



2026:DHC:2866-DB



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

Reserved on: 25th February, 2026

Pronounced on: 7th April, 2026

Uploaded on: 7th April, 2026

+ **CRL.A. 943/2016**

STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Ritesh Kumar Bahri APP for
State with Mr. Lalit Luthra and Mr.
R. S. Gupta, Advs.
SI Thakur Singh, P. S. Khyala.

versus

HARISH & ANR

.....Respondents

Through: Mr. Harsh Prabhakar, Mr. Dhruv
Chaudhry, Mr. Shubham Saurav and
Mr. Vijit Singh, Advs.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN**

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter '*CrPC*') has been preferred by the Appellant assailing the Impugned Judgement dated 20th July 2015, passed by the Id. Additional Sessions Judge, West District, Tis Hazari Courts, Delhi, whereby the Respondents - Rinku @ Shiv Kumar and Harish were acquitted of the offences in Sessions Case No. 7/2011, arising out of FIR No. 210/2009, registered at P.S. Khyala under Section 307/324 read with Section 34 of the Indian Penal Code, 1860 (hereinafter '*IPC*').



FACTUAL MATRIX:

2. The prosecution case emanates from an incident which allegedly took place on the intervening night of 17/18th October 2009, during the festival of Diwali, at C-10, Raghbir Nagar, Delhi. As per the prosecution, the incident had its genesis in a sudden altercation when one PW- 8 Balram, who had visited the house of the complainant PW-1 Prabhu Shyam, was returning at about 12:30 a.m. It is alleged that at that time accused Rinku @ Shiv Kumar demanded a cigarette from him, and upon refusal, a quarrel ensued. The situation allegedly escalated when Rinku @ Shiv Kumar is stated to have assaulted Balram with a *danda* and thereafter called co-accused Harish to the spot. Harish is alleged to have arrived armed with a knife and, in the course of the altercation, inflicted knife blows upon PW-1 Prabhu Shyam when he intervened, and subsequently upon PW- 5 Ghanshyam, who also attempted to intervene. The occurrence is thus alleged to have arisen out of a spontaneous quarrel during the late hours of the Diwali night, and culminated in injuries being sustained by the said persons.

3. The case was set into motion upon receipt of DD No. 14A at Police Station Khyala at about 02:45 a.m., regarding a quarrel taking place at the said address.

4. Pursuant to the said information, PW-12 SI Gurdeep Singh, along with PW-9 Ct. Rajesh, proceeded to the spot of occurrence. However, upon reaching the location, no eye-witnesses were found present and the police officials were informed by persons gathered in the vicinity that the injured persons had already been removed to Deen Dayal Upadhyay Hospital (hereinafter '*DDU Hospital*'). The relevant portion of the statement is reproduced herein below:



Witness	Statement in Examination in Chief
PW- 12 SI Gurdeep Singh	<i>...on the intervening night of 17/18.10.2009, he was on night emergency duty and at about 02:30 AM he received DD No,14A EX.PW12/A regarding a quarrel at C-10, Raghurvir Nagar, Delhi. Thereafter, he along with Ct. Rajesh reached at C-10, Raghurbir Nagar, where no eye witness met at that time and only the fact that the injured were shifted to some hospital came to their know. Then they returned to police station.</i>

5. Meanwhile, DD No. 17A was recorded at about 03:30 a.m., informing the police that two persons, namely Prabhu Shyam and Ghanshyam, had been admitted to DDU Hospital after sustaining injuries in a quarrel. Upon receipt of the said information, the Investigating Officer reached the hospital and sought permission from the attending doctor to record the statement of the injured.

6. Upon being declared fit for statement, PW-1 Prabhu Shyam, the complainant and one of the injured persons, gave his statement to the police. In the said statement, he alleged that on the night of the incident a person named Balram (PW-8) had come to his residence. When Balram left the house around 12:30 a.m., accused Rinku @ Shiv Kumar demanded a cigarette from him. Upon Balram refusing to provide a cigarette, an altercation ensued, during which the accused allegedly assaulted him. It was further alleged that the accused called Harish, who arrived armed with a knife and inflicted knife injuries upon Prabhu Shyam, and when Ghanshyam



attempted to intervene, he too was stabbed. The relevant portion of the statement made by PW- 1 Prabhu Shyam is reproduced herein below:

“...he is residing at the aforementioned address and runs a chole bhature shop. On 17.10.2009, one boy from his village namely Balram, came to him to meet and when at about 12.30 AM (night) he left his (complainant) house for going to Uttam Nagar, accused Rinku demanded cigarette from him,, to which he denied while saying that he is not having cigarette. On this Rinku started abusing Balram and with the danda, which he was carrying, Rinku started giving beatings to Balram. When Balram shouted, he (complainant) and Ghanshaym came there. Rinku also started giving beatings to them. Rinku called Harish to bring knife, by raising voice, and accordingly Harish came there with knife and while abusing them told that "aaj tumhe bataunga ki tumne kis sey panga liya hai" and then he gave knife blow to him (Prabhu Shyam) and when Ghanshyam came to save him, he also gave knife blow to Ghanshyarm. Thereafter, his brother took him to hospital.”

7. On the basis of the said statement, along with the medical documents and surrounding circumstances, the Investigating Officer prepared a rukka recommending registration of a case under Section 324 IPC. The rukka was sent through PW-9 Ct. Rajesh, pursuant to which FIR No. 210/2009 was registered at Police Station Khyala.

8. During the course of investigation, the blood-stained clothes allegedly worn by the injured persons were seized and sealed by the Investigating Officer. Subsequently, statements of witnesses were recorded under Section 161 CrPC, and a site plan of the place of occurrence was prepared.



9. The medical examination of the injured persons was conducted at DDU Hospital. The MLC of Prabhu Shyam bearing No. 21018/09 (Ex. PW-4/A) revealed multiple incised wounds allegedly caused by a sharp weapon and the injuries were opined to be simple in nature. The MLC of Ghanshyam bearing No. 20956/09 (Ex. PW-2/A) recorded a deep incised wound on the right flank and the injury was later opined to be dangerous in nature. The said MLCs are reproduced hereinbelow:

MLC of PW- 1 Prabhu Shyam

Name	Prabhu Shyam	सम्बन्धित व्यक्ति	श्री. सुदेश शर्मा	Sex	Male	Case No.	21018/09	MLC No.	
Residence	C-10 Rajinder Nagar	By	Brother with alleged H/O assault						
Date & Time	2:10 PM 18/10/19	N/H/O	LOC/vomiting/EXT Bleed/ oriented O/E (On Examination)						
Brought By	Suresh Shah Brother								
Mark of Identification	Open wound forehead								
Thumb Impression									
Duty Constable Name	Ch. Malviya								
Police Station	Rajinder Garden								
Nature of Injury	40	Kind of weapon / poison	Sharp						

Handwritten notes on the form:
 1. C/W Lt wrist on radial aspect 4X2 cm with bone
 2. C/W below chin 2X1 cm
 3. C/W upper chest high lateral aspect 2X2 cm
 4. C/W left axillary line from axilla to nipple 4X1 cm
 R2 O - 1
 T.T.O and wrist
 Vomiting
 Dist. & subcutaneous
 X-ray Chest PA/AP
 Sharp
 R. And Scandal

“B. By Brother with alleged H/O assault N/H/O LOC/vomiting/EXT Bleed/ oriented O/E (On Examination):

XXX

Injuries:

- 1. C/W Lt wrist on radial aspect 4X2 cm with bone***



- exposed.
2. C/W below chin 2X1 cm.
 3. C/W upper Rt thigh lateral aspect 3X2 cm.
 4. C/W left axillary line 4cm lateral to nipple 4X1 cm.”

MLC of PW- 5 Ghanshyam

20956 Deen Dayal Upadhyay Hospital, New Delhi-110064

Name: Ghanshyam S/O Soman Chel Age: 19 yr Sex: male ENR: 201803 MEDIC: 20915

Residence: 10 Baghwanagar New delhi

Date & Time: 10/10/09 @ 2:20 PM

Brought By: Individual (Brother)

Mark of Identification: Lacer over left breast with on forehead

Chief Complaint: Alleged H/O physical assault - as told by brother and self. N/H/O LOC/vomiting/seizure/ENT bleed

O/E: conscious, oriented, afebrile, BP: 110/80 mm, P: 80/min regular favorable

Chest: clear

CVS: NAD clinically

CNS: [Normal]

Examination findings: L/E - C/W below chin 2x1 cm, C/W upper Rt thigh lateral aspect 3x2 cm, C/W left axillary line 4cm lateral to nipple 4x1 cm.

Throat: Lacerations (diagram showing two oval lacerations on the tongue)

Diagnosis: Head Injury

Kind of witness: Shrop

“Alleged H/O physical assault as told by Brother and self. N/H/O LOC/vomiting/seizure/ENT bleed
XXX

- O/E (On Examination):
- Conscious, oriented
 - Afebrile
 - BP: 110/80 mm Hg
 - P: 80/min Regular, favorable
 - Chest: [Clear]
 - CVS: NAD clinically
 - CNS: [Normal]



- *P/A: As per local examination*
- L/E (Local Examination):*
- *C/W: 4cm x 2cm over Rt flank.*
 - *Depth would be ascertained by SR Surgery.*
- ‘X’ Injury- Dangerous – Rajiv.”*

10. The relevant medical opinion regarding the injuries are reproduced hereinbelow:

<i>Witness</i>	<i>Statement in Examination in Chief</i>
<i>PW- 2 Dr. Kumar Narender Mohan</i>	<i>On 18.10-2009 at about 02:20 AM injured Ghanshyam was brought to DDU Hospital for his medical examination with alleged history of physical assault, as told by self and brought, by. On examination patient was found conscious and oriented. On local examination there was clean incised wound 4 cm X 2 cm over right flank (over the belly right side). Patient was given primary treatment and was referred to surgery emergency for further examination and management. The kind of weapon by which injured Ghanshyam sustained injuries was sharp. He proved on record the MLC of injured Ghanshyam, prepared by him, as Ex. PW-2/A bearing his signatures at point A.</i>
<i>PW- 3 Dr. Rajiv</i>	<i>Senior Resident, General Surgery, DDU Hospital stated that he has seen the MLC Ex;PW-2/A in respect of patient / injured Ghanshyam. Ghanshyam was referred to surgery emergency for further examination and</i>



	<p><i>his case was seen by him being senior resident. Surgery. On examination patient was found conscious and oriented. In systemic examination of the abdomen of the patient, it was tense, guarding (tenderness) and rigidity was present. On the basis of the abovesaid finding, patient was admitted in surgery unit-1 for further investigation and treatment. He proved on record the medical record (running into fourteen pages) from surgery department in respect of medical treatment given to the patient Ghanshyam in DDU Hospital, duly attested by the Statistical Officer, (Head of Medical Record Department).Ex.PW-3/A (colly.). <u>As per the record patient Ghanshyam was operated on 18.10.2009 in the hospital as mentioned at page 8 of Ex.PW-3/A and on the basis of intra operative findings, he had opined the nature of injuries as dangerous as mentioned in MLC Ex. PW-2/A at point X bearing his signatures at point X-1.</u> He further stated that the patient Ghanshyam was examined by him and his general findings given in MLC Ex.PW-2/A are from point Y to Y1 bearing his signatures at point Y2.</i></p>
PW- 4 Dr. Ajay sharma	<p><i>Medical Officer, DDU Hospital, appeared in the court to depose on behalf of Dr. Aditya Kaushik, Junior Resident. He stated that he had seen Dr. Aditya Kaushik writing and signing during the course of official duty and he can identify his writing and</i></p>



	<p><i>signature. On 18.10.2009, Dr. Aditya Kaushik examined patient Prabhu Shyam, who was brought by his brother with history of assault. Mr. Prabhu Shyam sustained injury 1. 01W left wrist on redial aspect 4x2 cm with bone exposed, 2. CIW bellow chin 2x1 cm, 3. CIW upper left thigh lateral aspect 3x2 cm, 4. CIW left axillary line 4 cm lateral to nipple 4x1 cm. After giving first aid patient was referred to surgery specialty for the. further management vide MLC no.21018. He proved on record the MLC prepared by Dr. Aditya Kaushik as Ex.PW-4/A. .</i></p>
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11. In view of the medical opinion declaring the injury suffered by Ghanshyam as “dangerous”, Section 326 IPC was subsequently added during the course of investigation. Upon completion of investigation, a charge-sheet under Sections 324/326/34 IPC was filed before the court.

12. At the stage of consideration of charge, the Id. Magistrate formed the opinion that the material on record disclosed a *prima facie* case under Sections 307/324/34 IPC, and since the offence under Section 307 IPC is triable exclusively by the Court of Sessions, the matter was committed to the Court of Sessions. The Id. Magistrate in order dated 4th August, 2011 held as under:

“I have considered the rival submissions and perused the statement of Prabhu Shyam on the basis of which FIR was registered. I have also seen the MLCs on record wherein injuries of Ghan Shyam opined as dangerous with sharp weapon



*and injuries of Prabhu Shyam opined as simple sharp. **Hence, the material on record is sufficient which discloses a prima facie case for the offence u/s 307/34 and u/s 324/34 IPC against the accused persons. Charge be framed.** Charge framed accordingly to which they pleaded not guilty and claimed trial.”*

13. Upon committal, charges under Sections 307/324/34 IPC were framed against the Respondents, to which they pleaded not guilty and claimed trial.

14. In order to prove its case, the prosecution examined twelve witnesses, including the injured witnesses, eye-witnesses, medical experts and the investigating officers. The principal witnesses relied upon by the prosecution were the injured persons PW-1 Prabhu Shyam and PW-5 Ghanshyam, along with PW-7 Suresh, brother of the injured persons, and PW-8 Balram, who was allegedly present at the time when the altercation began.

<i>Witness</i>	<i>Statement in Examination in Chief</i>	<i>Statement in Cross Examination</i>
<i>PW-1 Prabhu Kumar Shah</i>	<i>...Thereafter, Accused Harish along with accused Rinku stabbed him with the knife on his different 1 parts of the body including stomach. His brother Ghanshyam vi/as also present in his house at that time. When he intervened in the incident, both the accused also stabbed</i>	<i>...Accused Rinku and Harish came inside his house along with Balram. No family member of accused persons came to his house during the quarrel. During the quarrel Suresh came downstairs at the ground floor and he was also beaten by the accused</i>



	<p><i>Ghanshyam with knife.</i></p>	<p><i>persons. The quarrel took place inside his house for 5-7 minutes. Accused persons also stabbed him with knife inside his house.</i></p> <p><i>XXX</i></p> <p><i>He conceded that in his statement dated 18.10.2009 it is nowhere stated that accused Rinku also stabbed him with knife or he was carrying knife. He confirmed that till date he has not lodged any complaint to any authority regarding the fact that 10 has not mentioned in his statement that accused Rinku was carrying a knife and he also stabbed him with knife. He clarified that his brother Suresh has lodged a complaint Ex.PWI/DA in this regard, after consulting with him.</i></p>
<p>PW- 5 Ghanshyam</p>	<p><i>...After meeting them, when Balram came out from their house to go to his house at Uttam Nagar, accused Rinku caught hold of Balram and beaten him. Balram rushed to their house and accused Rinku</i></p>	<p><i>...He first time saw the accused Rinku on the date of incident in his house i.e. C-10, Raghbir Nagar, Delhi When Balram came inside, he was alone and all of them were at that time inside their house.</i></p>



	<p><i>followed him and also entered their house. He requested Rinku not to beat Balram, to which Rinku started beating him also. In the meantime, Rinku shouted "HARISH CHAKU LEKAR AA". Harish came to his house with two knives and he gave one of the knives to Rinku and with one knife he stabbed in his abdomen. He became unconscious. Harish and Rinku also gave knife laws to his brother Prabhu Shvarn. One of the knife blows given by them on the neck of his brother Prabhu but he saved himself and the knife blow caused injury on his chin. Before that Balram ran way from the spot due to fear as he was beaten with danda. When the accused were armed with knives, Balram ran away. Both the accused attacked them and caused injuries with knives in order to kill them.</i></p>	<p><i>At that time, Suresh was sleeping at the first floor of the house. Kundan was with him in the house at that time when Balram came inside after quarelling with Rinku. On confronting the witness with his statement Ex.PW5/D1, he stated that he had told to the police in his statement that accused Harish came with two knives and out of which he handed over one knife to Rinku but the same was not found recorded therein, however, the fact of brining the knife was recorded. He further stated to have told to the police in his statement Ex.PW5/D1 that accused person threatened him by saying 'BIHARION AAJ TUMEH HUM JAAN SE MAAR DENGE but the said fact is not found recorded in his statement Ex.PW-5/D1.</i></p>
PW- Suresh	7 ... On the date of incident at about 12:30 AM when Balram came	<i>In between the incident of demanding of cigarette and arrival of</i>



	<p>out from their our house for going to Uttam Nagar, then accused Rinku (correctly identified) demanded cigarette from Balram. Balram refused to give cigarette to Rinku, on which a quarrel had started. Accused Rinku called accused Harish. Accused Harish came at the spot along with knife. Accused Rinku was having DANDA in his hand. His brothers Prabhu Shyam, Ghanshyam and he himself were present at the spot at the time of incident. When they tried to intervene in the matter, then accused persons gave beatings to his brothers Prabhu Shyam and Ghanshyam. Accused Harish inflicted knife injuries to his brothers Prabhu Shyam and Ghanshyam and he took them to DDU Hospital. Police met him and recorded his statement after making enquiry from him.</p>	<p>accused Harish at the spot he along with Balram remained present in front of the house of accused Rinku. He conceded that Rinku had not inflicted knife injuries to any injured. The incident took place for about 10-15 minutes</p>
PW- Balram	8 ...Thereafter, they came out from the house of Suresh and Ghanshyam.	



	<p><i>Accused Rinku was having LATHI / DANDA in his hand. Accused Rinku called accused Harish. Accused Harish (correctly identified) came at the spot alongwith knife. Prabhu Shyam, Ghanshyam and Suresh were present at the spot at the time of incident. Accused Rinku gave DANDA blow on different parts of his body. When Prabhu Shyam and Ghanshyam tried to save him then accused persons gave beatings to Prabhu Shyam and Ghanshyam. Accused Harish inflicted knife injuries to Prabhu Shyarri and Ghanshyam. Suresh took Prabhu Shyam and Ghanshyam to DDU Hospital. Police met him and recorded his statement after making inquiries from him. He correctly identified the LATHI / DANDA as Ex.P-4 to be the same vide which accused Rinku had caused injuries to him.</i></p>	
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15. Upon completion of prosecution evidence, statements of the accused



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were recorded under Section 313 CrPC, wherein they denied the allegations and claimed that they had been falsely implicated.

16. The defence examined two witnesses, DW-1 Nirmala and DW-2 Manju, who sought to dispute the prosecution version and asserted that the accused were not involved in the alleged assault. The relevant portion of the statements are reproduced below:

Witness	Statement in Examination in Chief	Statement in Cross Examination
DI Smt. Nirmala	<i>... Her son Shiv Kumar @ Rinku and Harish did not cause any injury to Prabh/u Shyam and Ghanshyam. On the other hand they tired to save them. Suresh, Prabhu Shyam and Ghanshyam have falsely implicated her son Shiv Kumar @ Rinku and Harish in this case to extort money from them. They several times visited at their house to. demand money i.e. Rs. 20 lacs to change their statements but as her son Shiv Kumar @ Rinku and Harish are innocent, they did not give that money to them. Even in the year 2013 Prabhu Shyam, Ghanshyam and Suresh alongwith their advocate came at their house after consuming liquor and threatened them</i>	<i>There was dark and she could not see the person, who caused injuries to victims. No one had tried to save Prabhu Shyam, Ghanshyam and their relatives. She could not tell the name of the person, who told, him that,some boys robbed the gambled amount from Prabhu Shyam and Ghanshyam and they also caused injuries to them. XXX She stated that she did not lodge any complaint anywhere regarding the demand of money by victims to compromise this</i>



	<p><i>that they would implicate her son, Shiv Kumar @ Rinku and Harish in the present case, if they would not fulfill their demand. She also made complaint at P.S. Khyala in this regard. On 17.03.2014, Prabhu Shyam and Ghanshyam again visited their house and used filthy language and demanded Rs. 20 lacs from them to compromise the matter.</i></p>	<p><i>matter. She had seen the victims only once at her residence when they came to demand money. She also could not tell the date and month when the victims with their Advocate came to their house. She did not make any call on 100 number in this regard. She could not assign any reason as to why she had not made any call on 100 number when the victims along with their Advocate came to their house after consuming liquor to demand money.</i></p>
<p>D2 W1- Smt. Manju</p>	<p><i>... Her son.Harish and Shiv Kumar @ Rinku did not cause any injury to Prabhu Shyam and Ghanshyam. On the other hand they tired to save them. Suresh, Prabhu Shyam and Ghanshyam have falsely implicated her son Harish and Shiv Kumar @ Rinku in this case to extort money from them.</i></p>	

17. After appreciation of the evidence on record, the Id. Trial Court concluded that the prosecution had failed to prove its case beyond



reasonable doubt and accordingly acquitted the accused of the charges under Sections 307/324/34 IPC by Judgment dated 20th July, 2015. The findings of Id. Trial Court are as under:

“...At this juncture, an important question arises if complainant and his family members made complaint date 20.11.2009 Ex.PW 1/DA complaining that police has registered a wrong FIR and if they had given a true version in their abovementioned complaint, then why, they did not depose in the court, as per the contents of their complaint dated 20.11.2009 and why they supported the story of the 10 after making material improvements, regarding the facts, which were neither mentioned in their complaint Ex.PWI/DA as well as in the FIR.

15. In the light of aforesaid, both the accused persons are entitled for an Order of acquittal in their favour by giving them the benefit of doubt. They both are acquitted accordingly. Their existing Bail Bonds are extended for an another period of six months in view of the provisions of Sec.437A Cr.P.C.”

18. During the pendency of the present appeal, it was brought to the notice of this Court that Respondents No. 2 Rinku @ Shiv Kumar had expired. *Vide* order dated 18th April, 2016, this Court recorded that Respondents No. 2 had died and accordingly directed that his name be deleted from the array of parties.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

19. Mr. Bahri, the Id. APP submits that the incident in question occurred on the intervening night of 17/18th October 2009 at about 12:30 a.m., during



the festival of Diwali. It is submitted that the rukka/tehrir was prepared at about 5:45 a.m. on 18th October 2009, following which the FIR was promptly registered. The ld. APP submits that the prompt registration of the FIR clearly demonstrates that there was no delay or opportunity for fabrication or deliberation, thereby lending credibility to the prosecution version.

20. The ld. APP further submits that the prosecution has been able to prove its case beyond reasonable doubt through the testimonies of the material witnesses and the supporting medical evidence. It is contended that the accused persons, being armed with knife, had attacked the injured persons Prabhu Shyam and Ghanshyam, and the nature of the injuries sustained clearly reflects the gravity of the attack and the intention of the accused.

21. The ld. APP places reliance on the testimonies of PW-1 Prabhu Shyam and PW-5 Ghanshyam, both of whom are injured witnesses establishes the presence of the accused persons at the spot and their participation in the act. It is argued that the injured witnesses have consistently identified the accused persons and have supported the prosecution case in material particulars.

22. The ld. APP further submits that the testimony of injured witnesses carries a special evidentiary value in a criminal trial. He further submits that there is ordinarily no reason for an injured witness to falsely implicate a person while shielding the actual offender, particularly when the witness himself has sustained injuries during the occurrence. In the present case, both the injured witnesses have supported the prosecution version and their testimonies are stated to be consistent with each other.



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23. The Id. APP further submits that the prosecution version finds complete corroboration from the medical evidence on record. The medical examination conducted at DDU Hospital revealed that Prabhu Shyam had sustained injuries caused by a sharp weapon which were opined to be simple, whereas Ghanshyam had sustained a stab injury which was later opined to be dangerous in nature.

24. It is further submitted that the Id. Trial Court erred in discarding the prosecution case by focusing on minor discrepancies and variations in the testimonies of the witnesses. He submits that, such minor inconsistencies are natural in the testimony of witnesses who depose after the passage of several years and cannot be treated as fatal to the prosecution case.

25. The Id. APP further submits that the Id. Trial Court has also failed to properly consider the evidence led on behalf of the defence. It is submitted that the defence evidence, particularly the testimony of D1W1, was not subjected to a careful appreciation by the Id. Trial Court. He submits that, the defence version that the accused persons were not involved in the incident and had in fact attempted to rescue the injured persons appears to be a belated and afterthought explanation, which was introduced only during the course of the trial. It is submitted that the said defence is not supported by any material on record and does not inspire confidence when examined in the backdrop of the consistent testimony of the injured witnesses.

26. The Id. APP submits that the prosecution evidence, when appreciated in its entirety, clearly establishes the culpability of the accused persons. It is contended that the testimonies of the prosecution witnesses are trustworthy, inspire confidence and remain substantially unshaken during cross-examination.



27. The Id. APP also places reliance on the judgement of Supreme Court in *Shahaja v. State of Maharashtra, (2023) 12 SCC 558*.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

28. *Per contra*, the Id. counsel for the respondents submits, that the prosecution case itself suffers from serious inconsistencies and material contradictions which go to the root of the matter. The testimonies of the alleged injured eye-witnesses and other prosecution witnesses are not consistent with each other on several material aspects including the place of occurrence, the weapons allegedly used in the incident, and the presence of various persons at the scene of the crime.

29. The Id. counsel submits that while the prosecution case as reflected in the charge sheet was that accused Rinku @ Shiv Kumar assaulted with a *danda* and accused Harish used a knife, the testimonies of certain prosecution witnesses introduced an entirely different version. In particular, PW-1 Prabhu Shyam and PW-5 Ghanshyam deposed during trial that both accused persons were armed with knives and that accused Harish had brought two knives and handed one of them to accused Rinku @ Shiv Kumar. The Id. counsel submitted that these improvements are clearly contrary to the earlier statements recorded during investigation and were not supported by the Investigating Officer, who categorically stated that none of the witnesses had informed him that two knives were used or that accused Rinku @ Shiv Kumar was carrying a knife. These material improvements, according to the respondents, render the prosecution case unreliable.

30. He further submits that there are glaring contradictions regarding the place where the incident allegedly occurred. According to the prosecution



version in the final report, the incident took place outside the house situated at C-10, Raghbir Nagar. However, PW-1 Prabhu Shyam deposed that the accused persons entered his house and stabbed him inside the house. PW-5 Ghanshyam, on the other hand, stated that the stabbing took place outside their house and not inside the premises. PW-7 Suresh Shah deposed that the incident occurred in front of the house of accused Rinku @ Shiv Kumar. The Id. counsel submits that such contradictory versions regarding the very place of occurrence create serious doubt about the truthfulness of the prosecution case.

31. The Id. counsel for the respondents also pointed out inconsistencies regarding the presence of witnesses at the time when accused Rinku @ Shiv Kumar allegedly demanded a cigarette from PW-8 Balram. While PW-1 Prabhu Shyam and PW-5 Ghanshyam stated that PW-8 Balram was alone at that time, PW-7 Suresh claimed that he and one Ranjeet were present with Balram. PW-8 Balram himself stated that one Kundan was accompanying him at that time. These contradictory versions, according to the respondents, demonstrate that the prosecution witnesses are not reliable and their testimonies cannot be safely relied upon for recording a conviction.

32. It was further argued that several persons who were allegedly present at the scene of the incident were not examined during the trial. Witnesses such as Baljeet, Ranjeet, Kundan, Firoz and others were repeatedly mentioned in the testimonies of prosecution witnesses, yet none of them were examined by the prosecution. Ld. Counsel submitted that the non-examination of these material witnesses further weakens the prosecution case, particularly when the testimonies of the examined witnesses suffer from significant contradictions.



33. Attention of the Court was also drawn to the complaint dated 20th November, 2009 submitted by PW-7 Suresh to the Deputy Commissioner of Police alleging that incorrect facts had been recorded in the FIR. It was submitted that the said complaint introduced a materially different version of the incident and itself demonstrates that the prosecution witnesses were not consistent in their account of the occurrence.

34. The Id. Counsel places reliance on the judgment of the Supreme Court in *Arulvelu v. State*, (2009) 10 SCC 206, wherein it was held that the Appellate Court should be slow in setting aside a Judgment of acquittal, particularly where two views are possible on the evidence. It was submitted that unless the findings of the Id. Trial Court are shown to be perverse or wholly unsustainable, interference in appeal is not warranted.

35. The Id. counsel also places on *Jagir Singh v. State (Delhi)*, (1975) 3 SCC 562 and *Shivaji Dayanu Patil v. State of Maharashtra*, Supp (1) SCC 758.

ANALYSIS AND FINDINGS:

36. The Court has considered the matter.

37. At the outset, it is necessary to reiterate the settled position governing appeals against acquittal. The appellate court does possess the power to re-appreciate the evidence; however, interference with an order of acquittal is warranted only when the findings recorded by the Id. Trial court are perverse, manifestly illegal, or wholly contrary to the evidence on record. Where two views are reasonably possible on the basis of the evidence led, the view favourable to the accused ought to be adopted.

38. The Supreme Court has consistently emphasised this principle in



Chandrappa v. State of Karnataka, (2007) 4 SCC 415, where the Supreme Court consolidated the principles applicable to appeals against acquittal and reiterated that the power to interfere must be exercised only in exceptional cases where the judgment of acquittal is clearly unreasonable or perverse. This Court is, accordingly, conscious that its task is not to re-appreciate evidence as a first court but to examine whether the acquittal suffers from any vitiating infirmity. The Supreme Court in the said case held as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the



presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

39. One of the notable aspects emerging from the record is that there was no prior enmity between the parties. The incident allegedly arose from a trivial altercation when accused Rinku @ Shiv Kumar demanded a cigarette from PW-8 Balram and the latter refused to provide the same. The prosecution itself does not suggest any prior enmity or longstanding dispute between the accused persons and the injured witnesses.

40. The absence of prior enmity does not by itself exonerate an accused person. However, where the prosecution case rests primarily on oral testimonies which suffer from inconsistencies, the lack of motive assumes relevance while appreciating the overall probability of the prosecution version.

41. In the present case, the alleged incident appears to have originated from a sudden quarrel during the festive night of Diwali and does not appear to have been the result of any pre-planned or premeditated conduct.

42. The Supreme Court has held that in cases where the incident arises out of a sudden and unplanned altercation, the inference of premeditated



intention to cause death is difficult to sustain. The Supreme Court in *Sudam Prabhakar Achat v. State of Maharashtra.*, 2025 SCC OnLine SC 602, held that where an assault occurs suddenly without premeditation and the parties did not bear prior enmity toward each other, it would be inappropriate to attribute the gravest criminal intention to the accused. The Supreme Court in the said case held as under:

“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.”

43. A significant infirmity in the prosecution case arises from the contradictory versions regarding the place of occurrence. The Id. Trial Court



has noticed that: PW-1 Prabhu Shyam stated that the stabbing took place inside his house and the quarrel continued there for 5-7 minutes. PW-5 Ghanshyam deposed that the entire incident occurred outside the house in front of the gate. The complaint dated 20.11.2009 (Ex. PW1/DA) submitted by PW-7 Suresh, introduced yet another location: “C Block, near Valmiki Mandir, near Police Station Khyala.” This is a materially different location from all versions given in the various testimonies. The translated version of the complaint dated 20.11.2009 is reproduced hereinbelow:

“...On the date 17-10-2009, a boy from our village, Balram, came to our house from Uttam Nagar to give Deepawali greetings. At night, after the Deepawali prayer, when Balram, after having dinner, started going to his home in Uttam Nagar, my brothers Prabhu Shah and Ghanshyam went to drop him outside; then near Police Station Khayala, near C-Block Valmiki Mandir, Rinku, a resident of C-13, Raghbir Nagar, along with his paternal uncle's son Harish and paternal aunt's son Kallu, met my brothers and the village boy Balram at around 12:30 midnight and started asking for a cigarette. My brothers said that we do not smoke cigarettes, therefore we do not have cigarettes; then he, while being stubborn, started abusing (using foul language), and also these three snatched all the cash of that day's earnings from the pockets of my brothers and upon their opposition, the village boy...

44. The Investigating Officer, PW-12 SI Gurdeep Singh, further stated in his cross-examination that none of the witnesses had informed him that any incident took place inside the house nor had they taken him inside the



premises to show the place of occurrence.

45. These different versions regarding the very location of the incident go to the root of the prosecution case. The place of occurrence is a foundational fact in any criminal prosecution and such contradictions render the prosecution case uncertain.

46. Another major weakness in the prosecution case pertains to the uncertainty regarding the weapon used in the alleged assault.

47. As per the original version of the prosecution reflected in the rukka and charge sheet, accused Rinku @ Shiv Kumar was stated to be carrying a *danda*, while accused Harish allegedly arrived with a knife and inflicted the injuries. However, during the trial, the testimonies of PW-1 and PW-5 introduced a materially different version suggesting that two knives were used and that one of the knives was handed over by Harish to Rinku @ Shiv Kumar, after which both accused persons allegedly inflicted knife injuries.

48. This improvement is clearly contradicted by the testimony of the Investigating Officer, who categorically stated that none of the witnesses had informed him that two knives were used or that accused Rinku @ Shiv Kumar was carrying a knife.

49. Further, PW-7 Suresh and PW-8 Balram both prosecution witnesses have consistently stated that only accused Harish was carrying a knife, whereas accused Rinku @ Shiv Kumar was carrying a *danda* and did not inflict any knife injury. The alleged knife was also never recovered during investigation, despite the disclosure statement of accused Harish.

50. The introduction of a second knife and the attribution of knife injuries to accused Rinku @ Shiv Kumar represent a material improvement upon the original version, one that was never disclosed to the investigating officer,



and finds no support in the charge-sheet, and is contradicted by two other prosecution witnesses. The Supreme Court in *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657.*, held that where the improvement is not in matters of detail but goes to the heart of the alleged criminal act, it is a circumstance which substantially impairs the reliability of the testimony. The Supreme Court in the said case held as under:

“Material contradictions

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152].)

31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh [(2009) 11 SCC 106 : 1998 SCC (Cri) 1605]

.)

32. The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses



may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. (Vide Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352]).

51. The Id. APP has emphasised on the use of a knife and the seriousness of the injuries to contend that the accused persons intended to cause injury. However, the mere use of a knife does not automatically establish the intention required for an offence under Section 307 IPC.

52. The Supreme Court in *Jage Ram v. State of Haryana*, (2015) 11 SCC 366, held that the nature of weapon used is only one factor in determining intention, and the surrounding circumstances, nature of injuries and overall conduct of the accused must also be considered. The relevant paragraph from the said case is reproduced hereinbelow:

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also



be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

53. In the present case, the incident appears to have arisen out of a sudden quarrel during the night of Diwali. The evidence on record does not clearly establish that the accused persons had any pre-existing intention to cause death.

54. For instance, PW-1 conceded during cross-examination that his earlier statement did not mention that accused Rinku @ Shiv Kumar was carrying a knife or had stabbed him. Similarly, PW-5 admitted that the statement regarding Harish bringing two knives was not recorded in his earlier statement to the police.

55. This Court also takes note of the fact that several persons allegedly present at or near the scene of the incident including Baljeet, Ranjeet, Kundan, Firoz, and others were referred to repeatedly in the testimonies of the prosecution witnesses but were never examined during the trial.

56. The incident allegedly took place in a residential locality during Diwali night, and several persons were stated to be present in the vicinity. Despite this, none of the independent witnesses mentioned in the testimonies such as Baljeet, Ranjeet, Firoz or Kundan were examined by the prosecution.

57. The failure to examine such witnesses assumes importance in the present case where the testimonies of the examined witnesses themselves



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suffer from contradictions.

58. In view of the discussion above, this Court is of the considered opinion that the prosecution has not been able to establish its case beyond reasonable doubt. The inconsistencies regarding the place of occurrence, the uncertainty about the weapon used, the improvements made in the testimonies of key witnesses and the absence of independent corroboration create serious doubt regarding the prosecution version.

59. The Id. Trial Court was therefore justified in granting the benefit of doubt to the accused persons.

60. Accordingly, the present appeal filed by the State is dismissed and the Impugned Judgment dated 20th July, 2015 passed by the Id. Trial Court is upheld. Pending applications if any, stand disposed of.

**MADHU JAIN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

APRIL 7, 2026/P