



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

% Reserved on: 15th May, 2023
Decided on: 26th June, 2023

+ **CRL.A. 865/2018**

SMT. RAJESH & ANR. Appellant
 Represented by: Mr.J.K.Sharma, Advocate with
 Mr.Siddharth Pandit, Ms.Chhaya
 Arya & Mr.V.Prakash, Advocates.

versus

STATE Respondent
 Represented by: Mr.Laksh Khanna, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this common appeal, the appellants Smt. Rajesh and Kanwar Singh had challenged the judgment of learned Trial Court dated 06th July, 2018 whereby the appellants were held guilty for murder of one Amit ("deceased") and as also the order on sentence dated 13th July, 2018, whereby the both the appellants were directed to undergo imprisonment of life alongwith fine of ₹50,000/- each, in default whereof, simple imprisonment for six months for offence punishable under Section 302/34 of the Indian Penal Code, 1860 ("IPC").

2. During the pendency of this appeal, appellant No.2 Kanwar Singh passed away on 15th June 2020 while he was lodged in Mandoli Jail. As per the status report received in the Court, the factum of death was verified and it was stated that in the inquest proceedings, the death was found to be



natural. Thus, vide order dated 9th May 2023, this Court held that the appeal qua the appellant No. 2 namely Kanwar Singh has abated and thus, the appeal was required to be heard only qua appellant No. 1. Appellant No. 1 Rajesh had undergone custody period of 3 years 9 months and 10 days as on 15th June 2020 when she was released on interim suspension of sentence. However, as she had not surrendered after the expiry of the interim suspension of sentence, she was thereafter arrested and sent to judicial custody. She is presently in judicial custody and has undergone till date nearly 4 years of imprisonment including remissions.

3. Brief facts of the case are that on 11th March, 2011, at about 8 PM, the deceased returned back home and parked his car, and the appellants were standing outside their house and on seeing the deceased, the appellant Kanwar Singh started abusing the deceased. The deceased asked appellant Kanwar Singh as to why was he abusing, on which Kanwar Singh started abusing more loudly and furiously and came out with a knife. Rajbala (PW-1), Babita (PW-9) and Sushila (PW-24) took the deceased inside the house to save him. Thereafter, both the appellants along with one more person reached the roof of their own house and Rajesh told Kanwar Singh to finish the deceased and solve all their daily quarrels. Thereafter, Rajesh gave Kanwar one wooden *phatta* and Kanwar threw the said *phatta* on the deceased because of which, the deceased sustained head injury, fell on the ground and became unconscious. Babita also sustained injuries due to the throwing of the *phatta*. Arun (PW-13) and Ravi (PW-14) took the deceased to the hospital. Information was given to the police, which was recorded vide DD No.33A which was marked to SI Sri Bhagwan (PW-22) who



reached the spot i.e. house of Bhim Singh where he got to know that the injured was taken to Brahm Shakti Hospital and on reaching the said hospital, he got to know that the deceased was shifted to SGM Hospital. While on his way to the SGM Hospital, he received information vide DD No.49B (Ex.PW-22/A) regarding death of the deceased. The dead body was sent to the mortuary and thereafter, SI Sri Bhagwan returned back to the spot where he met the complainant Rajbala (PW-1) and recorded her statement (Ex.PW-1/A) and prepared the rukka (Ex.PW-22/B) on which FIR No. 66/2011 dated 12th March, 2011 under Section 302/34 IPC was registered at PS Aman Vihar (Ex.PW-5/A). From the spot exhibits were lifted and the wooden plank was also seized. Thereafter, appellant Smt. Rajesh was arrested by IO/Insp. Neeraj Kumar (PW-26) from her house vide arrest memo Ex.PW-26/C and appellant Kanwar Singh was arrested on 18th March, 2011 from Bhagya Vihar at the instance of the brother of the deceased Sushil vide arrest memo Ex.PW-12/A. Upon completion of investigation, charge-sheet was filed and the appellants were charged for offences punishable under Sections 302/323/34 IPC. To prove its case, the prosecution led 26 witnesses.

4. Dr. Shalini Girdhar (PW-18) conducted the post mortem on the dead body of the deceased on 12th March, 2011 and tendered her report (Ex.PW-18/A) and opined:

“External injuries—Antemortem Injury:

Stellate shaped wound present on scalp in middle 11 cm from ossicput, 7.5 cm from front of forehead, 16.5 cm from left mastoid process, 19.5 cm from right mastoid process, 164.5 cm from heal. The wound has exposed surface with underlying sutures opened.



Internal Examination:

1. HEAD

a) Scalp Tissues-

b) Skull Bones-

c) Brain Matter Meninges & Cerebral Vessels-

d) Base of Skull-

Subscalp haematoma present on frontal region and temporal region 4 in number. Closed fracture of junction of lambdoid suture/ sagittal suture and sagittal/ coronal suture with associated haematoma. Diffuse subdural and subarachnoid ...on right side of brain about 80-100 ml cut-1300 gm.

x x x x

5. FINAL OPINION:

Cause of death-in this case is Coma due to head injury caused by blunt force which is sufficient to cause death in ordinary course of nature. However, viscera is preserved to rule out alcohol intoxication.

Time since death-about fifteen hours.

Total number of sheets Fourteen (14).

5. Learned counsel appearing on behalf of the appellant assails the impugned judgement on the grounds that the weapon of offence in the present case was never shown to the doctor who conducted the post mortem examination and was rather shown to another doctor namely Dr. Shalini Girdhar (PW-17). Dr. Shalini opined that the injury mentioned in the post mortem report was possible by a wooden plank and was also possible by a brick. Even otherwise, the case of the prosecution was that the wooden plank was thrown by Kanwar Singh from the second floor of the building which had hit the deceased on the head, which would not be murder, and would rather attract Section 304 Part II IPC, and this fact was completely ignored by the learned Trial Court. It was contended by learned counsel that qua the stains of blood found on the wooden plank it was possible that the blood could have fallen on the plank when the deceased received injury by



brick. It was further contended that the version put forth by Rajbala (PW-1) that Smt. Rajesh gave wooden *phatta* to Kanwar Singh who then hit the deceased by the said *phatta* by throwing it from the second floor on the deceased standing in the courtyard on the ground floor was not corroborated by the other eye-witnesses i.e. PW-6, PW-9, PW-13 and PW-14. It was further contended that the learned Trial Court erred in discarding the testimony of Babita (PW-9) who categorically deposed that a brick had fallen on the head of the deceased and feet of Babita. It was further contended that the draftsman Manohar Lal (PW-23) categorically deposed that the second floor of the premises was not visible from the ground floor and that there was a 107 cm periphery wall on the second floor which also belies the case of the prosecution. It was further pointed out by learned counsel that Rajbala and Sushila were not seen by the IO either at the spot or at the hospital. Further despite the police having reached the spot before 9 PM, the *rukka* was sent at 11.45 PM which substantiates the fact of PW-1 and PW-24 not being present at the spot. In light of these facts, it was contended that the impugned judgment and order on sentence be set aside and the appellants be acquitted.

6. Per contra, learned APP appearing for the State contended that the prosecution was able to prove the case beyond reasonable doubt and based on ocular evidence along with medical and forensic evidence, and thus, impugned judgment be upheld and consequently, the present appeal qua Rajesh be dismissed. Learned APP submitted that Rajbala (PW-1) who was the mother of the deceased, was the eye-witness to the incident and has narrated the incident in detail and consistently with her previous statement



and had ascribed specific roles to the appellants. It was further submitted that the contention on behalf of the appellant that Rajbala was not present at the spot is baseless and from the testimony of PW-22 and PW-26 it is evident that she was infact at the spot where her statement and supplementary statements were recorded. Further, the contention that *rukka* was recorded at 11.45 PM despite the incident having taken place at 8-8.15 PM is also without any merit as PW-1 categorically deposed that after the incident she was not in her senses as her son/ deceased had received injuries. Learned APP placed reliance on the decision in CrI.No. 1446-1447/2003 Main Pal & Anr. v. State of Haryana to contend that every person cannot be expected to behave in similar manner. It was further submitted that minor contradiction in the testimony of any witness would not dent the case of the prosecution unless those contradiction goes to the root of the matter and reliance in this regard was placed on AIR 2011 SC 2302 A. Shanker vs. State of Karnataka. Learned APP further submitted that as per crime scene report (Ex.PW-11/A), wooden *phatta* was found and seized from the spot and no brick was found or recovered from the spot which negated the defence of the appellants. Even otherwise, the place of incident was a pucca structure and there was no sign of any construction at the spot, thus there was no scope of any brick accidentally falling on the head of the deceased. Learned APP further pointed out that although, Arun (PW-13) who took the deceased to the hospital turned hostile, however, the MLC of the deceased (Ex.PW-25/A) records that the deceased was brought by Arun (PW-13) who told the doctor that there was an alleged history of physical assault which established PW-13 being aware of the quarrel which



led to the death of the deceased. It was further contended by learned APP that as per the FSL Report (Ex.PW-26/F), human blood was found on the wooden plank seized from the spot. As per the post mortem report (Ex.PW-18/A), the cause of death was opined to be “*coma due to head injury caused by blunt force which is sufficient to cause death in the ordinary course of nature*”. Furthermore, it was submitted by learned APP that the wife of the deceased Babita (PW-9) was won over by the appellants and in this regard, reliance was placed on the transcript of conversation between Babita and the appellants, which was confirmed by the FSL to be of Babita (Ex.PW-31/A). Even otherwise, it was submitted that a perusal of Babita’s own MLC (Ex.PW-9/B), shows that she had herself told the doctor that there was a physical assault which is contradictory to the statement given by her in Court and shows that she was won over by the appellants.

7. Having heard both the parties at length and perusing the record, the following evidence emerges.

8. Smt. Rajbala (PW-1) deposed that on 11th March, 2011 at about 8 PM, his son/deceased returned home and at that time the appellants were standing outside their house and on seeing the deceased, appellant Kanwar Singh started abusing the deceased. After parking the car inside the house, deceased ask appellant Kanwar as to why was he abusing, on which appellant Kanwar became more furious and started abusing deceased in loud voice and in more abusive language. At that time, Babita and Sushila were also present there. Kanwar Singh went inside his house and came back with a knife in his hand and ran after deceased and she, Babita and Sushila took the deceased inside the house to save time. Thereafter, Kanwar Singh and



Rajesh and one more person reached the roof of the house and at that time, all of them were inside the gate in the open courtyard and Rajesh told Kanwar Singh to finish Amit and solve all daily quarrel, after which, Rajesh gave a wooden *phatta* in the hand of Kanwar Singh, and Kanwar Singh hit the deceased with the said *phatta* by throwing the same on the deceased. The deceased suffered injuries on his head and fell on the floor and Babita also received injuries on her leg with the said wooden *phatta*. Thereafter, the deceased became unconscious and was bleeding from his head. Sons of her *jeth*, Arun and Ravi, also reached her house and took the deceased to the hospital in their vehicle. Thereafter, police came to her house at about 11.30 p.m. and recorded her statement (Ex.PW-1/A). She further stated that all the three persons had murdered her son with a common intention. In her cross examination, she stated that only one statement was recorded by the police and the same was not read over to her. She further stated that her daughter Sushila got married three months prior to the incident and had come to her house as per custom on the occasion of first Holi. She further stated that there was no landline connection at her house and there were two mobile connections, one with Amit and another with Sushil. She stated that she neither made a call to the police nor went to the police station nor accompanied her son to the hospital. On arrival of the police, she did not immediately make the statement as she was not in a condition to make statement to the police. She further stated that after the incident, neither she herself nor Babita nor Sushila nor Sushil made any efforts to apprehend the appellants and at that time, they all were busy in taking care of Amit. Her



clothes were also stained with blood, however, the same were not given to the police.

9. Babita (PW-9) deposed that the deceased was her husband. She stated that on 11th March 2011, at about 8-8.15 PM, her husband/deceased reached the house in his car and parked the same inside the house. After parking the car, she and the deceased went to close the main gate and some brick fell from upside and hit the head of her husband and then hit her feet. She further stated that at that time, some *phattas* were lying inside the gate of the house and her husband fell on those *phattas*. Thereafter, she started crying on which her *devars* Ravi and Arun came there and took her husband/deceased to the hospital. Thereafter, she made a call to her mother-in-law Rajbala and informed her about the injury on the deceased. At the hospital, the Doctor declared her husband/deceased dead. Thereafter, she returned to their house where police made enquiries but did not record any statement. She further stated that at the time of the incident, her mother-in-law was not at the spot since morning as she had gone to her parents' village with Sushil. As the witness was resiling from her previous statement, she was declared hostile. In her cross-examination, she denied having made any statement (Ex.PW-9/A) to the police. She denied having stated that she had received injury on her lower leg due to throwing of a wooden plank by Kanwar Singh on the instigation of Rajesh.

10. Arun (PW-13) deposed that on 18th March 2011, he was present at his medical store and at about 8-8.30 PM, he received a call from his father that the deceased had received injuries, on which, he immediately went to the house of the deceased at Mubarakpur and took the deceased to the hospital



along with his brother Ravi. At the hospital, the deceased was declared dead. He denied having known as to how the deceased had received injuries and who had injured him. Thereafter, the witness was declared hostile as he was resiling from his previous statement.

11. Sushila (PW-24) deposed that on 7th March 2011, she was present at her paternal house on the occasion of Holi and on 11th March 2011, at about 8-8.15 PM, her brother/deceased came back to the house. On seeing her brother/deceased, appellants Rajesh and Kanwar started abusing her brother/deceased. Her mother had opened the door of the house and on hearing the noise of abuse, she also came out of the house. After parking the car inside the house, her brother/deceased went outside and asked the appellant Kanwar Singh as to why was he abusing, on which, Kanwar Singh again started abusing and thereafter, Kanwar Singh went inside his house and brought a knife. She along with her mother brought the deceased inside the house and thereafter, appellants Rajesh and Kanwar Singh went to the roof of the house and started abusing her brother/deceased. Rajesh handed over a *phatta* to Kanwar Singh and asked him to finish her brother/deceased, on which, Kanwar Singh hit the *phatta* on the head of her brother/deceased by throwing the same from roof, pursuant to which, her brother fell down and blood started oozing from his head. She stated that she tied a chunni on the head of her brother. The said *phatta* also fell on the foot of Babita. Thereafter, her mother Rajbala started weeping and her cousins Ravi and Arun came and took the deceased to the hospital.

12. SI Mahavir Singh (PW-15) deposed that on 11th March 2011, he received the information recorded vide DD No. 33A and reached the spot



i.e. house of Bhim Singh at village Mubarakpur. He noticed blood in the courtyard inside the main gate of the house and also noticed one wooden plank stained with blood and also noticed hair strands at two places. In his presence, crime team had inspected the spot and took photographs and, in the meanwhile, SI Sri Bhagwan came to the spot and recorded the statement of the complainant.

13. L/Ct. Renu (PW-19) was on PCR duty on the intervening night of 11/12th March, 2013 and at 20.33.45 information was received from Mobile No.09278880002 with address Mubarakpur, Bhim Singh ka makan, Booster Pump Road, Kirari Chowki and the complainant had given information about quarrel "*sar me eet maar di hai*" which was recorded in PCR Form (Ex.PW-19/A).

14. SI Sri Bhagwan (PW-22) deposed that on 11th March, 2011, on receipt of DD No. 33A regarding quarrel, he along with Ct. Dinesh reached the spot i.e., House of Bhim Singh, near Booster Pump, Village Mubarakpur. In the verandah of the house, blood was found lying and hair strand also found lying at two places and one wooden plank was also lying there. He got to know that the injured was taken to Brahm Shakti Hospital. On reaching the said hospital, he got to know that the injured was shifted to SGM Hospital and accordingly, as he started to going towards SGM Hospital, he received telephonic information vide DD No.49B regarding death of the deceased. The dead body was shifted to the mortuary at the SGM Hospital and, thereafter, he returned to the spot. At the spot, he met complainant Rajbala, mother of deceased and recorded her statement (Ex.PW-1/A) and he prepared the *rukka* (Ex.PW-22/B) on which FIR was



got registered. Further investigation was assigned to IO/Insp. Neeraj Kumar. In his cross examination, he stated that the information was received by him was in respect of a brick which was hit on the head of the injured. He stated that he reached the spot at 9 PM but did not find any eye witness at the spot. No eye witness was found either at Brahm Shakti or SGM Hospital and he returned to the spot at about 10.45 PM and the IO was already present there at the spot.

15. IO/Insp. Neeraj Kumar (PW-26) stated that after registration of FIR, investigation was handed over to him and at the spot, he prepared the site plan (Ex.PW-15/DA). Crime team also reached at the spot and photographs of the crime scene were taken. He lifted the exhibits i.e., blood, blood stained earth, earth control, hair and wooden plank from the spot which were seized vide memo Ex.PW-6/B and Ex.PW-6/A. Thereafter, he recorded supplementary statement of the complainant Rajbala. After post mortem examination, the dead body was handed over to the relatives of the deceased. Thereafter, he went to village Mubarakpur where he arrested Smt. Rajesh from her house vide arrest memo Ex.PW-26/C and her disclosure statement Ex.PW-26/E was recorded. On 18th March, 2011, appellant Kanwar Singh was also arrested from Bhagya Vihar at the instance of Sushil vide arrest memo (Ex.PW-6/F) and his disclosure statement (Ex.PW-12/A) was recorded. SI Manohar Lal prepared the scaled site plan (Ex.PW-23/A). Subsequent opinion regarding the weapon of offence, i.e., wooden plank was sought which was given by Dr. Manoj Dhingra (PW-17). Upon completion of investigation, he filed the charge-sheet. In his cross examination, he stated that he examined the caller of DD No. 33A and



stated that the said caller did not tell him that somebody had hit the head of the deceased with the brick. He further stated that Dr. Shalini Girdhar had conducted the post mortem on 12th March, 2011 and at that time the wooden plank was in the Malkhana and as the said doctor was not available, opinion of another doctor was sought. He further stated that no recovery was effected in pursuance of the disclosure statement of appellant Rajesh.

16. In their respective statements under Section 313 Cr.P.C, the appellants Smt. Rajesh and Kanwar Singh stated that their arrest was motivated and that police had taken their signatures on blank papers by force. They denied having made any disclosure statement to the police and further stated that Smt. Rajesh was residing in her own house with her husband and that Kanwar Singh was residing in his own house. They denied their presence at the scene of occurrence, stated that all the allegations against them were baseless and concocted and that they were innocent and were falsely implicated in the present case due to enmity.

17. As noted above, this Court in the present appeal is now only concerned with the appellant No. 1 as appellant No. 2 has passed away. Even as per the case of prosecution based on the statement of Rajbala (PW-1) and Sushila (PW-24) is that Rajesh gave the wooden phatta to Kanwar Singh and told him to hit the same. The main plank of argument of learned counsel for the appellant is that the *rukka* was got written on the statement of Rajbala, mother of the deceased Amit who was not present at the spot as is evident from the witnesses including the Investigating Officer who on reaching the spot, did not find any eye witness and thus, the FIR is ante-time and falsely implicates the appellant, particularly, appellant Rajesh. It is



stated that the FIR has been wrongly shown to have been written at about 11.45 p.m.

18. It may be noted that in the MLC of Amit as also MLC of Babita (PW-9), the wife of Amit which was proved vide exhibits PW-25/A and PW-9/B respectively, though it is stated 'alleged history of physical assault', however, the name of the assailant(s) has not been mentioned. Further, the case of the Rajbala in the *rukka* and before the Court, as noted above, was that Kanwar Singh was the younger brother-in-law of Rajbala who was residing in the house which is situated in front of her house. She stated that Kanwar Singh used to quarrel with them on petty issues and abuse them. Appellant No. 1 Rajesh qua whom the appeal now survives is the wife of other brother-in-law of Rajbala namely Charan Singh. Kanwar Singh was residing in the house of Charan Singh and according to Rajbala, Rajesh used to instigate Kanwar Singh to quarrel with her family and on her instigation, Kanwar Singh was always ready to quarrel and abuse her family. According to Rajbala, on 11th March 2011 at about 8 p.m., her son Amit returned home from outside. He came in his car and on seeing Amit, Kanwar started abusing him. After parking the car inside the verandah of her house, Amit asked Kanwar Singh as to why he was abusing. On this, Kanwar Singh started abusing Amit loudly. Rajbala at that time was present outside her house besides Babita, wife of Amit and Sushila, her daughter. Rajbala stated that Kanwar Singh entered his house, came back with knife and ran after Amit to kill him. She stated that she, Babita and Sushila took Amit inside the house in order to save him. Thereafter, accused Kanwar Singh, Rajesh and one more person reached at the roof of their house and it



is alleged that Rajesh gave a wooden plank in the hand of Kanwar Singh asking him to hit Amit, on which, Kanwar Singh threw the wooden phatta hitting Amit on his head due to which, he fell on the floor. It is stated that Babita also received injuries due to hitting of the wooden phatta.

19. It may be noted that the case of Rajbala and Sushila is, once Kanwar Singh picked up the knife, they took Amit inside the house and were inside the gate in the open courtyard. As per the crime scene report, the wooden phatta recovered from the spot was 7 feet long and 5 inches wide with 1.5 inch thickness. A perusal of the scaled site plan Ex.PW-23/A shows that the wooden plank is stated to have been thrown from point E from the house of appellant Rajesh at point A in the house of Rajbala. However, these two open areas are not opposite to each other and right in front of point E, there is a toilet, bath, bricks flooring and open area. Thus, point A is diagonally opposite the house with the iron gate and the boundary wall of the houses in between. The incident is of night time and there appears to be no light in the gali. Further, distance between points A to E is 1210 cms. with boundary wall height of Rajbala's house 238 cms. followed by iron grill of height of 40 cms. Thus, even if it is assumed that the plank was thrown from the second floor of the house of Charan Singh, in view of the distance between the two houses and the open area where point E exists not being opposite exactly to point A and even if the statement of Rajbala is accepted, it cannot be held that the wooden plank version of Rajbala is also not corroborated by the site plan as no car of Amit has been shown to be parked in the open area in the site plan.



20. Further, the very presence of Rajbala at the spot is doubtful, for the reason, Rajbala claims to be present at home when the incident took place and the explanation given for delay in recording statement of Rajbala based whereon FIR is registered, is that she was not in her proper senses to give statement. SI Sri Bhagwan (PW-22) along with Constable Dinesh (PW-7) who reached the spot on 11th March 2011 stated that on reaching the house of Bhim Singh, they saw blood inside the verandah at two places as also hair scattered and one wooden plank lying in the verandah. He left Constable Dinesh at the spot and went to Brahm Shakti Hospital where he was informed that the injured was shifted to SGM Hospital and while, he was going to SGM Hospital, a telephonic information was received that the injured had died. Thereafter, he came to the spot and recorded the statement of complainant Rajbala. It is evident that this witness did not meet Rajbala when he first visited the spot and inspected the same along with Constable Dinesh. Constable Dinesh (PW-7) who was left at the spot, in his cross-examination, categorically stated that when he reached at the spot, many public persons were present, however, they did not meet any eye witness at that time. He stated that he remained at the spot for about 2.30-3 hours and had not met any eye witness during the said period. In the light of this categorical statement of Constable Dinesh, statement of Babita (PW-9) is required to be analyzed whose presence at the time of incident cannot be disputed as she suffered an injury with her husband and her MLC was also exhibited. According to Babita, at about 8-8.15 p.m., she was present at her house alone when her husband came from outside in car. He drove his car inside the house, she opened the gate and after parking the car, they both



went to close the main gate. According to her, some brick fell from the roof and hit the head of her husband and also hit her feet. At that time, phattas were lying inside their house and her husband fell on the phattas. She started crying when her brothers-in-law Ravi & Arun came and took her and her husband to the hospital. She made a phone call to her mother-in-law Rajbala and informed about the injuries.

21. Though statement of Babita (PW-9) is sought to be discredited on the ground that she was won over by accused and in this regard, some transcripts were also sought to be proved, however, this version of Babita finds corroboration from the first call made to the PCR and recorded in the PCR form vide Ex.PW-19/A and Ex.PW-21/A, which note '*QUARREL OR INJURED SIR ME ITH MAR DI HAI..*'. It further notes '*DO PADOSION KA JHAGRA, ONE INJ. JO PAHLE HI HOSP. JA CHUKA HAI...*'. Even as per the witnesses at the spot, the PCR form notes at 21:46:45 hours- '*PADOSI BHI HAI AUR CHACHA TAU KE LADKE HAI JINME JHAGDA HUA THAA SAME CALL DOR...*'. Then, it is stated '*SITUATION NORMAL HAI...*'. It is thus evident that the first PCR call only names Kanwar, the Chacha and there is no reference of Rajesh whose role has only been assigned of handing over the phatta in the hands of Kanwar Singh and instigating to throw at Amit. Further the first PCR call also notes '*ITH MAR DI*' and not wooden phatta.

22. In view of these serious anomalies in the prosecution version itself and the presence of Rajbala at the spot being doubtful, this Court finds that the appellant Rajesh is entitled to the benefit of doubt.



23. Consequently, the impugned judgment of conviction and order on sentence are set aside. Appellant Rajesh who is stated to be in custody be released forthwith, if not required in any other case.

24. Appeal is disposed of.

25. Copy of the judgment be uploaded on the website of this Court as also be sent to the Superintendent, Jail for intimation to the appellant Rajesh, updation of records and compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
'vn'

