IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of reserving Judgment: 24th September, 2026

Date of Decision: 19th November, 2026

IN THE MATTER OF:

CNR No. DLHC010880052009

\+ CRL.A. 389/2009

RATNESH KUMAR SHARMA .....Appellant

Through: Mr. Subodh K. Pathak and Mr. Abhijeet Saxena, Advocates.

versus

GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Satinder Singh Bawa, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Disputes and differences are an inevitable part of human interaction and, in the ordinary course, most such disagreements end with the immediate cause of the dispute itself. However, there are occasions when a seemingly ordinary quarrel escalates, tempers run high, and the conduct of the persons involved travels beyond the limits of a mere verbal exchange, resulting in physical violence and, sometimes, consequences far more serious than what may have been contemplated at the commencement of the dispute. In such cases, while the occurrence has to be examined as a whole, criminal liability must necessarily be determined with reference to the role, conduct and intention attributable to each of the persons alleged to have

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participated therein. This assumes greater significance where constructive liability under Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') is invoked, since participation in an occurrence and the sharing of a common intention to commit the particular criminal act are questions that must be examined in the backdrop of the evidence brought on record.

2. The present appeal has been preferred by the appellant challenging the judgment of conviction dated 29.04.2009 (hereinafter referred to as 'Impugned Judgment') and the order on sentence dated 30.04.2009 (hereinafter referred to as 'Impugned Order') passed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi, in Sessions Case No. 4/18/2/2009 arising out of FIR No. 05/2008 registered at Police Station Burari. Vide the impugned judgment, the appellant was sentenced to Rigorous Imprisonment ('RI') for a period of seven years and a fine of Rs.60,000/- under Section 304 Part II IPC, out of which Rs.50,000/- was directed to be paid to Satbir Verma, father of the deceased. In default of payment of fine, he was directed to undergo Simple Imprisonment ('SI') for a period of six months. He was further sentenced to RI for a period of six months and a fine of Rs.1,000/- under Section 323 IPC, with SI for a period of one month in default. Both substantive sentences were directed to run concurrently.

3. The prosecution's case is that on 04.10.2008, preparations were underway at the residence of deceased Babloo for his forthcoming marriage, and a God Bharai ceremony was scheduled to take place on that day. The family of Babloo resided in the vicinity of the family of Uma Shankar. According to the prosecution, disputes had arisen between the two families on earlier occasions over the throwing of garbage and water in the street.On

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the morning of 04.10.2008, at approximately 7:00–7:30 AM, Smt. Raj Kumari, mother of Babloo, had cleaned a vacant plot situated opposite her house for making arrangements for the guests expected to attend the ceremony. It is alleged that Nagina Devi, wife of Uma Shankar, threw household garbage onto the said plot, leading to a quarrel between the two women. When Satbir Verma, father of Babloo, intervened, Nagina Devi called her sons, namely, the appellant Ratnesh Kumar Sharma, Yogesh and Dipesh @ Nanki.

4. According to the prosecution, the three brothers came out and assaulted Satbir. When Babloo intervened to rescue his father, the accused persons also assaulted him. Yogesh allegedly picked up a wooden *thapi*, lying near the entrance of the house, and repeatedly struck Babloo on his waist and abdomen. The prosecution further alleges that the appellant and Dipesh also participated in the assault upon Babloo. The altercation came to an end after neighbours intervened. Babloo was thereafter taken inside the house. Initially, the family did not consider the injuries to be serious. However, at about 12:30 PM, his condition began to deteriorate. His mother Raj Kumari and sister-in-law Khushi first took him to a local doctor and thereafter to Sushruta Trauma Centre, where he was examined at approximately 8.40 PM. His medical examination was performed by Dr. Karan Singh (PW-5) and was recorded vide MLC (Ex. PW-5/A). Information regarding the admission of the injured persons was received by the police vide DD Entry No. 33, (Ex. PW-3/A). Satbir's statement was recorded, a rukka was prepared and FIR No. 05/2008 was registered under Section 308 read with Section 34 IPC. Babloo died in the hospital on 05.10.2008. The offence was thereafter converted to one under Section 304 IPC.

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5. During investigation, Yogesh, who was a juvenile, was apprehended on 05.10.2008. The wooden *thapi* was recovered at his instance and seized vide memo Ex. PW-9/B. The other juvenile, Dipesh @ Nanki, was apprehended subsequently. Proceedings concerning both juveniles were dealt with separately before the Juvenile Justice Board. The appellant was arrested on 05.11.2008. Upon completion of investigation, the charge-sheet was filed against the appellant under Sections 304, 323 and 34 IPC and charges were framed on 19.02.2009. The appellant pleaded not guilty and claimed trial. The prosecution examined sixteen witnesses. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the appellant denied the allegations and claimed false implication. The defence examined DW-1 Rama Devi, who sought to support the alternative version that Babloo had sustained the fatal injury after falling while descending the stairs of his house.

6. The principal controversy in the present appeal concerns the appellant's liability for the death of Babloo, particularly when the prosecution attributes the repeated blows with the wooden *thapi*, which resulted in the fatal abdominal injury, to the appellant's younger brother Yogesh. The question is whether the evidence establishes that the appellant participated in the assault upon Babloo in furtherance of a common intention, and whether the knowledge required under Section 304 Part II IPC can consequently be attributed to him with the aid of Section 34 IPC.

7. At the outset, learned counsel for the appellant has assailed the judgment of conviction primarily on the ground that the prosecution witnesses materially changed their version concerning the manner in which Babloo sustained the fatal injury. It has been submitted that the initial history recorded in the MLC (Ex. PW-5/A) was of a fall from a height or

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stairs and that the subsequent allegation of assault is an improvement introduced after the occurrence. Reliance is placed upon the testimony of PW-5, who confirmed that the attendants initially reported a fall and subsequently disclosed an assault.

8. It has been further submitted by the learned counsel for the appellant that the medical evidence does not conclusively establish that the fatal injury was caused by an assault. Dr. Vijay Dhankar (PW-10) accepted that a fall from a height onto a projecting object could cause an injury similar to Injury No. 2 i.e. Contusion 5 × 4 cms present over left lateral aspect of abdomen in the upper part as reflected in the Post Mortem report (Ex. PW-10/A). Reliance in this regard has also been placed upon the testimony of Rama Devi (DW-1), who claims to have witnessed Babloo falling while descending the stairs. It has been vehemently contended that this evidence, read with the initial medical history, creates a reasonable doubt regarding the prosecution's version.

9. Learned counsel for the appellant has also questioned the reliability of Satbir Verma, father of the deceased and complainant (PW-4), Raj Kumari, mother of the deceased (PW-6) and Khushi, sister-in-law of the deceased (PW-8), on account of their relationship with the deceased, the variations in their descriptions of the weapons and the precise words spoken during the quarrel, and the non-examination of independent witnesses despite the occurrence having taken place in a residential locality. The delay of about 16 hours in registration of the FIR is also relied upon as an opportunity for deliberation and false implication.

10. On the applicability of Section 34 IPC, learned counsel for the appellant has submitted that the prosecution itself attributes the fatal blows with the wooden *thapi* to Yogesh. It has been argued that the appellant's

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participation in the initial assault upon Satbir cannot automatically make him liable for the subsequent fatal assault upon Babloo. The use of the *thapi* by Yogesh during the quarrel, it is submitted, was a sudden act and there is no evidence establishing that the appellant shared the common intention in furtherance of which the fatal assault was committed or possessed the requisite knowledge under Section 304 II IPC. Learned counsel for the appellant has also relied upon the absence of fingerprint examination of the wooden *thapi* and the discrepancy in its measurements. It has been submitted that the learned Trial Court failed to consider the cumulative effect of these circumstances and the evidence of DW-1.

11. Per Contra, learned APP for the State has supported the impugned judgment. It has been submitted that PW-4, PW-6 and PW-8 can naturally be classified as eye-witnesses to the occurrence and their relationship with the deceased is no ground to discard their testimony. The initial history of a fall, according to the State, stands explained by the shock and apprehension of the two women accompanying Babloo to the hospital. It is further submitted that the medical evidence is consistent with the ocular account of a blunt-force assault.

12. Learned APP has further submitted on the aspect of common intention, that the three brothers acted together, initially assaulted Satbir and thereafter turned upon Babloo when he intervened. The appellant and Dipesh also participated in the assault upon the deceased Babloo, while Yogesh inflicted the repeated blows with the *thapi*. Lerned APP has lastly submitted that the fact that the fatal blows were inflicted by Yogesh does not absolve the appellant when the evidence on record establishes that he participated in the same collective assault. It has been further submitted by the learned APP that common intention under section 34 IPC could develop

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at the spot and is to be inferred from the conduct of the accused and the circumstances of the occurrence.

13. Having heard the rival submissions and carefully perused the evidence on record, this Court is required to independently assess the material on record and determine whether the prosecution has established the guilt of the appellant beyond reasonable doubt.

14. Before examining the oral testimony of the witnesses and the rival submissions, it would be appropriate to first consider the medical evidence, as it provides an objective account of the nature and possible cause of the injuries sustained by Babloo and is relevant to assessing the competing explanations advanced by both sides for how those injuries were caused. In this regard, the initial history recorded in the MLC, Ex. PW-5/A, assumes significance. The initial history was furnished to Dr. Karan Singh (PW-5), by Raj Kumari (PW-6) and Khushi (PW-8), who had accompanied Babloo to the hospital at approximately 4:30 PM. PW-5 deposed that, when asked about the cause of the injuries, they informed him that Babloo had fallen from a height. However, in his cross-examination, PW-5 clarified that at approximately 6:46 PM, PW-6 and PW-4 orally informed him that the injuries had been sustained in an assault. The doctor recorded the history as disclosed to him in the relevant column of the MLC (Ex. PW-5/A). Thus, the medical record reflects an initial account of a fall, followed by a subsequent oral disclosure of assault made to the attending doctor by the deceased's parents. Relevant portion of the cross-examination of PW-5 has been reproduced hereunder for reference.

> *"the sister in law and the mother of deceased appraised me that the deceased fell from the height at 4.30 PM and about 6.46 PM later on the mother and father of deceased appraised me that the causes of injury was due to assault."*

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15. This makes clear that the subsequent information was conveyed orally to PW-5 by PW-4 and PW-6, and was not communicated through a separate written complaint or police statement. Thus, the medical record contains both an initial history of a fall and a subsequent disclosure of assault, and neither can be disregarded while evaluating the prosecution's case.

16. The explanation offered by the prosecution is that PW-6 and PW-8, being close family members of the deceased i.e. mother and sister-in-law of the deceased, were shocked and apprehensive when Babloo's condition deteriorated and that they initially gave an incorrect history. PW-6 expressly stated that she was shocked and that her husband was not present when she first accompanied Babloo to the hospital. PW-8 also deposed regarding the fear and apprehension experienced by them while taking Babloo for treatment. The alleged threats and stone-pelting referred to by PW-8 were not supported by any separate complaint, and this Court does not treat those allegations as independently established. Nevertheless, the fact that the initial history was subsequently corrected during the same evening, before the registration of the FIR, is relevant. It weakens the suggestion that the assault version was introduced for the first time after the police investigation had commenced.

17. The medical evidence establishes that Babloo suffered blunt-force trauma to the abdomen, resulting in haemorrhagic shock and death. PW-10 opined that Injury No. 2 was sufficient to cause death in the ordinary course of nature and that the injury could have been caused by the wooden *thapi*. The doctor also accepted the possibility of a similar injury being caused by a fall from a height onto a projecting object. The medical evidence, therefore, establishes the nature and fatal consequence of the injury and confirms that

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the *thapi* was capable of causing it. It does not, by itself, conclusively distinguish between an assault and a fall. The manner in which the injury was sustained must consequently be determined by examining the ocular evidence and the surrounding circumstances.

18. The ocular account of the morning occurrence is provided principally by PW-4, PW-6 and PW-8. PW-4 was himself injured in the same occurrence. He specifically attributed the repeated blows with the *thapi* on Babloo's waist and abdomen to Yogesh. PW-6 and PW-8 also attributed the use of the *thapi* to Yogesh and, importantly, both placed the appellant among the persons physically participating in the assault upon Babloo. PW-6 stated that the appellant and Nanki also beat Babloo, while PW-8 stated that all three brothers were beating him and attributed a brick to the appellant and an iron rod to Dipesh.

19. The testimony of these witnesses is not identical in every detail. PW-4 described the use of bricks against himself when he attempted to save Babloo, whereas PW-8 placed a brick in the appellant's hand during the assault upon Babloo. PW-6 did not specify the weapon allegedly used by the appellant, but expressly stated that he also beat Babloo. These differences concerning the precise role and weapon attribution require scrutiny, particularly because the appellant's liability for the death rests upon Section 34 IPC. They do not, however, erase the consistent assertion of PW-6 and PW-8 that the appellant physically participated in the assault upon Babloo. PW-4 also identified the appellant as one of the assailants in the same occurrence and stated that all three accused had beaten Babloo and himself.

20. The Court is conscious that the prosecution witnesses are members of the deceased's family. Their relationship with the deceased calls for careful scrutiny, but is not by itself a ground to reject their evidence. In Bhagwan

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Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537, the Hon'ble Supreme Court reiterated that the testimony of a related witness must be assessed on its merits and cannot be mechanically discarded merely on account of relationship. In the present case, PW-4's presence is supported by his own injuries, as recorded in the MLC qua him (Ex. PW-1/A). PW-6 and PW-8 were naturally present at the house on the morning of the ceremony. Their evidence is consistent on the occurrence of the quarrel, the intervention by Babloo, the use of the thapi by Yogesh and the participation of the appellant in the assault upon Babloo.

21. The variations in the precise words spoken during the quarrel also do not, in the facts of the present case, displace the core of the prosecution version. PW-4 referred to Nagina Devi gesturing and exhorting her sons to assault, while PW-6 attributed to the three brothers the words that the recurring quarrel should be brought to an end. The exact words are not reproduced uniformly by the witnesses. This Court does not place decisive reliance upon the precise wording of the exhortation. The more material circumstance is the sequence of events: the three brothers came out together, assaulted Satbir, and thereafter participated in the assault upon Babloo when he intervened. The differences in the exact words spoken during a sudden quarrel do not, by themselves, undermine that sequence. In this context the Hon'ble Supreme court in, Manoj Suryavanshi v. State of Chhattisgarh, (2020) 4 SCC 451 held that there are bound to be some discrepancies between the narration of different witnesses when they speak on details related to the occurrence or the incident in question, and unless the contradictions are of a material nature, the same should not be considered detrimental to the rest of the evidence in its entirety. Further the Apex court had also observed that corroboration of evidence with "mathematical

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niceties" cannot be expected in criminal cases and that minor embellishments and trivial discrepancies ought not to obliterate otherwise acceptable evidence.

22. The defence has also emphasised that independent neighbours were not examined, although PW-4 stated that four to six persons had gathered at some distance and neighbours intervened. This is a circumstance to be kept in view. However, the non-examination of independent witnesses does not automatically render the testimony of natural eyewitnesses unreliable. The relevant question remains whether the witnesses examined by the prosecution are trustworthy and whether their testimony withstands scrutiny against the medical and other evidence. In the present case, the evidence of PW-4, PW-6 and PW-8 is not rejected merely because they are related to the deceased.

23. The delay in registration of the FIR is another circumstance requiring consideration. The occurrence is alleged to have taken place at approximately 7:00-7:30 AM. Babloo's condition deteriorated around noon, and he was first taken for local medical assistance before being brought to the Trauma Centre at approximately 4:30 PM. The initial history of a fall was recorded at the hospital, followed by a disclosure of assault at approximately 6:46 PM. DD No. 33 was recorded at approximately 9:20 PM. The police reached the Trauma Centre thereafter, Satbir's statement was recorded by HC Rambir Singh (PW-11), at approximately 11:30 PM at the Trauma Centre. Thereafter, PW-11 prepared the rukka and dispatched it through Ct. Sanjeev at approximately 11:55 PM for registration of the FIR. The FIR was consequently registered shortly after midnight, during the intervening night of 04.10.2008 and 05.10.2008.

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24. The interval between the occurrence and the registration of the FIR is substantial and cannot be ignored. The prosecution's explanation is that the family initially underestimated the seriousness of the injuries, proceeded with the scheduled ceremony, and sought medical assistance when Babloo's condition deteriorated. The father reached the hospital later and the assault version was disclosed before the police registered the FIR. The initial history of a fall and the delay in approaching the police are circumstances which warrant caution, but they must be assessed in the context of the entire chronology. As explained in State of Himachal Pradesh v. Gian Chand, (2001) 6 SCC 71, delay in lodging an FIR is not by itself a ground for rejection of the prosecution's case and the Court must examine whether the delay has been satisfactorily explained and whether it afforded an opportunity for embellishment or fabrication.

25. There is also a discrepancy in the evidence concerning the names disclosed by Satbir to the police. PW-11 stated in cross-examination that Satbir had disclosed the name of Yogesh, but not the names of the other accused. PW-13, on the other hand, stated that Satbir had named Uma Shankar and his three sons, including Ratnesh. This discrepancy weakens the precision of the earliest disclosure and must be weighed in the appellant's favour to that extent. However, the question of the appellant's identity does not rest solely upon the police witnesses' depositions regarding the first disclosure. PW-4, PW-6 and PW-8 identified the appellant in Court and attributed participation in the assault leading to the death of Babloo to him. Thus, their evidence must be considered independently and in the context of the other circumstances.

26. The defence version is supported to some extent by the initial medical history and the testimony of Rama Devi (DW-1). DW-1 stated that she saw

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Babloo talking on the telephone at approximately noon and falling while descending the stairs. Her testimony cannot be rejected merely because she was examined by the defence or because she was acquainted with the appellant's family. Her evidence has, therefore, been considered on its merits. The difficulty however, with the testimony of DW-1 is that she did not disclose the alleged fall to the family or the police at the relevant time, and no explanation for such silence emerges from her deposition. In hindsight, upon due consideration, the conduct exhibited by DW-1 appears highly unusual, as it would not be unnatural or unexpected for a person who had witnessed an incident of the nature described by DW-1 to remain silent. Her account must further be considered alongside the testimony of PW-8, who stated that Babloo's condition deteriorated around noon and that he fell to the floor inside the house where a dari was spread. PW-8 specifically denied that Babloo fell while descending the wooden staircase or that such a fall caused the fatal injury.

27. The two accounts of the later fall are thus materially different. DW-1 describes a fall while descending the stairs, whereas PW-8 describes Babloo collapsing onto the floor inside the house after his condition had deteriorated. The initial medical history lends some support to the possibility of a fall, and the medical evidence does not rule out an injury caused by a fall onto a projecting object. However, DW-1 does not identify any particular object against which Babloo struck his abdomen. Her testimony establishes a possible fall, but does not establish that the fall caused the fatal abdominal injury. It must be weighed against the direct testimony of PW-4, PW-6 and PW-8 concerning the morning assault, and the evidence that Babloo complained of pain thereafter before his condition deteriorated.

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28. The absence of external abrasions or bruises at the time of the initial medical examination has also been considered. PW-5 stated that there were no external injuries apart from tenderness over the left lumbar spine, flank and lower back. However, PW-10 specifically stated that a blow with a wooden thapi could cause contusions and internal injuries without necessarily producing abrasions. The post-mortem examination revealed the fatal abdominal contusion and internal injury. The absence of external abrasions, therefore, does not render the ocular version medically impossible.

29. The wooden thapi was recovered at the instance of Yogesh and not the appellant. No fingerprints were lifted from it. The Trial Court's observation that lifting fingerprints from its coarse and uneven surface was scientifically impossible is not supported by any separate expert evidence in the material placed before this Court. The Court does not rely upon any such asserted scientific impossibility. The absence of fingerprint evidence is a missing forensic circumstance, but it does not establish that the weapon was not used. The recovery and medical opinion corroborate the prosecution case regarding the object capable of causing the injury; they do not independently establish the appellant's participation. His role has to be determined from the ocular evidence.

30. On an overall consideration, the initial history of a fall, the later disclosure of assault, the medical possibility of an injury from a fall, the evidence of DW-1 and the delay in registration of the FIR are material circumstances. They have not been brushed aside. However, the direct testimony of PW-4, PW-6 and PW-8 concerning the morning occurrence, the subsequent complaint of pain by Babloo, the medical evidence of blunt-force trauma and the disclosure of assault at the hospital during the same

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evening, when considered cumulatively, provide a more reliable explanation for the fatal injury than the alternative version advanced by the defence. The Court is accordingly satisfied that the prosecution has established beyond reasonable doubt that Babloo sustained the fatal injury in the assault alleged by it.

31. The relevant depositions may be considered in greater detail in determining the appellant's individual role. Satbir Verma (PW-4), father of the deceased and the complainant, deposed that when he intervened in the quarrel between the two women, the appellant and his two younger brothers came out and assaulted him. When Babloo came to his rescue, Yogesh picked up a wooden thapi lying near the entrance of the house and struck Babloo repeatedly, two to three times, on his waist and abdomen. PW-4 further stated that when he attempted to save Babloo, the three accused picked up bricks and assaulted him on his hand and chest. He identified the appellant in Court and identified the wooden thapi as Ex. P-1.In cross-examination, PW-4 stated that the appellant and Nanki were present close to him and Babloo during the occurrence. He maintained that Yogesh had struck Babloo with the thapi. He also stated that the family did not immediately approach the police because they were required to attend the God Bharai ceremony and he did not wish to further sour relations with their immediate neighbours. He reached the Trauma Centre at approximately 6:00-6:30 PM, when Babloo was undergoing an operation. His own medical examination corroborates that he sustained simple blunt injuries during the occurrence.

32. Raj Kumari (PW-6), mother of the deceased, also deposed about the quarrel arising from the garbage thrown onto the vacant plot. She stated that Nagina Devi called her sons, whereupon all three grappled with and

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assaulted her husband. When Babloo intervened, the accused persons grappled with him as well. She specifically stated that Yogesh picked up a thapi and started beating Babloo, while the appellant and Nanki also beat him. She further identified the thapi produced before the Court.PW-6 stated that she was shocked and, in that state, initially informed the attending doctors that Babloo had fallen from the wooden ladder. She explained that her husband was not with her at the time. In cross-examination, she maintained that the appellant and Nanki had also beaten Babloo. She denied that Babloo had sustained the fatal injury from a fall from the ladder.

33. Khushi (PW-8), sister-in-law of the deceased, deposed that she was inside the house when she heard the noise of the quarrel and came outside. She saw the appellant and his two brothers beating Babloo. She attributed the wooden thapi to Yogesh, an iron rod to the younger brother, and a brick to the elder brother, namely, the appellant. She stated that Babloo became unconscious due to the beating and was taken inside the house. After regaining consciousness, he complained of pain.PW-8 further stated that around 12:00-1:00 PM, when Babloo's condition deteriorated, he fell to the floor inside the house where a dari was spread. She and her mother-in-law thereafter took him for medical assistance. She explained that, owing to their shock and apprehension, they initially told the doctor that Babloo had fallen from a ladder or stairs. In cross-examination, she maintained that the appellant and his brothers had beaten Babloo and that the weapons were as described by her. She denied that Babloo had sustained the fatal injury by falling while descending the wooden staircase. She also clarified that the fall inside the house occurred when his condition deteriorated and that she had herself witnessed it.

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34. Mool Chand (PW-7), brother of the deceased, was not an eyewitness to the initial occurrence. He stated that he learnt about the quarrel when he woke up at approximately 8:00-8:30 AM and thereafter came to his parental house. His testimony is relevant to the circumstances immediately following the occurrence, but the question of the appellant's participation in the assault is principally supported by PW-4, PW-6 and PW-8.

35. Dr. Karan Singh (PW-5) proved the MLC of Babloo, (Ex. PW-5/A). In his deposition before the court, he had stated that Babloo was brought to the Trauma Centre at approximately 4:30 PM by his mother and sister-in-law who initially stated that Babloo had fallen from a height, but subsequently disclosed that he had been assaulted. In cross-examination, he stated that at approximately 6:46 PM the mother and father of the deceased informed him that the injuries were caused due to assault. He further stated that neither Babloo nor the attendants named the assailants. Apart from tenderness over the left lumbar spine, flank and lower back, there were no external injuries such as abrasions or bruises. He accepted that a fall from a height onto a projecting object could cause similar injuries, but also stated that the injuries were possible by assault with a blunt object.

36. Dr. Vijay Dhankar (PW-10), who conducted the post-mortem examination, proved the post-mortem report (Ex. PW-10/A). He opined that death was due to haemorrhagic shock in the case of blunt trauma abdomen. The injuries were ante-mortem and recent. Injury No. 2, a contusion over the abdomen, was sufficient to cause death in the ordinary course of nature. In his subsequent opinion (Ex. PW-10/B), he stated that the said injury could have been caused by the wooden thapi examined by him. In cross-examination, he accepted that a person falling from a height onto a projecting object could sustain a similar injury. He also clarified that a thapi

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could cause contusions and internal injuries without necessarily producing abrasions, and that a blow with the thapi on the abdominal portion of the back could result in rupture of the spleen.

37. HC Rambir Singh (PW-11) deposed that information regarding admission of the injured persons was received vide DD No. 33 at approximately 9:20 PM. He reached the Trauma Centre, obtained the MLC and found Babloo unfit for statement, while Satbir was fit. He recorded Satbir's statement and prepared the rukka. In cross-examination, he stated that Satbir's statement was recorded at approximately 11:30 PM and that the rukka was sent for registration of the FIR thereafter. He also stated that Satbir had disclosed the name of Yogesh, but did not disclose the names of the other accused. Ct Sanjeev (PW-13), on the other hand, deposed that Satbir had named Uma Shankar and his three sons, namely, Nanki, Yogesh and Ratnesh. The difference between these two accounts is a circumstance to be considered while examining the earliest disclosure. SI Satya Prakash (PW-13), the Investigating Officer, deposed that the wooden thapi was recovered at the instance of juvenile Yogesh. No fingerprints were lifted from the weapon. The recovery, therefore, is attributable to Yogesh and cannot be treated as forensic evidence connecting the appellant with the weapon.

38. Now, coming to the conviction under Section 323 read with Section 34 IPC which concerns the hurt caused to Satbir Verma. PW-4 has given a direct account of the appellant and his two brothers assaulting him during the occurrence. He stated that the three accused picked up bricks and struck him on his hand and chest. PW-6 also stated that all three brothers grappled with and assaulted her husband. The MLC of Satbir, proved by Dr. J.K. Basu as (Ex. PW-1/A), corroborates that he sustained simple blunt injuries.

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39. The testimony of PW-4, who was himself injured, identifies the appellant as one of the assailants. His presence and injuries are supported by the medical record, and his account receives corroboration from PW-6. The evidence on record establishes that the appellant had indeed participated in the assault upon Satbir along with the other accused and that the hurt was caused in furtherance of their common intention. The conviction under Section 323 read with Section 34 IPC, therefore, also calls for no interference.

40. The next and principal question is whether the appellant can be held liable for the death of Babloo when the repeated blows with the wooden thapi have been attributed to Yogesh. The answer requires separate consideration of the requirements of Section 304 Part II IPC and the principle of joint liability under Section 34 IPC. Section 299 IPC defines culpable homicide as causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act is likely to cause death. Section 304 IPC prescribes punishment for culpable homicide not amounting to murder. Part II applies where the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

41. Section 34 IPC embodies the principle of joint liability where a criminal act is done by several persons in furtherance of their common intention. It does not create a separate substantive offence. Its application requires proof of a common intention and participation in the criminal act in furtherance of that intention. The acts of the participants need not be identical, and it is not necessary that each accused should personally inflict the injury which ultimately causes death. However, mere presence at the

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scene, relationship with the principal assailant or participation in an unrelated act of violence is insufficient.

42. The principles governing Section 34 were explained in Jasdeep Singh @ Jassu v. State of Punjab, (2022) 2 SCC 545. The Supreme Court reiterated that common intention is a question of fact to be determined from a cumulative assessment of the evidence. It must be accompanied by participation in action in furtherance of that intention. The common intention need not be the result of a long-standing plan and may develop at the spot. At the same time, the Hon'ble Supreme Court emphasised that the existence of common intention must be established by the prosecution and cannot be presumed merely from the presence of the accused at the scene. The relevant paragraphs of Jasdeep Singh (supra) has been reproduced hereunder for reference:

> ***"20.*** *Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.*
>
> ***21.*** *What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.*
>
> ***22.*** *It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more,*

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the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. *The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.*

24. *Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.*

25. *The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.*

26. *There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.*

27. *The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided*

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a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court."

43. A particularly relevant and detailed explanation is found in Krishnamurthy @ Gunodu v. State of Karnataka, (2022) 7 SCC 521 wherein the Apex Court reiterated that Section 34 can be applied to an offence where knowledge, rather than intention, constitutes the requisite mental element. It also cautioned that a co-accused cannot automatically be made liable for every act committed by the principal offender. The ultimate criminal act must be attributable to, primarily connected with, or a known or reasonably possible outcome of the common purpose. Where the final act is distinctly remote and unconnected with the common intention, constructive liability cannot be imposed.

44. Applying these principles to the present case, the prosecution's evidence does not place the appellant merely at the scene or confine his role to the initial assault upon Satbir. The evidence of PW-6 is that when Babloo intervened to rescue his father, all three accused grappled with him, Yogesh used the wooden thapi, and the appellant and Nanki also beat Babloo. PW-8 goes further and states that all three brothers were beating Babloo, attributing the thapi to Yogesh, an iron rod to Dipesh and a brick to the appellant. PW-4 identifies Yogesh as the person who repeatedly struck Babloo with the thapi on the waist and abdomen, while also identifying the appellant as one of the participants in the same occurrence.

45. This Court has considered the difference between PW-4's account of the use of bricks against himself and PW-8's attribution of a brick to the appellant during the assault upon Babloo. PW-6, however, independently

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attributes physical participation in the assault upon Babloo to the appellant, though she does not specify the weapon used by him. The evidence of PW-8 concerning the brick is thus not an isolated assertion of the appellant's presence, on the contrary it is accompanied and somewhat supplemented by PW-6's account that the appellant also beat Babloo and by PW-4's identification of the appellant as a participant in the same occurrence. Having considered the cross-examination of these witnesses, this Court finds their evidence sufficient to establish that the appellant actively participated in the assault upon Babloo.

46. The prosecution's case, as submitted by the learned APP and based on what has come on record, is that the three brothers came together, assaulted Satbir, and when the deceased Babloo intervened, all three turned upon him which ultimately led to his demise. As far as the involvement of the appellant is concerned, none of the eye witnesses have deposed, or even hinted towards anything that would suggest or lead this court to believe or infer that he had withdrawn or dissociated himself from the assault when Yogesh picked up the thapi. Rather, PW-6 and PW-8 places the appellant clearly among the assailants who had carried out the assault upon Babloo. The use of the thapi must therefore be considered in the context of the continuing collective assault, and not as an isolated act to be viewed independently or in isolation of the conduct of the other participants.

47. The evidence on record establishes that the appellant did not merely participate in the assault upon Satbir and then remained a passive observer. He also participated in the assault upon Babloo after the latter intervened. The common intention relevant to the death of Babloo must therefore be assessed with reference to this second phase of the occurrence. Therefore this Court is accordingly satisfied that the common intention, to assault the

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deceased Babloo developed, at the latest, when he intervened and the three brothers collectively turned upon him. The assault was not an independent attack by Yogesh upon a victim who had already been left alone by the appellant. The evidence, as accepted above, places the appellant among the persons actively assaulting Babloo while Yogesh inflicted repeated blows with the thapi.

48. The further question is whether the knowledge required under Section 304 Part II IPC can be attributed to the appellant. Such knowledge cannot be inferred merely from the fact that Babloo died or from the fact that the appellant participated in a quarrel. This Court must consider the nature of the assault, the weapons used, the part of the body targeted, the repetition and force of the blows, and the appellant's own participation.

49. In the present case, the evidence clearly establishes that Yogesh repeatedly struck Babloo, two to three times, on the waist and abdomen with the wooden thapi. PW-8 stated that the appellant was participating in the same assault with a brick in his hand, while Dipesh had an iron rod. PW-6 independently stated that the appellant also beat Babloo. The assault was therefore not confined to a single blow delivered by Yogesh in isolation. It was a collective assault by three persons using blunt implements against the same victim, during which repeated blows were inflicted on the abdominal region. The medical evidence establishes that the fatal injury was a blunt-force injury to the abdomen, resulting in rupture of the spleen and haemorrhagic shock. PW-10 confirmed that the thapi could cause the injury and that a blow with it on the abdominal portion of the back could result in rupture of the spleen. The Court does not infer the appellant's knowledge merely from the fatal consequence. It is the nature and manner of the collective assault, the use of multiple blunt implements, the repeated blows

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to the waist and abdomen by Yogesh, and the appellant's own active participation in the same assault that support the inference.

50. Although the precise blow delivered by the appellant and the particular part of the body struck by him have not been separately identified, Section 34 does not require every participant to inflict an identical injury or the injury which ultimately proves fatal. The absence of such individual attribution is not decisive where the evidence establishes participation in the same criminal act in furtherance of a common intention. It is made clear that the appellant's liability is not founded merely upon his relationship with Yogesh or his presence at the scene, but upon the evidence that he was himself beating Babloo during the assault, during which the fatal blows were inflicted by his younger brother Yogesh.

51. The circumstances also distinguish the present case from Krishnamurthy (supra). There, the co-accused were found to have confined their role to holding and pulling down the deceased and had not participated in or facilitated the subsequent brutal assault by the principal offender. In the present case, the evidence on record, on close examination and consideration, clearly establishes that the appellant actively participated in the assault upon Babloo while Yogesh was inflicting the repeated thapi blows. The fatal act was therefore not a distinctly remote or unconnected escalation by Yogesh after the appellant had ceased participating. It formed part of the same collective assault.

52. This Court is conscious that the common intention under Section 34 and the knowledge required under Section 304 Part II are distinct concepts. The former concerns the common/collective intention behind the criminal act while the latter concerns the appellant's awareness that death was a likely consequence of that act. In view of the facts set out above, the

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appellant's participation in a collective assault upon Babloo, while repeated blows were being inflicted on the abdominal region by Yogesh, establishes the requisite knowledge. The circumstances support the inference that the appellant knew that the criminal act being carried out was likely to cause death, even though there is no evidence that he intended to cause death or intended to inflict the particular bodily injury which proved fatal.

53. Accordingly, the prosecution has been able to establish beyond reasonable doubt that the appellant actively participated in the assault upon Babloo in furtherance of a common intention shared with the other assailants, and that he possessed the knowledge required under Section 304 Part II IPC. The fact that the fatal blows were inflicted by Yogesh does not, in the circumstances of the present case, absolve the appellant of liability under Section 304 Part II read with Section 34 IPC.

54. The appeal is accordingly dismissed.

55. The Impugned Judgment dated 29.04.2009 and the Impugned order dated 30.04.2009 passed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi, are upheld.

56. The Appellant, whose sentence was suspended by this Court vide order dated 30.07.2009, shall surrender before the learned Trial Court within a week from today to undergo the remaining sentence. He shall be entitled to the benefit of set-off under Section 428 Cr.P.C. to the extent admissible and already granted by the learned Trial Court. His bail bonds and surety bonds shall stand cancelled upon his surrender. In the event of failure to surrender, the learned Trial Court shall take appropriate steps in accordance with law to secure his presence.

57. The appeal along with pending application(s) if any, stand disposed of accordingly.

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58. Copy of this judgment be transmitted to the learned Trial Court and the concerned Prison Authorities for requisite compliance.

VIMAL KUMAR YADAV, J

NOVEMBER 19, 2026/*ij*

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