



2026:DHC:2052-DB



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

Reserved on: 28.01.2026

Pronounced on: 12.03.2026

+ **CRL.A. 459/2024 & CRL.M.(BAIL) 2247/2025**

RASHID@BABBAN

.....Appellant

Through: Ms. Mallika Parmar, Adv.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP &
Mr. Aman Usman, APP
with ACP Mohinder Singh,
PS Vivek Vihar, SI
Shubham, PS Gandhi Nagar

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The instant appeal has been preferred by the appellant, challenging the Order dated 30.10.2023 passed by the learned Additional Sessions Judge-02, (East) Karkardooma Courts, Delhi (hereinafter referred to as 'Trial Court') in S.C. No. 417/2017 arising out of FIR No. 109/2017 registered at Police Station Gandhi Nagar, New Delhi, *vide* which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 ('IPC').

2. The appellant further challenges the Order on Sentence dated



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21.03.2024 passed by the learned Trial Court, sentencing him to undergo rigorous imprisonment for life with fine of Rs.1,000/- for the said offence. In case of default of payment of fine, the accused was to further undergo simple imprisonment for three months.

FACTS OF THE CASE

3. Briefly stated, it is the case of the prosecution that on 24.03.2017, on the basis of the statement of PW-21/*Chand Mohd.*, FIR No. 109/2017 was registered at the Police Station, Gandhi Nagar, stating that on 24.03.2017, at around 2:30-2:45 P.M., the nephew of the PW-21/*Chand Mohd.*, that is, the deceased-Junaid came running to the shop of PW-21/*Chand Mohd.*, picked up a stick lying in the shop and started running back. PW-21/*Chand Mohd.* caught hold of him. However, the appellant came running from the main road with a meat cutting knife and attacked the deceased on his left side below his stomach and ran away. PW-21/*Chand Mohd.* stated that PW-5/*Nasim* tried to catch the accused, but he escaped. Since the deceased was bleeding heavily, he was taken to the hospital in a TSR by the brother of PW-21/*Chand Mohd.*, that is, PW-12/*Yamin*, along with neighbours, that is, PW-2/*Mukhtar* and PW-5/*Nasim*. PW-21/*Chand Mohd.* later learnt that the deceased has been taken to Chacha Nehru Hospital where the doctor had declared him dead. PW-21/*Chand Mohd.* also reached the said hospital and stated to the police that the appellant had murdered the deceased.

4. It is the case of the prosecution that on the same day, the accused was arrested from his home and the alleged weapon of



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offence, that is, the knife, was recovered at his instance from the shop of PW-1/Mr. Shamim Ahmed.

5. The Post Mortem report of the deceased noticed an injury measuring 8x3.5 cm present at left inguinal region, 7 cm from midline (public symphysis) and 7.5 cm below and medial to anterior superior iliac spine. The depth of the wound was recorded as 7.1 cm. The cause of death was recorded as haemorrhage and shock due to the injury in question, which was found to be sufficient to cause death in the ordinary course of nature.

6. Upon completion of investigation, a chargesheet was filed on 12.06.2017.

7. The learned Trial Court, *vide* order dated 21.09.2017, framed the following charge against the appellant:

“That on 24.03.2017 between 2:30 pm to 2:45pm, on the road in front of Masjid and Madrasa Anjuman Islamia, near Saleem Ahmad Muga & Fish Shop, Delhi within the jurisdiction of PS New Gandhi Nagar, you intentionally committed the murder of Junaid, son with a meat cutting chopper and thereby you committed an offence punishable u/s.302 IPC.”

8. The appellant pleaded ‘not guilty’ before the learned Trial Court.

9. In order to prove its case, the prosecution examined around 40 witnesses, including the purported eye-witnesses, public witnesses, as well as the concerned public officials.



10. The learned Trial Court, in its impugned order of conviction, rightly framed the facts that were required to be proved by the prosecution, as under:

“51. It is the assessment of the court that in order to prove the charge under section 302 IPC against the accused, the prosecution was required to prove the following facts in issue.

(i) Presence of the accused with the deceased at the time of incident or immediately prior to the time of the incident.

(ii) Identification of the accused and manner of commission of the incident by the accused viz the act of intentional stabbing of the deceased.

(iii) Proof of the use of the alleged weapon of offence viz the knife Ex.PW21/ Article 01 by the accused.

(iv) Recovery of the weapon of offence at the behest of the accused.

(v) The cause of death being commensurate with the manner of the incident alleged by the prosecution.”

11. Relying on the testimony of PW-6/*Mohd. Amir* and PW-7/*Swalin Ahmed*, the learned Trial Court held that they proved the presence of the deceased with the appellant immediately prior to the incident. Further, placing extensive reliance on the statement of PW-21/*Chand Mohd.*, uncle of the deceased and the alleged eye-witness, the learned Trial Court found that with his statement, when read with the statement of PW-6/ *Mohd. Amir* and PW-7/*Mohd. Amir*, the prosecution has been able to establish that it was the appellant who had stabbed the deceased. Relying on the statements of PW-28/*Const. Nikhil*, PW-34/*ASI Sahdev*, and PW-35/*Inspector Mahender Singh*, the



learned Trial Court held that the prosecution had been able to prove that the knife/the weapon of offence had been recovered at the behest of the appellant. The learned Trial Court found that as the injury was commensurate with the manner of the incident alleged by the prosecution, the appellant was guilty of offence under Section 302 of the IPC. Basis the said findings, the learned Trial Court in summation opined:

“82. The court finds the prosecution to have proved all facts in issue on the standard of proof beyond reasonable doubt. It stands proved that the accused was present with the deceased at the time of incident and also immediately prior to the occurrence of the incident. It has also been established that it was accused Rashid who committed the incident in allegation viz the fatal stabbing of deceased Junaid by using a knife at about 2:30 pm to 2:45 pm on 24.03.2017 in front of the mosque at Gandhi Nagar. The prosecution has further succeeded in proving beyond any measure of doubt that the knife Ex.PW21/ Article 01 was used by the accused in commission of the offence and that the same knife was recovered at his instance. Lastly, the cause of death is in consonance with the charge of a stab wound having resulted in the death of the deceased.

83. The charge under section 302 IPC is contingent upon proof of the ingredients of 'Murder' as defined under section 300 IPC. Since the weapon used in the offence was deadly in nature, being a chhura (knife) and the blow was inflicted at a vulnerable and critical part of the body of the deceased viz groin, the court records the determination that the act of the accused in stabbing the deceased was with the intention of causing death. The accused is held guilty under section 302 IPC read with clause Firstly of section 300 IPC.



84. Also, the postmortem report having recorded that the injury upon the deceased was sufficient to cause death in the ordinary course of nature, the act of the accused in causing the culpable homicide of the deceased constitutes the offence of 'Murder' as defined under clause Thirdly of section 300 IPC. The accused is equally found guilty under section 302 IPC read with clause Thirdly of section 300 IPC.

85. The prosecution has succeeded in proving the charge under section 302 IPC against the accused.

86. Accused Rashid is convicted under section 302 IPC.”

12. Thereafter, the Order on Sentence dated 21.03.2024 was passed by the learned Trial Court, imposing the sentences as noted hereinabove.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

13. Ms. Mallika Parmar, learned counsel for the appellant, submits that the learned Trial Court has erred by adopting a pick and choose approach towards the evidence, while ignoring various material contradictions and an overall absence of incriminating evidence against the appellant. She submits that the testimony of PW-21/*Chand Mohd.*, the alleged eye witness, is highly unreliable. She submits that his conduct is unnatural and his very presence at the spot at the time of incident is doubtful. Additionally, his whereabouts in the aftermath of the incident are also unaccounted for and not corroborated by any other witness.



14. She highlights that PW-21/*Chand Mohd.* stated in his testimony that after the appellant had stabbed the deceased, instead of taking the deceased to hospital, he went to his brother Saleem's house to inform him; then went home; and was later informed about the deceased's death. He did not inform the police about the incident and rather the police approached him later on. This conduct, even if assumed to be true, is unnatural as he did not attempt to aid the deceased in any manner nor did he call for help. His testimony also contradicts the statements made by PW-9/*Salim*, PW-12/*Yamin* and PW-10/*Zuhaib*, all of whom have stated that it was PW-10/*Zuhaib* who came to the house and informed both PW-9/*Salim* and PW-12/*Yamin* about the incident.

15. Further contradiction exists as to where the statement of the PW-21/*Chand Mohd.* was recorded; while in his testimony he deposed that he was alone in his shop when the police recorded his statement, as per the FIR, his statement was recorded at the hospital.

16. She submits that PW-21/*Chand Mohd.* also denied accompanying the police to the house of the accused, which contradicts the statements made by police witnesses, PW-34/*ASI Sahdev* and PW-35/*Inspector Mahender Singh*.

17. She further highlights that PW-21/*Chand Mohd.* used to sell biryani on a rehri/cart. As per PW-9/*Salim*, PW-21/*Chand Mohd.* used to sell biryani on the rehri at the said spot only "*in the morning time and in the evening time he used to sit on the shop of fish*". As the incident occurred in the afternoon, his presence at the spot is doubtful. Multiple witnesses including PW-1/*Shamim*, PW-2/*Mukhtar* and PW-



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9/Salim stated that they did not see PW-21/Chand Mohd. at the spot. PW-20/ASI Sonu has deposed that while preparing the site plan, PW-21/Chand Mohd. did not tell him the location from where he saw the incident.

18. She submits that barring PW-21/Chand Mohd., all key and alleged eye-witnesses turned hostile. She highlights that, PW-5/Nasim, projected as an eyewitness who allegedly saw the accused stabbing the deceased, turned hostile and his testimony directly conflicts with that of PW-21/Chand Mohd. PW-6/Amir and PW-7/Swalin, the last scene witnesses, denied any quarrel or chase and stated that the appellant and deceased were seen in a relaxed manner joking with each other. PW-1/Shamim, turned hostile on the alleged recovery of the knife from his shop.

19. She highlights that there are also various shortfalls in the investigation; PW-35/Inspector Mahender Singh did not record PW-21/Chand Mohd.'s statement at the spot, found no blood trail and took no public signature on the disclosure statement. He also did not lift fingerprints from the knife. The MLC mentions only A/H/O and does not name the appellant. The CCTV CD (Ex. PW23/Article 1) of the area near the spot was produced without a certificate under Section 65-B of the Indian Evidence Act, 1872 ('IEA') making it legally inadmissible. Furthermore, PW-21/Chand Mohd. admitted that 20-25 people witnessed the incident at his shop, yet none were produced by the prosecution. The recovery was made from an open public shop and cannot be said to be in the exclusive knowledge of the accused.



20. She submits that the defence of false implication due to non-payment of salary by PW-9/*Salim*, that is, the brother of PW-21/*Chand Mohd.*, also creates sufficient doubt. It is improbable that the appellant, after committing a murder in broad daylight in front of multiple people, would hide the knife in a public place and then sit in his own home till the time police came and apprehended him. It is not alleged by the prosecution that any attempt was made by the accused to evade the arrest.

21. Reliance is placed on the judgment of the Supreme Court in *State of Rajasthan v. Bhola Singh*, AIR 1994 SC 542, to submit that the reliance on a solitary, uncorroborated and interested witness is unsafe.

SUBMISSIONS MADE BY THE LEARNED APP

22. Mr. Aashneet Singh, the learned APP, submits that there is no infirmity in the impugned orders passed by the learned Trial Court.

23. He submits that eye-witness-PW-21/*Chand Mohd.* had identified the accused as the assailant and described the incident of stabbing which led to the demise of the deceased. The non-supportive accounts given by other witnesses, ought not to diminish the evidentiary value of the deposition of PW-21/*Chand Mohd.* He submits that the presence of PW-21/*Chand Mohd.* at the spot was natural as he had a shop there.

24. He submits that in the first call to the police, the name of the accused was also mentioned by PW-9/*Salim*. He also highlights that



the statement of the PW-5/*Nasim* under Section 161 of the Cr.P.C. has also corroborated the case of the prosecution.

25. He contends that the recovery of the knife is corroborated by the statements of the police witnesses, PW-28/*Const. Nikhil* and PW-34/*ASI Sahdev*, and it cannot be brushed aside merely because PW-1/*Shamim* has turned hostile. He submits that the DNA of the deceased was found on the very knife which had been recovered at the instance of the accused.

ANALYSIS AND FINDINGS

26. We have considered the submissions made by the learned counsels for the parties and have perused the material available on record.

27. The law is well settled that on the testimony of a sole witness, conviction can be sustained, provided the witness is wholly reliable and his testimony is of stellar quality. Reference in this regard is made to the judgment of the Supreme Court in *Bhola Singh* (supra). While there is no bar in basing conviction on the testimony of a single eye-witness, in doing so, the Court must carefully scrutinize the evidence and be satisfied that it is free from any suspicion and is intrinsically reliable.

28. In the instant case, PW-21/*Chand Mohd.*, is the uncle of the deceased and the sole alleged eye-witness who has supported the case of the prosecution. He claims to have witnessed the stabbing of the deceased by the accused. Though his testimony has been relied upon heavily by the learned Trial Court in order to convict the accused, we



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find it to be suffering from material contradictions concerning his very presence at the crime scene and his alleged actions in the aftermath of the incident.

29. While PW-21/*Chand Mohd.* claims to have been at his shop at the time of the incident, this assertion is not corroborated by his own brother, PW-9/*Salim*, who has stated that PW-21/*Chand Mohd.* “used to sell biryani on a rehri in the morning time and in the evening time he used to sit on the shop of fish”. The incident occurred in afternoon, a time, when according to the said testimony, the PW-21/*Chand Mohd.* would not ordinarily be at the location. Added to this is the fact that none of the witnesses (PW-1/ *Shamim*, PW-2/*Mukhtar*, and PW-34/*ASI Sahdev*) who claim to have reached the spot immediately after the incident, state that PW-21/*Chand Mohd.* was present at the spot.

30. Most important is his claimed conduct post the incident. Instead of helping the deceased and taking him to a hospital, PW-21/*Chand Mohd.* claims to have run to the house of his brother- PW-9/*Salim* to inform him of the incident. This appears to be totally unnatural as the deceased was the nephew of PW-21/*Chand Mohd.* and his natural reaction would have been to rush his bleeding nephew to hospital. Even otherwise, his story of informing PW-9/*Salim* of the stabbing is not supported by his brothers, PW-9/*Salim* and PW-12/*Yamin*, as well as the brother of the deceased, PW-10/*Zuhaib*, all of whom have stated that it was PW-10/*Zuhaib* who went to the house of PW-9/*Salim* and informed him about the stabbing.

31. There are further contradictions in his story, which have been highlighted above by the learned counsel for the appellant and when



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compared to the prosecution's version, make his very presence at the spot of the incident and witnessing the incident to be very doubtful. The learned Trial Court has, therefore, erred in placing reliance on his testimony without adequately examining these material flaws.

32. PW-5/*Nasim*, who was also portrayed by the prosecution as an eye-witness, turned hostile. While retracting his earlier stand of having seen the accused stabbing the deceased, he stated that he had only heard noises and approached near the nursing home where he saw the deceased lying in an injured condition. He stated that he assisted in taking the deceased to the hospital along with the PW-2/*Mukhtar* and PW-12/*Yamin*.

33. The last seen witnesses, PW-6/*Amir* and PW-7/*Swalin*, while retracting their earlier stand of having witnessed an argument between the accused and the deceased, stated that they had seen the accused and deceased together at about 2:30 P.M.; that they had not seen them quarrelling, in fact, state that the appellant and the deceased were cracking jokes; and got to know later on that the deceased had expired in the hospital. Both stated that CCTV footage had not captured any quarrel between the accused and deceased. In fact, both maintained that not only did they not see any quarrel between the deceased and the appellant, but the deceased and appellant were cutting jokes with each other and had gone towards their respective houses. They do not support the prosecution's case of a fight breaking out between the appellant and deceased, because of which the appellant stabbed the deceased.



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34. The learned APP has also relied upon the Form 1 recorded at Delhi Police Control Room (Ex. PW-19/A) to submit that the first information itself recorded that it was the appellant who had stabbed the deceased. He submits that this corroborates the version of PW-21/*Chand Mohd.*

35. We are, however, unable to accept the submission of the learned APP. Ex. PW-19/A was recorded on the information received from PW-9/*Salim*, who admittedly is not an eye-witness to the incident, but received the information from PW-10/*Zuhaib*. PW-10/*Zuhaib* in turn had reached the place of incident after the incident, and was basing his assertion against the appellant on basis of hear-say. The same therefore, cannot come to the aid of the prosecution.

36. The CCTV footage allegedly showing the deceased and the appellant together was produced by the prosecution was without a certificate under Section 65-B of the IEA.

37. The next important evidence alleged against the appellant is the alleged recovery of the weapon of offence, a knife, from the shop of PW-1/*Shamim* at the disclosure of the appellant. PW-1/*Shamim* was claimed to be a witness of the recovery, however, he did not support the prosecution in his deposition before the Court.

38. Further, the first important chain of the circumstance is the arrest of the appellant. The appellant is stated to have been arrested from his own house at about 11:53 p.m. (as per the Arrest Memo (Ex. PW-21/B)). The recovery of the knife, therefore, would have been later, but it is shown to have been made the same day and from the shop of PW-1/*Shamim*, which is a public place. The incident is alleged



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to have taken place at 02:30 p.m. For the knife to have not been recovered till then, is highly doubtful.

39. That apart, it is the case of the prosecution that the knife had been picked up by the appellant from the shop (*rehri*) of the PW-1/*Shamim*, before he stabbed the deceased with the same. The appellant is then alleged to have thrown back the knife in the same shop of PW-1/*Shamim*, while running away. Still, according to the prosecution, though the incident happened in a crowded area, no other witness, including PW-1/*Shamim*, saw the appellant picking up the knife or throwing it back. PW-35-Insp. *Mahender Singh*, the Investigating Officer, is alleged to have lifted the blood stained concrete, earth control/concrete without blood and blood from the spot and prepared the Site Plan, however, not recovered the knife. Though the knife was lying in the open, it is alleged that it was only at the pointing of the appellant, that alleged recovery has been made. The case of the prosecution, to say the least, is, therefore, very doubtful on the same.

40. Further, no fingerprints were lifted from the knife to establish who had handled it.

41. From the above, the recovery of the knife being at the instance of and on the disclosure of the appellant, is highly doubtful.

42. From the above, we find that the prosecution had been unable to prove beyond doubt that the appellant was present at the spot of the incident or that the alleged weapon of offence, the knife, was recovered at his disclosure. The learned Trial Court has erred in



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ignoring the material contradictions in the case of the prosecution and finding the appellant guilty.

43. The impugned orders dated 30.10.2023 and 21.03.2024 are accordingly set aside. The appellant is acquitted of the Charge against him. He be released from Jail forthwith if not wanted in any other case. His personal bond and the surety are also discharged.

44. The appeal is allowed in the above terms. The pending application is disposed of as infructuous.

45. A copy of this judgment be communicated to the learned Trial Court and the concerned Jail Superintendent, for information and compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

MARCH 12, 2026/ik/rv