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

+ **CRL.A. 969/2002**

STATE

.....Appellant

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

versus

RAM SWAROOP & ORS.

.....Respondents

Through: **Ms. Anu Narula (DHCLSC)**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

VIMAL KUMAR YADAV, J.

1. Aggrieved by the judgment dated 01/02/2000 through which the respondents /accused were acquitted, the State came in appeal assailing the said judgment.

2. Concisely, the indispensable facts are that one Raju (PW-2) was taken to the Safdarjung hospital by H.C. Goverdhan Singh (PW-4) along with two other public persons in an injured condition. The statement given by injured Raju paved the way for registration of the FIR at Police Station R.K. Puram. All four respondents were specifically named in the FIR by the victim Raju PW-2, which led to their arrest. The investigating officer, on completion of investigation,



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which included recording of statements, collection of MLC preparation of site plan etc., filed the charge sheet under Section 307/34 IPC. All the four accused persons were formally charged for the offence punishable under Section 307 read with Section 34 IPC on 30.11.1998. Nine witnesses were examined including three vital witnesses who can be termed as eye witnesses to the incident and thereafter the evidence so coming on record was put to the accused persons and their versions were recorded under Section 313 Cr.P.C. Since the respondents/accused did not opt to lead evidence, the matter was argued and on the conclusion of the arguments, the impugned judgment was passed acquitting all the four respondents herein i.e. Ram Swaroop, Ramesh, Gulab and Suresh. These respondents were finally acquitted on the ground that the testimony of witnesses coming on record was found contradictory, full of inconsistencies and improvements, therefore, not reliable. The judgement of acquittal dated 01.02.2000 did not go down well with the prosecution and hence the instant appeal was filed.

3. It is contended on behalf of the appellant/State that the learned Trial Court has given undue importance to the inconsistencies and so called improvements which are trivial and insignificant whereas ignored the fact that the testimony of an injured person/victim cannot be brushed aside easily.

4. The learned Trial Court has given excessive importance to the mix-up qua the names of the respondents whereas the identity was otherwise established and has ignored the fact that the victim Raju was



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very well known to the respondents for about the last five-six years prior to the incident and so were the accused persons to Raju. As such, there was no confusion regarding the identity of the persons involved, therefore, the fact that the other two witnesses HC Goverdhan Singh and Rakesh could not specifically point out the names of the respondents was immaterial as these two too identified the respondents /accused persons by the most important identification feature, the face.

5. The testimonies of all the three vital witnesses including the injured, not only compliment and supplement but also corroborate each other's testimony. The learned Trial Court has not considered this aspect and was swayed by trivial instances of the so called contradictions, omissions or improvements featuring in testimony of the witnesses.

6. As such, it is submitted that the impugned judgment is liable to be set aside and the respondents are required to be held responsible and punished for the offences with which they were charged and tried.

7. While contesting the contentions of the Appellant/State it is asserted on behalf of the Respondents Nos. 1, 3 and 4, that the witnesses could not correctly identify and pin point the respondents, which reflects that they were not present there at the spot and as such not the eye witnesses. There is no reference of the earlier incident which took place a day before the actual instance, i.e., 09.07.1998 in the testimonies of the Goverdhan Singh PW-4 and Rajesh PW-3. There is no reference of the compromise about the earlier incident which form part of the statement of the victim Raju Ex.PW2/A.



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8. The said inconsistencies/improvements /contradictions as put forth and specified by the learned counsel for the Respondent No.2 together with other contentions have been summed up as follows as per the written submissions:

- ***While*** PW-2/Raju says quarrel on 9.7.98 took place between Rakesh (PW3) and Ramswaroop and Gulab Singh

But Pw3/Rakesh says quarrel was between Raju (PW2) and accused Persons.

- ***While*** PW-2/Raju deposes he was given Knife blow by accused Gulab Singh.

But PW-3/Rakesh says it was by accused Ram Swaroop

- HC Govardhan Das/PW4 who claims to be an eyewitness could not correctly identify accused Suresh and Ramesh.

- Nonetheless, irrespective of faulty identification, at worst, his case against the Present Accused/ Ramesh is that - ..”Suresh and Ramesh were surrounding the victim... then... all of a sudden Gulab Singh came there with Knife and gave a Knife blow to Raju.

Therefore, where is the common intention that can be attributed to Ramesh?

- Even though as per PW4/HC Goverdhan Das, he took the injured to hospital in a 3 wheeler along with 2 more Public witnesses, but admittedly the said 2 Public witnesses have not been examined.

- Even though in Rukka Statement based on the Statement of



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injured / Raju / PW2, he says that the tempo driver Rambir and Palledar Rakesh removed him to hospital, but conspicuously Rambir is not a witness and Rakesh (presuming he is the same Rakesh PW3) neither says he took the Palledar of PW2 nor says he removed PW2 to hospital.

- Claim of the Prosecution that the Shirt of victim is Ex. PW1 is not corroborated. Neither PW1 says his shirt was seized nor is the same shown to PW2. There is no scientific evidence to connect any shirt to the offence.*
- Similarly the claim of PW2 that the blood had fallen on the spot and scooter, has not been corroborated by PW 9/IO, who has admittedly not seized any blood.*
- Neither any of the 15/20 Public persons who allegedly gathered at the spot nor any police persons when the injured allegedly brought to spot have been examined.*
- In fact the entire testimony of PW2/injured is beyond his Rukka statement/Ex2/A. Neither the genesis of dispute on 9.7.98 or lodging of complaint on 9.7.98 or alleged compromise or bringing police officials on the spot or public persons having gathered etc are missing in this Ex. P2/A.*

Therefore, as per Section 155 of Indian Evidence Act (corresponding Section 158 of Bharatiya Sakshya Adhiniyam), the credibility of this witness is not there.

- Admittedly PW3/Rakesh could not clearly and unambiguously identify accused/Respondent Ramesh and interalia deposed that*



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he was not aware of the face of accused.

- *Admittedly alleged weapon/knife has been recovered*
- *No testimony of three wheeler auto driver recorded.*
- *Injury is only simple.*

9. Learned counsel for the respondent no.2 who has further placed reliance on the following judgment to strengthen her contentions:

- Naresh @ Nehru v/s State of Haryana (Criminal Appeal No. 1786/2023) With Irshad and Another V/s State of Haryana (Criminal Appeal Nos. 1787-1788/2023)
- Rai Sandeep @ Deep v/s State of NCT Delhi (2012) 8 SCC 21
- Chandrappa & Ors v/s State of Karnataka (2007) 4 SCC 415

10. The contentions of remaining three respondents also revolve around the aforesaid aspects, where they too as stated herein before question the mix up in the identification, procedural lapses in investigation and the testimony of the witnesses being unreliable.

11. In view of these circumstances, it is submitted on behalf of the Respondents in unison that the impugned judgment does not require any interference.

12. To establish a case under Section 307 IPC. It is the intention or knowledge or the circumstances in which injury was caused being the decisive factor holds the key. Section 307 IPC clearly reflects that the injury caused need neither be grievous or dangerous. An injury is enough, rather the requisite intention or knowledge or the



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circumstances in which an overt act is done, the injury is caused coupled with the fact that if the victim had died because the overt act, the accused would be guilty of murder is sufficient to constitute the offence under Section 307 IPC. Verily, even injury is not essential to be there as long as intention or knowledge can be attributed to the act done by the accused and the circumstances contemplated in Section 307 IPC. In case of injury the punishment stands enhanced, further clarifying the fact that, injury in itself is not mandatory to invoke under Section 307 IPC, as long as the overt act can be assigned to or may be taken as an outcome of a particular intention or knowledge. In this context reference can be made to the observations made by the Supreme Court in ***R. Prakash Vs. State of Karnataka (2004) 9 SCC 27***, which reads as follows:

“9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

13. The two most important grounds which weighed and tilted the



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scale in favour of the accused/Respondents were the inconsistencies, discrepancies and improvements in the testimonies of the vital witnesses, coupled with certain lapses in the investigation together with the aspect of identification of the accused persons by their names and faces. However, the learned Trial Court seems to have been swayed by these aspects and in the process ignored that the testimony of the injured person/victim, which stands on better footing and cannot and should not be ignored or weighed down lightly unless there are cogent reasons to do so. In this context, reference can be made to the observation made in the case titled as ***Pritam Chauhan Vs. State (Govt. of NCT of Delhi) 2013 V AD (CR.) (DHC) 268***, wherein while relying upon various judgments on the subject reaffirmed that the testimony of an injured witness is accorded special status in law and no good grounds exist to disbelieve the injured. Para 5 of the judgment goes as under:

“In the case of ‘Abdul Sayed Vs. State of Madhya Pradesh’, (2010) 10 SCC 259, the Supreme Court held:

The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh,



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Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]”

14. Reference in this context can also be made to another judgment in ***State of U.P. V. Naresh and Ors. 2011 AD (SC) 20*** wherein it was observed in the following words:

“The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicit a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there were grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

15. The discrepancies/contradictions/improvements which are not material cannot discredit the testimony of an injured witness as was observed in the case titled as ***Vinod Tyagi & Ors. Vs. State 2013 IV AD (Delhi) 145.***

16. Human memory has its own peculiar limitations of retaining, recapitulating, narrating and reiterating etc. It varies from person to person, event to event and from time to time etc. A person may very meticulously and vividly remember certain events, occurrences,



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persons or acts depending upon his own capacity, the importance attached to the persons, events, time, places, etc. Those very aspects may be too trivial for another person and therefore, little or no memory would be there. It is common that narration of events, etc. varies not only from person to person but the same person may not be able to recall and reiterate a particular thing/event, person/incident with the same precision and chronological order as was the first or the previous narrative was. This does not mean that the person was not privy to the event narrated, as long as the essential aspect remains intact and alive. A slip here or there or mix up about certain aspects would not rob the strength of the narration as long as the inference and impact of the narrative remains unadulterated and unaltered.

17. The discrepancies/inconsistencies etc. are required to be evaluated in the real world in real life situations, where minor and trivial ones are to be ignored. A mix up in the face and name, some minor mix up in chronological narrative, time gap, exact timings which document prepared, where and signed by whom first, so on and so forth are not potent enough to uproot the testimony of a witness, if the soul of the narrative remains intact. In this context reference can be made to the judgment ***State of Rajasthan Vs. Smt. Kalki & Anr*** reported in **1981 SCC (2) 752**, it was held as under:

“In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies



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are those which are not normal, and not expected of a normal person.”

In Narayan Chetanram Chaudhary & Anr Vs. State of Maharashtra (Crl.A. 25-26/2000), the Apex Court held as under:

“Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW.2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

18. When the testimonies of the witnesses in the instant case are tested on the above parameters, then the contentions of the Appellant/State start gaining strength. The learned Trial Court has not



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dealt with the aspect of credibility of the injured witness and has not given any reason as to why statement of the Raju PW-2 has been ignored and why precedence is given to the testimonies of HC Goverdhan Singh PW-4 and Rakesh PW-3, who too, incidentally, support the case of the prosecution. It is correct that there are certain slips and misses in their narrative but there is nothing which may cloud, either the date, time, place of incident or the incident itself or for that matter the presence of the accused/Respondents at the spot at the time of incident.

19. In view of the aforesaid facts, the judgment relied upon by learned counsel for the respondent in case titled as Naresh @ Nehru v/s State of Haryana (Criminal Appeal No. 1786/2023) has no bearing as such on the facts of the instant case, notwithstanding the fact that there cannot be any quarrel with the proposition laid down in the aforesaid judgment. Indeed, the testimony of the witnesses should be of impeccable character which in the instant case is there, if the trivial discrepancies are ignored.

20. Another contention raised on behalf of the respondent to resist the claim of the appellant, is the applicability of the Section 34 of the IPC. It is submitted that there was no prior meeting of minds, nor any plan, as can be inferred from the facts itself. Whether or not all the respondents were involved? The narrative reflects that what happened was in the spur of a moment, albeit, the genesis may be there in verbal duel which took place a day before the incident i.e. on 09.07.1998.

21. Learned Counsel for the respondents has raised certain aspects



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in an attempt to puncture the case of the appellant such as non-examination of two public persons, who accompanied the injured and HC Goverdhan Singh while taking the victim to the hospital.

Another aspect, which has been raised revolves around the shirt of the victim Raju which, according to the learned counsel for the respondents, should have been seized by the Investigating Officer since it would have corroborated or otherwise the factum of injury on the person of the victim. The shirt must be blood stained and there must be a cut through which the knife pierced through resulting into a stab wound.

Another aspect put forth on behalf of the respondents is the defective site plan as it does not reflect as to where the blood fell post stabbing of the victim, together with non recovery of the weapon of offence.

22. All these aforesaid aspects are indicative of the lapses on the part of the Investigating Officer, if at all these steps were to be taken depending upon the circumstances of the case. Two factors are vital i.e. the importance and gravity of these defects in the investigation, its impact and how far the victim can be blamed for these lapses. If the victim is not to be blamed, then why it should be read in favour of the accused/respondents. There is sufficient evidence vis-a-vis the injury to the victim. Even if the blood stained shirt was not seized, the factum of injury is not going to be upset. Similarly, failure to seize the sample of the blood stained soil or earth control, again is not going to affect the case of the prosecution. The knife could not be recovered and as



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has been deposed by the Investigating Officer that an effort was made but, it could not be located.

23. However, the defective investigation as narrated above, is not and should not be given undue importance. It has been held in various pronouncements that a victim and a case should not suffer on account of the defective investigation as long as the case is otherwise credible. In this context, reference can be made to the judgment in *C. Muniappan Vs. State of T.N, (2010) 9 SCC 567*, where the Supreme Court held that it was a case of highly defective investigation but this was not the-end of the matter, for if primacy was given to omissions and lapses by perfunctory investigation, faith and confidence of the people in criminal justice administration would erode. In such cases, there is a legal obligation on the part of the Courts to examine prosecution evidence de hors such lapses, to find out whether evidence is reliable or not, and to what extent it is reliable and whether the lapses had affected the object of finding the truth. Reference was made to several decisions in support of the said ratio. In *Ganga Singh Vs. State of M.P., (2013) 7 SCC 278*, it was held that Courts cannot acquit an accused on the ground that there were some defects in the investigation, unless such defects cast reasonable doubt on the prosecution case. Similar findings were recorded (in *Sunil Kundu Vs. State of Jharkhand, (2013) 4 SCC422*, holding that lapses or irregularities in investigation would not be material if the evidence produced on record, despite the said lapses or irregularities, does not go to the root of the matter and dislodges the substratum of the



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prosecution case. In *Surajit Sarkar versus State of West Bengal* (2013)2 SCC 146, it was held that shoddy or defective investigation could, in a given case, result in acquittal but this would depend upon the defects. If the investigation results in the real culprit not being identified, then acquittal should follow. Similarly, if there are glaring loopholes in the investigation, the defence can exploit the lacunae. The court is to ensure that an innocent person is not put behind bar on trumped-up charges.

Incidentally, the case of the appellant/prosecution does not suffer from any such defect or irregularity, which may have the potential to dislodge it. As such, the respondents cannot derive any advantage out of the above referred three aspects.

24. It is emphasised further that even if there was some sort of anger amongst the respondents, it cannot be inferred that all of them shared a common intention. They may have for the sake of arguments, a grudge against the victim and wanted to teach him a lesson but then, to what extent they intended to harm him is another aspect. Intention is an abstract thing and has to be inferred from various factors which include the facts and events before, at the time of incident as well as post incident conduct and events. This may include the oral utterances, the gestures, the weapon used, the portion of the body targeted, the number of blows given etc.

25. To elucidate the scope and applicability of Section 34 IPC, reference may be made to the decision of the Apex Court in ***Raju Pandurang Mahale v. State of Maharashtra, (2004) 4 SCC 371,***



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wherein the principles of joint liability and the evidentiary rule governing common intention were comprehensively explained. The relevant extract is reproduced below for clarity:

16. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar v. State of Punjab [(1977) 1 SCC 746 : 1977 SCC (Cri) 177 : AIR 1977 SC 109] the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may



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be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

.....For applying Section 34 it is not necessary to show some overt act on the part of the accused.”

26. Further elucidation on the doctrinal foundation of “common intention” under Section 34 IPC was provided by the Supreme Court in *Vasant alias Girish Akbarasab Sanavale and Another v. State of Karnataka*, 2025 SCC OnLine SC 337, where the Court clarified that the intention must be attributable to each member of the group, and presence coupled with a facilitating role constitutes participation. The judgment distinguished between active participation and mere presence, emphasizing the individual mental element within collective liability.

27. In the instant case, there appears to be some sort of common intention but then to state that all of them shared the very same intention which Gulab had in his mind, is difficult to infer. A sort of scuffle was there in which the victim was incapacitated by the accused/respondents by holding him in such a manner that his movement was restricted to the extent that Gulab in the meantime, came up with the knife used for cutting vegetables etc. and stabbed the victim Raju. It is pertinent to note that the place of incident is a Subzi Mandi and all those involved in the incident have something to do with Subzi Mandi. Such a knife can easily be there with them, therefore, if that is used, although no recovery has been effected, it still



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shows that there was no preparation or premeditation rather it was a sudden act in the spur of moment. Whether this act of the respondent /accused Gulab can be attributed to all the co-accused is a debatable point. They may all have something in their mind against the victim Raju but then, all of them having the intention to cause his death or such an injury which could have resulted in his death, is far from the reality.

28. An incident had taken place the day before, i.e. 09.07.1998, and on that day nothing of the sort took place, except a verbal spat or may be something more on the borders of physical act, whereas the cause of the fight was fresh and recent. If nothing of that sort happened on that day i.e. 09.07.1998, then where was the occasion to take up the issue the very next day, that too at the scale at which it has taken place? All these factors indicate that some sort of flare-up must have happened there, on the day of incident too and Gulab probably could not contain his feelings and stabbed the victim. The remaining accused may not have had that intention or, one or two of them may have had a commonality developing at that moment, inasmuch the remaining accused persons i.e, Ram Swaroop, Suresh and Ramesh, who were holding the victim could have let him off or any of them let him off, if they found Gulab coming with a knife. It seems that one of them might have loosened the grip which gave the victim Raju an opportunity to move a bit, as deposed by him. This reflects a mixed reaction of the Respondents holding Raju that one or two of them wanted to avoid the incident. However, none of them, apparently, did anything to save the



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victim or desist or prevent or stop the assailant Gulab, encompasses all of them in to the fold of common intention, thus, makes them liable too to the act of stabbing done by Gulab.

29. In view of the aforesaid discussion, it is evident that injury was caused to the victim Raju by the accused/respondent Gulab and in this process the co-accused were facilitators. Apart from the testimony of the injured which stands on a higher footing, two other witnesses, one a public witness and another a police witness are there, who deposed about the core of the prosecution's case and fortified it. So far as the incident is concerned, the corroborative medical evidence is there about the injury by a sharp weapon which brings in the role of a knife, though not recovered. Learned Trial Court has recorded the findings in favour of the respondents, while relying upon the discrepancies and inconsistencies in the deposition of the witnesses, which are, apparently, trivial having no potential to upset the case of the prosecution. Whereas Id. Trial Court failed to and has not considered the testimony of the victim in its right perspective therefore, the impugned judgment is set aside and the appeal is allowed.

30. Having considered the entire gamut of facts and circumstances, especially the requisite intention/knowledge contemplated under Section 307 IPC being amiss, the accused, therefore, cannot be held responsible for it, however, the act of Gulab, assisted by other three respondents make all of them responsible for causing injury to victim Raju, therefore, all respondents/accused persons are held guilty under Section 324 IPC read with Section 34 IPC.



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31. Considering the fact that the incident is of the year 1998 and the appeal is pending since 2002 and that the respondents have spent certain period in custody during the trial, which in the totality of circumstances appear to be sufficient, therefore, they are sentenced to undergo the period already undergone by them.

32. Appeal stands disposed of accordingly.

SUBRAMONIUM PRASAD, J.

VIMAL KUMAR YADAV, J.

OCTOBER 31, 2025*/ms/ps/neha/akc*