



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

Date of decision: 17th NOVEMBER, 2025

IN THE MATTER OF:

+ **CRL.A. 449/2002**
RAJESH TEWARI

.....Appellant

Through: Ms. Aashaa Tewari, Advocate.

versus

THE NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State.

SI Arvind Verma

+ **CRL.A. 504/2002**
NITIN SHARMA @ BABLOO

.....Appellant

Through: Mr. C. Mohan Rao, Sr. Advocate with
Mr. Lokesh Kumar Sharma and Ms.
Tanya Kaushik, Advocates.

versus

STATE N.C.T. OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State.

SI Arvind Verma

+ **CRL.A. 532/2002**
UMESH SHARMA

.....Appellant

Through: Mr. Harsh Prabhakar, Ms. Anjana
Prabhakar, Ms. Pallavi Garg and Mr.
Dhruv Chaudhry, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State.

SI Arvind Verma

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RAHUL SINGH



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CRL.A. 449/2002



**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV**

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present Appeals have been filed against the Judgment of Conviction dated 22.05.2002 and the Order on Sentence dated 22.05.2002, passed by Learned Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter referred to as “**Trial Court**”) in Sessions Case No.23/1999, arising out of FIR No.782/1998, registered at Police Station Gokalpuri, Delhi for the offences committed under Section 302 read with Section 34 of the Indian Penal Code, 1860 (“**IPC**”). By the Judgement on Conviction dated 22.05.2002, the Appellants herein, Rajesh Tewari (“**Rajesh**”), Nitin Sharma @ Babloo (“**Nitin**”) and Umesh Sharma (“**Umesh**”) have been convicted for committing the murder of one Jatinder. By a separate Order on Sentence dated 22.05.2002, the Appellants have been sentenced to undergo imprisonment for life along with a fine of Rs.2,000/- each and in case of default of payment of fine, the Appellants were further directed to undergo rigorous imprisonment for two months for the offences committed under Section 302 read with 34 of the IPC.

2. The Appellants, being aggrieved by the Judgment on Conviction and Order on Sentence, have preferred the present Appeals.

3. Shorn of unnecessary details, the facts leading to the filing of the present Appeals as stated in the Impugned Judgment are as follows:-

- a. On 23.10.1998, at about 11 AM, Inder Pal (PW-2) was sitting at his shop, when Inder Pal’s (PW-2) nephew Rajender Kumar’s (PW-3) servant Ramesh Kumar (PW-12) came to Inder Pal (PW-2) and informed him that some boys were beating the then injured



- Jatinder near Shiv Vihar, Kachhi Pulia, Johripur Road (“1st incident”). Thereafter, Inder Pal (PW-2) immediately rushed to the spot, whereas, Ramesh Kumar (PW-12) ran to call Rajender Kumar (PW-3).
- b. It is stated that by the time Inder Pal (PW-2) reached the spot, the boys who were beating the then injured Jatinder had run away from the spot.
 - c. Pursuant to that, the then injured Jatinder was having minor injuries and his motorcycle was also lying at the spot.
 - d. In the meanwhile, Rajender Kumar (PW-3) and Vinay Kumar Sharma (PW-1) also reached the spot. Thereafter, the then injured Jatinder was in an angry state and he informed Inder Pal (PW-2), Rajender Kumar (PW-3) and Vinay Kumar Sharma (PW-1) that the boys who had beaten him up were the accused persons namely Umesh, Nitin and Rajesh.
 - e. It is stated that after beating the then injured Jatinder the accused persons Umesh, Nitin and Rajesh had run away from the spot to some *gali*.
 - f. Thereafter, some boys came up to the then injured Jatinder and informed him that the accused persons Umesh, Nitin and Rajesh were sitting in a house at 25’ Wide Road.
 - g. It is stated that after receiving such information, the then injured Jatinder, Inder Pal (PW-2), Rajender Kumar (PW-3) and Vinay Kumar Sharma (PW-1) ran towards the house where the accused persons were sitting in. Thereafter, the accused persons Umesh Sharma, Nitin and Rajesh came outside the house, and on seeing the then injured Jatinder, they started scuffling with him.



Thereafter, the two accused persons Rajesh and Nitin caught hold of the then injured Jatinder while the other accused person Umesh took out a knife and stabbed twice on the chest of the then injured Jatinder (“**2nd incident**”). Pursuant to that the then injured Jatinder fell on the ground and all the three accused persons Umesh, Nitin and Rajesh ran away from the house at 25’ Wide Road.

- h. Pursuant to that, the then injured Jatinder was taken to GTB Hospital in a three seater rickshaw (“**TSR**”) where he was declared brought dead.
- i. It is stated that during investigation the entire crime scene/place of incident was photographed, samples of blood, blood stained earth and earth control were collected.
- j. Pursuant to that, on 24.10.1998 at 11:30 AM, the Post Mortem Report bearing No.727/1998 exhibited as Ex.PW-4/A was conducted by Dr. Anil Kohli (PW-4). Dr. Anil Kohli (PW-4) opined that the cause of death was due to “Haemorrhagic shock, anterior stab injuries to the heart produced by a sharp edged weapon”. Injuries No.1&2 were sufficient to cause death in the ordinary course of nature both independently and collectively with the other injuries. For ease of reference, the Post Mortem Report i.e. Ex.PW-4/A is being extracted hereinbelow:



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G.T.B.H. - 104

विधि चिकित्सा विभाग
DEPARTMENT OF FORENSIC MEDICINE

पु. सी. एम. एच. एम. पु. से. व. ह. अस्पताल
U.C.M.S. & G.T.B. HOSPITAL

शहादरा दिल्ली-110095
SHAHADARA, DELHI-110095

हृदय परीक्षण रिपोर्ट नं०
POST MORTEM REPORT NO. 727/98

हृदय प्राप्त करने की तारीख व समय

Date & Time of Receiving dead body

हृदय प्राप्त करने का पत्र प्राप्त करने की तारीख व समय

Date & Time of receiving inquest papers

हृदय परीक्षण आरम्भ करने की तारीख व समय

Date & Time of starting autopsy

हृदय परीक्षण समाप्त करने की तारीख व समय

Date & Time of concluding autopsy

हृदय लाने व पहचानाने वाला पुलिस हॉ. नं०

Body brought & identified by Police Constable

हृदय पहचानने वाला

Body also identified by

मृतक का नाम

Name of deceased

पिता/पति का नाम

Father's / Husband's Name

पता

Address

ऊँचाई

Height

वजन

Weight

Brief history of the case (As per inquest papers):

to G.T.B.H. Casualty with H/o assault on 23.10.98 at 11.45 a.m.

(क) सामान्य अवलोकन:

(A) General observations:

Male body wearing a multi coloured (red, green, yellow) full sleeves shirt with cut marks corresponding to injuries on left side, white coloured vest torn and with cut marks corresponding to the injuries, brown pant with black leather belt, brown underwear, handkerchief & red thread around right wrist. Clothes are blood stained. Eyes closed. Cornea opaque. Rigor mortis present over both upper and lower limbs. Red hypostasis present over the back except the pressure points. No external signs of antemortem of the body seen.



(B) Details of Injuries :

Antenatal Injuries-

1. Incised stab wound $4\text{cm} \times 0.2\text{cm}$ placed obliquely over left side front of chest, placed 7cm below left nipple and 10cm to the left of midline. It has clean cut margins and one angle of the wound is more acute than the other. On dissection the track of the wound is cutting the fifth intercostal muscle on the left side, entering the chest cavity, passing through the pericardial sac, passing through & through the left ventricle of the heart and finally terminated. Direction of wound is going downwards, medially & posteriorly & depth is 16cm .
2. Incised stab wound $2\text{cm} \times 0.2\text{cm}$ present vertically over left side front of chest placed 11cm to the left of midline and 4cm below left nipple. It is spindle shaped with clean cut margins. On dissection the track of the wound is entering the chest cavity through the fourth intercostal muscle, passing through the pericardial sac, through & through the left ventricle of the heart and finally terminated. Direction of wound is going downwards, medially & posteriorly & depth is 15cm .
Haemorrhages & extravasation of blood present along the tracks of both wounds.
3. Red abrasion $2\text{cm} \times 0.2\text{cm}$ present over right side of face placed 4cm in front of right ear.
4. Red abrasion $1.5\text{cm} \times 0.2\text{cm}$ present over right side of face placed 2cm in front of right ear.



(ग) आन्तरिक परीक्षण :
(C) Internal Examinations :

I. शिर व कर्ण/Head and Neck

Scalp: Haemorrhage present over left temporo-parietal region of undersurface of scalp.

Skull: NAD.

Brain: 1250 gm. Pale

Neck structures: NAD.

II. छाती/Thorax

Trachea & bronchi: NAD.

Sub-acute injuries as mentioned earlier

Lungs { Rt 450 gm. } Both pale
 { Lt 350 gm. }

Heart: 250 gm. Injuries as mentioned earlier.

Pericardial sac & left pleural cavity contain about 1 1/2 litres of blood & blood clots.

III. शिर व कर्ण/Abdomen and others

Stomach: 150 ml of semi-digested food, yellow in colour. Walls normal.

Intestines: Distended with gases of putrefaction.

Liver: 1100 gm. Pale

Spleen: 100 gm. Pale

Kidneys: 100 gm each. Both pale

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k. Thereafter, the clothes and blood of the deceased Jatinder were seized and sent to FSL.



- l. On 27.10.1998, the two accused persons Umesh and Nitin were arrested. Further, on interrogation, they made separate disclosure statements exhibited as Ex.PW-13/A and Ex.PW-13/B respectively. Further, they also pointed out the place of occurrence by a common memo exhibited as Ex.PW-13/C.
- m. On 29.10.1998, the third accused Rajesh was arrested. Further, he was interrogated and he made a disclosure statement exhibited as Ex.PW-14/A. Further, he also pointed out the place of occurrence by a memo exhibited as Ex.PW-14/B.
- n. It is stated that the knife (murder weapon) could not be recovered as according to disclosure statement of the accused Nitin, the knife was taken away by the accused Rajesh. Whereas, the accused Rajesh disclosed that he had thrown away the knife near the cremation ground.
- o. Thereafter, on 24.08.1999, charges were framed by the Trial Court under Section 302 read with 34 of IPC to which the accused persons Umesh, Nitin and Rajesh pleaded not guilty and accepted trial.
- p. During trial, the prosecution examined 18 witnesses including investigating officers, medical and forensic experts, and alleged eye witnesses. Further, the accused Rajesh did not lead any Defence Evidence, whereas, the other two accused persons Umesh and Nitin led Defence Evidence. The accused persons Umesh and Nitin examined two witnesses namely Pappu Rawat (DW-1) and Babu Lal (DW-2).
- q. The Trial Court convicted the Appellants herein, under Section 302 read with Section 34 of IPC, holding that the prosecution had



- succeeded in establishing the commission of murder of Jatinder beyond reasonable doubt.
- r. The Trial Court was of the opinion that the Defence Witnesses Pappu Rawat (DW-1) and Babu Lal (DW-2) were not the eye-witnesses to the said incident. Further, the Trial Court was also of the opinion that Pappu Rawat (DW-1) and Babu Lal (DW-2) simply saw the quarrel happening and informed about the same to PW-12 and Pappu Rawat (DW-1) and Babu Lal (DW-2) were not material witnesses. Further, their non-examination by the prosecution was of no consequence. The Trial Court also took cognizance of the fact that the accused persons Umesh, Nitin and Rajesh have just tried to encash on the Pappu Rawat (DW-1) and Babu Lal (DW-2) due to their names being present in the statement of PW-12 and the accused persons Umesh, Nitin and Rajesh mentioned about the names of the Pappu Rawat (DW-1) and Babu Lal (DW-2) to create a confusion as Pappu Rawat (DW-1) and Babu Lal (DW-2) stated in their statement that “2/3 boys attacked the deceased Jatinder with knife and they did not name those 2/3 boys”. Further, the Trial Court also considered the fact that the Pappu Rawat (DW-1) and Babu Lal (DW-2) never approached the police stating that they were the eye-witnesses to the said incident.
- s. The Trial Court took cognizance of the fact that the version of the statements of the Defence Witnesses Pappu Rawat (DW-1) and Babu Lal (DW-2) were contradicting to the facts of the present case. The Trial Court held that the statements of Defence Witnesses Pappu Rawat (DW-1) and Babu Lal (DW-2) were that



- they removed the then injured Jatinder to the shop of Prikshat Electronics was unnatural because in their earlier statement the DWs had stated that the shop of Prikshit Electronics was closed as they had gone to the said shop to collect a tape-recorder. Further, the Trial Court was of the opinion that considering the facts of the present case and the earlier statements of the Defence Witnesses Pappu Rawat (DW-1) and Babu Lal (DW-2), they should have dropped the then injured Jatinder to the Hospital and not to the shop.
- t. The Trial Court was of the opinion that the Defence Witnesses Pappu Rawat (DW-1) and Babu Lal (DW-2) were trying to concoct a story by stating that they were eye-witnesses to the entire incident and they were the ones who brought the then injured Jatinder to PW-3 who in turn took the then injured Jatinder to the Hospital, since the 'MLC' reflected the inclusion of PW-3's name.
- u. The Trial Court noted that the non-examination of "the person who informed the then injured Jatinder about the hiding spot of the accused persons Umesh, Nitin and Rajesh" by the police does not hold much value to the present case. The Trial Court also noted that the IO had explained that he could not ascertain the name of that person and that is the reason why he could not examine the person. It also noted that the absence of shopkeepers and neighbours near the place of first incident is of no significance because the IO had explained that these people did not witness anything.





- v. The Trial Court also noted that around 15/20 people who had gathered at the spot at the time of the second incident had left the spot before the arrival of the police and this is the reason why the police did not know about the names and addresses of those 15/20 people who had gathered at the spot. It is also noted that no adverse inference can be drawn on account of absence of these persons.
- w. The Trial Court also dwelled on the dichotomy between interested witnesses and related witnesses observing that an interested witness is the one who stands to gain some advantage from the conviction of the accused, whereas, a related witness is the one connected to a party by ties of blood and close relationship. The Trial Court also took note of the concept of a chance witness.
- x. The Trial Court also delineated the distinction between ocular evidence and medical evidence observing that medical evidence cannot over reach the direct evidence and that depending on the facts of the case - ocular evidence could be preferred over medical evidence.
- y. Vide Judgment on Conviction dated 22.05.2002 and the Order on Sentence dated 22.05.2002, respectively the Trial Court convicted the Appellants herein for commission of offence punishable under Section 302 read with Section 34 of IPC and the Appellants herein were sentenced to undergo imprisonment for life and fine of Rs.2,000/- each and in case of default of payment of fine, they were further directed to undergo rigorous imprisonment for two months for the commission of the offence punishable under Section 302 IPC read with Section 34 of IPC.



z. It is this Judgment of Conviction and Order on Sentence passed by the Trial Court which are under challenge in the present Appeals.

4. Learned Counsel for the Appellant No.1 submitted that the Trial Court has failed to appreciate: (i) that the Appellant No.1 did not share any common intention with the other co-accused persons i.e. Appellant No.2 & 3 herein, and that the Appellant No.1 only caught hold of the deceased Jatinder from the back; (ii) that the prosecution failed to prove that the Appellant No.1 had the knowledge that the other co-accused Appellant No.3 was carrying a knife with which he is alleged to have killed the deceased Jatinder; (iii) that the Appellant No.1 had no motive to kill; and (iv) that it was the deceased Jatinder who was the aggressor and he was the one who alleged to have followed and call out the accused persons Umesh, Nitin and Rajesh for a quarrel.

5. Learned Counsel for the Appellant No.1 further argued that the Trial Court had committed an error in convicting the Appellant No.1 solely on the basis of the testimonies of three witnesses who were either interested or related. He further submitted that the prosecution failed to produce any independent witness, despite the testimony of PW-1 indicating that 15-20 persons had gathered at the spot and had witnessed the incident.

6. He further contended that PW-4, the Doctor who conducted the Post-Mortem examination deposed in his cross-examination that the deceased Jatinder had sustained two knife blows and that the injuries No.1 and 2 were inflicted by two different weapons, whereas, the prosecution case proceeded on the premise that both stab injuries were caused by a single knife. In furtherance to the above, he also pointed out that the MLC of the deceased Jatinder, merely records an alleged history of assault and does not mention the names of the assailants.



7. Learned Counsel for the Appellant No.2 submitted that the Trial Court has failed to appreciate: (i) that the prosecution was unable to prove the guilt of the Appellant No.2 beyond reasonable doubt and the offence punishable under Section 302 read with Section 34 of IPC was not made out at all; (ii) that the role of the Appellant No.2 was only to the effect that he had caught hold of the deceased Jatinder and the Appellant No.2 did not instigate the Appellant No.3 to kill the deceased Jatinder; (iii) that the name of the Appellant No.2 as “Nitin” was not mentioned in the FIR and it was only mentioned as “Babloo”; (iv) that the father’s name and residential address of “Babloo” was not mentioned in the FIR; (v) that the blood stained clothes of PW-3, who stated to have dropped the deceased Jatinder to the Hospital in TSR, were not handed over to the police during investigation; (vi) that none of the neighbours who were admittedly present during the course of first and second occurrence of the incident were examined by the IO; (vii) that PW-1, PW-2 & PW-3 are interested witnesses being the maternal uncle and brother of the deceased Jatinder and thus these three prosecution witnesses were interested in the conviction of the Appellant No.2; and (viii) that the weapon i.e. knife which was used in the incident had not been recovered during the investigation.

8. Learned Counsel for the Appellant No.2 further argued that name of none of the accused persons, including the Appellant No.2, was disclosed by PW-3 to the Doctor at the time of examination and prior to the preparation of the MLC of the deceased Jatinder. He further pointed out that the history recorded therein merely stated “assault”.

9. He also contended that the Trial Court failed to properly consider the testimonies of DW-1 and DW-2, who were, in fact, material witnesses in the present case. In continuation, he also argued that while the prosecution



chose not to examine these witnesses, the Appellants herein produced them in defence, and their testimonies presented the true account of the incident which clearly establishes that the Appellants were not responsible for the offence and that the injuries sustained by the deceased Jatinder were inflicted by some unknown persons. He further argued that the two defence witnesses were the actual eye-witnesses to the incident and according to him, the present matter was one of blind murder, wherein, the Appellant No.2 has been falsely implicated.

10. Learned Counsel for the Appellant No.3 submitted that the prosecution has failed to prove his involvement beyond reasonable doubt. He contended that there is no independent or credible evidence to substantiate the allegations against the Appellant No.3, and the Trial Court has erred in relying solely upon the testimonies of interested witnesses while convicting him.

11. He further argued that the evidence on record, even if taken at its face value, does not establish the common intention as contemplated under Section 34 of IPC, and therefore the conviction of the Appellant No.3 under Section 302 read with Section 34 of IPC is wholly unsustainable in law and on facts.

12. Before advertng to the merits of the case, it is apposite for this Court to examine and evaluate the testimonies of the witness statements given before the Trial Court.

13. Vinay Kumar, PW-1 deposed that on 23.10.1998 at about 10:45-11 AM, he was going along 33' road when PW-3, his neighbour, came running from the direction of his house. He inquired from PW-3 as to why was he running, upon which PW-3 informed him that a quarrel was taking place involving his younger brother, the then injured Jatinder and some other boys



who were assaulting him near Johri Pur Kachi Pulia. On receiving this information, he, along with PW-3, proceeded towards Kachi Pulia, where they met the then injured Jatinder and PW-2. At that time, the then injured Jatinder had sustained minor injuries on his face and the right side of his head, and his motorcycle was also lying nearby. At that time the then injured Jatinder appeared agitated, and when questioned about the incident, he stated that accused persons namely Umesh, Nitin and Rajesh had beaten him. While they were still there, some boys approached and informed the then injured Jatinder that the assailants were sitting in a room across the drain (nala). He further stated that on hearing this, the then injured Jatinder immediately ran towards that direction, followed by him, PW-2 and PW-3. Thereafter, he stated that when they reached near that house three boys emerged and began scuffling with the then injured Jatinder. They were about 10-15 steps away at that time. On seeing them approaching, the accused Umesh took out a knife from his pocket while the other accused persons Rajesh and Nitin caught hold of the then injured Jatinder. Thereafter, he stated that the accused Umesh then inflicted two knife blows on the then injured Jatinder's chest, causing him to collapse. He further stated that pursuant to that they raised an alarm, shouting "Bachao Bachao", upon which all the accused persons fled from the spot. Thereafter, PW-1 stated that they placed the then injured in a TSR and took him to GTB Hospital, where the doctors declared him "brought dead". Further, PW-1's statement was recorded by the police on the same day. PW-1 identified the accused Umesh, as the same person who had stabbed the deceased Jatinder, and the other accused persons Rajesh and Nitin as those who had caught hold of the deceased Jatinder during the incident. He further stated that he knew all the accused persons prior to the occurrence, as they resided in the same locality

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30.11.2025 14:09

CRL.A. 449/2002



and he also knew PW-2, a resident of the same area, whom he addressed as “Chacha”. On 28.10.1998, PW-1 and PW-2 went to Police Station Gokal Puri around noon to know the progress of the case. There, the SHO showed PW-1 and PW-2, the accused persons Nitin and Umesh in police lock-up. PW-1 identified them and informed the SHO that one of them had held the deceased Jatinder while the other had stabbed him. PW-1’s identification statement was recorded at that time. Further, on 30.10.1998, PW-1 again visited the police station with PW-2 regarding the arrest of the remaining accused Rajesh. The SHO showed them the accused Rajesh in police custody, and PW-1 identified him as the person who had caught hold of the deceased Jatinder at the time of the incident.

14. Inder Pal, PW-2 deposed that on 23.10.1998, at about 11 AM, he was sitting at his shop situated at his residence when PW-12, the servant of his nephew PW-3, came running and informed him that some boys were assaulting his younger nephew the then injured Jatinder near Kachi Pulia, Johri Pur Road. Upon receiving this information, PW-2 immediately rushed to the spot, while PW-12 went to call PW-3. Upon reaching there, PW-2 found the then injured Jatinder with minor injuries on his face, appearing agitated. When he inquired about the cause, the then injured Jatinder told him that the accused persons Umesh, his brother Nitin and Rajesh had beaten him. Shortly thereafter, another boy arrived and informed the then injured Jatinder that those same boys were sitting in a house on 25’ Road. On hearing this, the then injured Jatinder ran towards that house, followed by PW-2 and others. As the then injured Jatinder reached near that house, all three accused persons – Umesh, Nitin and Rajesh started a scuffle with him. During the scuffle, the accused Umesh stabbed then then injured Jatinder in the chest with a knife while the other accused persons Nitin and Rajesh held



him by his hands. On witnessing this, PW-2 and others raised an alarm shouting “Bachao Bachao, kya kar rahe ho”, upon which all the accused persons Umesh, Nitin and Rajesh fled, and the then injured Jatinder fell to the ground. PW-2 and others placed the then injured Jatinder in a TSR and took him to GTB Hospital, where the doctors declared him “brought dead”. Soon thereafter, police officials, including SHO S.S. Rana from Police Station Gokal Puri, reached the Hospital. PW-2 narrated the entire incident to the SHO, and his statement (Ex. PW2/A) was recorded and signed by him. After getting the statement recorded, PW-2 accompanied the police back to the scene of the incident, where the police collected blood-stained soil, blood samples, and other materials from the spot, sealed them with the seal of “SSR”, and prepared memos duly signed by PW-2. The said seal was handed over to PW-11 and these articles were taken into possession by the police. The motorcycle of the deceased Jatinder lying at the first place of occurrence, the number of which PW-2 does not remember, was also seized vide memo Ex. PW-2/B signed by PW-2. PW-2’s statement regarding the recovery was also recorded by the police. At the Hospital, during the search of the deceased Jatinder’s belongings, the police recovered Rs.54.45, a black purse, a driving license, and visiting cards, which were taken into possession by the police and were seized under a memo Ex.PW-2/C and signed by PW-2. After about a month and a half, the SHO again took PW-2 to the spot, and he pointed out the locations where the incidents had occurred. On 28.10.1998, PW-2, along with PW-1, went to PS Gokal Puri to know the progress of the investigation, where they saw the accused persons Umesh and Nitin in custody. He identified them as the same persons involved in the incident, the accused Umesh being the one who had stabbed the deceased Jatinder, and the other two accused persons Nitin along with Rajesh, the



ones who had held the deceased Jatinder from behind. Further, PW-2's statement was recorded by the IO. Thereafter, on 30.10.1998, PW-2 along with PW-1, again went to the Police Station and identified the accused Rajesh Tewari, who was then in custody, as the same person who had caught hold of the deceased Jatinder during the incident. PW-2 further stated that all the three accused persons, namely, Umesh, Nitin and Rajesh were known to him from before as the accused persons Umesh and Nitin are real brothers and they ran a shop named "Sharma Electronics" near the *nala* and the accused Rajesh ran a building material shop adjacent to theirs. PW-2 also stated that he could identify the case property collected from the spot, as well as the clothes worn by the deceased Jatinder at the time of the incident. He also mentioned that his clothes were stained with the deceased Jatinder's blood when he lifted him into the TSR and that PW-2 had preserved those clothes, which he had also brought to the court.

15. Rajender Kumar, PW-3 deposed that the deceased Jatinder was his younger brother, who was engaged in running an electronics shop under the name of Prikshat Electronics at Shiv Vihar, 33" Road while, PW-3 was managing a separate shop under the same name opposite Shiv Vihar Pulia, Main Karawal Nagar Road. PW-3 stated that on 23.10.1998, at about 11 AM, he was present at his house when his servant, PW-12, arrived and informed him that some boys were assaulting his younger brother the deceased Jatinder at Johri Pur Road near Shiv Vihar Kachhi Pulia. Upon receiving this information, PW-3 immediately rushed towards the spot. On his way, he met his neighbour PW-1, who inquired as to where he was going in such haste. PW-3 informed him of the incident as conveyed by PW-12, whereupon PW-1 accompanied him to the place of occurrence. When they reached near Kachhi Pulia, they found that PW-2 had already arrived at the



spot. The motorcycle of the deceased Jatinder was lying nearby, and the deceased Jatinder was found there in an injured condition with visible injury marks on his face. PW-3 asked the deceased Jatinder about the incident, and he disclosed that the accused persons Umesh, his brother Nitin and Rajesh had stopped his motorcycle while he was proceeding towards Johri Pur and had assaulted him. PW-3 further stated that he advised the deceased Jatinder to wait for their father's arrival and in the meantime, one boy approached and informed the deceased Jatinder that the assailants were present in a house located on 25' Road. Upon hearing this, the deceased Jatinder immediately started running towards the said place, and PW-3, along with PW-1 and PW-2, followed him. Shortly thereafter, they noticed three boys emerging from a house. PW-3 identified them in Court as the accused persons Umesh, Nitin and Rajesh, whom he already knew. When the accused persons Umesh, Nitin and Rajesh came out of the house, they began scuffling with the deceased Jatinder. During the scuffle, the accused persons Rajesh and Nitin caught hold of the deceased Jatinder, while the third accused Umesh inflicted knife blows on the left side of the deceased Jatinder's chest. After receiving two knife injuries, the deceased Jatinder fell to the ground, and the three accused persons Umesh, Nitin and Rajesh fled towards 25' Road. Further, PW-3 along with others, took the deceased Jatinder to GTB Hospital in a TSR, where he was declared dead. On hearing of his brother's death, PW-3 lost consciousness and, upon regaining it after some time, found the SHO of Police Station Gokalpuri, along with other police personnel including the ACP, present at the hospital. They thereafter accompanied PW-3 to the place of occurrence and inspected the scene. Thereafter, the police collected blood samples, plain earth, and blood-stained earth from the spot where the deceased Jatinder had fallen.



Thereafter, PW-3's statement was recorded by the police at that time. PW-3 further stated that about four days after the incident, he went to the Police Station Gokal Puri to ascertain the progress of the investigation and to enquire about the arrest of the offenders. At that time, he saw the accused persons Umesh and Nitin, present at the police station. On seeing them, PW-3 informed the police that they were the same persons who, along with their third associate accused Rajesh, had murdered the deceased Jatinder. PW-3 then inquired from the police about the arrest of the third accused Rajesh, and was informed that efforts were being made to apprehend him shortly. Thereafter, PW-3 stated that at that time, the police prepared the personal search memos of accused persons Umesh and Nitin, which were signed by PW-3. He also identified the same in court as Ex. PW-3/A and Ex. PW-3/B respectively, bearing his signatures at point A. PW-3 further deposed that two thereafter, he again visited the Police Station Gokal Puri to enquire about the arrest of the third accused Rajesh. The police informed him that they had received secret information regarding the presence of the accused Rajesh at his residence and asked whether PW-3 would be able to identify him, to which PW-3 replied in the affirmative. Thereafter, the police took PW-3 to Gali No.6, House No. X-8/27 Brahm Puri, where, upon seeing the accused Rajesh Tewari, PW-3 identified him as the third assailant involved in the murder of the deceased Jatinder. On his identification, the said accused Rajesh Tewari was arrested. The Police prepared the personal search memo of accused Rajesh Tewari at that time, which was duly signed by PW-3 and is exhibited as Ex. PW-3/C bearing his signature at point A. PW-3 further stated that he could identify the wearing apparel of the deceased Jatinder if shown to him. At this stage, one sealed parcel bearing the seal of DD CFSL Biology, Calcutta (Parcel No.4), was produced before



the Court. On opening the same, another sealed parcel with the seal of DD CFSL, Calcutta, was taken out, which, when opened, contained one pant (Ex. P-5) with a leather belt (Ex. P-6), one shirt (Ex. P-7), one underwear (Ex. P-8), one handkerchief (Ex. P-9), and one baniyan (Ex. P-10). On seeing these articles, PW-3 identified them as the same clothes that his brother the deceased Jatinder was wearing at the time of the incident. PW-3 further stated that while removing the deceased Jatinder to the Hospital, PW-3's own clothes had become stained with blood, and he was capable of identifying them. At this stage, one sealed pullanda bearing the seal of ASJ with the details of the present was produced and upon opening it, two pants and two shirts were taken out. PW-3 identified his pant and shirt as Ex. P-3 and Ex. P-4, respectively, and on seeing the remaining pant and T-shirt, he stated that they belonged to PW-2 which were marked as Ex. P-1 and Ex. P-2.

16. Ramesh Kumar, PW-12 deposed that on 23.10.1998 he was employed as a repairer of electronic goods at the shop M/s Prikshat Electronics, owned by PW-3. The said shop was situated in front of Hanuman Mandir at Shiv Vihar, T-Point, Delhi. At about 11 or 11:30 AM, while PW-12 was returning from Johri Pur, he met two persons, namely Babu (DW-1) and Pappu (DW-2), who informed him that a quarrel was taking place between some persons and the deceased Jatinder, the younger brother of his employer PW-3, near Kachhi Pulia, Johri Pur. On receiving this information, PW-12 immediately went to the said spot and found that a scuffle was going on between the deceased Jatinder and about three to four persons. PW-12 also noticed that the deceased Jatinder's motorcycle was lying nearby. PW-12 thereafter proceeded to the shop of PW-3 to inform him about the incident, however, the shop was found to be closed. He then went to 33' Foot Road and



informed PW-2 about the occurrence. PW-2 instructed him to convey the information to PW-3. In compliance, PW-12 went to PW-3's residence and apprised him of the incident. PW-12 further stated that he is unable to identify the persons who were quarrelling with the deceased Jatinder, as the incident occurred about two years ago and he had not seen them clearly at that time.

17. A plain reading of the depositions of PW1, PW-2, PW-3 and PW-12 indicates that the Appellants herein were responsible for the murder of the deceased Jatinder. The consistent version emerging from the testimonies of these witnesses is that Appellant Nos. 1 and 2 had caught hold of the deceased Jatinder, while Appellant No.3 inflicted knife blows upon him, resulting in his death. The sequence of events as narrated by the aforesaid witnesses is coherent, mutually consistent and corroborative of each other in material particulars, thereby lending credence to the prosecution case and leaving no reasonable doubt to the involvement of the Appellants herein in the commission of the offence.

18. At this juncture, it is apposite to also consider the evidence led by the accused persons Umesh and Nitin.

19. Pappu Rawat, DW-1 deposed that on 23.10.1998, he was residing at 168A, Shiv Vihar, near Murgi Farm under P.S. Gokalpuri. On that morning, around 10 AM, DW-1 along with Babu Lal (DW-2), had gone to collect his tape-recorder, which had been given for repair to Prikshat Electronics. However, the shop was closed that day. While returning home via Johri Pur Road, DW-1 noticed a quarrel taking place near the house of DW-2, where about 5-6 individuals were assaulting the deceased Jatinder, the younger brother of the owner of Prikshat Electronics. He further stated that those persons were shouting at the deceased Jatinder, accusing him of having



dared to teach their sister. After witnessing this, DW-1 and DW-2 left the spot. Subsequently, when they reached near Kacchi Pulia, they met PW-12, who worked as a servant at Prikshat Electronics. They informed him that the deceased Jatinder was being beaten by some men and advised him to inform the deceased Jatinder's family. While crossing the Pulia, DW-1 stated that the same 5-6 individuals came running behind him and DW-2, followed by the deceased Jatinder, who was asking them to stop. In response, two among those men inflicted knife blows to the deceased Jatinder causing him to collapse. A crowd began to gather, but no one came forward to assist. Consequently, DW-1 and DW-3 lifted the deceased Jatinder and transported him in a TSR to the Prikshat Electronics shop. Soon after, PW-3 arrived and took the deceased Jatinder to the Hospital. DW-1 further stated that thereafter, he and DW-2 returned to their respective homes.

20. Babu Lal, DW-2, deposed that on 23.10.1998, he was residing at 168, Shiv Vihar, near Murgi Farm under P.S. Gokalpuri. He stated that on that day, he, along with DW-1, went to Prikshat Electronics to collect a tape recorder they had given for repair. However, the shop was found closed. While returning via Johri Pur Road near Bublhas, they saw 4-5 boys assaulting a person. Later, he realised that the person being beaten was the deceased Jatinder, the younger brother of the owner of Prikshat Electronics. DW-2 further stated that the said boys were abusing the deceased Jatinder, mentioning something about their sister. Thereafter, DW-2 and DW-1 left the spot, and upon reaching near Kachhi Pulia, they met PW-12, who worked as a servant for the deceased Jatinder. They informed PW-12 about the quarrel and asked him to convey the information to the deceased Jatinder's family. DW-2 stated that while he and DW-1 were walking ahead, the same 4-5 boys were moving in front of them, followed by the deceased



Jatinder, who asked them to stop. In response, 2-3 of those boys turned around and attacked the deceased Jatinder with knives before fleeing the scene. Subsequently, a crowd gathered at the spot. DW-1 and DW-2 then placed the deceased Jatinder in a cycle-rickshaw and took him to his shop. Thereafter, the deceased Jatinder's elder brother arrived and took him to the Hospital. DW-2 concluded by stating that he and DW-1 then returned home.

21. Upon careful examination of the depositions of DW-1 and DW-2, this Court finds no reason to place confidence in their testimonies. The statements of both these defence witnesses appear to be a verbatim reproduction of each other, containing identical sequences of events, expressions and details, thereby indicating that they are not based on independent recollection of facts but are rather concocted with the intention to mislead the Court. Such mechanical uniformity, without any natural variation sequence or emphasis renders their testimonies artificial and untrustworthy.

22. Moreover, the defence has failed to explain why these witnesses, if indeed present at the scene, did not report the matter to the police at the earliest opportunity. Their conduct in merely observing a fatal assault, leaving the scene, and later claiming to have taken the deceased to the shop – without informing any authority, further diminishes the credibility of their version.

23. The Post Mortem Report i.e. Ex. PW-4/A indicates the following antemortem injuries: (i) incised stab wound: 4cm x 0.2cm placed obliquely over left side front of chest, placed 7cm below left nipple and 10cm to the left of midline. It has clean cut margins and one angle of the wound is more acute than the other and the depth of the wound is 16cm; (ii) incised stab wound: 2cm x 0.2cm present vertically over left side front of chest placed



11cm to the left midline and 4cm below left nipple. It is spindle shaped with clean cut margins and the depth of the wound is 15cm; (iii) red abrasion: 2cm x 0.2cm present over right side of face placed 4cm in front of right ear; and (iv) red abrasion 1.5cm x 0.2cm present over right side of face placed 2cm in front of right ear.

24. The said Post Mortem Report opines that the cause of death was due to haemorrhagic shock due to interior stab injuries to the heart produced by a sharp edged weapon. Injuries No.1 and 2 were sufficient to cause death in the ordinary course of nature, both independently and collectively with the other injuries.

25. In the opinion of this Court, the prosecution has succeeded in proving the case beyond a reasonable doubt and therefore, this Court does not find any infirmity in the Order of Conviction passed by the Trial Court.

26. Therefore, the conviction is upheld. The Appellants herein are directed to surrender forthwith, and if the Appellants do not surrender, the State is directed to take steps to ensure that the Appellants are taken into custody to serve the remaining part of their sentence. The bail bonds are cancelled.

27. Let a copy of this judgment be transmitted to the concerned Jail Superintendent for compliance.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

NOVEMBER 17, 2025

Prateek/JR