



2026:DHC:2927-DB



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

**Reserved on: 10<sup>th</sup> March, 2026**

**Pronounced on: 8<sup>th</sup> April, 2026**

**Uploaded on: 8<sup>th</sup> April, 2026**

+ **CRL.A. 48/2025 & CRL.M.A. 30839/2025, CRL.M.(BAIL)  
88/2025**

**SANJAY**

.....Appellant

Through: Mr. B. Badrinath, DHCLSC with Mr.  
Dhruv Bhardwaj, Advs.

versus

**STATE GOVT. OF NCT OF DELHI**

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with  
Ms. Divya Yadav and Mr. Lalit  
Luthra, Advs.

Mr. Rajat Manchanda, Ms. Megha  
Gaur, Mr. Mayank Nautiyal, Advs.  
for complainant.

**WITH**

+ **CRL.A. 65/2025 & CRL.M.(BAIL) 115/2025**

**PRADEEP**

.....Appellant

Through: Mr. Praveen Kumar, Mr. Manoj  
Kumar, Mr. Satvik Mishra, Advs.

versus

**THE STATE**

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with  
Ms. Divya Yadav and Mr. Lalit  
Luthra, Advs.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE MADHU JAIN**

### **JUDGMENT**

**MADHU JAIN, J.**

1. The present appeals have been preferred under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter*, 'BNSS') assailing the impugned judgment of conviction and order on sentence dated 18<sup>th</sup> May,



2024 and 16<sup>th</sup> October, 2024 respectively passed by the Id. ASJ (FTC-02), South East, Saket Court, Delhi whereby the Appellants have been convicted in Sessions Case No. 1296/2016 arising out of **FIR No. 255/2012** registered at P.S. Pul Prahlad Pur, New Delhi, under Section 302/34 of the Indian Penal Code, 1860 (*hereinafter 'IPC'*), holding as under:

*“201. To sum up, in view of above discussion, the prosecution has proved beyond reasonable doubt the charge under section 302/34 of the Indian Penal Code against the accused persons, Pradeep and Sanjay @ Kalia, so the accused persons, Pradeep and Sanjay @ Kalia are found guilty of having committed the said offence and hence, they are convicted of offence punishable under sections 302/34 of the Indian Penal Code, 1860.”*

2. By the impugned judgment of conviction and order on sentence, the Appellants have been sentenced to rigorous life imprisonment for the commission of offences punishable under Section 302 read with Section 34 of the IPC, along with fine of Rs. 70,000/- . Out of the fine, a sum of Rs. 7,500/- shall be paid to the Prosecution/Respondent for the expenses incurred by the State and a sum of Rs.30,000/- shall be given to the family of the deceased, as part compensation. In default of payment of fine, the Appellants shall undergo simple imprisonment for a period of 6 months.

**Factual Matrix**

3. On 29<sup>th</sup> August 2012, P.S. Pul Prahlad Pur, New Delhi at about 10:53 A.M., received an information *vide* DD No. 6A regarding a boy having been stabbed at the petrol pump, Lal Kuan and that he was serious. The said information was entrusted to Sub-Inspector Sunil Kumar, who along with



Constable Bhojpal reached the place of occurrence. Inspector Dharam Dev, the officer-in-charge of the police station, also arrived at the spot along with other police staff. At the spot, bloodstains were present on the cemented tiles at two places and the injured person, Neeraj (the deceased) had already been removed to the hospital by a PCR van. Upon inquiry, one boy Rajesh (PW-1) (*hereinafter 'Complainant'*), who was present there, produced himself as an eyewitness and his statement was recorded.

4. According to the police report, *i.e., inter-alia*, as stated by the Complainant/Rajesh that he lived at 14, T-Huts, Kalka Stone, Lal Kuan, M.B. Road, New Delhi and was in a private job in Municipal Corporation of Delhi, and he stayed home due to non-availability of work. On 29<sup>th</sup> August 2012, at about 10:30 A.M., he along with his friends Neeraj, Pava and Shahrukh were smoking cigarettes sitting on the wall of the bus stand Prem Nagar, Lal Kuan. At that time, the Appellant/Pradeep (*hereinafter 'Pradeep'*) came there and demanded a cigarette from him. Upon the Complainant's refusal, Pradeep pushed him, whereupon the Complainant came down from the wall and pushed Pradeep back, leading to an altercation between Pradeep, deceased Neeraj and the Complainant. Thereupon, Pradeep said "*I will be back to teach you a lesson*" and ran towards Babban Dhaba, and returned to the spot carrying a vegetable-cutting knife in his hand. He attacked the Complainant with the knife, however, the Complainant caught hold of his hand and a scuffle ensued between deceased Neeraj and Pradeep. In the meantime, Pradeep's younger brother, the Appellant Sanjay @ Kalia (*hereinafter 'Sanjay'*) came to the spot and freed Pradeep and told him "*Maar isko chaaku maar de*". Pradeep attempted to attack the Complainant, however, he ran and picked up a brick. Meanwhile, Sanjay caught hold of Neeraj from behind and told Pradeep "*Maar isko*



*chaaku maar de*”. Thereupon, Pradeep stabbed Neeraj with the knife in his abdomen, who fell down and when the Complainant tried to lift him, his T-shirt got blood-stained. The Complainant then ran towards Neeraj’s house and brought Neeraj’s mother on the spot of incident. The Complainant further stated that he knew both the Appellants and they, in furtherance of their common intention, caused the death of Neeraj.

5. Inspector Dharam Dev and Sub-Inspector Sunil Kumar proceeded to the Trauma Centre, AIIMS, New Delhi wherein they collected MLC No. 326879/12 of Neeraj, who had been declared ‘brought dead’. Inspector Dharam Dev thereupon formally inspected the dead body and found that the stab wound was present on the chest below the left nipple. Both then returned to the spot, meanwhile, ASI Sajjan Kumar, In-charge, Crime team along with Photographer Constable Ashwin Kumar, also reached the spot, inspected the crime scene and took photographs thereof. On the basis of the statement of the Complainant, scene of crime, MLC and dead-body, a *rukka* was prepared and the present case was registered under Sections 302/34 IPC, and the investigation was taken up by Inspector Dharam Dev himself.

6. The post-mortem report opined that the cause of death was cardiogenic shock due to a stab injury to the chest, and that all the injuries were ante-mortem in nature. The relevant post mortem report reads as under:

*“J- OPINION- The cause of death to the best knowledge and belief. Cardiogenic shock and its complications due to incised stab wound to the chest. All Injuries are antemortem in nature.”*



Department of Forensic Medicine & Jai Prakash Narayan Apex Trauma Centre All India Institute of Medical Sciences, Raj Nagar, New Delhi

Name of the deceased: Kumar-Falgun, h Kumar - Brother

Post Mortem Report No. TC 588/12 Ref. No. August 72

Hour of Receipt of Inquest Papers & dead body: Aug,30 2012@12:45
Hour of Starting Autopsy: Aug,30 2012@12:50
Hour of Concluding Autopsy: Aug,30 2013@14:30
Name: NAGENDER No. D 4620 I.O. Manoj Kumar Isp

B-HEAD AND NECK
1. Skull, brain, meninges and cerebral vessels (Note presence of any abnormal small, scalp, skull - MAD)
2. Orbit, Nasal and nasal cavities: NO ABNORMALITY DETECTED

Brief History as per Inquest papers including FIR/IO etc. Alleged history of the deceased sustaining fatal injuries due to assault by sharp weapon on 29-8-12 at 10:30hrs. He was brought to JPNATC AIMS at 11:30hrs where he was declared brought dead at 11:23hrs

E - SPINAL
1. Spinal column and spinal cord (The spinal cord need only be opened and the cord examined if special indications are present)
NOT OPENED

F - ADDITIONAL REMARKS
NIL

SCHEDULE OF OBSERVATION A-GENERAL

Name: NEERAJ (268173) SURESH Age 20Y Sex Male
Address: 1-167 LAL KIAN PUL PRAHLAD PUR NEW DELHI DL INDIA
Height (cm): 157cms Weight (in kg) Physique: Average
Social Identifying features (in unknown bodies): NIL
Rigor Mortis: assessed off
Post-Mortem Staining: Present and fixed on back and dependent parts of the body except pressure points
Eyes: Pupils bilaterally dilated and fixed; cornea hazy and lustreless
Mouth: Closed
Decomposition: Absent

4. Neck, larynx, thyroid and other: NO ABNORMALITY DETECTED neck structures.
C-CHEST (THORAX)
1. Ribs and Chest Wall: As mentioned above
2. Diaphragm: NO ABNORMALITY DETECTED
3. Oesophagus: NO ABNORMALITY DETECTED
4. Trachea and bronchi: walls congested
5. Pleural cavities: NO ABNORMALITY DETECTED
E. Lungs: congested
7. Heart and pericardial sac: as mentioned above
8. Large blood vessels: NO ABNORMALITY DETECTED

G - SPECIMEN COLLECTED FOR TOXICOLOGICAL
SI. Nature of specimen Preserved HI - Items handed over to
1. Stomach with contents No (1) Post Mortem Report Yes
2. Small intestine and contents No (2) Inquest papers - Total No. 12
3. Sample of Liver No (3) Dead Body Yes
4. Kidney (one half of each) No (4) Viscera, clothes and articles, if any
5. Spleen No
6. Sample of Blood No
7. Other viscera
8. Preservative used

External appearance: condition of limbs, eyes NO ABNORMALITY DETECTED
Nose, mouth, anus, vagina & urethra.
Injuries (if any) (to be accurately describe all)
Injuries (if any) (to be accurately describe all)
Injuries (if any) (to be accurately describe all)

D-ABDOMEN
1. Abdominal wall: NO ABNORMALITY DETECTED
2. Peritoneal cavity: NO ABNORMALITY DETECTED
3. Stomach and content: partially digested food particles present.
4. Small intestine: NO ABNORMALITY DETECTED
5. Large intestine, vermiform appendix: NO ABNORMALITY DETECTED
6. Liver, gall bladder, biliary passages: congested
7. Spleen: NO ABNORMALITY DETECTED
8. Kidney, renal pelvis, ureters: congested
9. Pelvic walls: NO ABNORMALITY DETECTED
10. Urinary bladder and urethra: NO ABNORMALITY DETECTED
11. Genital organs: NO ABNORMALITY DETECTED

9. I.O. please arrange for toxicological analysis of the viscera from CFSU, which is duly preserved, sealed and handed over to Police along with sample of soil.
Name & Designation:

10. Any other Sample
Blood on gauze in a sealed envelope and cloths in a sealed parcel
I - TIME SINCE DEATH: About a day (body was kept in cold storage)

J - OPINION: The cause of death to the best knowledge and belief
Cardiogenic shock and its complications due to incised stab wound to the chest. All injuries are ante-mortem in nature.

1 stab wound obliquely placed, measuring 1.4cmx0.2cmx0.6cm 6.2 cm on the left side of the chest. The lower inner edge is more acute upper outer edge and is situated 4.5cm from midline and 7cm below nipple. The same is situated 11cm from the left hand. The direction of track is backwards, slightly downwards and to the right side. On the left hand, anterior wall of the right ventricle is ruptured with 2nd of blood present in the pericardial sac.

All time fields are in 24
Report made by: Dr. Tejpal H.T. (Senior Resident)
Dept. of Forensic Medicine & Toxicology, Jai Prakash Narayan Apex Trauma Centre, All India Institute of Medical Sciences, Raj Nagar, New Delhi - 110029
Printed On: 17/08/2012 10:52:35

7. During the course of investigation, a site plan was prepared at the instance of the Complainant, who produced his blood-stained T-shirt, which was seized. Statements of witnesses including Shahrukh (PW-5) and Sumit @ Paua (PW-8) were recorded, who corroborated the version of the Complainant.

8. The statement of Babban Singh (PW-4), the owner of Babban Dhaba,



was also recorded. He stated that he had been a guard and had been running a dhaba. He stated that the Appellants would often come to his dhaba to eat food, on 29<sup>th</sup> August 2012, at about 10:30am, Pradeep suddenly came to his dhaba and took away his kitchen knife, which was lying on the table. He later came to know that Pradeep had stabbed a boy with that knife. On 11<sup>th</sup> September 2012, a Test Identification Parade (TIP) of the recovered knife was conducted in which the witness Babban Singh identified the knife as belonging to his dhaba.

9. On 30<sup>th</sup> August 2012, Inspector Dharam Dev along with SI Sunil Kumar and Head Constable Prahlad Singh went in search of the Appellants. Pradeep was then identified at the instance of Head Constable Prahlad Singh and thereafter he was arrested. During investigation, Pradeep confessed to the commission of the crime. Upon interrogation, he also disclosed that he was in a habit of taking liquor and *Ganja* and on the date of the incident, he came to Prem Nagar bus stand under the influence of alcohol. There were four boys who were smoking cigarettes. He knew the Complainant and asked him to give a cigarette, however, the Complainant did not give him the said cigarette and started abusing him and pushed him. Thereafter, Pradeep got angry and brought a kitchen knife which was lying on the table of Babban's dhaba and attacked them. He corroborated the Complainant's statement. He further stated that after crossing the road, he fled away towards DDA Jungle and after breaking the knife into two pieces, he threw the same in the jungle near the gate wall. Pursuant to his disclosure statement, the broken knife allegedly used in the offence was recovered from the DDA jungle near the ICD/TKD area. During investigation, on 5<sup>th</sup> September 2012, Sanjay surrendered before the Court. During interrogation, Sanjay also confessed to committing the crime and thereafter he was



formally arrested. He admitted to being in a habit of consuming liquor and taking tobacco. He also pointed out the place of occurrence.

10. Upon completion of the investigation, the charge-sheet was filed before the concerned Magistrate under Sections 302/34 IPC. *Vide* order dated 29<sup>th</sup> November 2012, the Magistrate took cognizance of the offence. The case was thereafter committed to the Court of Sessions. *Vide* order dated 10<sup>th</sup> January, 2013, upon considering the police report and the documents sent along with it under Section 173 Cr.P.C, charges under Sections 302/34 IPC were framed against Pradeep and Sanjay @ Kalia, to which they pleaded not guilty and claimed trial.

11. During the course of the Trial, the Prosecution examined as many as 33 witnesses to establish its case. The Prosecution mainly relied upon the testimony of three eye-witnesses to the incident, namely, the Complainant (PW-1), (PW-5) Shahrukh, and Sumit @ Paua (PW-8). Each of these witnesses provided a detailed ocular account of the incident, they did not have any animus or grudge against the Appellants. For the sake of brevity, the statements have been summarized above and have not been repeated herein. The remaining witnesses comprised of police officials, medical experts, forensic witnesses, public witnesses and formal witnesses.

12. The Id. Trial Court, after recording the evidence of the parties, considered the Defence and the Prosecution cases in detail. The Appellants examined two defence witnesses in support of their case. The first defence witness, Roop Singh (DW1), deposed that he was a mason by profession and that Appellant Sanjay used to work with him as a *baildar*. According to the witness, on 29<sup>th</sup> of an unspecified month in 2012, Sanjay had finished his work and returned home, however, the witness did not remember the exact month. The second defence witness, Dheeraj Kumar (DW2), stated that on



28<sup>th</sup> August, 2012 he, along with Appellant Pradeep and two other boys, had gone to Faridabad at about 11:00 P.M. for work as helpers and conductors on a bus. Their work concluded at around 10:00 A.M. the following day, after which all of them returned to their respective homes. He too did not depose anything further relevant to the occurrence.

13. The Appellants were examined under Section 313 Cr.P.C. In their statements, the Appellants denied the incriminating circumstances in evidence against them and claimed to have been falsely implicated and to be innocent.

14. The Id. Trial Court, *vide* the impugned judgment, convicted the Appellants, holding that the Prosecution had proved beyond reasonable doubt the charge under Sections 302/34 IPC and convicted the Appellants of the same. The relevant portion of the judgment is reproduced hereinbelow for ease of reference:

*“199. There are three eye-witnesses of the incident, namely, PW1 Rajesh (the complainant), PW5 Shahrukh and PW8 Sumit, who have given their ocular account of this case. All the three witnesses did not have animus or grudge against the accused persons. The manner of the incident as described by them is corroborated by the medical evidence which shows the presence of injuries i.e. a stab wound of 1cm X 0.5cm on the left side of chest, having depth of 6.2 cm, attributable to a sharp weapon. From the fact duly proved of bringing of the knife by the accused Pradeep from the nearby Dhaba after his altercation with the complainant Rajesh, the weapon of offence i.e. knife used in stabbing, the manner in which the injury was inflicted on the person of the victim, the words uttered by the accused persons before inflicting injuries and the part of body in which the stab injury was inflicted, I am of the considered*



*opinion that death of the deceased was caused by the accused persons with the intention of causing death and while the accused Sanjay @ Kalia had caught hold the injured from the back, the accused Pradeep had stabbed the deceased with a knife in his chest proves that both the accused persons had acted in concert. Further, the accused persons have not been able to spell out any plausible reason for their false implications.”*

### **Submissions**

#### **Submissions on Behalf of the Appellant Sanjay in CRL.A. 48/2025**

15. Mr. B. Badrinath, Id. Counsel appearing on behalf of Sanjay submits that there were material contradictions in the depositions of the Prosecution witnesses which put a serious doubt on the Prosecution’s case. He submits that the alleged incident, as per the Prosecution, was witnessed by the Complainant (PW-1), Shahrukh (PW-5) and Sumit (PW-8). However, both Shahrukh (PW-5) and Sumit (PW-8), who are independent witnesses, have failed to ascribe any role to Sanjay and have, in fact, exonerated him. Shahrukh (PW-5) has clearly deposed that the incident occurred during a scuffle between Pradeep and the Complainant (PW-1), and that deceased Neeraj sustained the injury in the course of that scuffle, without attributing any role to Sanjay. Shahrukh (PW-5) has specifically denied the suggestion that Sanjay had exhorted Pradeep to stab Neeraj. Similarly, Sumit (PW-8) has also not supported the Prosecution’s case *qua* Sanjay and has denied that Sanjay either caught hold of the deceased Neeraj or exhorted the co-accused to commit the offence. Id. Counsel further submits that Complainant (PW-1) himself admitted in cross-examination that he personally did not see Pradeep stabbing Neeraj, thereby raising serious



doubt as to the manner of the occurrence and the specific role attributed to Sanjay.

16. He further submits that no independent witness has been examined by the Prosecution in support of their case despite the alleged incident having taken place at a public place, namely, a main road in front of a bus stand. The Prosecution witnesses themselves have categorically deposed regarding the presence of numerous independent persons at the spot. In this regard, reliance is placed on the judgment of the Supreme Court in ***Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470***, wherein it has been held that non-examination of independent witnesses seriously impairs the credibility of the Prosecution's case, especially when the explanation offered is feeble.

17. He further submits that the alleged weapon, being knife Ex.P2, was recovered from a forested/open area accessible to all members of the public. He places reliance upon ***Krishan v. State of Haryana, (2024) SCC OnLine SC 70***, wherein it has been held that recovery from an open space easily accessible to many, and without joining independent witnesses, renders the recovery suspicious and doubtful.

18. He further submits without prejudice to the argument that the Appellant was not present at the spot, that even as per the Prosecution's case, a scuffle took place between the Complainant (PW-1), the deceased Neeraj and Pradeep, whereafter Pradeep brought a knife from a dhaba which was only 10–15 steps away, and in the course of the scuffle stabbed the deceased Neeraj. Inspector Dharam Dev (PW-31) has also deposed in cross-examination about injuries on Pradeep's person which lends credence to the fact that there was a scuffle between Pradeep, Complainant (PW-1) and



deceased Neeraj, thus demonstrating that the incident took place without premeditation, in a sudden fight, and without the offenders having taken undue advantage or acted in a cruel or unusual manner. Ld. Counsel further submits that Pradeep's younger brother, Sanjay had reached the spot only upon noticing the commotion involving his brother, and not prior to the incident. He further submits that even as per the Prosecution's case, the deceased Neeraj had intervened in the scuffle between Complainant (PW-1) and Pradeep and, in that process suffered a stab injury, which further supports the case that the occurrence was sudden and unplanned. In this regard, reliance is placed upon *Hem Raj v. State (Delhi Administration)*, **1990 Supp (1) SCC 291**, wherein it was held that when the incident had occurred on the spur of the moment and in the heat of passion upon a sudden quarrel and a single stab was inflicted upon the chest of the deceased, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury. He submits that Sanjay could not be imputed with the intention to cause death but only with the knowledge that he was likely to cause an injury which was likely to cause death. Reliance is further placed upon *Jagtar Singh v. State of Punjab*, **(1983) 2 SCC 342** and *Ranjitham v. Basavaraj*, **(2012) 1 SCC 414**, wherein in similar circumstances the Supreme Court converted the conviction from Section 302 to Section 304 Part II of the IPC. It is accordingly submitted that although Complainant (PW-1) alleged that Sanjay had caught hold of the deceased, the said allegation stands contradicted by Complainant's (PW-1) own admission that he did not witness the actual act of stabbing, as well as by the depositions of Shahrukh (PW-5) and Sumit (PW-8), both of whom have categorically exonerated Sanjay, thereby rendering the said allegation wholly unreliable. In the absence of any cogent evidence establishing



participation or a shared common intention, the Prosecution has failed to prove the case against Sanjay beyond reasonable doubt, and no conviction under Section 302 read with Section 34 IPC can be sustained against him.

19. Ld. Counsel further submits that Sanjay has already been incarcerated for approximately 6 years and 5 months. He urges that, in keeping with the reformatory principle of sentencing, the Court ought to take into account that Sanjay is the father of three daughters, one of whom is a five year minor, entirely dependent upon him, and that his wife earns a meagre amount working as a tailor and is unable to maintain the family. He submits that the sentence already undergone is adequate punishment in the facts and circumstances of the present case and that the Appellant is capable of rehabilitation and reintegration into society.

**Submissions on Behalf of the Appellant Pradeep in CRL.A. 65/2025**

20. The grounds urged on behalf of Sanjay, namely, the non-examination of independent witnesses despite the incident having taken place at a public place, material contradictions in the depositions of Prosecution witnesses, the suspicious recovery of the alleged weapon from an open and accessible area without reliable forensic corroboration, and the failure of the Prosecution to establish the genesis of the incident and to prove its case beyond reasonable doubt, are common to the case of the present Appellant Pradeep as well, and for the sake of brevity, are not reiterated herein.

21. Ld. Counsel appearing on behalf of Pradeep submits that the genesis of the incident stems from a minor altercation over a trivial matter which escalated into an unforeseen event, and there was no enmity or prior animosity or planning suggesting a premeditated attack. Pradeep was



allegedly arrested on the following day based on a purported confession during interrogation which is inadmissible under Section 25 of the Indian Evidence Act, 1872 (*hereinafter* 'IEA'). He further submits that the Prosecution has failed to present any cogent evidence directly linking Pradeep to the commission of the offence and none of the witnesses could conclusively establish the presence of common intention under Section 34 IPC, thereby undermining the credibility of the Prosecution's case.

22. He further submits that the Id. Trial Court failed to give due weight to the material contradictions in the Prosecution's evidence. The Complainant (PW1) stated that Sanjay was present and exhorted Pradeep, whereas Shahrukh (PW5) stated that Sanjay was not present at the time of stabbing, and the Complainant (PW1) himself admitted that he did not actually see Pradeep stabbing Neeraj. Shahrukh (PW5) and Sumit (PW8) also provided differing accounts. These material contradictions go to the root of the Prosecution's case creating a strong element of reasonable doubt, in so far as Sanjay is concerned, his role in the stabbing is not clear.

23. Ld. Counsel further submits that the Id. Trial Court failed to appreciate the absence of crucial forensic evidence, as, although the police have claimed to have recovered the weapon of offence, a kitchen knife, from an open public area at the instance of Pradeep, however, no bloodstains or fingerprints were found and the forensic report does not conclusively link the knife to the commission of the offence, thereby casting serious doubt on the alleged recovery. He further submits that Babban Singh, the dhaba owner, failed to unequivocally identify the knife during trial, further weakening the Prosecution's case.



24. Ld. Counsel further submits that the Id. Trial Court failed to appreciate the contradictions between the FIR and the testimonies of Prosecution witnesses during the examination-in-chief, particularly concerning the sequence of events, as well as the medical evidence, inasmuch as the post-mortem reflects a single stab wound whereas the Prosecution witnesses claimed multiple injuries. He further submits that the Complainant (PW1), being a habitual user of *ganja*, casts doubt on his ability to accurately recall the sequence of events, thereby weakening the credibility of the Prosecution's case.

**Submissions on behalf of the Respondent- State**

25. *Per Contra*, Mr. Bahri, Id. APP for the State submits that Complainant (PW1) concluded his examination-in-chief on 10<sup>th</sup> January, 2014, fully supporting the Prosecution's case. His cross-examination was conducted only on 8<sup>th</sup> August, 2014, after a gap of approximately seven months, despite the opportunity available to the defence throughout. The examination-in-chief of Complainant (PW1), which stood unrebutted for seven months, is accordingly entitled to due weight and credence, and the belated cross-examination is to be looked with caution.

26. He further submits that the testimonies of Shahrukh (PW-5) and Sumit (PW-8), though declared hostile by the Prosecution, cannot be discarded in their entirety. Reliance is placed upon *Khujji @ Surendra Tiwari v. State of Madhya Pradesh, (1991) 3 SCC 627*, wherein it was held that the evidence of a prosecution witness cannot be rejected *in toto* merely because the Prosecution chose to treat him as hostile, and that such evidence is not to be treated as washed off the record altogether but can be accepted to the extent his version is found dependable on careful scrutiny. In the present



case, notwithstanding their hostility on the question of Sanjay's role, Shahrukh (PW-5) correctly identified the knife (Ex.P-2) as the weapon used in the incident, and Sumit (PW-8) admitted in his cross-examination that Pradeep stabbed the deceased Neeraj in the abdomen and that Neeraj fell to the ground on being stabbed. The relevant portions of the said testimonies are extracted below:

<b><i>Witness</i></b>	<b><i>Cross- Examination</i></b>
Shahrukh (PW-5)	<i>"...The knife used in the offence was a kitchen knife and I can identify the same, if shown. (at this, stage, MHC(M) has produced one sealed paper envelope sealed with seal of DSP FSL which is opened and one more envelope bearing particulars of this case alongwith a kitchen knife broken in two pieces is taken out and shown to the witness) The knife shown to me in two pieces is the same knife which was used in the incident in my presence and the same is exhibited as Ex. P2."</i>
Sanjay (PW-8)	<i>"...It is correct that Pradeep stabbed Neeraj in abdomen. It is correct that on being stabbed, Neeraj fell on the ground. It is correct that thereafter Neeraj was lifted from the spot by Rajesh and thereafter I alongwith Rajesh called mother of Neeraj to the spot."</i>

These admissions having gone uncontroverted, are liable to be relied upon by this Court.

27. He submits that the medical evidence fully supports the Prosecution's case. The post-mortem report records a single stab wound obliquely placed on the left side of the chest, measuring 1.4 cm × 0.2 cm with a depth of approximately 6.2 cm, situated 4.5 cm from the midline and 7 cm below the nipple. He submits that the left side of the chest is a vital part of the human



body, and inflicting of a stab wound of such depth upon such vital part is sufficient to establish the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. He submits that even if it be accepted that the blow was intended for the Complainant (PW-1) but the deceased Neeraj had intervened, which led to the stabbing. Accordingly, the principle of transfer of malice under Section 301 IPC would be attracted and the conviction under Section 302 IPC would be fully sustained.

28. He further submits that the presence of both Appellants at the spot and their respective roles have been duly established by the testimonies of Complainant (PW-1) and Sumit (PW-8). He submits that Babban Singh (PW-4) has correctly identified the knife and the TIP proceedings have been properly conducted and proved. He submits that common intention under Section 34 IPC arose during the altercation, and the presence and participation of Sanjay is sufficient to hold him liable.

29. On the question of sentence insofar as Appellant Sanjay is concerned, he submits that the Court may take note of his prior criminal antecedents. Appellant Sanjay has been previously convicted under Sections 382 and 392 read with Section 34 IPC in *FIR No. 44/2010*, and under Sections 279, 337, 338 and 471 IPC in *FIR No. 594/2020*. In view of these aggravating circumstances, it is submitted that no leniency in sentence is warranted in his case.

### **Analysis and Findings**

30. The Court has heard the parties and considered the matter.

31. It is evident from the record that on 29<sup>th</sup> August 2012, at about 10:30 A.M., the deceased Neeraj was present at the bus stand, Prem Nagar, Lal Kuan, along with Complainant (PW-1), Shahrukh (PW-5) and Sumit (PW-



8). It is not disputed that Pradeep arrived at the spot, that an altercation arose over a demand for a cigarette, that Pradeep subsequently went to Babban Dhaba and returned with a knife, and that deceased Neeraj sustained a stab wound on the left side of his chest, resulting in his death. The post-mortem report confirms the cause of death as cardiogenic shock due to an incised stab wound to the chest. The factum of death, its cause, and the presence of the Appellants stands established. The issue for determination is whether the offence under Section 302/24 IPC is made out and whether the conviction under Section 302 read with Section 34 IPC can be sustained.

32. The Id. Trial Court convicted both Appellants under Section 302 read with Section 34 IPC, holding that the Appellants acted in concert with the intention to cause death. The Court has examined whether the facts on record, as disclosed by the Prosecution's own evidence, justify a conviction for murder, or whether the offence falls within Exception 4 to Section 300 IPC, thus amounting to culpable homicide not amounting to murder. Exception 4 to Section 300 IPC reads:

*“300. Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*

**xxx**

*Exception 4 — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

*Explanation — It is immaterial in such cases which party offers the provocation or commits the first assault.”*



For Exception 4 to Section 300 to apply, four ingredients must be satisfied: (i) the act must be committed without premeditation; (ii) it must occur in a sudden fight in the heat of passion; (iii) it must arise upon a sudden quarrel; and (iv) the offender must not have taken undue advantage or acted in a cruel or unusual manner. The said Explanation clarifies that it does not matter which party offered provocation or committed the first assault.

33. On the question of premeditation, the Prosecution's own case shows there was no prior design or plan. The altercation arose spontaneously over a trivial demand for a cigarette. There was no prior enmity between Pradeep and deceased Neeraj, as Complainant (PW-1) admitted in cross-examination. Pradeep did not arrive at the spot armed. Post the scuffle, he went to the dhaba and returned with a kitchen knife belonging to Babban Singh (PW-4), which was lying on the table. The knife was not brought from home or kept ready. The entire sequence, from the demand for a cigarette to the fatal blow, unfolded within minutes. There is no evidence to suggest that either Appellant came to the spot with any intention to assault or kill Neeraj. The lack of premeditation is thus established on the facts.

34. The requirement of a sudden fight in the heat of passion upon a sudden quarrel is also met. Complainant (PW-1) stated that Pradeep came and demanded a cigarette, was refused, pushed the Complainant (PW-1), he was pushed back, and that heated words were exchanged. Thereafter, Pradeep ran towards the dhaba, saying he would return and teach them a lesson. Sumit (PW-8) confirmed this, stating that there was an exchange of abuses and a scuffle between Complainant (PW-1) and Pradeep, and that Complainant (PW-1) slapped Pradeep before Pradeep left for the dhaba and returned with a knife. The Investigating Officer, Inspector Dharam Dev



(PW-31) , admitted that minor injuries of scuffle were found on Pradeep's body at the time of his arrest. This supports the account of a sudden fight involving mutual blows and there is no evidence of a calculated or deliberate attack. The incident was a spontaneous escalation of a petty quarrel.

35. The third and fourth ingredients, *i.e.*, absence of undue advantage and absence of cruel or unusual conduct, are also satisfied. The post-mortem evidence shows that Neeraj suffered a single stab wound on the left side of the chest. Dr. Atul Kumar (PW-12) confirmed that there was only one stab wound. A single blow in the course of a scuffle, without repeated or sustained assault, does not by itself mean that the offender took undue advantage or acted in a cruel or unusual manner. The deceased Neeraj was not restrained or rendered helpless before being stabbed. On the contrary, Shahrukh (PW-5) deposed that the deceased Neeraj had intervened in the scuffle between Pradeep and Complainant (PW-1), and was injured during that intervention. The Complainant (PW-1) said in cross-examination that he did not see Pradeep stab Neeraj, and that Neeraj informed him of the stabbing as he was being taken away. The stabbing happened during the scuffle and was not a deliberate attack on a defenceless person.

36. It is also significant that Shahrukh (PW-5), an independent witness, deposed that during the scuffle between Pradeep and the Complainant (PW-1), Neeraj came forward to intervene and was injured in the process. This version is consistent with the Appellants' case and the overall Prosecution evidence. The deceased Neeraj was not the target of a premeditated attack, he was injured in a sudden fight to which he was not a party at the outset, having intervened in a scuffle involving others. This supports the application of Exception 4 to Section 300 IPC.

37. The Court also considers the question of common intention attributed



to the Appellant Sanjay under Section 34 IPC. The Supreme Court in *Chellappa v. State*, (2020) 5 SCC 160 held that Section 34 IPC is not a substantive offence, and that before holding someone vicariously liable, the Prosecution must prove the existence of a shared intention to commit the crime. The Court cautioned that common intention cannot be presumed merely from the presence at the scene or from a minor role, and that where doubt exists, it must benefit the accused.

38. In the present case, the common intention attributed to Sanjay has been inferred mainly from the allegation that he caught hold of the deceased Neeraj and urged Pradeep to stab him. However, both independent witnesses, Shahrukh (PW-5) and Sumit (PW-8), did not support this. Shahrukh (PW-5) said Sanjay arrived after Neeraj was stabbed. Sumit (PW-8), deposed that he did not see Sanjay catch hold of Neeraj and that Neeraj was standing at some distance. In these circumstances, the inference of shared intention to commit murder cannot be sustained against Sanjay.

39. Even if the presence and participation of Sanjay are accepted for the sake of argument, Section 34 IPC is a rule of joint liability and does not create a separate or aggravated offence. The liability under Section 34 IPC follows the nature of the principal offence established against the main accused. The Court finds that the offence made out against Pradeep is culpable homicide not amounting to murder under Exception 4 to Section 300 IPC, accordingly, the liability of Sanjay, even if attached through Section 34 IPC, cannot exceed that of the principal offender. The conviction of Sanjay under Sections 302/34 IPC is therefore not sustainable.

40. Having found that Exception 4 to Section 300 IPC applies, it is necessary to determine whether this case falls under Part I or Part II of Section 304 IPC. Part I applies where the act is done with the intention of



causing death or such bodily injury as is likely to cause death. Part II applies where the act is done with the knowledge that it is likely to cause death, but without intention to cause death or such bodily injury as is likely to cause death. In the present case, the knife was not Pradeep's property but was taken from the dhaba in the heat of the moment. The fight was spontaneous, only a single blow was inflicted and the Complainant (PW-1) did not see the stabbing. In these circumstances, while there was knowledge that the act was likely to cause death, there was no clear intention to cause death or a specific injury likely to cause death. The present case thus falls under Section 304 Part II IPC.

41. In *Narayan Yadav v. State of Chhattisgarh*, 2025 SCC OnLine SC 1603, the Supreme Court recently observed that for Exception 4 to Section 300 IPC to apply, it is not enough to show a sudden quarrel and no premeditation, it must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The relevant portion reads as under:

*“40. Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the words used in the provision itself. It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel. The Exception deals with a case of provocation not covered by Exception 1, although it would have been more appropriately placed after that exception. It is founded upon the same principle, as both involve the absence of premeditation. However, while Exception 1 involves total deprivation of self-control, Exception 4 refers to that heat of passion which clouds a person's sober reason and urges them to commit acts they would not otherwise commit. There is provocation in Exception 4, as there is in Exception 1, but the*



*injury caused is not the direct consequence of that provocation. In fact, Exception 4 addresses cases where, notwithstanding that a blow may have been struck or provocation given at the outset of the dispute, regardless of how the quarrel originated, yet the subsequent conduct of both parties' places them on an equal footing with respect to guilt."*

*41. A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side. If it were, Exception 1 would be the more appropriate provision. There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. The protection of Exception 4 may be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.*

*42. To bring a case within Exception 4, all the ingredients mentioned therein must be satisfied. It is important to note that the term "fight" occurring in Exception 4 to Section 300 of the IPC is not defined in the IPC. A fight necessarily involves two parties – it takes two to make a fight. The heat of passion requires that there must be no time for the passions to cool, and in such case, the parties may have worked themselves into a fury due to a prior verbal altercation. A fight is a combat between two and more persons, whether with or without*



weapons. It is not possible to enunciate any general rule as to what constitutes a “sudden quarrel”. This is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. **For the application of Exception 4, it is not enough to show that there was a sudden quarrel and no premeditation. It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.**

43. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, it will be convenient to approach the problem in three stages. The question to be considered at the first stage is, whether the accused committed an act which caused the death of another person. Proof of a causal connection between the act of the accused and the resulting death leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299 of the IPC. If the answer to this question is, *prima facie*, found in the affirmative, the next stage involves considering the application of Section 300 of the IPC. At this stage, the court must determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this is in the negative, the offence would be “culpable homicide not amounting to murder”, punishable under either the first or the second part of Section 304, depending respectively on whether the second or the third clause of Section 299 is applicable. However, if the answer is in the positive, but the case falls within any of the exceptions enumerated



*in Section 300, the offence would still be “culpable homicide not amounting to murder”, punishable under the Part I of Section 304 of the IPC.”*

*(emphasis supplied)*

42. In the present case, despite the Appellant Pradeep having a knife in his hand and the deceased was unarmed, he did not take any undue advantage of the same. Only a single wound was caused on the spur of the moment. Thus, Exception 4 Section 300 IPC to would be applicable.

43. As to sentence, the Appellants have been in custody for more than seven years. Both have therefore undergone a substantial period of incarceration. Sanjay is the father of three daughters, one of whom is a five-year minor, entirely dependent upon him, his wife earns a meagre income and cannot maintain the family. Considering the nature of the offence as found by this Court, the period of sentence already undergone, and the absence of aggravating factors, it is held that a sentence of the period already undergone would be adequate and appropriate.

### **Conclusion**

44. Having regard to the material on record and for the reasons stated above, this Court holds that the conviction against the Appellants cannot be sustained in its present form. The offence committed by the Appellants falls within the category of culpable homicide not amounting to murder.

45. Accordingly, the judgment of conviction dated 18<sup>th</sup> May, 2024 and the order on sentence dated 16<sup>th</sup> October, 2024, passed by the Id. Trial Court are hereby modified.



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46. The conviction of both Appellants under Section 302 read with Section 34 IPC is set aside and the Appellants are convicted for culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC read with Section 34 IPC.

47. The sentence of both Appellants is modified to the period of imprisonment already undergone.

48. The fine imposed by the Id. Trial Court shall remain. The directions regarding payment of compensation to the family of the deceased Neeraj shall also remain in force.

49. Both Appellants are directed to be released forthwith, if not required in any other case.

50. The Appeals are accordingly allowed. Pending applications, if any, are disposed of.

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

52. Let the copy of this order be communicated to the Secretary, DLSA (South-East) for necessary information and compliance.

**MADHU JAIN  
JUDGE**

**PRATHIBA M. SINGH  
JUDGE**

**APRIL 8, 2026/Av**