



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 22nd March, 2023**
Decided on: 26th June, 2023

+ **CRL.A. 408/2018**

SUNIL alias SONU Appellant

Represented by: Mr.Anwesh Madhukar, Advocate
 (DHCLSC) with Mr.Yaseen Siddiqui,
 Ms.PrachiNirwan and Mr.Pranjal Shekhar,
 Advocates.

versus

THE STATE OF DELHI Respondent

Represented by: Ms.Shubhi Gupta, APP for the State with
 Inspector Dharmender Kumar, P.S.Jahangir
 Puri.

+ **CRL.A. 137/2018**

NITIN alias DEVENDER Appellant

Represented by: Mr.Anwesh Madhukar, Advocate
 (DHCLSC) with Mr.Yaseen Siddiqui,
 Ms.PrachiNirwan and Mr.Pranjal Shekhar,
 Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Represented by: Ms.Shubhi Gupta, APP for the State with
 Inspector Dharmender Kumar, P.S.Jahangir
 Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.



1. By way of these appeals, the appellants challenge the common judgment of learned Trial Court dated 25th October, 2017 whereby the appellants were held guilty for the murder of one Sachin (“deceased”). The appellants also challenge the order on sentence dated 6th November, 2017 whereby the appellants were directed to undergo rigorous imprisonment for life along with fine of ₹ 10,000/- each, in default whereof simple imprisonment for 1 year for offence punishable under Section 302/34 of the Indian Penal Code, 1860 (“IPC”).

2. Vide the aforesaid impugned judgment and order on sentence, two other accused persons namely, Satish and Gaurav were also held guilty for offence punishable under Section 323/34 IPC for causing simple injury on Rahul and were directed to undergo simple imprisonment of 4 months along with fine of ₹1000/- each in default whereof simple imprisonment for 1 month. These two accused persons had already undergone their period of sentence.

3. Brief facts of the prosecution case are that on 28th November, 2016, Rahul (PW-1) along with his friend/deceased was going to the house of his *mausi* Shivani (PW-2) who was residing in a street No.700. Accused Chotu @Satish was having a small mechanic shop in the corner of street No.600 and Sunil @ Sonu, Gaurav @ Bakra and Nitin @ Mota were standing in front of the said mechanic shop under the influence of liquor. At about 8.45-9 PM, while Rahul was talking to his *mausi*, Gaurav called deceased and as the deceased went up to Gaurav, Gaurav started arguing and abusing the deceased. Thereafter, Gaurav and Nitin caught the deceased from his neck and when Rahul tried to save the deceased, Chotu and Gaurav gave *danda* blows on



Rahul's head. Nitin and Sachin started beating the deceased with kicks and fists blows and thereafter, Nitin pulled out a knife and on seeing the knife, the deceased started running to save his life. Thereafter, Sonu and Nitin chased the deceased and caught hold of him at the *pulia* of *gandanala* of EE Block and inflicted knife blows on the deceased. In an attempt to save Rahul, Shivani intervened and covered Rahul, but she was pulled and dashed to the ground. Thereafter, both Chotu and Gaurav went up to the place where the deceased was beaten and they also started beating the deceased. A police official namely ASI Subhash Chandra (PW-15) was passing by the street, whom Shivani forcibly stopped, sought his help and took him to the place where the deceased was being beaten up. On seeing ASI Subhash (PW-15), all the four accused persons ran away and Shivani made repeated calls at No.100. One PCR van removed Rahul to the hospital and another PCR van removed the deceased to the hospital. Information given to the police was recorded by DD No.63A (Ex.PW-19/A) which was marked to SI Suresh (PW-19) who reached the spot and thereafter, went to BJRM Hospital. At the hospital, Rahul could not be found and the deceased was found unfit for statement. Search was made for eye-witness Rahul, however, he could not be found and on 29th November, 2016, at about 11.45 PM, Rahul himself came to the police station where his statement (Ex.PW-1/A) was recorded on which *rukka* (Ex.PW-19/D) was prepared and FIR No.667/2016 dated 30th November, 2016 under Section 307/34 IPC was registered at PS Jahangir Puri (Ex.PW-20/A). Thereafter, efforts were made to search the accused persons, and behind PRAYAS Home, EE Block, Jahangir Puri all the four boys/accused persons were found sitting



and pursuant to identification by Rahul and their interrogation, all the four boys/accused persons, Sunil @ Sonu, Satish, Gaurav and Nitin were arrested vide arrest memos Ex.PW-1/A-1, Ex.PW-1/B-1, Ex.PW-1/C-1 and Ex.PW-1/D-1 respectively. Disclosure statements of the accused persons (Ex.PW-19/F-1, Ex.PW-19/F-2, Ex.PW-19/F-3 and Ex.PW-19/F-4 respectively) were also recorded. On 2nd December, 2016 at about 7.35 AM, an information vide DD No.12A (EX.PW-19/H) was received regarding death of the deceased at LNJP Hospital. Further, investigation was marked to Insp. Ajay Kumar. Thereafter, the dead body was sent for post mortem examination.

4. Dr. Arun Kumar conducted the post mortem examination on the dead body of the deceased on 2nd December, 2016 and tendered his report (Ex.PW-8/A). He opined:

“VII. EXTERNAL EXAMINATION:

A. Evidence of Surgical intervention:

1. *Incised fasciotomy wound measuring 22 cm in length with wide gapping of margins, exposing underlying muscles was present on antero-medial aspect of left thigh; lower end was present 5 cm above knee joint. Unhealthy granulation tissue was present at the margins of the wound and exposed surfaces of the muscles. On exploration blood clots of about 400 grams was present in the layers of muscles.*
2. *Incised fasciotomy wound measuring 30 cm in length with wide gapping of margins, exposing underlying muscles was present on posterior-lateral aspect of left thigh; lower end was present just above knee joint. Unhealthy granulation tissue was present at the margins of the wound and exposed surfaces of the muscles. On exploration evidence of surgical repair was present in the blood vessels of popliteal fossa, blood clots of about 300 grams was present in the layers of muscles.*



3. *Incised fasciotomy wound measuring 17.5 cm in length with wide gapping of margins, exposing underlying muscles was present on antero-medial aspect of left leg; upper end was present 8 cm below knee joint. Unhealthy granulation tissue was present at the margins of the wound and exposed surfaces of the muscles. On exploration blood clots of about 200 grams was present in the layers of muscles.*
4. *Incised fasciotomy wound measuring 11 cm in length with wide gapping of margins, exposing underlying muscles was present on posterior-lateral aspect of left leg; upper end was present 3 cm below knee joint. Unhealthy granulation tissue was present at the margins of the wound and exposed surfaces of the muscles. On exploration blood clots of about 200 grams was present in the layers of muscles.*

B. External Antemortem Injuries

1. *Brownish scabbed abrasion measuring 2 cm X 1.5 cm was present on right parieto-occipital region, 2 cm from midline and 4 cm above occipital protuberance.*
2. *Brownish scabbed abrasion measuring 3 cm X 2 cm was present on right parietal region. 3 cm from midline and 7.5 cm above occipital protuberance.*
3. *Brownish scabbed abrasion measuring 3 cm X 0.6 cm was present obliquely placed on right parietal region with lower outer end 3 cm from midline and 6 cm above occipital protuberance.*
4. *Stitched lacerated wound measuring 2.5 cm in length with 1 black colour stitches in situ was present vertically placed on right frontal region. 1 cm from midline and 5 cm above eye brow.*
5. *Stitched incised wound measuring 4 cm in length with 4 black stitches in situ was present horizontally placed on right side forehead, 4 cm from midline and 1.5 cm above eye brow. Tailing was present in the medial end.*
6. *Stitched incised wound measuring 4 cm in length with 4 black stitches in situ was present vertically placed on right side face, 12 cm from*



midline and 5 cm above angle of mandible. Tailing was present in the lower end.

- 7. Lacerated wound measuring 0.8 cm X 0.5 cm X subcutaneous deep was present vertically placed on left side of face, 7 cm from midline and 8 cm above angle of mandible surrounded by brownish scabbed abrasion measuring 1 cm X 1 cm.*
- 8. Stitched incised wound measuring 6 cm in length with 8 black stitches in situ was present vertically placed on left side ala of nose extending upto left side upper lip, 1 cm from midline. Tailing was present in the lower end.*
- 9. Brownish scabbed scratch abrasion measuring 0.6 cm X 0.1 cm, crescentic in shape with concavity facing medially was present on dorsum of left hand, 4 cm below wrist joint.*
- 10. Brownish scabbed scratch abrasion measuring 3 cm X 0.5 cm was present obliquely placed on left shoulder back, 16 cm from midline and 2 cm below shoulder top.*
- 11. Stab wound measuring 1.5 cm X 0.2 cm X 2.8 cm with clean cut margins, wedge shaped with medial end more acute than outer end, was present horizontally placed on left buttock, 10 cm from midline and 78 cm above left heel. Track of the wound was directed forwards, medially and upwards. Track of the wound goes cutting skin and subcutaneous fat. Extravasation of blood was present throughout the tract.*
- 12. Stab wound measuring 1 cm X 0.1 cm X 2 cm with clean cut margins, was present horizontally placed on left buttock, 11 cm from midline and 75 cm above left heel. Track of the wound was directed forwards, medially and downwards. Track of the wound goes cutting skin and subcutaneous fat. Extravasation of blood was present throughout the tract.*
- 13. Stab wound measuring 3.8 cm X 0.2 cm X 10.5 cm with clean cut margins, was present horizontally placed on left buttock, 6 cm from midline and 71 cm above left heel. Track of the wound was directed forwards, laterally and downwards. Track of the wound goes cutting*



skin, subcutaneous fat and muscles. Extravasation of blood was present throughout the tract.

14. Brownish scabbed abrasion measuring 1.5 cm X 1.5 cm was present on left knee joint.

Heart: Weight was 265 grams. Pericardial cavity: Unremarkable. Myocardium: No changes evident on gross examination. Endocardium in chambers & valves were grossly normal. Coronaries were grossly patent.

Thoracic Vessels and Diaphragm: Unremarkable.

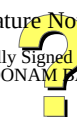
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OPINION:

Time Since Death: About half day. (As per hospital records, body having been preserved in cold storage)

Cause of Death: Septicemic shock consequent upon compartment syndrome and infection of left lower limb as a result of antemortem injury to left thigh produced by pointed sharp edge object via injury no.13. All injuries are antemortem in nature and 3-4 days in duration. Injuries No: 01, 02, 03, 04, 07, & 14 are produced by blunt force impact; injury No. 05, 06, 08, 11, 12 & 13 are produced by pointed sharp edge object and injury No. 09 & 10 are produced by nails. Injury No. 13 is individually sufficient to cause death in ordinary course of nature."

5. Dr. Avinash Tripathi examined Rahul on 30th November, 2016 who was brought by Ct. Lokendra Kumar. He examined Rahul and prepared his report (Ex.PW-9/A) and on examination, the patient was found conscious oriented to time, place and person and on local examination, abrasions were found on right forehead 2x1 cm, left eyebrow 0.5x0.5 cm, left cheek 2x0.5 cm, right cheek 1x0.5 cm and left knee 1x5 cm and it was opined that Rahul had sustained simple injury.





6. On completion of investigation, charge-sheet was filed by IO/Insp. Ajay Kumar (PW-23) and the accused Satish and Gaurav were charged for offence punishable under Section 308/34 IPC and the appellants Sunil @ Sonu and Nitin @ Devender were charged for offence punishable under Section 302/34 IPC. To prove its case, the prosecution examined 23 witnesses and on the other hand, to rebut the case of the prosecution, defence evidence in the form of 3 defence witnesses was also led.

7. Learned counsel appearing on behalf of the appellants assails the impugned judgment on the ground that the impugned judgment of learned Trial Court is not based on proper appreciation on facts and circumstances of the case thereby subjecting appellants to miscarriage of justice, and accordingly, the impugned judgment and order on sentence be set aside and the appellants be acquitted. It was contended that in the present case, the first PCR call regarding the incident was made by the father of the appellant, namely, Vishwanath and as per the PCR Form (Ex.PW-16/A), it was recorded "*injured ko lekar hospital jaa rahe hain jisko padosi Rahul ne blade maar kar injured kardia*". It was submitted that the present case arises out of an FIR which was lodged against the appellants as a cross FIR since FIR No.664/2016 (Ex.DW-1/A) was already registered on the information given by the appellants. It was further submitted that the present FIR was registered after two days of registration of FIR No.664/2016. Further, it was pointed out that as per the post mortem report (Ex.PW-8/A) it was opined that injury No.13 was individually sufficient to cause death and injury No.13 was described at "*stabbed wound measuring 3.8 cm x 0.2 cm x 10.05 cm was present horizontally placed on left*



buttock”. However, as per the MLC of the deceased (EX.PW-4/A), the only injury present on the lower part of the body of deceased was one wound on the right thigh of the deceased and it was submitted that the most important injury, i.e., injury No.13 finds no mention in the first medical examination of the deceased and thus, the said injury No. 13 cannot be said to have been inflicted on the appellant herein. It was submitted that the deceased was under the influence of alcohol and thereafter, the possibility of self-inflicted injury or injury being caused by fall cannot be ruled out. Furthermore, there is no witness who stated to have taken the deceased to the hospital. As per the MLC, the deceased was brought to the hospital by PW-19, however, as per the testimony of PW-19, deceased was already removed from the hospital when he reached. Even PW-15 who was the first police official to have reached the place of occurrence nowhere mention about the deceased. It was further pointed out by learned counsel that as per the case of the prosecution, the date of incident is 28th November, 2016 and logically, the MLC of Rahul (PW-1) should have been dated 28th November, 2016, however, the MLC of Rahul and FIR are both dated 30th November, 2016. It was further contended that it was in fact the deceased and the injured Rahul who were the actual aggressors and the case under Section 302 IPC is not made out. It was pointed out that from the evidence of PW-1 and DW-2 that Satish was the owner of the mechanic shop and thus, he was at his work place and it was PW-1 and the deceased who came to Satish’s shop in a drunken condition and started quarreling with the accused persons. No explanation has been provided as to why the deceased and PW-1 were present at the shop of the Satish. Even the site plan (Ex.PW-10/A) does



not show the location of the house of Shivani (PW-2). Learned counsel further contended that no weapon of offence was recovered at the instance of the appellant and it was only *dandas* which were recovered and no DNA analysis was carried out of the blood stains found on the *dandas*, so as to connect the appellants with the crime alleged. Learned counsel further contended that even otherwise, there are material contradictions in the testimony of various witnesses.

8. Per contra, learned APP appearing on behalf of the State submitted that the impugned judgment of Learned Trial Court is based on proper appreciation and facts of the case and therefore, prayed that the impugned judgment be upheld and consequently, the present appeal be dismissed. To buttress her contention, learned APP relied upon the following facts:

- i. That Rahul PW-1 and Shivani PW-2 were the eye-witnesses to the incident in question and Rahul himself had also sustained injuries during the incident. Both these witnesses have categorically deposed about the incident and named the two appellants as the persons who inflicted injuries on Rahul and the deceased, and that it was these two appellants who had inflicted knife blows on the deceased. Reliance was placed on the decision in 2010 AIR SCW 5701 Abdul Sayeed vs. Sated of MP to contend that the testimony of an injured eye-witness stand on a high pedestal as there is an inbuilt assurance regarding his presence at the spot and it is unlikely that he would allow the real culprit to go scot-free.
- ii. That testimony of ASI Subhash (PW-15) also lends credence to the version of PW-1 and PW-2 who deposed that while he was on his way to



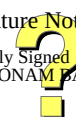


G-Block Jhuggi, Shivani stopped him and informed him about the incident and when PW-15 went towards the spot, he saw four boys running away and PW-1 lying in an injured condition at the spot.

- iii. As per the post mortem report (Ex.PW-8/A), cause of death was opined to be *septicemic shock consequent upon compartment syndrome and infection of left lower limb as a result of ante mortem injury to left thigh produced by pointed sharp edge via injury No.13*. Further, injury no.13 opined to be individually sufficient to cause death. Although, the weapon of offence was not recovered in the present case, however, the testimonies of the eye-witnesses clearly establish that injury No.13 was caused by knife. Furthermore, as per the subsequent opinion (Ex.PW-8/B), it was opined that injuries No.1,2,3,4,7 and 14 on the body of the deceased were possibly caused by the *dandas* recovered at the instance of the appellant.
- iv. That the four boys/accused persons were arrested on 29th November, 2016 behind PRAYAS Home upon identification of Rahul (PW-1) and the same was proved by PW-19, PW-21 and PW-22.

9. Having heard both the parties at length and perusal the record, the following evidence emerges.

10. Rahul (PW-1) deposed that on 28th November, 2016, he along with his friend/deceased was going to the house of his *mausi* from the street where building of PRAYAS was situated. He stated that Chotu @ Satish was having his mechanic shop in the corner of street No.600 and that Sunil @ Sonu,





Gaurav @ Bakra and Nitin @ Mota were standing in front of his shop with Satish @ Chotu under the influence of liquor. At about 8.45-9 PM, he was talking with his *mausi* Shivani and at that time, accused Gaurav @ Bakra called the deceased and started arguing with the deceased. Shivani called back the deceased and advised us to go back to our house, however, Gaurav abused the deceased to which the deceased objected and Gaurav again started arguing with the deceased. Thereafter, Gaurav and Nitin caught hold of the deceased at the neck and at the same time, Shivani told him to save the deceased from accused persons. When he tried to save the deceased, Chotu and Gaurav gave *danda* blows on his head and Nitin and Sonu started beating the deceased with kicks and fits blows. At the same time, Nitin pulled out a knife and on seeing the knife, the deceased started running, however, Sonu and Nitin overpowered the deceased at the *pulia* of *gandanala* at Block-EE and gave knife blows to the deceased. He further stated that Gaurav and Chotu were beating him and Shivani intervened to save him and Gaurav and Chotu pulled Shivani to the other side and she was dashed to the ground. Thereafter, both Gaurav and Chotu also went up to the place where Sachin was being beaten up and Satish also pulled a knife and started giving blows to the deceased. At that time, one police official was passing from the street and Shivani stopped the police official and took him to the place where Sachin was beaten up and on seeing the police official, all the four accused persons ran away. He stated that Shivani repeatedly made calls at No.100 and after sometime, the PCR van reached there and he was taken to the hospital. Sachin was lying on the slope of the *pulia* and therefore, he was not removed to the hospital to the said PCR. Doctor





advised him to wash his face as he was bleeding from his face. He further stated that he could not see the deceased at the hospital and therefore, in search of the deceased, he left the hospital and as he came out of the BJRM Hospital, he fell down and became unconscious. He further stated that he was taken to the house of his elder *mausi* where he was made to sleep and he regained consciousness in the next morning. He again went back to BJRM Hospital where he got to know that the deceased was shifted to LNJP Hospital but he was not allowed to meet him and thereafter, he went to PS Jahangir Puri where his statement (Ex.PW-1/A) was recorded. Thereafter, he along with the police officials went in search of the accused persons and reached PRAYAS Home, EE Block where all the four accused persons were apprehended and subsequently arrested. In his cross examination, he stated that there was a pervious enmity as the deceased slapped Aamir who was a friend of Sonu and this incident took place before Ganesh Chaturthi. He further stated that he did not tell the police in his statement (Ex.PW-1/A) that he and Sachin had consumed alcohol.

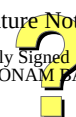
11. Shivani (PW-2) deposed that on 28th November, 2016 at about 9-9.15 PM, she was standing at Gali No.700, Jahangir Puri when Rahul and his friend/deceased were passing from the street and she stopped both of them and asked as to where were they going. At the same time, Sonu, Chotu, Nitin and Gaurav pulled the deceased from his back. These persons started beating Rahul with *dandas*. Thereafter, Sonu and Nitin followed the deceased who ran away in order to save himself and she stated that she covered Rahul to save him. She was pulled by Chotu and Gaurav who were beating Rahul. Sonu and Nitin were





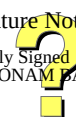
carrying knives in their hands and inflicted knife blows on the face, back and lower body of the deceased. Thereafter, Gaurav and Chotu also went to the place where Sachin was beaten up and Chotu snatched knife from the hands of Sonu and gave blow on the back of the deceased. Nitin was carrying a small iron type object by which he was beating Sachin on his face. At the same time, a police official was passing through the *pulia* she forcefully stopped the police official and asked for the help. On seeing the police official, all the accused persons ran away and she made call to the police at No.100 from her mobile No.9953837570 repeatedly. A PCR van reached there and removed her nephew/Rahul to the hospital and thereafter, another PCR van removed the deceased to the hospital. In her cross examination, she stated that she did not accompany Rahul the hospital as she was taking care of the deceased. She further stated that her mother was also with her when she went to the BJRM Hospital where Rahul was taken.

12. ASI Subhash Chandra (PW-15) deposed that on 28th November, 2016, at about 9-9.15 PM, he was going on motorcycle towards G Block Jhuggi for attending a call of a female regarding harassment by her husband and when he reached near Singla Store Jahangir Puri, one female, namely, Shivani stood in front of his motorcycle, forced him to stop and informed him about a quarrel which was taking place. He went to the spot and the four boys ran away towards PRAYAS Child Home *gali*. He enquired from Shivani, if Shivani had made call at No.100 and she replied in affirmative. He saw PCR van approaching the spot and after its arrival, he left for G Block Jhuggi.





13. SI Suresh (PW-19) deposed that on receipt of DD No.63A (Ex.PW-19/A), he along with Ct. Harjeet reached E-EE Block Jahangir Puri dividing road near E 700 wali gali where he got to know that injured was already removed to BJRM Hospital. At the spot, broken pieces of glass bottle and blood was found on the pulia. At the BJRM Hospital, the deceased was found admitted and was unfit for statement. Sonu, Satish, Gaurav and Nitin were also admitted in the hospital. Rahul was not found at the hospital. Crime team was called at the spot. Blood stained maroon colour pant of the deceased was handed over by the hospital which was seized vide memo Ex.PW-19/B. On 29th November, 2016, at about 11.45 PM Rahul came to the police station and his statement (PW-1/A) was recorded, *rukka* was prepared and FIR was registered. He prepared the site plan Ex.PW-19/E and thereafter, he along with Rahul went in search of the accused persons who were found sitting behind PRAYAS Home, EE Block, Jahangir Puri. After identification by Rahul and interrogation, Sunil @ Sonu, Satish, Gaurav and Nitin were arrested vide arrest memo Ex.PW-1/A-1, Ex.PW-1/B-1 Ex.PW-1/C-1 and Ex.PW-1/D-1 respectively. Disclosure statements of the accused persons (Ex.PW-19/F-1, Ex.PW-19/F-2, Ex.PW-19/F-3 and Ex.PW-19/F-4 respectively) were recorded. Thereafter, the accused persons led the police party to the nala where the knife was thrown but the same could not be found. On 2nd December, 2016, at about 7.35 AM, an information vide DD No.12A (Ex.PW-19/H) was received regarding death of the deceased at the LNJP Hospital. Thereafter, further investigation was handed over to Insp. Ajay Kumar.





14. Insp. Ajay Kumar (PW-23) stated that investigation in this case was marked to him on 2nd December, 2016 whereupon he along with SI Suresh went to mortuary at LNJP Hospital. The dead body was sent for post mortem examination and after the examination, dead body was handed over the relatives of the deceased (Ex.PW-6/B). On 10th December, 2016, Sunil and Nitin led the police party to a place behind PRAYAS Child Home and pointed out the place where they had thrown the weapon of offence. Nitin produced a bamboo stick/*danda* and Sunil pointed out a nala where he thrown the knife however, the knife could not be found. The *danda* recovered at the instance of Nitin was seized vide memo Ex.PW-14/A. On 13th December, 2016, Satish and Gaurav led the police party to behind PRAYAS Child Home and both these accused got recovered two bamboo sticks/*dandas*, which were seized vide memo Ex.PW-21/A and Ex.PW-21/B respectively. Thereafter, upon completion of investigation, he filed the charge-sheet. In his cross examination, he stated that the place of recovery was an open place, however, the same was not visible from the main road.

15. In their respective statements under Section 313 of the Criminal Code of Procedure, 1973 ("Cr.P.C."), appellants Sunil @ Sonu and Nitin @ Devender denied their arrest from behind PRAYAS Home at EE Block and stated that they were called by the police officials at PS Jahangir Puri for some enquiry regarding FIR No.664/2016 under Section 307 IPC. They further stated that nothing was recovered at their instance and that the police had taken their signatures on blank papers. They stated that they were innocent and were falsely implicated in the present case and further stated that Rahul has deposed



against them to take revenge of FIR No.664/2016 under Section 307 IPC. Appellant Nitin @ Devender further stated that he had gone to the mechanic shop of Sunil where Sunil and Satish were already present and after sometime Gaurav also arrived there. Suddenly, 4-5 boys including Rahul came there with sharp edged weapons and they were all under the influence of liquor. They started attacking Sunil and Satish and he tried to intervene but they also hit at his head and he had sustained incised injury in his head. Somebody made a call at No.100 and they went to the BJRM Hospital in PCR van where they were medically treated. Upon narration of this incident, FIR No.664/2016 under Section 307 IPC was registered at PS Jahangir Puri against Rahul, deceased and others.

16. One of the main plank of challenge to the conviction by the appellants is to delay in lodging of the FIR based on the statement of Rahul who is stated to be the eye-witness. It is trite law that mere delay in lodging the FIR is not fatal to the prosecution case, in case the same is satisfactorily explained by the maker of the FIR. Hon'ble Supreme Court in the decision reported as (2013) 5 SCC 655 Kanhaiya Lal Vs. State of Rajasthan held:

“15. It is settled in law that mere delay in lodging the first information report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory.





16. In this regard, we may refer with profit to a passage from *State of H.P. v. Gian Chand* [(2001) 6 SCC 71 : 2001 SCC (Cri) 980] , wherein a three-Judge Bench of this Court has expressed thus: (SCC p. 79, para 12)

“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

17. In *Ramdas v. State of Maharashtra* [(2007) 2 SCC 170 : (2007) 1 SCC (Cri) 546] , this Court has observed that: (SCC p. 179, para 24)

“24. ... mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and, in a given case, the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation, there may be circumstances appearing on record which provide a reasonable



explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them.”

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19. Thus, whether the delay creates a dent in the prosecution story and ushers in suspicion has to be gathered by scrutinising the explanation offered for the delay in the light of the totality of the facts and circumstances. Greater degree of care and caution is required on the part of the court to appreciate the evidence to satisfy itself relating to the explanation of the factum of delay. In Kilakkatha Parambath Sasi v. State of Kerala [(2011) 4 SCC 552 : (2011) 2 SCC (Cri) 355 : AIR 2011 SC 1064] it has been observed (SCC p. 557, para 20) that when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened”.

[Emphasis Supplied]

17. Rahul (PW-1) who got lodged the FIR besides reiterating the incident, also stated that his aunt (*mausi*) Shivani stood before the motorcycle of the police official and stopped him. She caught the hand of the said police official





and brought him to the place where Sachin was given beating. After seeing the said police official, accused persons ran away. His aunt made a telephonic call at 100 number repeatedly. However, none of those PCR calls have been placed on record by the prosecution. After some time, PCR reached and met his aunt, who pointed towards Rahul and he was taken to the hospital. Since Sachin, the deceased was lying on the slope of the pulia, he was not removed to the hospital by the said PCR. At the hospital, doctor advised him to wash his face as he was bleeding from face. He could not find Sachin in the hospital, so, he left the hospital to search Sachin and came to BJRM hospital, where he fell down and became unconscious. From there, his maternal grandmother and one boy took him to the house of his elder *mausi*, where he slept and where he regained consciousness on the next day morning. Police enquired about him from his aunt Shivani who told them that he was sleeping. He came to know that Sachin was seriously injured and taken to BJRM hospital from where he was referred to LNJP hospital and thereafter, he reached to P.S.Jahangir Puri when his statement Ex.PW-1/A was recorded which he duly signed.

18. Version of this witness (PW-1) is duly corroborated by not only the testimony of Shivani (PW-2), his aunt but also of the independent witness ASI Subhash Chand who, as noted above, deposed that when he was going on 28th November 2016 at about 9/9.15 p.m. towards G- Block Jhuggi to attend a call, one female namely Shivani stood in front of his motorcycle and forced him to stop, informing that a quarrel is taking place. He got down and at her pointing out, he reached the spot and saw that four boys ran away towards Prayas Child Home Gali. Since Shivani had made a call at 100 number, ASI Subhash Chand



saw a PCR van approaching to the spot and on PCR reaching the spot, he left the spot on his motorcycle to attend his call.

19. Challenge is also laid to the testimony of Rahul claiming that the first PCR call regarding the incident was made by the father of the appellant Sunil, namely, Vishwanath, wherein, it was noted that “*Rahul ne blade maar kar injured kar dia*”. Thus, Vishwanath, father of appellant Sunil stated that Rahul has inflicted an injury by blade.

20. It may be noted that the appellants led the defence evidence by examining ASI Ram Bharose (DW-1) who exhibited FIR being FIR No. 664/2016 under Sections 307/34 IPC vide Ex.DW-1/A lodged on the written complaint of Sunil alleging that on 28th November 2016, at about 9.15 p.m., when he came to the repair shop of his younger brother Satish @ Chhotu along with his friends Gaurav & Nitin, Rahul who had fought with him and his brother Chhotu on the previous occasion, came to them with his friend Sachin. Sunil alleged that Rahul and Sachin came in a highly intoxicated condition and Rahul started abusing them by saying ‘*salon tumhe jaan se maarna hai*’, on which, he replied, ‘*bhai tu jaa, tumne jyada hee pee rakhi hai*’. Thereafter, Rahul forcefully clung on him and he pushed Rahul aside, on which, Rahul threatened them ‘*salon abhi tumhara kaam tamam karta hun*’. Thereafter, Rahul along with Sachin ran towards G Block and after 5-7 minutes, they both along with two other boys came there with knife and *dandas*. On seeing them, Sunil and his friends ran away whereas, Rahul and his associates ran after them. It is alleged that Sunil and his associates were caught and given injuries. From this FIR and the other evidence on record, it is revealed that the incident



first started at the repair shop of Satish @ Chhotu, one of the accused in the present FIR, where Rahul and Sachin had come in an intoxicated condition. However, the FIR lodged by Sunil being FIR No. 664/2016 under Sections 307/34 IPC does not explain how Rahul and Sachin received injuries, but, it is clear that both the sides received injuries as is evident from the fact that the MLCs of the accused-appellants Sunil and Nitin have been exhibited by DW-3 SI Rakesh Kumar vide Ex.DW-3/A and Ex.DW-3/C respectively revealing simple injuries, besides MLCs of Gaurav and Satish (Ex.DW-3B and Ex.DW-3/D respectively).

21. Further, Rahul was extensively cross-examined in regard to the other cases registered against him, however, no suggestion has been given that Ex.PW20/A was lodged as a counter-blast to the FIR registered against Rahul. Be that as it may, whatever may be the outcome of the counter-blast FIR, in the present case, there is ample evidence on record in the form of depositions of Rahul and Shivani about Sachin (deceased) being assaulted by the appellants. Further, no suggestion was given to Rahul that he was the one who inflicted injury on the deceased Sachin. Though it is argued and claimed that in fact, the deceased and Rahul were the aggressors, however, in the cross-examination of Rahul, no such suggestion was put except stating that he had assaulted Nitin by knife blows and wooden *dandas*.

22. In view of discussion aforesaid and number and nature of injuries caused to Sachin, the impugned judgment of conviction and order on sentence is upheld.

23. Appeals are accordingly dismissed.





24. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent, Tihar Jail for intimation to the appellants and updation of records.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
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Signature Not Verified

Digitally Signed
By: JUSTICE MUKTA
GUPTA



Signature Not Verified

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By: POONAM BAMBA



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