



2026:DHC:296



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

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+ **CRL.A.1024/2017**

SURAJ SINGHAppellant
Through: Mr. Mahesh Kumar, Advocate
versus

THE STATE GOVT OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State with
Ms. Yusra, Advocate, with Inspector
B.S. Guliya, P.S. JP Kalan and SI
Naveen Yadav, P.S. Dwarka South.

+ **CRL.A.1034/2017**

MOHD. NASEEMAppellant
Through: Mr. Mahesh Kumar, Advocate
versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State with
Ms. Yusra, Advocate, with Inspector
B.S. Guliya, P.S. JP Kalan and SI
Naveen Yadav, P.S. Dwarka South.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeals have been preferred by the appellants seeking to



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assail a common judgment of conviction dated 03.10.2017 and order on sentence dated 11.10.2017. The appellants were convicted for the offence punishable under Sections 326/34 IPC and sentenced to undergo RI for 3 years along with payment of a fine of Rs.10,000/- each, in default whereof they would undergo SI for 3 months each. The benefit under Section 428 Cr.P.C. was granted to the appellants.

2. As common submissions have been addressed, the present appeals are being taken up and disposed of vide a common judgment.

3. The facts in a nutshell are that the FIR in the present case came to be registered on 23.03.2012 on the statement of the complainant/injured, who alleged that he was a rickshaw driver. He had gone to take tea at the shop of one *Guru Dev Das*, and the complainant's son, *Kundan*, was also there. At about 4.30 pm, four boys came who were loudly talking and abusing and when the complainant/injured objected to the same, one of them exhorted others, on which two of them caught hold of him while the third one took a silver-coloured knife and stabbed into his stomach. His son, *Kundan*, and *Guru Dev Das*, rushed to help him, on which all the four boys attempted to flee away. Two of them who had caught hold of the complainant/injured were apprehended at the spot and they disclosed their names as *Suraj Singh* and *Mohd. Naseem @ Sonu*. The other two boys were apprehended later by the I.O. and discovered to be JCLs. The knife in question was recovered at the instance of JCL 'T'.

4. The appellant was taken for medical examination and on completion of investigation; charge sheet came to be filed. On 05.09.2012, charges came to be framed under Section 307/34 IPC.



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5. Learned counsel for the appellants contends that the prosecution has failed to prove the case against the appellants as the identity of the appellants has not been conclusively established. He further states that the person who stabbed the complainant/injured was a juvenile and was tried separately.

6. The contentions are opposed by the learned APP for the State, who submits that both the appellants were apprehended at the spot of the incident, and that they have been rightly convicted by the Trial Court with the aid of Section 34 IPC.

7. During the trial, the complainant/injured was examined as PW-2. He deposed that on 03.04.2012, he had gone to the tea stall run by his relative, *Guru Dev Das*, to take tea, and near the stall, four boys were abusing each other. When he asked them not to do so, he was stabbed in the abdomen with a knife. He stated that the boy who had caused the injury was not present in Court. The witness did not ascribe any role to the present appellants.

He was cross-examined by the learned APP for the State, in which he denied having stated to the police that the names of the accused persons apprehended at the spot were *Suraj* and *Sonu*. He volunteered that he could identify the accused who had stabbed him and that he had done so in the Juvenile Court where he had gone for deposition. He admitted it to be correct that the incident took place on 23.03.2012. On a further suggestion being put that the appellants were the same persons who were the associates of the accused who had stabbed him, the witness denied the same. Notably, no suggestion was given as regards the allegation of the appellants catching



hold of the witness.

8. *Kundan*, son of the complainant/injured, was examined as PW-3 and narrated a different version of the incident. He stated that on the day of incident, four boys were beating one boy near the tea stall where he and his father were taking tea, and upon his father objecting to the same, one of the said four boys stabbed his father. However, he stated that he could not see as to which of the four boys had stabbed his father. He identified both the appellants as being amongst the four boys who were beating the other boy. When the witness inquired from the four boys as to why they were beating a person of their uncle's age, the four boys gave beatings to him. He stated that while the appellant/*Mohd. Naseem* held him by the collar of his shirt, the appellant/*Suraj* hit him with his fists. The appellants were caught at the spot by the witness with the help of public persons and his uncle, the teaseller *Guru Dev Das*.

In cross-examination by the learned APP for the State, the witness denied the suggestion that the JCL 'T', who had statedly stabbed his father, was arrested in the presence of the witness and that a knife was recovered from his possession. He admitted that the sketch of the recovered knife as well as the seizure memo of the same were prepared in his presence. He admitted that the other JCL 'R' was identified by him before the I.O. as the one who had instigated his other associates. He stated that he could identify the seized knife, but upon the recovered knife being produced, he stated that he could not say whether the produced knife was the weapon of offence.

During cross-examination by the counsel for accused/*Mohd. Naseem*, he stated that he cannot tell as to who out of the two accused persons is



Suraj and who is *Sonu*. He did not remember as to which accused held his father from which side at the time of the incident.

The cross-examination conducted on behalf of accused/*Mohd. Naseem* was adopted by the learned counsel for the accused/*Suraj Singh*.

9. *Gurudev Das*, the tea-stall owner was examined as PW-4. His narration of events also comes with a twist. He stated that the appellants, along with two associates, were giving beatings to one person, and upon his *fufa* (uncle) asking them not to do so, the four boys started beating up his *fufa*. He stated that he did not remember which of those persons had held his *fufa*, but confirmed that one small person amongst the four had stabbed his *fufa* in the stomach

In his cross-examination by the learned APP for the State, he denied the suggestion that the four boys were not beating another person but rather quarrelling and abusing each other. He stated that he did not remember the names of the accused persons who were apprehended by him and PW-3, but denied that their names were *Suraj Singh* and *Sonu*. On the recovered knife being produced in Court, the witness stated that the produced knife is not the same which was recovered from the possession of JCL 'T'.

During cross-examination by the counsel for the accused/*Mohd. Naseem*, the witness stated that the four accused persons were verbally abusing each other and not the complainant.

The cross-examination conducted on behalf of accused/*Mohd. Naseem* was adopted by the learned counsel for the accused/*Suraj Singh*.

10. The primary witnesses in the present case are the injured complainant/PW-2; his son and eyewitness, PW-3; and their relative and



eyewitness, the teaseller PW-4. As noted above, a perusal of their testimonies shows that they have all given varying accounts of the incident in question.

11. The injured complainant/PW-2 has not ascribed any role to the appellants. He has not identified the appellants and rather denied that the names of the accused persons apprehended at the spot were *Suraj* and *Sonu*. He also denied that the appellants were the associates of the person who had stabbed him. It is also extremely pertinent to note that despite being cross-examined by the learned APP for the State, no suggestion regarding the appellants herein catching hold of him to enable the concerned accused to stab him in the abdomen was given to the complainant.

12. On the other hand, both PW-3 and PW-4 have given a different version of the incident. PW-3 could not identify as to who had stabbed his father. He has further deposed that the four boys also gave beatings to PW-3 himself. However, no charge was framed on this aspect. Neither any MLC is prepared *qua* this witness. Notably, he did not ascribe to appellants any role in the stabbing of his father. He was also unable to individually identify the two appellants insomuch as which one of the two was *Suraj*, and which one was *Sonu*.

PW-4 denied that the names of the two persons who had been apprehended at the spot by him and PW-3 were *Suraj Singh* and *Sonu*. He stated that the appellants had held the complainant but did not remember which appellant had held him from which side.

13. As for the role ascribed to the appellants in the incident in question, the complainant/PW-2 did not ascribe any role to the appellants; PW-3



ascribed to them the role of holding the complainant and of having given beatings to PW-3 himself; while PW-4 ascribed to them the role of holding the complainant and giving beatings to him.

14. In the absence of any detailed testimony on this point, it would be erroneous to read beyond the record and assume that the appellants shared a common intention in furtherance of which the complainant was stabbed.

15. The above conclusion is further supported by the inconsistencies evident in the versions of the two eyewitnesses as to the actions of the appellants, with PW-3 stating that the appellants had beaten him up when he tried to intervene, and PW-4 stating that the appellants had beaten up the complainant when he had tried to intervene.

16. It is also worthwhile to note at this stage that it has come out in the testimony of the complainant that there were 25-30 persons present at the spot at the time of the incident, yet none of them were examined by the prosecution to establish the facts of the situation. It is also worth mentioning that neither PW-3 nor PW-4 identified the recovered knife as the weapon of offence upon it being produced in Court.

17. In light of the testimonies of the key witnesses, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. In view thereof, the impugned judgment and order on sentence must be set aside. Accordingly, the present appeals succeed and the appellants are acquitted.

18. The bail bonds furnished by the appellants stand cancelled and their sureties are discharged.

19. A copy of this judgment be communicated to the Trial Court and the



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concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

JANUARY 13, 2026

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Signature Not Verified

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MOHAN CHOUDHARY
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