out the possibility of deliberation to falsely implicate any person. It was observed at page 62: -

17. The fact that the first information report was given almost immediately rules out any possibility of delibera-tion to falsely implicate any person. All the material par-ticulars implicating the four appellants were given .

30. This position was reiterated in Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468: 2012 SCC OnLine SC 259, wherein it was obse ved at page 383: -

11. Admittedly, the FIR had been lodged promptly within a period f two h urs from the time of the incident at mid-night. Pr mptness in filing the FIR gives certain assurance of the veracity of the version given by the informant/com-plainant.

12. The FIR in a criminal case is a vital and valuable piece of evidence, though it may not be a substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of a coloured version, exaggerated account or concocted story as a result of a large number of consultations/delibera-tions. Undoubtedly, the promptness in lodging the FIR is an assurance regarding the truth of the informant's ver-sion. A promptly lodged FIR reflects the first-hand ac-count of what has actually happened, and who was re-sponsible for the offence in question. (Vide Thulia Kali v. State of T.N. [(1972) 3 SCC 393: 1972 SCC (Cri) 543: AIR 1973 SC 501], State of Punjab v. Surja Ram[1995 Supp (3) SCC 419: 1995 SCC (Cri) 937: AIR 1995 SC 2413], Girish Ya-dav v. State of M.P. [(1996) 8 SCC 186: 1996 SCC (Cri) 552] and Takdir Samsuddin Sheikh v. State of Gujarat [(2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218: AIR 2012 SC 37] .)

31. ASI Yash Pal (PW14) stated that he found blood stains on the floor of the room. He found a blood- stained knife and seized it after measuring it. He found a blood-

stained bed sheet and seized it. He also seized the victims shirt and undervest, and pyjama of the accused. He sta ed in his cross-examination that he had visited the spot on 9.6.2021. He admitted that the house of the victim was situated in the middle of village Chhalada. He volunteered to say that the houses of other people were located towards one side of the victims house. He admitted that the house of t e sister-in-law of the victim was located adjacent to the victims ouse. The house of Bandana (PW2) was located at a d stance of 15-20 mtrs. He associated the people residing in the vicinity during the investigation. He admitted that the accused had also sustained one injury in the incident.

32. The statement of this witness that he had picked up the blood-stained knife from the spot and had seized the under vest and pyjama of the accused and the shirt of the victim was not suggested to be incorrect in the cross-examination, which means that it is accepted as correct by the defence. The bed sheet, the knife, the undervest, the pyjama of the accused and the shirt of the victim contained blood of Group B as per the report of analysis (Ex.PX). This corroborates that the victim had sustained injuries in the room on her bed.

33. It was submitted that there are contradictions in the statements of the witnesses, which made the prosecutions case suspect. This submission will not help the defence. The incident occurred on 8.6.2021. The statements were recorded in January, February and May of 2022. Therefore, sufficient time had lapsed since the incident. The c ntradictions were bound to come with the passage of time because of the failure to remember the facts. These cannot be used for discarding the prosecutions case. Honble Supreme Court held in Rajan v. State of Haryana, 2025 SCC OnLine SC 1952, that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

32. The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the

appellate court which had n t this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless here are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When an eye-witness is examined at length, it is quite p ssible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

IX. By and large, pe ple cann t accurately recall a conversation and reproduce the very words used by them or hea d by hem. They can only recall the main purport of the conve sation. It is unrealistic to expect a witness to be a h man tape recorder.

X. In regard to the exact time of an incident, or the time durati n f an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.

XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events that take place in rapid succession or in a short time span. A witness

is liable to get confused or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness. [See Bharwada Bhoginbhai irjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)

34. Therefore, the discrepancies are insufficient to discard the prosecutions case.

35. The Medical Officer examined the accused and found an abrasion of size 6x2 cms. over the left side of the back of the chest. The injury was simple. The Medical Officer had noticed only an abrasion, and the MLC does not corroborate the defence version that the accused had sustained injuries on his head and leg.

36. Dr Prachi Chambiyal (PW6) issued the final opinion stating that the nature of the Injury No.1 on the victims mandibular region was grievous, which could have been caused by sharp sharp-edged weapon. She has not mentioned that the injury was dangerous to life. She had also noticed a lacerated wound on the left nipple, an incised wound at the inner lower quadrant left breast, incised wound in the left infra-mammary region, which were caused by a knife, an instrument for cutting/stabbing. These wounds are not shown to be causing any danger to the victims life. Thus, the necessary ingredients of Section 307 are not satisfied. However, causing injury by a sharp-edged weapon like a knife used for stabbing satisfies the ingredients of Section 326 of the IPC.

37. It was laid down by he Honble Supreme Court in Bejoy Chand Patra v. State of W.B., 1951 SCC 1155: 1951 SCC OnLine SC 77 that an offence p nishable under Section 326 of the IPC is a minor offence in relati n to the offence punishable under Section 307 of the IPC and a person charged with the commission of an offence punishable under Section 307 of the IPC can be convicted of the commission of an offence punishable under Section 326 of the IPC. It was observed at page 1156:

3. The first point urged on behalf of the appellant before us is that, inasmuch as there was no charge under Section 326 of the Indian Penal Code and the

offence under that section was not a minor offence with reference to an of-fence under Section 307 of the Code, he could not have been convicted under the former section. This argument, however, overlooks the provisions of Section 237 of the Criminal Procedure Code, 1898. That section, after refer-ring to Section 236, which provides that alternative charges may be drawn up against an accused person where it is doubtful which of several offences the facts which can be proved will constitute, states as follows:

237. When a person is charged with one offence, he can be convicted of another.(1) If the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

4. There can be no doubt that, on the facts of this case, it was open to the Sessions Judge to charge the appellant al-ternatively under Sections 307 and 326 of the Indian Penal Code. The case, therefore, clearly falls under Section 237 of the Criminal Procedure C de, 1898, and the appellant's conviction under Section 326 of the Indian Penal Code was proper even in the absence of a charge.

5. In Begu v. King Empe o , (1924-25) 52 IA 191: 1925 SCC OnLine PC 10, the Privy Council had to deal with a case where certain persons were charged under Section 302 of the Indian Penal Code, but were convicted under Section 201 for causing the disappearance of evidence. Their Lord- ships upheld the conviction, and while referring to Section 237 of the riminal Procedure Code, they observed : (IA p. 195)

A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. Their Lordships entertain no doubt that the procedure was a proper procedure and one warranted by the Code of Criminal Procedure.

38. This position was reiterated in Moirangthem Chaoba Singh v. State of Manipur, 1982 SCC OnLine Gau 42: 1982 Cri LJ 1806, wherein it was observed at page 1808:

13. The question whether a person charged under S. 307 I.P.C. can be convicted under S. 326 I.P.C. seems no longer to be res integra. Under S. 221(1) Cr. P.C., if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will consti-tute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alterna-tive with having committed some one of the said offences. Under sub-sec. (2) of the same section, if in such a case the accused is charged with one offence and it appears in evidence that he committed a different offence

for which he might have been charged under the provisions of sub-sec. (1), he may be convicted of the o ence which he is shown to have committed, although he was not charged with it. In Bejoy Chand Patra v. State of West Bengal, 1951 SCC 1155: AIR 1952 SC 105 : (1952 Cri LJ 644), relying on AIR 1925 PC 130 : (1925-26 Cri LJ 1059) and the provisions of Ss. 236 and 237 of the old Code, it has been held on the facts of that case that it was open to the Sessions Judge to charge the appellant alternatively under Ss. 307 and 326, Penal Code. The case, therefore, clearly fell under S. 237, Cr. P.C. and the appellant's conviction under S. 326, Penal Code, was pr per even in the absence of a charge. In Begu v. Em-peror , AIR 1925 PC 130, where the accused were charged under S. 302 and on evidence they were found to be guilty of an offence under S. 201 (causing the evidence of crime to disappear) and so were convicted under the latter sec-tion, it was held that the conviction was proper. In Bhu-pendra Singh v. State of Madhya Pradesh, 1981 Cri LJ 751 : (1980 Supp SCC 352: AIR 1981 SC 1240), their Lordships of the Supreme Court having regard to all the circumstances of the case, the trivial nature of the quarrel, the circum-stances leading to the commission of the offence, the fact that the injured and the accused were all young students studying in college and keeping in view the nature of in-jury, were of the opinion that the learned Additional Ses-sions Judge was right in convicting the appellant for an offence under S. 324 and S. 324 read with S. 149, I.P.C. and accordingly the conviction under S. 307/149 I.P.C. was al-tered to one under S. 324 I.P.C. In Shek Idris's case (1939) 43 Cal WN 782, it was held that though the accused was charged with attempt to murder, he could be convicted of grievous hurt. In Gangabishan's case, (1937) 38 Cri LJ 442 (Nag), it was held that though the charge was for attempt to murder, he could be convicted of hurt. In view of the above decisions, the decision in AIR 1956 Raj 39 : (1956 Cri LJ 270) is doubtful. The submission is accordingly rejected.

39. Therefore, the accused can be convicted of the commission of an offence punishable under Section 326 of the IPC even though he was not charged with the commission of an offence punishable under Section 326 of the IPC.

40. Learned Trial Court sentenced the accused to undergo rigorous imprisonment for seven years, which is excessive and is reduced to five years.

41. Learned Trial C urt had sentenced the accused to pay a fine of ₹25,000/- which cannot be said to be excessive, and no interference is required with the amount of fine imposed by the learned Trial Court.

42. In view of the above, the present appeal is partly allowed, and the accused is convicted of the commission of an offence punishable under Section 326 of the IPC and is sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹25,000/- and, in default of the payment of the fine to undergo further imprisonment of one year. He will be entitled to the benefit of set-off as per Section

428 of Cr.P.C. Modified warrants be prepared.

43. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith ending miscellaneous application(s), if any, also stand(s) disposed of.