



2026:DHC:1752-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 4th February, 2026
Pronounced on: 27th February, 2026
Uploaded on: 27th February, 2026

+ CRL.A. 1008/2025 & CRL.M.(BAIL) 1546/2025

JITENDER@BABU

.....Appellant

Through: Ms. Indu Kaul, Mr. Abhishek Sahu &
Mr. Vikram Kaul, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri APP with
Ms. Divya Yadav & Mr. Lalit Luthra,
Advs. (M: 9999892015) with SI
Deepak Malik, Inspector Mukesh
Kumar PS Barakhamba Road. (M:
8130302556)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal is filed under Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, 'BNSS') by the Appellant assailing the Impugned Judgement of conviction and order on sentence dated 23rd April, 2025 and 26th April, 2025 respectively, passed by the Id. ASJ-04, New Delhi District, Patiala House Courts, New Delhi, whereby the Appellant has been convicted in Sessions Case No. 9097/2016, arising out of FIR No. 54/2015, registered at P.S. Barakhamba Road under Section 302



read with Section 34 of the Indian Penal Code, 1860 (hereinafter 'IPC'), holding as under:

“28. Since, both PW3 and PW6 have failed to identify accused Saurav and Satish as the persons who were present on the spot at the time of incident and in the absence of any other incriminating evidence against them, both accused Saurav and Satish are acquitted for the offence under S. 304/34 IPC.

CONCLUSION

The accused Sunny @ Babe and Jitender @ Babu are convicted for the offence under S. 302/34 IPC. The accused Saurav and Satish are acquitted for the offence under S. 304/34 IPC.”

2. By the Impugned Judgement of conviction and Order on Sentence, the Appellant has been sentenced to undergo Simple Imprisonment along with a fine of Rs. 20,000/-. In default of payment of the fine, he has been sentenced to undergo Simple Imprisonment for a period of one year for the offence punishable under Section 302 read with Section 34 of the IPC. The Id. Trial court in the Order on Sentence held as under:

“b) Jitender @ Babu

The Convict is sentenced to Simple Imprisonment for Life and fine of Rs. 20,000/- for the offence u/s 302 IPC. In default of payment of fine, the convict to undergo SI for one year.”

FACTUAL MATRIX:

3. The present criminal appeal arises out of FIR No. 54/2015 registered at Police Station Barakhamba Road, New Delhi, in relation to an incident which occurred on the night of 19th May, 2015 at about 11:00 PM in the



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vicinity of Stall No. 42, Shankar Market, New Delhi, resulting in the death of Biju Varghese, proprietor of Capital Express Courier. The prosecution case, as recorded in the Impugned Judgement, is founded primarily on the testimonies of two alleged eyewitnesses, namely PW-3 John Minj and PW-6 Vijender @ Bijender, both employees of the deceased.

4. As per the prosecution version accepted by the Id. Trial Court, PW-3 John Minj, while present at RML Hospital, met SI Chander Prakash (PW-26) and made a statement alleging that on the date of the incident, he and PW-6 Vijender were working as field boys at Capital Express Courier, owned by the deceased Biju Varghese.

5. It was stated that at around 11:00 PM, after ordering food for his employees, the deceased left the shop to return home. Within a few minutes thereafter, noises were allegedly heard from outside the shop, upon which PW-3 and PW-6 came down and saw four persons assaulting Biju Varghese. One of the assailants was stated to have caught hold of the deceased by the neck, while the others were beating him. According to PW-3, when he attempted to intervene, he was pushed aside by one of the assailants described as 'fat boy', who allegedly pulled the deceased to the ground and exhorted others to bring a hammer or knife. During the assault, the said assailant allegedly took the helmet of the deceased and struck him repeatedly on the head.

6. It is further the prosecution case that PW-3 and PW-6, upon witnessing the assault, ran towards Sadar *Bazar* to seek police assistance and approached a PCR van. The PCR officials accompanied them back to the spot, where the deceased was found lying in a pool of blood. The injured was taken to RML Hospital in the PCR van, where he was declared brought



dead. The victim was examined and an MLC bearing No. E/1100157/15 was made. The relevant portion of the said MLC is reproduced hereinbelow:

“GENERAL EXAMINATION

- (i) *Pulse: Absent*
- (ii) *BP: Absent*
- (iii) *Respiration: Absent*
- (iv) *Pupils: B/L fixed / dilated / non responding to light*
- (v) *Gait: —*
- (vi) *Speech: Brought dead*

SYSTEMIC EXAMINATION

- (i) *Chest: No breath sounds*
- (ii) *CVS: No heart sounds*
- (iii) *Abdomen: —*
- (iv) *CNS: Brought dead*

LOCAL EXAMINATION (AFFECTED SYSTEM)

- 1. *Nasal bleed present*
- 2. *Bilateral swelling of both eyes (Black eye)*
- 3. *Cut over left eyelid (L) 2 × 0.5 cm*
- 4. *Swelling on left temporal region of scalp*

PROVISIONAL DIAGNOSIS

H/o assault.

Brought dead to casualty.

TREATMENT GIVEN

Admission in casualty under Incharge (A&E).

CAUSE OF DEATH

Cause of death not known.

To be ascertained after post-mortem exam.

NATURE OF INJURY

Simple / Grievous / Dangerous

(Dangerous appears indicated)

ARTICLES FOUND (UNCLAIMED CASES)

Following clothes seized

(jeans pant + shirt + belt

- *hand + sando vest)*



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Handed over to I.O.

CASE HISTORY

Pt was brought by police with alleged h/o assault.

Pt became unconscious at spot allegedly.

At RML hospital patient was declared dead."

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DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI
(Post-mortem Section) (पश्चात्तम विभाग) (पश्चात्तम विभाग)
(Under Legal Case Sheet)

NAME: RIJU VARSHI
RESIDENCE: 145, BDA Flats, Chilla Village, Mayapuri, Delhi 110029
AGE: 40 yrs
SEX: Male
OCCUPATION: Asst. Manager, RML Hospital
DATE OF EXAMINATION: 19/5/15

1. DATE & TIME OF DEATH: 19/5/15 at 1:30 PM
2. PLACE OF DEATH: B.K. Road
3. NAME & NO. OF WITNESS: Lt. Arjun
4. NAME & NO. OF DOCTOR: Dr. Arjun
5. NAME & NO. OF ATTENDING PHYSICIAN (HOSPITAL LETTERS): Dr. Arjun (M.D.)
6. NAME & NO. OF POLICE OFFICER: Lt. Arjun
7. NAME & NO. OF INVESTIGATING OFFICER: Lt. Arjun
8. NAME & NO. OF JUDGE: Lt. Arjun
9. NAME & NO. OF JURY: Lt. Arjun
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7. On the basis of the statement of PW-3 and the MLC of the deceased, FIR No. 54/2015 under Section 302/34 IPC was registered at about 01:30 AM on 20th May, 2015, and investigation was initially entrusted to SI Chander Prakash (PW-26) and subsequently to Inspector Swadesh Kumar (PW-27). During spot inspection, blood was found scattered at the place of occurrence, and a damaged helmet and other articles were recovered. The place of occurrence was preserved, photographed, and exhibits were seized.



8. Post-mortem examination of the deceased was conducted on 20th May, 2015. The post-mortem report No. 233/2015, recorded 13 ante-mortem injuries, primarily on the head and face, along with contusions on the chest. The cause of death was opined to be the combined effect of multiple injuries to the head and contusion on the heart and lungs consequent upon blunt force impact, sufficient to cause death in the ordinary course of nature. A subsequent opinion was obtained regarding the helmet alleged to be the weapon of offence. The relevant portion of the said post-mortem report is reproduced as under:

“External Injuries:

- 1. Contusion with swelling, bluish red in colour, of size 4.5 × 4.5 cm, present over left parieto-temporal region.*
- 2. Abraded contusion, bluish red in colour, of size 3.5 × 3 cm, present over left side of forehead, 3 cm above left supra-orbital margin.*
- 3. Contusion, bluish red in colour, of size 4 × 3 cm, present over right side of forehead, 2.5 cm above right supra-orbital margin.*
- 4. Multiple lacerations varying in size from 0.1 × 0.1 cm to 0.8 × 0.2 × 0.1 cm, with ragged margins, present in on area of 2.5 × 2.2 cm over mid-forehead, just above medial end of right supra-orbital margin.*
- 5. Contusion, bluish red in colour, of size 4.5 × 4 cm, present over right eye with sub-conjunctival haemorrhage in underlying bulbar conjunctiva.*
- 6. Contused lacerated wound with ragged margins, of size 2 × 0.5 × 0.3 cm, present over left eye lid and left mid-eyebrow. Lateral end of wound is directed supero-laterally.*
- 7. Contused lacerated wound with ragged margins,*



of size $1.8 \times 0.2 \times 0.2$ cm, present horizontally oriented, inferior orbital margin of left eye.

8. Contused lacerated wound of size $1 \times 5 \times 0.2$ cm, with ragged margins, present over right side of root of nose.

9. Lacerated wound with ragged margins, of size $2 \times 0.1 \times 0.1$ cm, present on right aspect of nose just behind nasal ala.

10. Contused lacerated wound with ragged margins, of size $1.2 \times 0.5 \times 0.2$ cm, present on inner aspect of mid right half of upper lip.

11. Contused lacerated wound of size $1 \times 0.5 \times 0.2$ cm, with ragged margins, present on outer aspect of mid right half of lower lip.

12. Contused lacerated wound with ragged margins, of size $1.1 \times 0.5 \times 0.2$ cm, present on inner aspect of mid right half of lower lip.

13. Abraded contusion, bluish red in colour, of size 4.5×4 cm, present on anterior aspect of chin.

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OPINION:

Cause of death: Death is due to combined effect of multiple injuries to head and contusion on heart and lung consequent upon blunt force impacts to head and chest, which are collectively sufficient to cause death in ordinary course of nature. All injuries mentioned are antemortem in nature and fresh in duration. However routine viscera has been preserved to rule out any associated intoxication.

Approximate time since death: About 12–18 hours (body stored in cold storage prior to autopsy).”

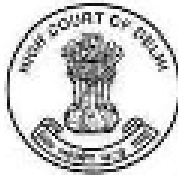
9. On 21st May, 2015, information was received regarding the arrest of



accused Sunny @ Babe in another matter by ATS, East District. During interrogation, he allegedly disclosed his involvement in the present case. He was thereafter arrested, produced in muffled face, and his Test Identification Parade (hereinafter, 'TIP') was fixed, which he refused. During police custody remand, Sunny @ Babe allegedly made a disclosure statement naming Satish @ Babbu, Saurav @ Gunga, and Jitender @ Babu (the present Appellant) as co-assailants.

10. On the basis of the disclosure statement, the present Appellant Jitender @ Babu, along with co-accused Satish and Saurav, were arrested on 27th May, 2015 from Ramleela Grounds, as per the prosecution. The Appellant refused to participate in TIP proceedings. During TIP of co-accused Satish and Saurav, they were not identified by PW-3 or PW-6. However, the prosecution claimed that PW-3 and PW-6 subsequently identified the Appellant Jitender @ Babu as the person who had caught hold of the deceased by the neck.

11. Upon completion of the investigation, a charge-sheet was filed under Section 302/34 IPC. Cognizance was taken on 24th August, 2015, and the case was committed to the Sessions Court. Initially, charges under Section 302 IPC were framed against Sunny @ Babe, while charges under Section 304 Part I & II read with Section 34 IPC were framed against the present Appellant and the other co-accused. The prosecution later moved an application under Section 216 Code Of Criminal Procedure (hereinafter, 'CrPC') seeking an alteration of charge against the Appellant to Section 302/34 IPC, which remained pending for several years and was ultimately allowed on 31st May, 2024, at a stage when prosecution evidence was nearing conclusion. The Id. Trial court in the order dated 31st May, 2024



held as under:

“Today, the matter is fixed for consideration on the application u/s 216 Cr.P.C. filed on behalf of the Ld. Addl. PP for the State dated 20.07.2016. The application has been filed seeking alteration / addition of charge for the offence u/s 302/34 IPC against accused Jitender, Saurabh and Satish.

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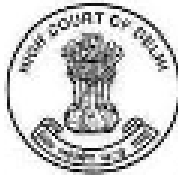
Per contra, the application is vehemently opposed by Ld. Counsel for accused Jitender that no ground is made out for alteration of charge. All the allegations including the specific allegations as pointed out by Ld. Addl. PP for the State, have been duly discussed by the Ld. Predecessor in the order dated 21.11.2015. The Ld. Predecessor after considering the specific role of accused Jitender as alleged by the witnesses u/s 161 Cr.P.C. had framed charge for the offence u/s 304-I/304-II/34 IPC against accused Jitender alongwith co-accused Satish Kumar and Saurabh Chouhan.

Heard Ld. Addl. PP for the State, Ld. Defence Counsel for accused Jitender and perused the record file.

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The Ld. Addl. PP for the State has sought alteration / addition of the charge u/s 302/34 IPC. On perusal of testimony of PW-3 and PW-6 and the post-mortem report, such addition of the charge u/s 302/34 IPC is deemed necessary despite the fact that the trial has begun and is at the fag end in light of the evidence presented before the court.

Accordingly, the application u/s 216 Cr.P.C. filed by the Ld. Addl. PP seeking amendment / alteration of the charge against accused Jitender for the offence u/s 302/34 IPC is allowed.



Accordingly, the amended charge u/s 302/34 IPC framed against accused Jitender to which he pleaded not guilty and claimed trial.

It is submitted by the Ld. Addl. PP for the State that he does not want to recall or examine any witness with respect to the amendment in the charge. It is submitted by the Ld. Defence Counsel that she wants to cross-examine PW-3 and PW-6 and seeks permission of the court to resummon these witnesses. Let PW-3 and PW-6 be re-summoned for cross-examination on the limited aspect with respect to the amended charge framed against accused Jitender, subject to their availability.”

12. During trial, the prosecution examined 29 witnesses. The Id. Trial Court treated PW-3 John Minj and PW-6 Vijender as the star witnesses, holding them to be eyewitnesses to the incident. The remaining witnesses comprised of police officials, medical experts, forensic witnesses, and formal witnesses. Notably, no independent public witness from the crowded Shankar Market area were examined, despite PW-3 admitting the presence of several persons at the spot. The relevant medical opinion given by PW-2 and PW- 24, as recorded by the Id. Trial court is reproduced hereinbelow:

“B. PW-2 Dr. Rahul Band and PW24 Dr. Sukhdeep Singh

These witnesses proved the postmortem report of the deceased Biju Varghese as Ex.PW2/A. They deposed that there were a lot of external injuries found on the body of the deceased as detailed in the report Ex.PW2/A. The cause of death was combined effect of multiple injuries to head and contusion on heart and lungs consequent upon blunt force impact to head and chest which are



collectively sufficient in ordinary course of nature to cause death. All the injuries were ante-mortem in nature and fresh in duration.

They further deposed that they received the weapon of offence i.e. one black helmet for subsequent opinion. They gave their subsequent opinion as Ex.PW2/B.

PW24 during his cross-examination deposed that out of 13 injuries, all the injuries except injury no. 4 are possible by the use of helmet. No single injury mentioned by him is responsible for the death of deceased, but the death was the result of combined effect of the aforesaid injuries. The injuries referred except injury no. 4 can be possible by fist as it also cause blunt force. Injury no. 4 is a light laceration and can be caused by the use of nails. The scratches seen on the helmet produced by the 10 could be possible due to wear and tear.”

13. The relevant statements of PW- 3 and PW- 6 are reproduced hereinbelow:

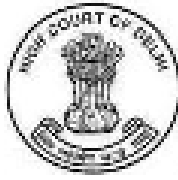
“PW- 3 John Mini

28.03.2016

PW 3 JOHN MINJ, S/O LATE SIMON MINJ, R/O - HOUSE OF SARPANCH, CHLLLA VILLAGE, MAYUR VIHAR, DELHI. AGED ABOUT 40 YEARS, EMPLOYED IN COURIER COMPANY.

On SA

I am residing on the second floor of the house of the Sarpanch In Mayur Vihar. I am employed with Capital Express Couriers at Stall no. 42, Shankar Market, Delhi for the last about 5 years. Apart from me one Bijender was also employed and the



owner of the said courier company was Biju Verghese. I and Bijender were working as field boys in the courier company.

On 19.05.2015 at about 10:15 - 10 :30 PM I along with Bijender and deceased Biju were working in the courier company. At about 10:00 PM I was asked by Biju Verghese to bring food from the near by Dhabha and Biju Verghese was getting down from the office. After about 5 minutes when I came down stairs from the office which was situated on the first floor of stall no. 42 then I saw three four persons had caught hold of Biju Verghese and were beating him. I tried to Intervene In the situation then accused Sunny pushed me. Accused Sunny said that today "Biju Verghese ka kaam tamam kar denge". Accused Sunny asked the other co-accused persons to bring a hammer and knife. Accused Jitender had caught hold of Biju Verghese from the neck from behind. Accused Sunny picked up the helmet which was kept on the motorcycle of deceased Biju Verghese and struck the helmet repeatedly on the head of Biju Verghese. I was frightened and I went near the super bazar where a PGR van met us and they arrived with me to the spot and deceased Biju Verghese was picked up from the spot and was taken to RML Hospital. After examination of Biju Verghese in the hospital he was declared brought dead. I recorded my statement in RML Hospital Ex.PW3/A signed by me at point A. There were two other co-accused who were also beating Biju Verghese but I could not identify them. Accused Sunny, Jitender, Saurav and Satish are present before the court today however, I do not know whether accused Saurav and Satish were present at the time of incident or not. I have shown the place of occurrence to the police. I had also gone to Tihar Jail for the purpose of TIP but



Jitender and Sunny refused for their TIP. I had not identified any person who was put to TIP.

Prior to the present incident about 1(½) - 2 years ago one person had come to the office of Biju Verghese and demanded money and that person had told Biju Verghese that Sunny had sent him. The witness states that he remembers now and the person was accused Saurav present before the court today. Biju Verghese had replied that he did not have money at that time and that he will pay it later on.

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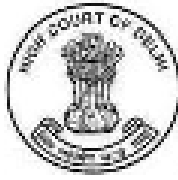
12.07.2016

PW 3 John Minj recalled for further examination in chief resumed after lunch

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XXX by Sh. S.Q. Kasim, Ld. Counsel for accused Sunny @ Babe.

*...I remained at the place of occurrence for around 7- 8 minutes. There were many persons at the place of occurrence but I do not know them. There were 8-10 more persons other than me at the place of occurrence. I could not retain the identity of the persons present at the place of occurrence. I intervened in between the assailants and the deceased. **The accused persons have not beaten O me with a helmet. Only one accused was having the helmet. Three other assailants were not having any other thing in their hands. The three assailants were without any weapon of assault except the one who was Sunny @ Babe who was holding the helmet.** I have categorically stated the identity, brand, colour of the helmet which the accused Sunny @ Babe was holding to the investigating officer in my statement Ex.PW3/A and when the helmet was seized by the 10 I have confirmed the helmet to have been the same which was used by accused Sunny @ Babe and I have*



also put signatures on the seizure memo which was...

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PW- 6 Vijender @ Bijender

09.09.2016

PW 6 Sh. Vljender @ Bijender, S/o Sh. Laturl Lai Singh, R/o Village Maharajpur, PS - Narkey, District - Firozabad. Presently : House No. 82, Chatarsal Colony, Mewla Maharajpur, Faridabad.

On SA

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.....I do not know ,other persons. There were a number of persons from courier staff. I called them but they did not come, I along with John went to call the police and one police gypsy was found near Super Bazar and I told the police that someone is beating my owner and they should come fast. Thereafter, police came there, I and John also rushed by foot by different road than that of the police van and when we saw that the police van was moving ahead of the spot, we became anxious. John had also told me that "Malik ko Maar Dala". Immediately, I went to Pahargunj to get help from Biju Verghese's friend Chandran and I informed him that "Kisi ne Malik ko Maar dia". I had also telephoned two friends of Biju Verghese namely Nand Kumar and another Biju Verghese having mobile numbers of 9310114048 and 9582797001 respectively from the mobile of Chandran.

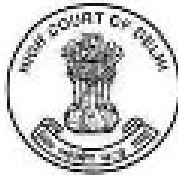
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24.11.2016

PW 6 Sh. Vijender @ Bijender recalled for his examination in chief which was deferred on 09.09.2016.

On SA

At this stage request is made to cross-examine the



*witness as he not disclosing complete facts.
Heard. Allowed.*

XXXX by Ld. Additional PP for State

XXX

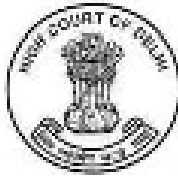
Statement Ex. PW6/B from point A to A 1 is read over to the witness and he denies having made any such statement to the police. It is wrong to suggest that in the month of February, 2015 while I along with Biju Verghese and John Minj were working at Stall no. 42, Capital Express Courier office at around 09:00 to 09:30 PM. Accused Sunny Babe came to office and told Biju Verghese that if he had to run office there, he will have to pay rupees and Biju Verghese refused to pay rupees to Sunny Babe and thereafter, Sunny Babe became angry and abused Biju Verghese. It is wrong to suggest that thereafter, Sunny Babe threatened Biju Verghese that he will face consequences. Confronted with statement Ex. PW6/C wherein it is so recorded.

Statement dt 07.08.2015 which is Ex.PW6/D is read over to the witness from point A to A 1 and he denies having made any such statement to the police. I had stated qua the identification of the accused Sunny Babe and Jitender, but I have not told about Saurav Chahuan and Satish Kumar.

Confronted with statement Ex.PW6/D from point A to A1 wherein it so recorded. It is wrong to suggest that as I have been won over by the accused persons that is why I have not admitted the contents of statement Ex.PW6/A to Ex. PW6/D from point A to A1. It is wrong to suggest that I have deliberately not identified accused Saurabh Chauhan and Satish Kumar in the court.

XXX

At this stage, attention of witness is drawn towards Saurabh and Satish present in the court today. but he fails to identify them as the assailants. It is wrong to suggest that I have



deliberately not identifying accused Saurabh Chauhan and Satish Kumar in the court.”

14. After recording statements of the all the Accused persons under Section 313 CrPC, the Id. Trial Court, *vide* the Impugned Judgement, convicted Sunny @ Babe and the present Appellant Jitender @ Babu under Section 302/34 IPC, while acquitting co-accused Satish and Saurav for want of identification and incriminating evidence. The conviction of the Appellant was primarily founded on the testimony of PW-3 and PW-6, read with the medical evidence and the alleged role attributed to him of holding the deceased by the neck during the assault.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

15. The learned counsel for the Appellant submits that at the outset the medical evidence does not disclose any injury on the neck of the deceased. The post-mortem report enumerates thirteen external injuries, all of which are confined to the head, face, chin and chest region. There is no laceration, contusion, fracture, or internal injury attributable to compression, strangulation, or force applied to the neck. In the absence of any corroborative medical evidence, the allegation that the Appellant “caught hold of the neck” of the deceased remains unsubstantiated and unsupported by objective findings. The Id. Trial Court, it is submitted, erred in treating this allegation as determinative without reconciling it with the absence of corresponding injuries.

16. The learned counsel further submits that there is no material on record



to establish any prior connection between the Appellant and the deceased, or between the Appellant and the alleged incident, except the bare oral assertion of PW-3 and PW-6. The Appellant was neither known to the deceased nor shown to have any prior interaction, dispute, or motive. No independent witness, documentary evidence, or circumstantial link connects the Appellant with the deceased prior to the incident. In such circumstances, the prosecution was required to establish the Appellant's culpability through cogent and unimpeachable evidence, which it has failed to do.

17. The learned counsel also submits that mere presence at the spot, even if assumed, does not *ipso facto* establish either intention or guilt. The Impugned Judgment proceeds on the premise that the Appellant's alleged act of holding the neck automatically attracts common intention under Section 34 IPC. The learned counsel submits that this approach overlooks settled law that common intention cannot be inferred mechanically and must be established through clear evidence of a shared mental state. In the present case, the overt act attributed to the Appellant is passive in nature and is not accompanied by any use of weapon, exhortation, or infliction of injury. The prosecution has not established that the Appellant shared either the intention to cause death or the knowledge that death was likely to ensue.

18. The learned counsel for the Appellant also places reliance on the medical opinion itself, which clearly states that the use of a helmet as a weapon is only a *possibility* and not a definitive conclusion. PW-24, during cross-examination, categorically deposed that except injury no. 4, all injuries are *possible* by the use of a helmet and that the injuries could also be caused by fist blows, which are blunt force in nature. The doctor further stated that no single injury was sufficient to cause death and that death resulted from



the combined effect of injuries. It is submitted that where medical opinion is expressed in terms of possibility rather than certainty, the benefit of doubt must necessarily enure to the accused, particularly one who is not alleged to have wielded the weapon.

19. It is further contended that the Appellant neither knew the deceased nor had any prior association with him. In the absence of such knowledge, the attribution of intention or even constructive knowledge becomes legally untenable. The prosecution has not established that the Appellant was aware of the vulnerability of the deceased, the severity of the injuries being inflicted, or the likelihood of fatal outcome. The Impugned Judgment proceeds on hindsight reasoning rather than contemporaneous assessment of the Appellant's mental state at the time of the incident.

20. The learned counsel further submits that the evidentiary value of PW-6 is substantially diluted, as his testimony was not effectively tested through proper cross-examination on crucial aspects relating to the Appellant's role. Despite inconsistencies in PW-6's narration regarding the number of assailants, sequence of events, and his own presence at the scene, the Id. Trial Court treated his testimony as unimpeachable. It is submitted that failure to subject such testimony to rigorous scrutiny has resulted in grave prejudice to the Appellant.

21. It is further submitted that the investigation suffers from serious forensic lapses. No blood sample was sent for serological examination to establish linkage between the alleged weapon and the deceased. Even the helmet, which forms the backbone of the prosecution case, was not subjected to proper forensic testing to conclusively connect it with the crime. The Investigating Officer himself admitted that the helmet was not



sent for serological examination and that no effort was made to investigate crucial corroborative aspects. These lapses assume greater significance when the Appellant is not alleged to have used the helmet at all.

22. The learned counsel further draws attention to the testimony of PW-24, who clearly stated that all injuries were not necessarily caused by the helmet alone and that blunt force such as fist blows could also result in similar injuries. This medical testimony directly contradicts the inference drawn by the Id. Trial Court that the Appellant's alleged act necessarily contributed to the fatal outcome. In the absence of specific injuries attributable to the Appellant, the finding of shared intention becomes legally unsustainable.

SUBMISSIONS ON BEHALF OF THE STATE:

23. *Per contra*, Mr. Bahri, the Id. APP for State submits that the presence of the Appellant at the site of occurrence stands firmly established through the consistent and corroborative testimonies of PW-3 John Minj and PW-6 Vijender @ Bijender, who were natural witnesses being employees of the deceased and present at the place of occurrence immediately prior to and during the incident. Their presence is further corroborated by PW-13 ASI Rameshwar, who deposed that it was PW-3 John Minj who informed the PCR about the assault and accompanied the PCR van to the spot and thereafter to the hospital. The Id. Trial Court, in the Impugned Judgment, has specifically recorded a finding that PW-3 and PW-6 were present at the spot and had witnessed the incident, and that their testimonies inspire confidence.



24. The learned APP further submits that the role of the Appellant Jitender @ Babu is clearly delineated in the ocular testimony. PW-3 John Minj has categorically deposed that the Appellant caught hold of the deceased Biju Varghese from the neck from behind, while the co-accused Sunny @ Babe inflicted repeated blows on the head of the deceased using the helmet. PW-6 Vijender has also corroborated this version by deposing that he saw one assailant holding the deceased by the neck while the other was assaulting him. The Id. Trial Court has, after detailed analysis, concluded that the act of holding the deceased by the neck facilitated the infliction of fatal injuries and constituted active participation in the assault.

25. The learned APP submits that the Appellant's refusal to participate in the TIP is a relevant circumstance which the Id. Trial Court has rightly taken into account. The refusal of TIP by the Appellant, coupled with his subsequent identification in Court by PW-3 and PW-6, lends assurance to the prosecution case. The Id. Trial Court has observed that the refusal of TIP, when viewed in the context of consistent ocular testimony, strengthens the prosecution's version rather than weakening it.

26. The learned APP further submits that the recovery and forensic examination of the helmet, which has been established as the weapon of offence, is a crucial circumstance against the accused. The helmet was recovered from the spot of occurrence and was identified by PW-3 as belonging to the deceased and as the same helmet with which repeated blows were inflicted. As per the biological and serological reports proved by PW-29, blood of human origin was found on the helmet. The Id. Trial Court has correctly held that the presence of human blood on the helmet corroborates the ocular version and the medical evidence, and that the



absence of DNA profiling does not dilute the evidentiary value of this recovery, particularly when the use of the helmet has been proved through direct testimony.

27. He further submits that the medical evidence fully supports the prosecution case. The post-mortem report and the subsequent medical opinion establish that the deceased suffered thirteen ante-mortem injuries, predominantly on vital parts such as the head, face and chest, and that the cause of death was the combined effect of multiple blunt force injuries. The doctors have opined that the injuries were sufficient in the ordinary course of nature to cause death and were consistent with the use of a helmet as the weapon of offence. The Id. Trial Court, has clearly recorded that the medical evidence conclusively links the assault to the fatal outcome.

28. The learned APP also submits that the argument raised on behalf of the Appellant regarding alleged inconsistencies in the testimonies of PW-3 and PW-6 has been duly considered and rejected by the Id. Trial Court. In paragraph 15 of the Impugned Judgment, the Id. Trial Court has recorded detailed reasons for holding that the so-called contradictions are minor, natural, and do not go to the root of the prosecution case. It has been correctly observed that the core of the prosecution story, being the presence of the accused, the manner of assault, and the specific role attributed to each assailant, has remained consistent throughout the statements of the witnesses.

29. The learned APP submits that the Id. Trial Court has correctly applied the principles governing common intention under Section 34 IPC. The Appellant's act of restraining the deceased by holding his neck enabled the principal assailant to inflict repeated and forceful blows on the head and face



of the deceased. Such conduct, when viewed in totality, clearly establishes participation in furtherance of the common intention to cause such bodily injury as was sufficient in the ordinary course of nature to cause death.

ANALYSIS AND FINDINGS:

30. The Court has considered the matter.

31. Before proceeding to examine the legal question arising in the present appeal, it would be apposite to briefly recapitulate the substance of the evidence relied upon by the prosecution. PW-2 Dr. Rahul Band and PW-24 Dr. Sukhdeep Singh proved the post-mortem report Ex. PW2/A, which records thirteen ante-mortem injuries on the person of the deceased Biju Varghese, predominantly on the head and face, along with contusions to the heart and lungs. The cause of death was opined to be the combined effect of blunt force impacts to the head and chest, sufficient in the ordinary course of nature to cause death. In cross-examination, PW-24 clarified that no single injury was independently fatal and that, except injury no. 4, the injuries were possible not only by a helmet but also by fist blows. He further stated that injury no. 4 could be caused by nails and that no fibre or plastic residue was found on the body.

32. The ocular version primarily rests on PW-3 John Minj and PW-6 Vijender @ Bijender, both employees of the deceased. PW-3 deposed that upon hearing noise, he saw accused Sunny @ Babe striking the deceased repeatedly with a helmet, while the present Appellant Jitender @ Babu allegedly caught hold of the deceased from behind by the neck. He further stated that Sunny uttered threatening words and asked others to bring a

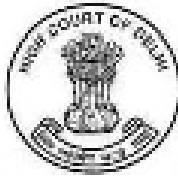


hammer and knife. PW-6 broadly corroborated the version that Sunny @ Babe assaulted the deceased and that the Appellant held him by the neck. However, both witnesses, during cross-examination, made certain clarifications regarding the number of assailants, their ability to identify co-accused persons, and aspects of their earlier statements under Section 161 Cr.P.C. The prosecution case, therefore, attributes to the Appellant a role of restraint, while the fatal blows are alleged to have been inflicted by co-accused Sunny @ Babe.

33. At the outset, the homicidal nature of the death of Biju Varghese is not in dispute. The post-mortem report No. 233/2015, duly proved through PW-2 Dr. Rahul Band and PW-24 Dr. Sukhdeep Singh, establishes beyond doubt that the deceased sustained thirteen ante-mortem injuries, predominantly on the head and face, along with contusions to the heart and lungs, and that death occurred due to the combined effect of blunt force impacts sufficient to cause death in the ordinary course of nature. The said post-mortem report has been reproduced above.

34. The conviction of the Appellant does not rest on medical evidence alone but primarily on the testimonies of PW-3 John Minj and PW-6 Vijender @ Bijender, both employees of the deceased. The Id. Trial Court has accepted their presence at the spot and treated them as eyewitnesses. For the purposes of the present appeal, this Court does not find it necessary to reopen the issue of their presence, as the appeal does not hinge on total absence of evidence but on the nature and degree of culpability attributable to the Appellant.

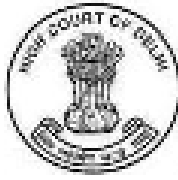
35. The central issue that arises for determination is whether the role attributed to the Appellant, even if accepted at its highest, satisfies the legal



threshold for murder punishable under Section 302 IPC read with Section 34 IPC, or whether it falls within the domain of culpable homicide not amounting to murder.

36. The prosecution case, as accepted by the Id. Trial Court, attributes a specific and limited role to the Appellant, namely, that he caught hold of the deceased by the neck from behind, while the co-accused Sunny @ Babe inflicted repeated blows on the head and face of the deceased using a helmet. The Id. Trial court held as under:

“25. In the present case, the accused Sunny @ Babe inflicted multiple injuries on the head and face of deceased Biju Varghese with the helmet while co-accused Jitender @ Babu had caught hold of him from his neck. The accused Sunny @ Babe also gave leg and fist blows to the deceased on his other parts of the body. As discussed above, the deceased suffered 13 external injuries and the cause of death was combined effect of multiple injuries to head and contusion on heart and lungs consequent upon blunt force impact to head and chest which are collectively sufficient in ordinary course of nature to cause death. The fatal nature of these injuries, as confirmed by medical evidence, and the circumstances of the attack clearly point to an intent to cause death or at least an intention to inflict injuries with the knowledge that they were likely to result in death. Even, if, it is presumed that the accused Sunny @ Babe and Jitender @ Babu did not have an intention to cause such bodily injury, the act of causing multiple injuries on the head, face & chest with the helmet; with leg & fist blows and co-accused Jitender holding the neck of deceased during the said act, is reflective of the knowledge that



causing such injuries is likely to cause death in the ordinary course of nature.”

37. A careful scrutiny of the medical evidence, however, reveals an important incongruity. The post-mortem report details thirteen external injuries, all confined to the head, face, chin and chest. There is no injury whatsoever on the neck, no contusion, abrasion, laceration, fracture, internal hemorrhage, or any indication of compression or strangulation. This absence is not a minor omission but a material circumstance, particularly because the act of holding the neck has been treated by the Trial Court as the foundational basis for invoking common intention against the Appellant.

38. PW-24, during his cross-examination, has categorically stated that no single injury was sufficient to cause death and that death was the result of the combined effect of injuries. He further stated that, except injury no. 4, all injuries could be caused by blunt force, including fist blows, and that the use of a helmet was a possibility rather than a medical certainty. The statement made by PW-24 in his cross-examination is reproduced hereinbelow:

*“In my report, it is not mentioned that any fiber or plastic material was found inside the dead body or on the surface of the body of deceased. **Out of 13 injuries, mentioned by me above, except injury No.4, all are possible by the use of helmet.** No single injury mentioned by me is responsible for the death of the deceased but the death was the result of combined effect of the aforesaid injuries. **The injuries referred to above by me, except No. 4, can be possible by fist as it also cause blunt force. Injury No.4 is a light laceration and can be caused by the use of nails. The scratches seen by***



me in the helmet, produced by the 10 before me, could be possible due to wear and tear.”

39. This medical opinion assumes significance because the Appellant is not alleged to have wielded the helmet or inflicted any blow. His alleged act is one of restraint, not assault. Where such an act is relied upon to elevate culpability to murder, the absence of medical corroboration weakens the inference sought to be drawn.

40. The Id. Trial Court, while acknowledging that even in the absence of intention, knowledge would suffice to sustain a conviction under Section 302 IPC, proceeded to hold that the act of restraining the deceased by the neck, coupled with the assault by the co-accused, reflected both intention and knowledge. With respect, this Court finds that such a conclusion confuses the distinct mental elements without adequately examining whether the Appellant shared the requisite intention to cause death or such bodily injury as was sufficient in the ordinary course of nature to cause death.

41. The prosecution case itself portrays the incident as sudden, occurring late at night, outside a commercial establishment, without any evidence of prior planning, preparation or premeditation. There is no material to suggest prior acquaintance or animosity between the Appellant and the deceased. The Appellant is not shown to have exhorted the principal assailant, brought any weapon, or directed the course of the assault. The exhortation to bring a hammer or knife is attributed exclusively to Sunny @ Babe, not to the Appellant. The relevant portion of the statement given by the PW-3 and PW-6 are hereinbelow:



“PW-5: After about 5 minutes when I came down stairs from the office which was situated on the first floor of stall no. 42 then I saw three four persons had caught hold of Biju Verghese and were beating him. I tried to Intervene In the situation then accused Sunny pushed me. Accused Sunny said that today "Biju Verghese ka kaam tamam kar denge". Accused Sunny asked the other co-accused persons to bring a hammer and knife. Accused Jitender had caught hold of Biju Verghese from the neck from behind. Accused Sunny up the helmet which was kept on the motorcycle of deceased Biju Verghese and struck the helmet repeatedly on the head of Biju Verghese.

XXX

Prior to the present incident about 1(½) - 2 years ago one person had come to the office of Biju Verghese and demanded money and that person had told Biju Verghese that Sunny had sent him. The witness states that he remembers now and the person was accused Saurav present before the court today. Biju Verghese had replied that he did not have money at that time and that he will pay it later on.

XXX

The accused persons have not beaten me with a helmet. Only one accused was having the helmet. Three other assailants were not having any other thing in their hands. The three assailants were without any weapon of assault except the one who was Sunny @ Babe who was holding the helmet.

XXX

PW- 6 statement: I do not know, other persons. There were a number of persons from courier staff. I called them but they did not come, I along with John went to call the police and one police gypsy was found near Super Bazar and I told the police that someone is beating my owner and they should



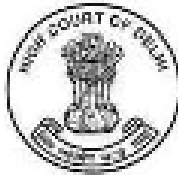
come fast.”

42. The conduct attributed to the Appellant, even if accepted, is thus facilitative rather than determinative. While such conduct cannot be brushed aside as innocuous, it must be assessed with circumspection when determining whether it evidences a shared intention to commit murder.

43. The law is well settled that the distinction between murder and culpable homicide turns primarily on the degree of intention. Knowledge that death is likely is not synonymous with intention to cause death. The Supreme Court has repeatedly cautioned against mechanically elevating cases of group assault to murder merely on account of fatal outcome, without a careful examination of the mental element attributable to each participant.

44. In *Virsa Singh v. State of Punjab*, AIR 1958 SC 465., the Supreme Court clarified that for clause three of Section 300 to apply, the prosecution must establish not only the existence of a bodily injury sufficient to cause death in the ordinary course of nature, but also the intention to inflict that very injury. In cases where such intention is absent, though knowledge may be present, the offence would ordinarily fall under Section 304 Part I IPC.

45. Similarly, in *Sudam Prabhakar Achat v. State of Maharashtra*, 2025 SCC OnLine SC 602., the Supreme Court held that where an assault occurs suddenly, without premeditation, and the accused does not take undue advantage or act in a cruel or unusual manner, the case would fall within culpable homicide not amounting to murder, even if the accused can be attributed with knowledge that death was a likely consequence. The Supreme Court held that:



“12. From the evidence of the prosecution witnesses itself, it is clear that the place of incident is near the house of accused persons. The possibility of a quarrel taking place on account of previous enmity between the accused persons and the deceased; and in a sudden fight in the heat of the moment, the appellant along with the co-accused assaulting the deceased cannot be ruled out. It can further be seen that the weapons used are a stick and the blunt side of the axe. These tools are easily available in any agricultural field. It therefore cannot be said that there was any premeditation.

13. It is further to be noted that the appellant is alleged to have used the stick whereas the co-accused is said to have used the blunt side of the axe. If their intention was to kill the deceased, there was no reason as to why the co-accused would not have used the sharp side of the axe. The nature of injury and the evidence of the prosecution witnesses would also not show that the appellant had taken undue advantage or acted in a cruel manner.

14. In that view of the matter, we find that the present case would not fall under the ambit of Section 302 of IPC and the appellant would be entitled to benefit of Exception IV of Section 300 of IPC. It is further to be noted that the appellant has already undergone the sentence of 6 years 10 months.

15. We are therefore inclined to partly allow the appeal. In the result, we pass the following order:

- (i) The appeal is partly allowed;*
- (ii) The conviction under Section 302 IPC is converted to Part I of Section 304 IPC;*
- (iii) The appellant is sentenced to the period already undergone; and (iv) The appellant is*



directed to be released forthwith if not required in any other case.”

46. Applying these principles to the present case, this Court is of the considered view that while the Appellant must be attributed with knowledge that restraining a person during a violent assault on vital parts could result in serious harm, the evidence on record does not establish beyond reasonable doubt that he acted with the intention to cause death, or to cause such bodily injury as was sufficient in the ordinary course of nature to cause death.

47. The reasoning of the Id. Trial Court itself, as reflected in para 25 of the impugned judgment, acknowledges that even if intention is presumed absent, knowledge would suffice. This reasoning, in effect, places the case at the threshold between Sections 302 and 304 IPC. In such a situation, particularly where the role attributed is secondary and non-weaponised, the law mandates a cautious and nuanced classification.

48. The invocation of Section 34 IPC also warrants careful scrutiny. Common intention cannot be inferred merely from simultaneous presence or from a single act of restraint, unless the evidence clearly establishes a prior meeting of minds or a shared mental design. The delayed alteration of charge against the Appellant from Section 304 IPC to Section 302/34 IPC at the fag end of the trial further underscores the need for circumspection, though this Court refrains from resting its conclusion solely on that aspect.

49. The manner in which common intention has been inferred against the Appellant also requires to be tested against the principles laid down by the Supreme Court in ***Chellappa v. State, (2020) 5 SCC 160***. In the said decision, the Supreme Court categorically held that Section 34 IPC is not a



substantive offence and that before fastening vicarious liability, the prosecution must establish, by cogent evidence, the existence of a shared intention to commit the crime. The Court further cautioned that such common intention cannot be presumed merely from the presence of the accused or from a subsidiary or facilitative role attributed to him, and that where doubt exists as to whether the accused shared the intention of the principal assailant, such doubt must necessarily enure to the benefit of the accused. The Supreme court in the said case held as under:

“9. It must be noted that Section 34 IPC is not a substantive offence. Before a person can be held responsible under this section, it must be established that there was a common intention and the person being sought to be held liable must have participated in some manner in the act constituting the offence. The common intention shared by the accused should be anterior in time to the commission of the offence, but may develop on the spot when the crime is committed (see Virendra Singh v. State of M.P. [Virendra Singh v. State of M.P., (2010) 8 SCC 407 : (2010) 3 SCC (Cri) 893]). However, from a perusal of the impugned High Court judgment [Kennady v. State, Criminal Appeal (MD) No. 1 of 2006, order dated 19-12-2007 (Mad)] , as well as the submissions of the prosecution, it is clear that no reasoning or evidence has been advanced as to the fulfilment of the requirements for the conviction of the appellant-accused under Section 34 IPC in the present case.

10. Further, a perusal of the circumstantial evidence in the case does not clearly indicate that the appellant-accused had common intention with the main accused to kill the deceased. In fact, from



the statement of PW 2, it is clear that at the time of the incident the main accused was the only person who reacted to the words of the deceased and his family members asking them to make way, and stabbed the deceased in the spur of the moment. As such, when some doubt exists as to the common intention animating the appellant-accused, the same must inure to the benefit of the appellant-accused.”

50. On a cumulative assessment of the ocular testimony, the medical evidence, the absence of neck injuries, the limited role attributed to the Appellant, and the governing legal principles, this Court is of the view that the offence committed by the Appellant is one of culpable homicide not amounting to murder.

51. Accordingly, the conviction of the Appellant Jitender @ Babu under Section 302 read with Section 34 IPC cannot be sustained. The same is liable to be altered to a conviction under Section 304 Part I IPC. The appeal, to the aforesaid extent, deserves to be allowed.

52. Upon an overall consideration of the material on record and for the reasons recorded in the preceding analysis, this Court is of the view that the conviction recorded against the Appellant cannot be sustained in its present form.

53. The Impugned Judgment of conviction dated 23rd April, 2025 and the order on sentence dated 26th April, 2025, passed by the Id. Trial court insofar as they relate to the Appellant Jitender @ Babu, are accordingly modified.

54. Having regard to the nature of the act attributed to the Appellant, the absence of premeditation, the limited and non-weaponised role assigned to him, and the medical evidence on record, this Court holds that the offence



committed by the Appellant falls within the ambit of culpable homicide not amounting to murder.

55. The Appellant is therefore convicted for the offence punishable under Section 304 Part I IPC, as the material on record establishes that the Appellant had the knowledge but no shared intention to cause such bodily injury likely to result in death.

56. While determining the appropriate sentence, this Court has taken into consideration the overall facts and circumstances of the case, including the role attributed to the Appellant, the manner in which the incident occurred, and the fact that the fatal blows were inflicted by the co-accused.

57. This Court has also taken note of the latest Nominal Roll, which reflects that the Appellant has undergone actual incarceration for a period of 4 years, 7 months, and 16 days as on 30th August, 2025.

58. In the considered view of this Court, the period of incarceration already undergone by the Appellant, coupled with the ordeal of a prolonged trial and appeal, would meet the ends of justice for the offence under Section 304 Part I IPC.

59. The Appellant is accordingly sentenced to rigorous imprisonment for the period already undergone.

60. The Appellant shall be entitled to the benefit under Section 428 of the Code of Criminal Procedure, 1973.

61. The fine imposed upon the Appellant by the Id. Trial Court is set aside. In the event the Appellant has deposited any amount towards fine pursuant to the Impugned Judgement, the same shall be refunded to him, subject to verification.

62. The Appellant shall be released forthwith, if not required to be



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detained in any other case.

63. Accordingly, the appeal is allowed in part, in the above terms, pending applications, if any, are disposed of.

64. Copy of this order be sent to the Jail Superintendent, for information and compliance.

**MADHU JAIN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 27, 2026/P