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

Date of decision: 22nd August, 2026

Uploaded on: 25th August, 2026

CNR No. DLHC010809022012

+ **CRL.A. 560/2012**

KAILASH RAI

.....Appellant

Through: None.

versus

RAJU @ RAJESH & ORS

.....Respondents

Through: Mr. Hirein Sharma, Ms. Meena Chaudhary, Mr. Amit Verma and Ms. Shreya Mishra, Advocates for R- 1 to 3.
Mr. Ritesh Kumar Bahri, APP with Ms. Divya, Advocate.
SI Arvind Verma M: 9220453308.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE VIKAS MAHAJAN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeal arises out of the judgment dated 23rd March, 2012 passed by the Id. ASJ (North-East), Karkardooma Courts, Delhi in **Sessions Case No. 21(I)/2009** in respect of **FIR No. 279/2009** registered at P.S. Gokal Puri for offences punishable under Sections 302/34 of IPC, whereby the accused RAJU @ RAJESH, Suresh and Roshan have been acquitted.



3. The brief facts of the case are that the incident took place on 7th September, 2009 at about 10.00 PM at A-Block, Gokal Puri, Near Post Office Main Road, Delhi within the jurisdiction of P.S. Gokal Puri.
4. As per the prosecution's case the accused persons had caused certain injuries to Mr. Manoj Kumar, son of Kailash Rai (Appellant herein). The victim was taken to GTB hospital, however, he succumbed to the said injuries on 8th September, 2009 at about 2:40 AM.
5. The prosecution had led the evidence of 18 witnesses, including the brother and father of the victim who had deposed as PW-1 and PW-2, respectively. It is noted that initially both the said witnesses had resiled from the statements given to the police and were cross-examined by the Id. APP on having turned hostile. However, on a later date the said witnesses had disposed that they had resiled from their statements as they were under threat from the accused persons.
6. The accused were initially arrested and were granted bail on 21st January, 2010. Further, statements of the accused persons were also recorded and it was their case that they were falsely implicated.
7. Id. Trial Court had considered the matter and was of the opinion that there were a large number of contradictions and improvements in the testimony of the witnesses for the prosecution especially PW-1 and PW-2. Moreover, the Id. Trial Court had also expressed doubts as to the investigation conducted by the police and was of the view that the benefit of the doubt should be extended to the accused persons. The relevant findings of the Trial Court are as under:

“20. Perusal of the record further shows that there are several material contradictions in the statements of



the witnesses regarding the arrest of the accused persons and the alleged recovery of the weapons of offence. Even, the site plan of the place, from where the weapon of offence was allegedly recovered, has not been prepared by the IO, during the investigation. No public witness has been joined by the IO to the alleged recovery, despite of the fact that several public persons were available to him at the time of recovery of the alleged weapons of offence.

21. Perusal of the record further shows the even the preparation of the scaled site plan by PW8 is doubtful as PW8 SI Mukesh Kumar has deposed before the Court that he visited the spot of the incident on 23.10.2009 alongwith Inspector Sushma Rawat, IO of the present case and inspected the spot at her pointing out and prepared the rough notes and thereafter, prepared the scaled site plan, Ex.PW8/A. He has also deposed that the notes encircled at point 'A' on Ex.PW8/A were written by the IO Sushma Rawat of her own and the same were written by Inspector Sushma Rawat without his consent. But PW12 Sushma Rawat has deposed that she called draftsman Mukesh Kumar Jain for preparation of the scaled site plan on 24.10.2009 and thereafter, she went to the spot with him, where he collected the rough notes and prepared the scaled site plan Ex.PW8/A.

22. Perusal of the record further shows that Inspector Sushma Rawat has conducted the entire investigations of this case, but, no documents have been prepared by her in her own handwriting. All these documents have been prepared by Ct. Gambhir PW(15), but, Ct. Gambhir (PW15) has not deposed even a single word in this regard, in his deposition before the Court on 21.09.2011.

23. Perusal of the record further shows that the MLC of



injured Manoj Chetu (since deceased) Ex.PW10/A, as well as, the FSL report Ex.PW12/B, have both indicated that the deceased had consumed liquor on the date of incident. Furthermore, PW13 Dr. Meghali Kelkar, who has conducted the postmortem on the dead body of the deceased has also note that "injury No. 4 was sufficient to cause death in ordinary course of nature". In his cross-examination, he has disclosed "that the injury, like injury no. 4, is possible due to blunt force impact, resulting out of vehicle accident. Blunt force, for example-impact by any hard rod, stick, stone or by fall on hard projecting object like footpath."

24. All these contradictions, as discussed above, make the entire prosecution case doubtful. Therefore, in view of the settled legal position, and the above circumstances, I am of the considered opinion that the accused are entitled for 'benefit of doubt' and accordingly, all the three accused are hereby acquitted for the offence punishable U/s 302/34 IPC. The bail bonds of the accused persons, which have been submitted by them in the Court during trial, shall remain in force for a further period of six months, as per the provisions of Section 437-A of the Cr.P.C. Accused persons are further directed to appear before the appellate court, as and when, the notices are issued to them by the appellate court, in any appeal, if preferred by the State. It is ordered accordingly. File be consigned to record room, after due compliance."

8. As stated above, the present appeal has been preferred by the father of the victim and the same was admitted on 15th May, 2012. The matter was thereafter pending consideration and on 3rd February, 2026, when the matter was listed before the Joint Registrar, the Appellant's statement was recorded as under:



“SI Surender PS Gokulpuri is present in Court along with the appellant in person. Appellant submits that he does not wish to proceed with the present appeal.”

9. The Appellant again reiterated the said statement on 20th February, 2026. The matter was thereafter listed on 30th March, 2026 when the question of maintainability of the present appeal was raised by the Respondents on the ground that the same has neither been filed by the State nor the victim.

10. Today, the matter has been taken up for hearing.

11. Ld. Counsel for the Respondents has raised the same issue of maintainability. It is submitted that the complainant in this case was the brother of the victim and not his father, who is the Appellant here, and hence the appeal is not maintainable.

12. This submission may not be fully accurate inasmuch as in terms of Section 372 of the Code of Criminal Procedure, 1973, a victim has the right to appeal against an order acquitting the accused persons. The said Section reads as under:

“372. No appeal to lie unless otherwise provided - No appeal shall lie from any judgement or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offense or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”



13. Further, Section 2(wa) of the Code defines ‘victim’ as under:-

“2(wa). victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

14. The said definition has been extensively discussed by the Supreme Court in ***Khem Singh (D) Through LRs vs. State of Uttaranchal, 2025 INSC 1024***. The relevant portion of the same reads as under:

“7.2 While Section 374 CrPC deals with appeals from convictions with which we are not concerned in this case, what is of relevance is Section 378 CrPC which, inter alia, deals with an appeal in case of acquittal. The remedy of an appeal against an acquittal is couched in certain conditions which are evident on a reading of sub-sections (4) and (5) of Section 378 CrPC vis-à-vis an appeal that could be filed by a complainant. However, the Parliament in its wisdom amended Section 372 CrPC by adding a proviso thereto by virtue of the Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009), (with effect from 31.12.2009). It is hence necessary to unravel the definition of victim in clause (wa) of Section 2 of the CrPC which was also introduced along with proviso to Section 372 CrPC. A victim is defined to mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir.

7.3 The expression ‘injury’, as defined in Section 44 of the IPC includes:

“Any harm whatever illegally caused to any person, in body, mind, reputation or property.”



7.3.1 Similarly, Black's Law Dictionary defines injury to include property damage, bodily harm, or violation of a legal right.

7.3.2 Additionally, the United Nations General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) provides a broad and inclusive definition of victim. According to Article 1 of the Declaration:

"Victim means persons who, individually or collectively, have suffered harm through acts or omissions which involve physical or mental injury, emotional distress, economic loss or substantial impairment of their fundamental rights."

7.3.3 Further, Article 2 extends the definition of victim to include immediate family members, dependents, or those who have intervened to assist a victim in crisis.

7.4 On a reading of the definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental, a financial loss or injury. The expression 'injury' could also be construed as a legal injury in a wider sense and not just a physical or a mental injury. The loss or injury must be caused by reason of an act or omission for which the accused person has been charged. Thus, it can be both by a positive act or negatively by an omission which is at the instance of the accused and for which such accused has been charged. Further, the expression 'victim' also includes his/her guardian or legal heir in the case of demise of the victim.

7.5 Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has



suffered any loss or injury. The expressions ‘loss’ or ‘injury’ themselves are of a very broad import which expressions also enlarge the scope of the expression ‘victim’. Further, the expression ‘victim’ includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged but also includes his or her guardian or legal heir which means that the definition of victim is inclusive in nature.”

Thus, in the opinion of the Court, the father of the victim/deceased would accordingly be a person who has suffered loss due to the death of his son and would fall within the definition of the victim. Thus, the appeal would be maintainable.

15. However, the Court has perused the initial testimony of PW-1 and PW-2 where they have clearly stated as under:-

Testimony of PW-1: Rajkumar

*“I was doing private job on 7.9.2009. On that day, at about 10/10.30 pm, when I was walking in the gali after taking my dinner, I heard noise and on hearing it when I reached the spot, my brother was lying in injured condition there. Many persons were also present there at that time. Thereafter I made a call to the PCR. But when the PCR did not come I took my brother to the GTB Hospital in auto rickshaw. In the hospital, my brother expired. Police met me in the hospital and my statement was recorded by the police which is Ex PW 1/A bearing my signature at point A. I had shown the spot to the police. Except this, no proceeding was done by the police in my presence. **The incident had not occurred in my presence. I had not seen any person inflicting injury on the person of my brother Manoj Kumar.**”*



Testimony of PW-2: Kailash Chand Rai

*On 7.9.2009, at about 10.00 pm, I was present at my house. Somebody told me my son Manoj was being beaten by some persons. On this, I immediately came out from my house and went to the spot and saw that my son Manoj was lying there. Thereafter I along with my son Rajkumar took Manoj Kumar to GTB Hospital where my son Manoj died. **I had not seen anybody while inflicting injuries on the person of my son Manoj nor the incident had occurred in my presence.***

16. Both the said witnesses had stated categorically that they had not seen anyone inflicting injuries on the victim and the incident also did not occur in their presence. Thereafter, they sought to resile from the said statement and sought to give evidence again which was considered by the Id. Trial Court. The Id. Trial Court has formed the opinion that the said witnesses have contradicted themselves and improved upon their earlier statements. The Id. Trial Court has also recorded the fact that the said witnesses had neither complained of the alleged threats received from the accused persons to the Court or the police, nor had they informed the Id. APP of the same prior to their examinations. The relevant discussion of the Id. Trial Court on the said aspect is as under:-

“12. Perusal of the record shows that the prosecution has examined two alleged eye-witnesses of the incident. PW1 Raj Kumar is the complainant and the brother of deceased Manoj Kumar @ Chetu PW2 Kailash Chand Rai is the father of deceased Manoj @ Chetu. Both these witnesses were firstly examined before the Court on 19.01.2010 and in their deposition on 19.01.2010, they both have deposed that on 07.09.2009 at about 10.00 to 10.30 P.M. they heard some noises and when they came to the spot they found



that deceased Manoj @ Chetu was lying in injured condition and many persons were present there and thereafter they called the police and the PCR Van took injured Manoj to GTB Hospital, where injured Manoj expired. Both these witnesses have categorically stated that they have not seen anybody inflicting injuries to deceased Manoj and the incident has not occurred in their presence. Both these witnesses were cross-examined by the Ld. Addl. PP for the State at length and in their cross-examination, they have denied all the suggestions of the Ld. Addl. PP for the State. Both these witnesses have even denied the fact of giving any statement to the police. Complainant has even denied the fact that he gave his statement Ex.PW1/A to the police, on the basis of which the rukka was prepared and FIR was lodged. Both these witnesses have denied the suggestion that the accused persons have inflicted injuries on the person of deceased Manoj @ Chetu. The complainant PW1 Manoj Kumar has even failed to identify the weapon of offence. He has also admitted that he was not present at the spot at the time of the incident.

13. Perusal of the record further shows that there is no other eye-witness of the incident and the entire prosecution case is based upon the testimonies of these two eye-witnesses. The present prosecution case has not been investigated or developed on the basis of the circumstantial evidence, to prove the guilt of the accused persons and therefore, no circumstantial evidence has been lead by the prosecution, during the entire trial. After recording of the statements of complainant Raj Kumar (PW1) and Sh. Kailash Chand Rai, father of the deceased (PW2) on 19.01.2010, an application was moved by PW2 Kailash Chand Rai U/s 311 Cr.P.C. for their re-examination, and the same was allowed by the Ld. Predecessor of this Court vide order dated 19.10.2010. Thereafter, both these witnesses were re-examined by the Ld.



Predecessor of this Court on 12.01.2011. In their re-examination on 12.01.2011, complainant Raj Kumar had deposed that on 19.01.2010, he was under the threat of the accused persons as they had threatened that they would get kidnapped and kill Rahul, son of deceased Manoj Kumar @ Chetu and now he was making the statement voluntarily. He has further alleged that on 07.09.2009 at about 9.45 p.m. he heard some noises and on hearing the noises he reached the spot and saw that the accused persons, alongwith another person, named, Suresh Gujjar, were giving beatings to his brother Manoj @ Chetu and when he tried to intervene, the accused persons tried to attack him and therefore, he ran away from the spot and told the incident to his parents. Thereafter, his parents came to the spot. He has further deposed that the accused persons, alongwith said Suresh Gujjar, also gave beatings to his parents and after the incident all the accused ran away from the spot and thereafter, injured Manoj was taken to GTB Hospital in an auto rikshaw, where the doctors declared him "brought dead". **This witness was further re-examined on 18.01.2011 and even on 18.01.2011 he made a large number of improvements in his deposition. Even on 18.01.2011, the Ld. Addl. PP for the State had cross-examined this witness and in his cross-examination by the Ld. Addl. PP for the State, this witness has again made a large number of improvements.** During his cross-examination before the Court, on oath, Sh. A. Ali Khan was his counsel and he was also present in the Court. He has also admitted that on 19.01.2010, his father was also present in the Court premises and on that day he had not stated to the Court about the threat extended by the accused persons to him. He has admitted that on 19.01.2010 they had not made any complaint to the Ld. Addl. PP for the State about threat. He has further admitted that no such complaint was made by him either to the Court staff or to the Naib Courts attached with the Court. He has further admitted



that he has not made any written or oral complaint regarding the threat extended by the accused persons, at the police post at Karkardooma Courts. He has also admitted that no complaint was lodged by him at PS-Gokul Puri or with the IO of this case. During his cross-examination this witness has further admitted that the accused Roshan has filed a civil suit against his deceased brother Manoj, regarding a plot of land and the same was pending in the Court of Sh. G.N. Pandey, Ld. Civil Judge, Delhi and on 22.01.2010 he alongwith his father PW2 Kailash Chand Rai, alongwith their counsel A. Ali Khan, Advocate had appeared in the said suit and the said civil suit was disposed off by the said Court on 22.01.2010 itself. He has further admitted that no complaint of any threat was made, even to that Court on 22.01.2010. He has further admitted that no complaint was lodged by them to any authority, regarding the threats. He has further admitted that his deceased brother was involved in 6-7 criminal cases regarding rape, kidnapping, extending threats and cases under Arms Act were also registered against him, at PS-Gokal Puri. He has further admitted that the deceased was a BC of PS-Gokal Puri. He has further admitted that his deceased brother was having enmity with many persons of the area, as he used to extort money from the innocent persons, including the shop keepers & rehriwalas, of the locality.

14. Perusal of the record further shows that PW2 Kailash Chand Rai was also re-examined on 18.01.2011 and 25.01.2011. This witness has also deposed in a similar manner, as that of PW1 Raj Kumar. He has also deposed about the threats extended by the accused persons to him, prior to making of the statement on 19.01.2010. This witness was again cross-examined by the Id. Addl. PP for the State, as he was again resiling from his earlier statement. Even, in his cross-examination, a large



number of contradictions and improvements have come on record.

15. Perusal of the testimonies of these two witnesses clearly indicate that these two witnesses have deposed in the Court, differently on several different occasions, as per their whims and fancies and they had given one statement on one day and another statement on another day. Both these witnesses are probating and reprobating, as per their liking.”

17. Thus, the Id. Trial Court has disbelieved the initial allegation of threats on the basis of lack of evidence and the fact that the accused persons were in custody during that relevant period.

18. Considering the above, as also the fact that the Appellant has repeatedly stated that he does not wish to press the present appeal, the Court does not find any reasons to interfere with the impugned judgment.

19. On all these grounds, the appeal along with pending applications, if any, is accordingly dismissed.

**PRATHIBA M. SINGH
JUDGE**

**VIKAS MAHAJAN
JUDGE**

**AUGUST 22, 2026
MR/msh**