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

Reserved on: ***05.11.2026***
Date of Decision: ***26.11.2026***
Uploaded on: ***26.11.2026***

\# **CNR No. DLHC011286472017**

\+ **CRL.A. 301/2017**

PRAMOD KUMAR VERMA & ORS ....Appellants

Through: Mr. Samrat Nigam, Sr. Adv. with Ms. Arpita Rawat, Mr. Abhishek Verma and Ms. Disha Mohanty, Advs. with Appellants-in-person (Mb : 9811744539)

versus

STATE OF NCT OF DELHI .....Respondent

Through: Ms. Meenakshi Dahiya, APP

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), assailing the judgment of conviction dated 06.02.2017 and the order on sentence dated 23.02.2017, passed by the learned Additional Sessions Judge-02, South-East District, Saket Courts, New Delhi, in ***Sessions Case No. 1291/2016***, arising out of ***FIR No. 184/2012***, registered at Police Station Hazrat Nizamuddin, South-East District, Delhi. *Vide* the impugned judgment, the appellants were convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and *vide* the impugned order on sentence, appellant No.1, Pramod Kumar Verma, was sentenced to rigorous imprisonment (RI) for a period of two (2) years, whereas appellant Nos.2 and 3, Kapil Verma and Monu Verma,

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were sentenced to rigorous imprisonment (RI) for a period of three (3) years each, besides fine and compensation.

FACTUAL BACKGROUND

2. Before adverting to the rival submissions, it would be apposite to mention the factual background of the case. The same, as noticed by the concerned learned Trial Court in the impugned judgment is as follows:

> 1.**As per case of prosecution, on 01.06.2012 at 1:10 pm in the afternoon, information regarding quarrel at House No.50, Jungpura Road was received at Police Post Jungpura Police Station Hazrat Nizamuddin. The said information was recorded vide DD No.16 Ex.PW-7/A and the same was marked to ASI Nanak Chand (PW-15) for necessary action**.
> 2.**On receipt of DD No.16, ASI Nanak Chand (PW-15) along with HC Randhir (PW-3) went to the spot i.e. road near Shop No.50, Jungpura Road, Bhogal, where they came to know that injured was already taken to Trauma Centre.by PCR. In the meantime, ASI Nanak Chand (PW-15) received DD No.20 Ex.PW-8/A regarding admission of injured Vinay Saini and Gaurav in hospital. Therefore, he went to Trauma Centre, where injured Vinay Saini and Gaurav were found admitted. Gurav was in ICU. Both the injured were declared unfit for statement. ASI Nanak Chand, IO of the case, met Om Prakash Saini, an eye witness of the incident. He recorded his statement Ex. PW-2/A and therefore, prepared rukka Ex. PW-15/A and gave the same to HC Randhir (PW-3) for registration of FIR. HC Randhir (PW-3) went to Police Station and got the FIR registered in the case**.
> 3.**Matter was investigated as per law. All the three accused were found involved in the commission of offence in the case. Therefore,**

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on conclusion of investigation, they were chargesheeted to face trial.

4.Accused persons, on their appearance before the court of learned MM, were supplied copy of charge sheet and complete set of documents and thus, compliance of section 207 of The Code of Criminal Procedure, 1973 (in short "Cr.P.C.") was made.

5.As the offence under section 307 of The Indian Penal Code, 1860 (in short "IPC") is exclusively triable by the Court of Session, therefore, the matter was committed to the Court of Session for trial in accordance with law.

6.**Prima facie, sufficient material was found to frame charge against all the three accused persons for offence punishable under section 307/34 IPC. Therefore, charge for the said offence was framed against accused persons on 02.08.2013 to which they pleaded not guilty and claimed trial**. [Framing of charges]

7.**In order to bring home the guilt against the accused persons, prosecution examined as many as fifteen witnesses. Thereafter, prosecution evidence was closed**.

9.**On conclusion of prosecution evidence, statement of accused persons under section 313 Cr.P.C. was recorded, wherein all incriminating material/circumstances appearing against them was put to them, to which they claimed innocence and alleged false implication**. [Defence Evidence (DE)] [Statement of accused persons under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC')]

10.**In support of their defence, accused persons examined DW-1 Ms. Sunita Kumari. Thereafter, defence evidence was closed**. [Defence Evidence (DE)]

11.I have heard and considered the submissions advanced by Shri M. Zafar Khan, learned

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Additional Public Prosecutor for State and Shri H.R. Verma, learned counsel for accused persons and carefully perused record of the case.

12.**Out of total fifteen witnesses examined by prosecution, PW-2 Om Prakash Saini is complainant, on the basis of whose statement, FIR was registered in the case. PW-4 Gaurav and PW-5 Vinay Kumar Saini are the victims and injured in the case. PW-1 HC Ram Chandra, the duty officer, is a formal witness of the prosecution. He recorded FIR Ex. PW-1/A in the case. PW-3 HC Randhir is the witness, who joined the investigation in the case on 01.06.12 alongwith IO ASI Nanak Chand (PW-15). PW-6 Ct. Joginder Singh, joined the investigation in the case with IO on 04.06.12. PW-7 Ct. Shakeel Khan and PW-8 Ct. Ashish Kumar are formal witness of the prosecution. PW-7 Ct. Shakeel took DD No.16A Ex. PW-7/A from duty officer, Police Station Hazrat Nizamuddin and handed over the same to IO ASI Nanak Chand. Similarly, PW-8 Ct. Ashish Kumar received DD No.20 Ex. PW-8/A from duty officer, Police Station Hazrat Nizamuddin and gave the same to ASI Nanak Chand at the spot i.e. House No.50, Jungpura. PW-9 Ct. Jaiveer joined in the investigation of the case on 02.06.12 with the IO of the case. PW-10 Dr. Mohd. Kaleem is also a formal witness of the prosecution. PW-11 HC Rakesh Kumar joined the investigation of the case on 26.07.12 alongwith IO ASI Nanak Chand. PW-12 HC Ajeet Singh, the PCR official is also a formal witness of the prosecution. On 01.06.12 at about 1 PM, on receipt of call from Police Control Room, he reached at the spot, where two boys were found lying in injured condition. He took them to Trauma Centre, AIIMS and got them admitted. PW-13 Ms. Laxmi, record clerk**

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(Record Room - Civil) is also a formal witness of the prosecution. She produced the summoned record i.e. file of Execution Petition No.12/12 titled as Om Prakash Vs. Smt. Gomti Devi and Ors. in the court. PW-14 Rajender Vashisht is bailiff, who by the orders of the court got vacated the suit shop from the accused persons and handed over possession of the same to complainant Om Prakash Saini. He was not present at the spot at the time of incident. PW-15 ASI Nanak Chand is the IO of the case, who conducted various stages of investigation in the matter and on conclusion of investigation, filed challan in the court. [Prosecution Evidence (PE)] (Emphasis supplied)

Impugned Judgment dated 06.02.2017

3. Upon appreciation of evidence, the concerned learned Trial Court held the testimonies of PW-2 Om Prakash Saini, PW-4 Gaurav and PW-5 Vinay Kumar Saini to be consistent and reliable. It was held that the said witnesses had identified the appellants and had specifically described the role attributed to each of them, namely, that appellant No.1 Pramod Kumar Verma caught hold of PW-5, appellant No.3 Monu Verma brought the knife, handed it over to appellant No.2 Kapil Verma and caught hold of PW-4, whereafter appellant No.2 inflicted knife injuries upon both the injured persons. Their ocular account was found by the concerned learned Trial Court to be corroborated by the medical evidence, which established that PW-4 had suffered grievous injuries, including a stab wound on the right side of his chest, whereas PW-5 had suffered simple injuries on his face.

4. The concerned learned Trial Court further held that the appellants had attacked the injured persons after the suit shop was vacated and its possession was handed over to the complainant pursuant to the order of the Civil Court.

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The plea that the injured persons had sustained injuries by falling upon the articles lying outside the shop was rejected, having regard to the nature and *situs* of the injuries recorded in the MLCs. The defence of false implication and the testimony of DW-1 Sunita Kumari were also found insufficient to dislodge the prosecution's case. It was held that the use of a knife upon a vital part of the body disclosed the requisite intention and knowledge for the offence of attempt to murder. Accordingly, *vide* judgment dated 06.02.2017, all three appellants were convicted for the offence punishable under Section 307 read with Section 34 IPC.

Impugned Order on Sentence dated 23.02.2017

5. At the stage of sentencing, the prosecution sought the maximum punishment prescribed by law, whereas the appellants prayed for leniency. It was submitted on their behalf that appellant No.1 and his two sons were the sole breadwinners of the family and that no other male member was available to look after their dependants. It was further stated that appellant No.1 was about 60 years of age, suffered from high blood pressure and a heart ailment and was also responsible for maintaining his widowed daughter and her two sons.

6. The concerned learned Trial Court took note of the distinct roles attributed to the appellants and observed that appellant No.2 was the principal offender who had inflicted the knife injuries, while appellant No.3 had caught hold of one of the injured persons. It further noticed that appellant Nos.2 and 3 had no previous criminal record, had regularly appeared during the trial and had not been involved in any criminal offence during its pendency. Accordingly, *vide* order dated 23.02.2017, appellant No.1 was sentenced to rigorous imprisonment (RI) for a period of two (2) years with a fine of ₹2,500/-, while appellant Nos.2 and 3 were sentenced to rigorous

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imprisonment (RI) for a period of three (3) years each with a fine of ₹2,500/- each. In default of payment of the said fine, each appellant was directed to undergo simple imprisonment (SI) for a period of six (6) months. The appellants were further directed to pay a compensation of ₹40,000/- to PW-4 Gaurav and ₹25,000/- to PW-5 Vinay Kumar Saini and, in default thereof, to undergo further rigorous imprisonment (RI) for a period of one (1) year each. The benefit of set-off under Section 428 CrPC was also extended to them. The fine and compensation were recorded as having been paid.

Present Proceedings

7. Aggrieved by the aforesaid judgment of conviction and the order on sentence, the appellants preferred the present appeal. *Vide* order dated 21.03.2017, a Coordinate Bench of this Court issued notice in the appeal and suspended the sentences awarded to the appellants, subject to each of them furnishing a personal bond to the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the concerned learned Trial Court. The said interim order was continued on 10.07.2017. Thereafter, *vide* order dated 14.09.2017, the appeal was admitted and the bail order dated 23.02.2017 passed by the concerned learned Trial Court was confirmed during the pendency of the appeal.

SUBMISSIONS ADVANCED

On behalf of the Appellant

8. Learned Senior Counsel appearing on behalf of the appellants submitted that the impugned judgment proceeds upon an erroneous appreciation of the evidence and that the prosecution has failed to establish the offence punishable under Section 307 read with Section 34 IPC beyond reasonable doubt. It was submitted that the concerned learned Trial Court did not examine the distinct roles attributed to the three appellants and treated

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their presence at the spot as being sufficient in nature to fasten joint liability upon each of them.

9. It was submitted that the occurrence arose against the background of proceedings for eviction from the tenanted shop. That the decree for eviction had already attained finality and was executed on 01.06.2012. Reliance by the learned Senior Counsel was placed upon the testimony of Rajender Vashisth (PW-14), the bailiff, who stated that appellant No.1, Pramod Kumar Verma, neither objected to nor resisted the execution of the warrant and had, in fact, assisted in getting the shop vacated. It was submitted that PW-14 also stated that no hot words were exchanged and no commotion took place in his presence. Learned Senior Counsel submitted that possession was peacefully delivered to the decree-holder and that the bailiff had left before the alleged occurrence. The learned Trial Court was, therefore, stated by the learned Senior Counsel to have attributed motive merely on the basis of the erstwhile landlord-tenant dispute, without examining whether that dispute had any immediate or proximate connection with the subsequent scuffle or not.

10. Learned Senior Counsel further submitted that the prosecution evidence itself rules out any premeditated or pre-arranged assault. That Om Prakash Saini (PW-2) admitted in his cross-examination that he had not seen any knife in the possession of the appellants when they came to the spot. That Gaurav (PW-4) stated that hot words were being exchanged and a scuffle had already commenced, whereafter Kapil allegedly asked Monu to bring a knife. It was contended that the alleged weapon was thus not carried to the spot and was stated to have been brought only after the scuffle had begun. The evidence was also stated to be inconsistent as to whether it was Pramod or Kapil who asked that the knife be brought. According to the learned Senior Counsel, this

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sequence was inconsistent with the prosecution's allegation of a pre-existing common intention to commit an offence under Section 307 of IPC.

11. It was submitted that the prosecution had withheld the best available independent evidence. It was submitted that PW-2 admitted, that he had called six or seven labourers to remove the articles from the shop and that approximately twenty-five to thirty public persons were present when the incident took place. He further stated that some known persons had attempted to intervene and that one of them was employed at a nearby shop and that none of the labourers, shopkeepers or other public persons were examined. Learned Senior Counsel submitted that the alleged occurrence took place in broad daylight in a crowded market and yet the prosecution rested its case entirely upon PW-2, the two injured witnesses and the police officials.

12. It was further contended that PW-2 was the decree-holder and Vinay Kumar Saini (PW-5) was his son, while PW-4 was stated to be the driver employed by PW-2's other son, Harsh Saini. PW-4 was unable to produce any employment document, did not remember the registration number of the vehicle allegedly driven by him and could not name any other person present at the spot. Learned Senior Counsel submitted that these circumstances, coupled with the pre-existing litigation between the parties, required the testimonies of the said witnesses to be subjected to close scrutiny. It was argued that the learned Trial Court accepted their versions without adequately considering these aspects, while rejecting the testimony of Sunita Kumari (DW-1) merely on the ground that she was the wife of appellant No.2.

13. Learned Senior Counsel submitted that the roles attributed to the appellants were materially distinct from each other. That even if the prosecution evidence were accepted at its highest, Kapil alone was alleged to have inflicted all the knife blows upon Vinay and Gaurav and that no act of

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causing any injury was attributed to either Pramod or Monu. It was submitted that the allegation against Pramod was confined to catching hold of Vinay, who suffered simple injuries, and that no role was attributed to him in relation to the injuries sustained by Gaurav, which were opined to be grievous. Monu was alleged to have brought the knife and caught hold of Gaurav. It was submitted that the learned Trial Court did not independently examine whether the evidence concerning each appellant satisfied the requirements of Section 34 IPC.

14. It was further submitted that the alleged knife was never recovered. That PW-4 stated that he did not know whether the appellants had taken the knife away or left it at the spot, and the police witnesses admitted that no weapon was recovered despite the search allegedly conducted near the *Barapullah* drain. According to the learned Senior Counsel, the absence of the alleged weapon assumed significance in view of the manner in which the occurrence was alleged to have unfolded.

15. Learned Senior Counsel also assailed the reliance placed upon the forensic evidence. It was submitted that the FSL report merely recorded the presence of human blood on the articles of clothing sent for examination and, in respect of some exhibits, gave an ABO grouping or an inconclusive result. No blood sample of either injured witness or any appellant was obtained and forwarded for comparison. The report could not therefore establish, whose blood was present on the respective articles or connect any appellant with the occurrence. It was argued that identification of a shirt as belonging to one of the injured witnesses could not substitute the omitted scientific comparison.

16. It was submitted that the medical evidence may establish that the injured persons had suffered injuries, but it did not identify the persons responsible for causing them. That in the absence of independent

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corroboration, recovery of the alleged weapon or forensic material connecting the appellants with the occurrence, the prosecution version could not be held to have crossed the threshold of proof beyond reasonable doubt.

17. Learned Senior Counsel lastly submitted that the incident pertains to the year 2012, the appellants have faced criminal proceedings for more than fourteen years and have no criminal antecedents. That appellant No.1 is now a senior citizen and neither his conduct during trial nor during the pendency of the appeal has been stated to be adverse. It was accordingly prayed that the impugned judgment of conviction dated 06.02.2017 and the order on sentence dated 23.02.2017 be set aside. In the alternative, these circumstances were urged for taking a lenient view on the quantum of sentence.

On behalf of the State

18. *Per contra*, the learned APP for the State opposed the appeal and submitted that the learned Trial Court has returned its findings upon a proper appreciation of the ocular, medical and forensic evidence. It was submitted that the prosecution case is founded not merely upon the testimony of the complainant but also upon the evidence of two injured witnesses, whose presence at the spot could not be disputed.

19. Learned APP submitted that PW-2, PW-4 and PW-5 remained consistent on the material particulars of the occurrence and specifically described the role performed by each appellant. Kapil was stated to have inflicted knife blows upon both injured witnesses. Monu was alleged to have brought the knife, handed it to Kapil and getting hold of Gaurav, and Pramod was alleged to have exhorted the other appellants and getting hold of Vinay. It was submitted that the prosecution never alleged that Pramod had personally inflicted any knife blow. It was submitted that, his liability arose from his active participation in the occurrence and the common intention

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shared by all three appellants. Their conduct in leaving the spot together upon the arrival of the PCR was also relied upon.

20. It was further submitted that the absence of an independent public witness was not fatal to the prosecution. That ASI Nanak Chand (PW-15) stated that he had made enquiries from several public persons present or passing through the market, but they did not disclose their names. Learned APP also submitted that an attempt had thus been made to associate public persons with the investigation and that their unwillingness to participate could not be used to discard the otherwise consistent testimony of the injured witnesses.

21. Insofar as the forensic evidence is concerned, learned APP relied upon the seizure memo ***Ex. PW-2/B*** and the testimony of PW-15 to submit that the bloodstained shirt produced by Vinay was duly seized, sealed and forwarded to the FSL. That the said shirt was subsequently identified during trial and no suggestion was put to the material witnesses that it did not belong to Vinay. It was contended that the FSL report was corroborative in nature and had to be read along with the ocular and medical evidence, rather than in isolation.

22. Learned APP further submitted that the medical evidence fully supported the ocular account. That Gaurav sustained a stab wound on the right side of his chest and incised wounds on his left arm, which were opined to be grievous, while Vinay sustained injuries on his face. Further, the injury on the chest was state to have been caused on a vital part of the body by a sharp-edged weapon. It was submitted that the nature, *situs* and manner of infliction of the injuries establish the requisite intention and knowledge, required for the offence punishable under Section 307 of IPC.

23. It was also submitted that the execution proceedings furnished a clear and immediate motive for the occurrence as the shop occupied by the

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appellants had been vacated on the same day and its possession had been delivered to PW-2 shortly before the incident. It was contended that the fact, that no quarrel occurred in the presence of the bailiff did not exclude the possibility of the appellants assaulting the complainant's side after the bailiff had left.

24. Learned APP accordingly submitted, that the prosecution had proved the presence and participation of all three appellants, their common intention, the injuries caused to the victims and the motive underlying the occurrence beyond reasonable doubt and it was therefore prayed, that the impugned judgment of conviction and the order on sentence be affirmed and the present appeal be dismissed.

ANALYSIS AND FINDINGS

25. This Court has considered the contentions advanced by the concerned learned counsel(s) appearing on behalf of respective parties and has also perused and appreciated the evidence and other material placed on record.

26. The principal questions which arise for consideration in the present appeal are, first, whether the testimonies of PW-2, PW-4 and PW-5 establish the occurrence and the individual role attributed to each appellant beyond reasonable doubt or not. Second, whether the acts of appellant No.2, Kapil Verma, and appellant No.3, Monu Verma, disclose a common intention to commit the offence punishable under Section 307 of IPC or not. Third, whether appellant No.1, Pramod Kumar Verma, shared that very common intention or whether there is a need to assess his liability differently, and fourth, as to what would be the appropriate offence and quantum of sentence to be imposed upon each appellant.

27. The outcome of the present appeal depends largely upon the manner in which the occurrence unfolded, and upon the role played by each appellant.

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This Court therefore deems it appropriate, to reproduce together the material portions of the testimonies of PW-2, PW-4 and PW-5 at the very threshold of this analysis as when read alongside one another, these accounts assist in determining as to who called for, procured and wielded the knife, which injured person was restrained by whom, and the sequence in which the assault took place. The relevant portions are therefore reproduced hereinunder:

PW-4's Testimony (Gaurav) (Injured)

> "**PW4 Gaurav s/o Sh. Ashok, age 22 yrs, R/o H.No. 210, Sunlight Colony-I, New Delhi.**
> **On SA :**
> In the year 2012 I used to drive car of Harsh Saini and I drove his car for about 5-6 months. On 1.6.2012 at about 1 pm, I reached at the house of Harsh Saini at H.No. 50, Jangpura, Bhogal to hand over the key of the car to Harsh Saini. **I saw that Om Prakash Saini, Harsh Saini & Vinay Kr Saini were present there and Pramod Kumar was also present there and hot word were exchanged between them and also they were abusing to each other. Monu and Kapil were also present there. Kapil, Monu and Pramod are present in the court today, witness pointed out towards the accused Pramod Kumar Verma, Kapil Verma and Monu Verma and identified them correctly. Thereafter scuffle took place them and accused Kapil told to accused Monu to bring a knife to teach a lesson to them and thereafter, Monu brought a knife there and handed over same to the accused Kapil. Accused Pramod caught hold to Vinay and accused Monu caught hold me, thereafter, accused gave knife blows to my right side chest portion and left hand and accused Kapil also gave knife blows to Vinay on his face. Meanwhile, PCR came there and after seeing the PCR the accused**

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persons ran away from there. Injured Vinay and me were taken to the Trauma Centre, AIIMS by the PCR. I was medically treated there……..” (Emphasis supplied)

PW-5’s Testimony (Vinay) (Injured)

“**PW5 Vinay Kumar Saini s/o Sh. Om Prakash Saini, age 32 yrs, R/o H.No. 50, Jungpura Road, Bhogal, New Delhi.**
On SA :
I am residing in the above said address with my parents and family members.
I know Om Prakash verma, who was our tenant of Shop No. 50, Jungpura Road, Bhogal, ND as tyre godown and he was expired in the year 1990. Pramod Kr. Verma is the son of Om Prakash verma and he overtook the possession of the said shop. My father Om Prakash Saini filed a civil suit for eviction of the shop against Pramod Kr Verma and his brothers. Before 1.6.12 the said civil suit was disposed off in our favour.
On 1.6.12 at about 12 noon bailiff came from the court for the eviction of the said shop and to hand over the possession of the said shop to my father. I alongwith my parents and brother Harsh Saini were present there. Pramod Kr Verma, Shalu, Kapil and Monu were present there. Bailiff had shown the order to Pramod Kr and his side and took over the possession and handed over the possession of the said shop to my father and bailiff went away from there. After some time Pramod Kr, Kapil and Monu started abusing us. Meanwhile, our driver Gaurav also came there to hand over the key of the car to my brother Harsh Saini. Thereafter, the above said persons started scuffling us and Kapil brought the knife through Monu and Monu Verma brought the knife there and handed over same to Kapil.

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Pramod Verma caught hold me from behind and Kapil gave knife blows to my face. Monu Verma caught hold our driver Gaurav from back side and Kapil also gave knife blows to him to his hand and body portion. Public persons also gathered there and someone called PCR and PCR came there. After seeing the PCR Pramod, Kapil and Monu ran away from there. PCR took me and Gaurav to Trauma Centre, AIIMS and we were medically treated there. I received stitches on my face and also my nose was operated due to the injuries. I was also medically treated at Jeevan Nursing Home after discharge from AIIMS Trauma Centre as the injuries on my face was serious. When I was taken to the trauma centre, my blood stained shirt was taken out by the doctor in the hospital. Accused Pramod Kr. Verma, Kapil Verma and Monu Verma are present in the court today, witness has correctly identified the above said accused persons.

I can identify my blood stained shirt, if shown to me.

Further examination in chief is deferred for want of case property.

PW5 Vinay Kr. Saini – recalled for further examination in chief as deferred on 24.1.14.

On SA :

I can identify my clothes, which were seized by the police.

At this stage, MHCM produced parcel No. 1 in unsealed condition before the court, which has been opened during the testimony of PW No. 2. One printed half sleeve shirt with brown stains is taken out from the parcel and same is shown to the witness, who correctly identified the same belonging to me and seized by the police. The shirt is already Ex. P1.

XXX by Sh. H.R. Verma, Ld. Counsel for all the accused.

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Accused Pramod was present at the spot when the bailiff reached there. My father was also present at the spot. Bailiff asked the accused Pramod to bring the labours for removing his articles but accused Pramod refused the same, thereafter, Bailiff asked my father to make arrangements of the labour and thereafter, my father called the labours for removing of the articles from the shop. The bailiff came at the spot at about 12 noon and he conducted his proceedings immediately. Bailiff remained there for about 20-30 minutes. Bailiff closed shutter of the shop and handed over the possession of the said shop to my father after removing the articles of the accused Pramod from the said shop and thereafter my father put the lock on the said shop. Bailiff had prepared some documents but I do not know the contents of the said documents.

Gaurav reached at the spot at about 12.45 - 1 pm to hand over the keys of the car to my brother Harsh Kr. No other family members of accused Pramod was present in the shop when Bailiff reached there. Accused Pramod was making phone calls after bailiff had left the spot. Accused Kapil and Monu came at the spot after 10-15 mnts of bailiff leaving the spot. Gaurav was present at the spot when accused Kapil and Monu reached at the spot. I alongwith my parents, my brother Harsh, Gaurav, all 3 accused and 15-20 public persons were present at the spot when the accused Kapil and Monu reached there. My mother was standing near gate of our house, which is near the shop in question. Accused Monu Verma brought the knife in his hand and handed over the same to accused Kapil at the spot. The said knife was about 1 ft long. Kapil gave first knife blows to me and accused Pramod caught hold me from behind at that

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time. Thereafter, accused Kapil gave knife blows to Gaurav, who was caught hold by the accused Monu. Accused Kapil gave 2 knife blows to Gaurav, one at his left hand and another at just below his chest.
Gaurav was wearing a dark colour T shirt at the time of incident and it might be either of blue or black colour. PCR van took to me and Gaurav to the hospital. My mother also accompanied us. I do not know if my mother put her signatures on the documents at the hospital or not. Vol. I was lying on the stretcher in the hospital. My clothes were taken out by the doctors at the hospital. Doctor did not hand over my clothes in my presence to anyone. Buttons of my shirt Ex. P1 were broken but I am not sure if all buttons of the said shirt were broken. The buttons of my shirt were broken in the incident of this case. **I was caught hold by accused Pramod from the back side with my shirt and accused Kapil caught hold me from the front side with my shirt. Police recorded my statement in the hospital. Police recorded my statement only once. Police did not inquire anything from my mother in the hospital. The articles of the accused Pramod were taken out from the shop and kept on footpath in front of the shop. I was taken to the Jeewan Nursing hospital from the trauma centre on the next day**. I was referred to the S.J. Hospital by the doctor of the trauma centre but I preferred to the Jeevan Nursing hospital being near to my house. I remained in the Jeevan Nursing Hospital for about 7-8 days and I was operated there. I did not handover the medical documents of Jeevan Nursing Hospital to the police. Volt. Police did not ask me about the said documents.
Accused persons ran away from the spot when the police reached at the spot. My family members tried to apprehend the accused

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persons but the accused ran away from there after showing the knife. Volt. No public persons tried to apprehend the accused due to fear of knife……." (Emphasis supplied)

PW-2's Testimony (The Complainant)

"**PW2 Sh. Om Prakash Saini s/o Late Sh. Bakhtu Singh Saini, 65 years, R/o H.NO. 50, Jangpura Road, Bhogal, New Delhi.**
On SA :
I am a retired Section Officer from the CSIR. **In the year 1960 my mother late Smt. Rishalo Devi gave our one shop of area 15 x 30 ft of property No. 50, Jungpura Road, Bhogal to Om Prakash Verma on rent basis of Rs.75/- per month. In the year 2000 the same rent was increased as Rs.82/- per month. My mother expired in the year 2007. Om Prakash Verma also expired in the year 1990. After the death of Om Prakash Verma his legal heirs his wife Gomati Devi, his sons Pramod Kumar and Raj Kumar and children of his pre-deceased son Vinod, namely Baby, Noori and Kapil Verma @ Shalu came in the possession of the said property in the year 1990. In the year 1989 I and my mother filed a suit for vacation of the above said property from the above said persons. In the year 2000 the said case was disposed of but the above said persons did not pay the rent of the above said property to me. I again filed a suit in the year 2008 and 2010 for the vacation of the said property. The court of Sh. B.R. Bansal, Ld. ARC, Saket Courts, Delhi decided the said case on 9.11.2011 and the eviction order was given by the court and the 6 months time was given to the accused persons to vacate the property. I filed the execution petition after expiry of 6 months of the said order. On 31.5.2012 the court**

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appointed Bailiff for the execution of the order and on 1.6.12 balif came at the above said property and executed the said order as the shop was found open and Pramod Kumar was present on the said shop on that day. Thereafter, on the instruction of bailiff I called the labours and on the instruction of bailiff the said shop was vacated by the labours. The bailiff gave the possession of the above said shop to me at about 12.50 pm and thereafter bailiff left the place. Pramod called his son Monu Verma at the spot and Kapil was also called by him at the spot on phone. My son Vinay & Harsh were also present at the spot. Meanwhile, Gaurav driver of Harsh came at the spot to hand over the keys of the car to him. At the said time, Pramod Kr. Verma, Kapil Verma and Monu Verma started assaulting us. Pramod caught hold Vinay. Monu handed over knife to Kapil and Kapil gave knife blow on the face of Vinay near his nose. Monu caught hold Gaurav and Kapil also gave knife blows to Gaurav on his hand and on his right chest side. I immediately called at 100 no. Others also made call to the police. Thereafter, the above said assailants namely Pramod Kumar, Kapil Verma and Monu Verma ran away from there. PCR van came at the spot and took both the injured Vinay and Gaurav to Trauma Centre, AIIMS. Local Police also came at Trauma Centre and recorded my statement, which is Ex. PW2/A bears my signatures at point A. Police also made inquiries from both the injured Vinay and Gaurav.

After 3-4 days police seized the blood stained clothes of Gaurav and Vinay. Police seized the blood stained clothes of Vinay vide seizure memo , which is Ex. PW2/B bears my signatures at point A.

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Accused Pramod Kr. Verma, Kapil Verma and Monu Verma are present in the court, witness correctly identified the said accused.
Bailiff executed the some documents at the time of handing over the possession to me on 1.6.12 and the said documents are , which are Ex. PW2/C (3 pages) (colly) bears my signatures at point A at each page.
I can identify the seized shirt, if shown to me.
At this stage, MHCM stated that the case property is not received by him from the FSL.
Deferred due to want of case property.
PW2 Om Prakash Saini – recalled for further examination in chief as deferred on 21.10.13.
On SA :
I can identify the clothes of Vinay, which were seized by the police.
At this stage, sealed parcel No. 1 duly sealed with the seal of SG, FSL, Delhi on which complete particulars of the case are also mentioned, is produced by MHCM before the court. The same is opened by breaking the seal. One printed half sleeve shirt with brown stains is taken out from the parcel and same is shown to the witness, who correctly identified the same belonging to his son Vinay and seized by the police. The shirt is Ex. P1.
XXX by Sh. H.R. Verma, Ld. Counsel for all the accused.
The articles from the shop were taken out by the labour which were called by me in the presence of the bailiff. I called 6-7 labours from the nearby chowk and I paid Rs. 100/- each to them. The articles taken out from the shop were kept near the footpath at a distance of about 3 ft from the shop. Some public persons who were present at the spot made call to the 100 no. I also made call to the police at 100 no. and I was informed by the police that the PCR had already left for the spot. I made

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call at 100 no. at about 1 pm. Bailiff had already left the spot after giving possession of the shop to me, before the arrival of police at the spot. Bailiff had left the spot at about 12.45 pm. PCR police officials consisted of 2-3 police officials. No other police reached at the spot. My statement was recorded at PP Jangpura at about 6-7 pm. I was called at the PP by the police. Police recorded my statement 2 times. For the first time in the Police Post and secondly at my house after 3 days on 4th of June, 2012 at the afternoon time at 3-4 pm. Police collected the blood stained clothes of Vinay & Gaurav from Trauma Centre. I do not remember the date when the police collected the clothes of injured from Trauma centre.

…….**25-30 public persons gathered at the spot when the police reached at the spot. When the bailiff came to the spot accused Pramod Kr was present. After the bailiff left the spot, accused Pramod Kr called the other 2 accused Monu and Kapil at the spot. First Kapil reached at the spot & immediately thereafter, accused Monu reached there. All the accused were standing nearby tea stall and from there, they came at the spot and started quarreling. The accused persons were standing at the nearby tea stall after the accused Monu and Kapil were called by accused Pramod. The shop was being vacated in the presence of accused persons. They refused to sign the proceedings prepared by the Bailiff. Accused Pramod was in the shop when the bailiff reached at the pot at about 12 noon. Accused Pramod was selling chhole bhature on the footpath to his customers. The belongings of Pramod Kr were taken out by the labours who were called by me in the presence of Bailiff. I put my lock on the shop after bailiff handed**

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over the possession of the said shop to me. The belongings of Pramod Kr which were taken out from the shop were lying in front of the shop and remained there for about a month. I used to watch that the belongings were reducing day by day. I do not know as to who used to take the articles from there. It is wrong to suggest that I kept some of the articles of Pramod in my own possession in my shop day by day. Accused Kapil gave the knife blows to Gaurav and Vinay. Accused Monu handed over the said knife to the accused Kapil. When the accused persons came at the spot I had not seen the knife in their possession. Vol. Accused Pramod was saying that to bring the knife and to teach the lesson to us. 25-30 public persons were present when the incident took place. Some known persons tried to intervene during the incident. I do not remember the name of said known persons. Vol. one was the servant of the nearby shop. No public persons apprehended the accused persons at the spot as they were having knife at that time. The said knife was having about 6 inches long blade. I do not know if it was buttondar or not. It is wrong to suggest that accused persons did not use any knife in the incident or that injured Gaurav & Vinay themselves had fallen down on the articles which were lying outside of the shop and received injuries due to said fall. Gaurav was wearing blue colour shirt on the day of incident. I do not remember the colour of clothes which the accused persons were wearing on the day of incident. I do not remember if police made inquiries from any public persons at the spot after the injured had been removed to the hospital by the PCR. Harsh Kr tried to save Gaurav from the accused persons. Harsh did not receive any injury. I tried to apprehend accused Kapil

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during the incident. Meanwhile police reached at the spot. When the police came at the spot accused Kapil was being caught hold by me. It is wrong to suggest that I am deposing falsely."
(Emphasis supplied)

Appreciation of the Ocular evidence

28. Before examining the consistency of the accounts reproduced above, it is necessary to notice the position from which these witnesses speak. PW-4, Gaurav and PW-5, Vinay Kumar Saini, are not merely eyewitnesses to the occurrence as both of them sustained injuries during the assault and received medical treatment immediately thereafter. So their injuries therefore furnish an independent assurance of their presence at the spot. The presence of PW-2, Om Prakash Saini, is equally natural, since possession of the suit shop had been delivered to him shortly before the occurrence and he remained present when the assault unfolded. It is against this factual background that the evidentiary worth of their testimonies must be assessed. As explained by the Supreme Court in ***Abdul Sayeed v. State of M.P., (2010) 10 SCC 259***, the testimony of an injured witness ordinarily carries substantial evidentiary weight, since the injury itself furnishes an assurance of his presence at the scene.

29. While appreciating their evidence, the Court must bear in mind that the witnesses were recounting an assault which began suddenly and unfolded rapidly. The Court cannot therefore expect each witness to reproduce every movement in identical language. So what assumes significance is whether they speak consistently on the essential features of the occurrence. Keeping this in mind, this Court can state that, **PW-2, PW-4 and PW-5, speak in one voice on the central sequence, which is, that Monu brought the knife and handed it over to Kapil, that Pramod restrained Vinay from behind, that**

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Monu restrained Gaurav, and that Kapil inflicted knife blows upon both the injured persons. Their cross-examinations also, do not dislodge this core account.

Liability of appellant no. 2, Kapil Verma and appellant no. 3, Monu Verma

30. The role of Kapil and Monu emerges with clarity from all three eyewitness accounts. Kapil was the person who took the knife from Monu and used it first against Vinay (PW-5) and thereafter against Gaurav (PW-4). Monu on the other hand, was also not a passive spectator, as he procured the knife, placed it in Kapil's hands, and restrained Gaurav from behind while Kapil inflicted successive blows upon Gaurav's right chest and left arm. These acts formed one uninterrupted and coordinated assault.

31. Now there is a variation in the evidence concerning the person who called for the knife. PW-4 specifically stated that Kapil directed Monu to bring the knife, whereas PW-2 volunteered during his cross-examination that Pramod was saying that the knife be brought and a lesson be taught. On the other hand, PW-5 did not attribute the call for the knife to Pramod and stated that Kapil brought the knife through Monu. This variation does not affect the liability of Kapil and Monu at all, as Kapil consciously accepted and repeatedly used the knife, while Monu consciously procured it, handed it over and physically restrained Gaurav during the stabbing. **Their conduct after the knife was brought supplies the clearest evidence of the intention shared between both of them**.

32. The absence of a pre-arranged plan also does not weaken this conclusion as 'common intention' may arise immediately before the criminal act or even during the occurrence of it. In ***Krishnamurthy v. State of Karnataka, (2022) 7 SCC 521***, the Supreme Court explained that common

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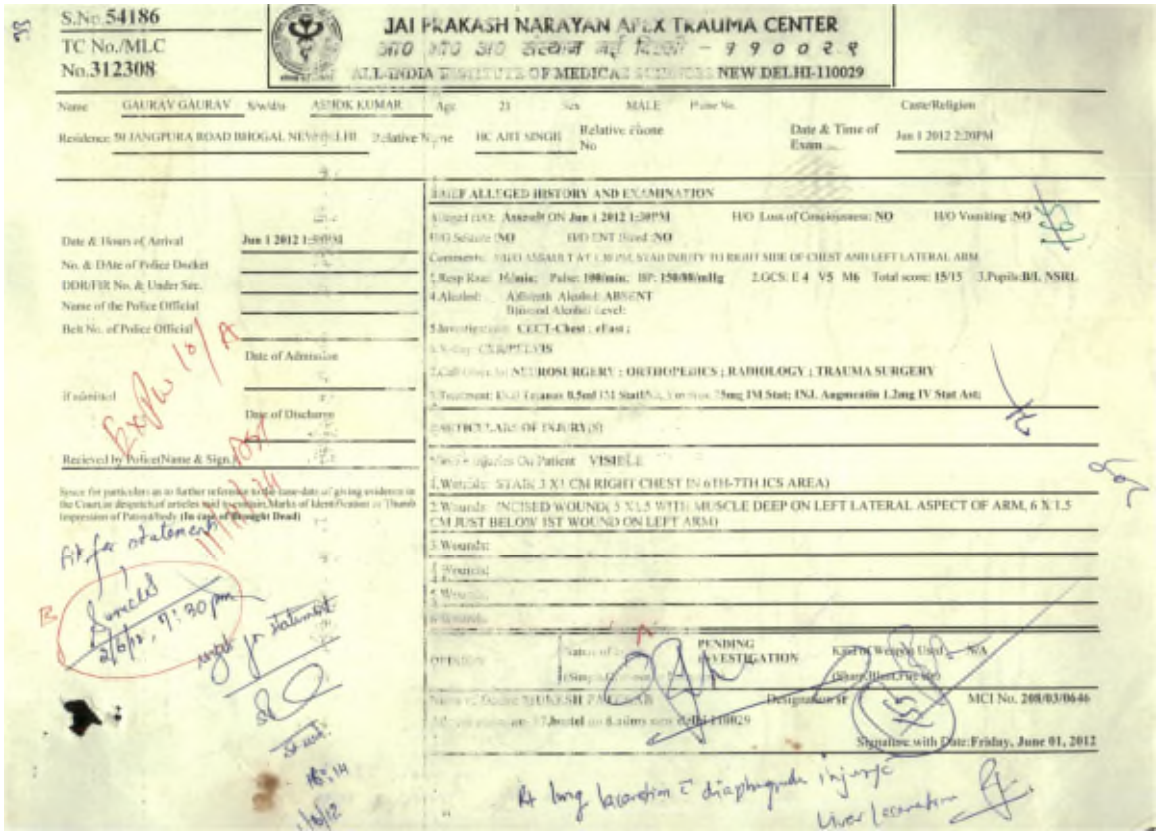
intention may be formed at the spur of the moment and must be gathered from the weapon used, the manner of attack, the injuries inflicted and the conduct of the participants. The conduct of Kapil and Monu in the present case, when viewed as a whole, establishes a meeting of minds with the intention of doing this particular act against PW-4 i.e. Gaurav, at least from the moment Monu procured the knife and handed it over to Kapil.

33. The medical evidence also lends a complete assurance to the account of PW-4. The MLC of the injured Gaurav (PW-4) is reproduced hereinbelow:



S.No.54186
TC No./MLC
No.312308

JAI PRAKASH NARAYAN APEX TRAUMA CENTER
ALL-INDIA INSTITUTE OF MEDICAL SCIENCES NEW DELHI-110029

Name GAURAV GAURAV S/w/d/o ASHOK KUMAR Age 21 Sex MALE Phone No. Caste/Religion
Residence 50 JANGPURA ROAD BHOGAL NEW DELHI Relative Name HC ABT SINGH Relative Phone No Date & Time of Exam Jun 1 2012 2:20PM

Date & Hours of Arrival Jun 1 2012 1:50PM
No. & DAte of Police Docket
DDR/FIR No. & Under Sec.
Name of the Police Official
Belt No. of Police Official
Date of Admission
If admitted
Date of Discharge
Recieved by Police/Name & Sign.

BRIEF ALLEGED HISTORY AND EXAMINATION
Alleged DOI: Assault ON Jun 1 2012 1:30PM H/O Loss of Consciousness: NO H/O Vomiting: NO
H/O Seizure: NO H/O ENT Bleed: NO
Comments: H/O ASSAULT AT 1:30 PM, STAB INJURY TO RIGHT SIDE OF CHEST AND LEFT LATERAL ARM
1.Resp Rate: 16/min; Pulse: 100/min; BP: 150/80/mHg 2.GCS: E 4 V5 M6 Total score: 15/15 3.Pupils:B/L NSRL
4.Alcohol: Alleged Alcohol: ABSENT
Blood Alcohol Level:
5.Investigation: CECT-Chest ; eFast ;
6.X-Ray: CXR/PELVIS
7.Call Given to: NEUROSURGERY ; ORTHOPEDICS ; RADIOLOGY ; TRAUMA SURGERY
8.Treatment: INJ Tetanus 0.5ml IM Stat; INJ. Augmentin 1.2mg IV Stat Ast;
9.ARTICULARS OF INJURY(S)
Nature of Injuries On Patient VISIBLE
1.Wounds: STAB 3 X1 CM RIGHT CHEST IN 6TH-7TH ICS AREA)
2.Wounds: INCISED WOUND(5 X1.5 WITH MUSCLE DEEP ON LEFT LATERAL ASPECT OF ARM, 6 X 1.5 CM JUST BELOW 1ST WOUND ON LEFT ARM)
3.Wounds:
4.Wounds:
5.Wounds:
6.Wounds:
OPINION Nature of Injury PENDING INVESTIGATION Kind of Weapon Used N/A
Name of Doctor MUKESH PALIWAL Designation MCI No. 208/03/0646
Signature with Date:Friday, June 01, 2012

34. As can be seen, Gaurav sustained a stab wound on the right side of his chest and incised wounds upon his left lateral arm. The treatment record further reflects a right-lung laceration, diaphragmatic injury, liver laceration and right haemothorax. These were not superficial injuries. The blow was directed towards the chest, which is a vital part of the body, and which further

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caused damage to his internal organs. So the *situs*, depth and consequences of the injury establish the intention or, at the least, the knowledge contemplated under Section 307 of IPC.

35. The law does not require that the injury actually caused must necessarily be sufficient in nature to cause death. In ***State of M.P. v. Harjeet Singh, (2019) 20 SCC 524***, the Supreme Court reiterated, that the intention contemplated under Section 307 of IPC, is to be gathered from the weapon employed, the part of the body targeted, the severity and the number of blows, the words used and the surrounding circumstances. Applying these considerations, Kapil's act of driving a knife into Gaurav's chest and causing internal injuries squarely attracts the provision of Section 307 of IPC as he must have had the knowledge that, if this act **being committed by him causes death, he would be held liable for the offence of murder.**

36. Now Monu shared that, i.e. Kapil's intention. His participation commenced with procuring the weapon, continued with handing it over to Kapil, and culminated in restraining Gaurav while the knife was used upon his chest. His conduct was integral to the execution of the assault and cannot be reduced to mere presence at the spot of occurrence. In ***Asif Khan v. State of Maharashtra, (2019) 5 SCC 210***, the Supreme Court sustained constructive liability where one accused restrained the victim while the other inflicted knife injuries as part of a coordinated attack. Monu's role is stronger here i.e. in the present case, since he not only restrained the injured person, but also procured and supplied the weapon used in the assault over the said person.

37. The non-recovery of the knife does not efface the consistent ocular account of the two injured witnesses and PW-2. The identity of the assailants, the nature of the weapon and the manner of its use stand proved through direct

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and consistent testimony, which further stands corroborated by the medical evidence. Recovery of the weapon would have no doubt supplied additional corroboration to the aforesaid account, but its absence also does not render the otherwise reliable evidence, legally insufficient.

38. The words "*under such circumstances*" in Section 307 of IPC also require consideration. The knife was brought to the spot, handed over to Kapil and thereafter used upon Gaurav while Monu held him from behind. One of the blows was directed at Gaurav's chest and caused injuries to his lung, diaphragm and liver. Although the incident arose out of an altercation, Gaurav was being held and was not in a position to defend himself when the knife was used upon a vital part of his body. Had the chest injury resulted in his death, the act would have amounted to murder. The requirement conveyed by the words "*under such circumstances*" thus in the opinion of this Court stands satisfied as both Kapil and Monu must have known that the act that we are committing and the circumstances under which, and the manner in which we are committing it, if causes death, we would be held liable for murder of the person against whom we are committing this act.

39. This Court accordingly finds, that appellant No.2, Kapil Verma, and appellant No.3, Monu Verma, acted in furtherance of their common intention in the assault upon Gaurav. The nature of the injury and the circumstances in which it was inflicted establish the ingredients if Sections 307 and 34 of IPC. Therefore, their conviction for the offence punishable under Section 307 read with Section 34 of IPC calls for no interference and is liable to be affirmed.

Liability of Appellant no.1 i.e. Pramod Kumar Verma

40. The case of appellant no. 1 requires an independent assessment. Section 34 of IPC is a rule of joint liability but it does not permit the Court to treat every member of a group as possessing the highest intention attributable to

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any one of them. The presence of three accused persons at the scene cannot by itself, justify carrying the murderous intention of one accused to every other accused person. The prosecution must establish with the requisite degree of assurance, the particular criminal act, and the intention shared by the person sought to be made constructively liable.

41. Now the evidence consistently establishes, that Pramod restrained Vinay from behind while Kapil inflicted a knife blow upon Vinay's (PW-5) face. That participation cannot be discarded and it therefore rules out a complete acquittal of appellant no. 1. But the same evidence confines his role to the assault upon Vinay. Pramod Kumar Verma is not shown to have procured, possessed or handed over the knife to anyone. He is not shown to have restrained Gaurav or to have assisted Kapil when the subsequent and graver assault upon Gaurav (PW-4) took place.

42. The evidence concerning the call for the knife also does not possess the consistency required to attribute that particular exhortation to Pramod beyond reasonable doubt. PW-4 Gaurav, who witnessed the occurrence and himself suffered the chest injury, categorically attributed the direction to Kapil. PW-5 did not state that Pramod called for the weapon. PW-2 made no such attribution in his examination-in-chief and volunteered during cross-examination that Pramod was saying that the knife be brought. On this material, the disputed exhortation cannot constitute a safe foundation for holding, that Pramod Kumar Verma i.e. Appellant No. 1, shared an intention to cause the life-threatening injuries subsequently inflicted upon Gaurav.

43. In ***Shambhu Kuer v. State of Bihar, (1982) 1 SCC 486***, the accused caught hold of the victim while his co-accused inflicted three knife blows, one of which pierced the lung. The Supreme Court held, that the act of catching hold of the victim did not without further proof establish, that the accused

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shared the intention to commit murder, thereby altering his conviction to a lesser offence. A similar approach was adopted in ***Rana Partap v. State of Haryana, (1983) 3 SCC 327***, where the accused who restrained the deceased was not held to share the murderous intention of the person who inflicted the fatal knife injuries.

44. In ***Harbans Nonia v. State of Bihar, 1993 Supp (1) SCC 485***, the Supreme Court differentiated between the liability of the person who inflicted the dagger injury and that of the unarmed accused who restrained the victim. More recently, in ***Krishnamurthy v. State of Karnataka (supra)***, the principal accused remained liable for murder, while the conviction of the two accused who had held and pulled the limbs of the deceased was altered to Section 323 read with Section 34 IPC. **The Supreme Court held, that a co-participant is liable only to the extent of the consequence which he intended, knew, or could reasonably have visualised as part of the shared design.**

45. This Court would like to state first, that, the decisions referred to above do not advance appellant no. 3 i.e. Monu's case. In those cases, the evidence did not show that the accused who restrained the victim knew that a knife would be used or had otherwise assisted in arranging the weapon. Monu's role went much further. As has been stated above, appellant no. 3 brought the knife, handed it over to Kapil and then held Gaurav (PW-4) while Kapil used that knife upon his chest. The assault with the knife was therefore, neither unforeseen nor independent of Monu's participation. When applying the principle laid down by the Apex Court in ***Krishnamurthy v. State of Karnataka (supra)*** which has been stated above, this Court is of the opinion that Monu being a co-participant knew or could have reasonably visualized the extent of the consequence of his act alongside Kapil. His conduct thus, when considered as a whole, establishes that he shared Kapil's intention in

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the assault upon Gaurav. Pramod however, stands on a different footing, since he neither brought nor handled the knife and took no part in the assault upon Gaurav.

46. The decision in ***State of M.P. v. Harjeet Singh (supra)*** is also instructive. The Supreme Court restored the conviction of the actual knife assailant under Section 307 of IPC, while affirming the acquittal of the co-accused from Section 307 read with Section 34 of IPC, because the witnesses were inconsistent with respect to the person whom he i.e. the person so acquitted had restrained. **So all these authorities recognise, that different participants in the same occurrence may be guilty of different offences when the evidence does not establish that they shared the same degree of criminal intention. This principle also finds statutory recognition in Section 38 of IPC which provides that where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act**.

47. Applying these principles, Pramod Kumar Verma's act of restraining Vinay undoubtedly facilitated the assault upon him, but it does not establish, that he shared Kapil and Monu’s intention in relation to the subsequent stabbing of Gaurav in the chest. The distinction is founded upon the evidence which shows that Monu procured the knife and restrained the person who received the life-threatening chest injury, and that Pramod neither procured the weapon nor participated in the assault upon that injured person. Their respective liabilities, in the opinion of this Court therefore, cannot be placed on the same footing.

48. Having established earlier itself, that appellant No.1 actively participated in the assault upon Vinay, and taking into consideration the aforesaid findings, a complete acquittal is not warranted. The evidence at the

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same time, does not establish that he shared the common intention requisite for a conviction under Section 307 read with Section 34 of IPC. This Court must therefore, determine the precise offence made out against him from the proved facts. For this purpose, it now becomes necessary to examine the nature of the injury sustained by Vinay, the weapon used in causing it and the extent of the intention which may safely be attributed to appellant No.1 from his act of restraining Vinay during the assault.

49. Now the nature of the injury sustained by Vinay has a direct bearing upon the precise offence made out against appellant No.1. It is, therefore, appropriate to reproduce the MLC of Vinay Kumar Saini (PW-5), proved on record as ***Ex. PW-10/C***, before proceeding further


S.No.54191
TC No./MLC
No.312367

JAI PRAKASH NARAYAN APEX TRAUMA CENTER
आ० प्र० अ० संस्थान नई दिल्ली – ११०० २९
ALL-INDIA INSTITUTE OF MEDICAL SCIENCES NEW DELHI-110029

Name: VINAY KR Sn/d/o: OM PRAKASH SAINI Age: 29 Sex: MALE Phone No: 9873440786 Caste/Religion
Residence: H NO 30 JANGPURA ROAD BHGAL NEW DELHI Relative Name: HC ART SINGH Relative Phone No: Date & Time of Exam: Jun 1 2012 2:52PM

Date & Hours of Arrival: Jun 1 2012 1:58PM
Date of Admission
Date of Discharge
Received by Police(Name & Sign.)

BRIEF ALLEGED HISTORY AND EXAMINATION
Alleged H/O: Assault ON Jun 1 2012 1:00PM H/O Loss of Consciousness: NO H/O Vomiting: NO
H/O Seizure: NO H/O ENT Bleed: NO
Pulse Rate: 15/min Pulse: 78/min BP: 114/84/mHg 2.GCS: E 4 V5 M6 Total score: 15/15 3.Pupils:B/L NSRL
4.Alcohol: A/Breath Alcohol: ABSENT
(Blood Alcohol Level)
5.Investigations: of Fast: CCR, Pelvis ē B/L hip.
6.X-Ray:
7.Sub Group: RADIOLOGY : MEDICINE TRAUMA SURGERY
8.Treatment:

PARTICULARS OF INJURY(S)
Visible Injuries On Patient VISIBLE EXTERNAL INJURY
1.Wounds: Laceration over Rt Eye Region
2.Wounds:
3.Wounds:
4.Wounds:
5.Wounds:
6.Wounds:
Simple
Nature of Injury: SIMPLE Pending Kind of Weapon Used: N/A (Sharp,Blunt,Fire etc) Blunt
Name of Doctor: SOMIL SINGHAL Designation: JR MCI No. 1148513
Address: 164/A/5 TAGORE TOWN ALLAHABAD.U.P
Signature with Date: Friday, June 01, 2012

Pt is unfit for statement & pt not present on consult
01/06/12
5:00 PM

50. Now Vinay's injury as can be seen, was medically classified as being "*simple*" and "*blunt*" in nature. No fracture, permanent impairment, permanent disfiguration, injury endangering life, or any other consequence falling within Section 320 of IPC has been established. Section 320 IPC exhaustively specifies the injuries which would constitute grievous hurt, and

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the proven injury must therefore fall within one of those statutory categories to constitute the same. Reference in this regard may be made to ***Mathai v. State of Kerala, (2005) 3 SCC 260*** and ***Avinash Shetty v. State of Karnataka, (2004) 13 SCC 375***. He claims to have undergone further treatment but no material has been placed on record to substantiate the same. Even though he admitted in his cross examination that he did not hand over any documents to the police with respect to this treatment because they did not ask for them, without any document to support or corroborate the said statement, no reliance can be placed upon it.

51. The decision in ***State of Karnataka v. Siddegowda, 1995 Supp (3) SCC 404***, is directly applicable to the issue at hand as in that case, the injured person had sustained an incised, clear-cut and gaping wound near the wrist, which was muscle-deep, and the underlying muscle and nerve had also been cut. And despite the doctor having described the injury as being grievous in nature, the Supreme Court held, that it did not fall within any of the categories enumerated in Section 320 of IPC and therefore, the Court categorized it for the purposes of that case as a 'simple injury'. The Court consequently in the aforesaid case held, that the appropriate conviction would be under Section 324 read with Section 34 of IPC. The aforementioned case is an instance of the premise, that a court is not bound to determine the nature or cause of an injury solely from the descriptive label appearing in an MLC. That medical evidence must be assessed with the ocular and other evidence on record. In ***State of Haryana v. Bhagirath, (1999) 5 SCC 96***, the Supreme Court held that medical opinion is not the last word and that it must be tested for its consistency with the remaining evidence.

52. Now in the present case, PW-2, PW-4 and PW-5 consistently stated that Kapil used the knife against Vinay while Pramod restrained him, and the

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medical description also does not establish any impossibility in that account, but what it does establishes is that, the resulting injury was simple and not grievous in nature. When Vinay's injury has itself been medically classified as being "*simple*" and "*blunt*" in nature, and no objective material has been produced to bring it within any of the categories of grievous hurt under Section 320 of IPC, this Court can state that all the factors when cumulatively considered along with the authorities cited above, and the course adopted by the Supreme Court in the same, the offence made out against appellant no. 1 i.e. Pramod Kumar Verma in the present case is one under Section 324 read with Section 34 of IPC. His act in the opinion of this Court knowingly facilitated the voluntary causing of hurt by a dangerous weapon and thus it establishes a common intention to that limited extent. In ***Mihir Gope v. State of Jharkhand, (2021) 2 SCC 726***, the Supreme Court set aside the convictions under the graver provisions and sustained a conviction under Section 324 IPC where the proved injuries were simple and the higher criminal intention was not established.

53. This Court is conscious of the fact, that the mere fact that an injury is simple in nature does not by itself, exclude the applicability of Section 307 of IPC. But **the alteration of Appellant no. 1's conviction is not founded solely upon the medical classification. It rests upon the cumulative circumstances that his role was confined to restraining Vinay, that he did not procure or handle the knife, that the evidence concerning his alleged exhortation is inconsistent, that no role is attributed to him in the grievous assault upon Gaurav, and that the injury caused to the person restrained by him was simple in nature.** So the nature of the injury inflicted upon PW-5 i.e. Vinay being simple in nature, as can be seen, is the last factor

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out of a list of others that compel this Court to alter his conviction to a lesser offence.

54. Before moving onto the conclusion, this Court considers it appropriate to also examine, that whether the proved facts satisfy the distinct ingredients of Section 308 IPC or not, for the purposes of completeness and to rule out its applicability also. The decision of the Supreme Court in ***Bhagwan Singh v. State of Uttarakhand, (2020) 14 SCC 184***, brings the distinction between Section 307 IPC and Section 308 IPC into clearer focus. To attract Section 308 IPC, it must be established that, when appellant no. 1 restrained Vinay, he either intended to cause death or such bodily injury as was likely to cause death, or knew that the act facilitated by him was likely to cause death. In ***Bhagwan Singh v. State of Uttarakhand (supra)***, the accused had himself discharged a loaded firearm during a marriage celebration, resulting in deaths and injuries. Now although an intention to commit murder was not established, the act personally performed by him was of such an inherently dangerous character that knowledge of the likelihood of death could be attributed to him. No comparable intention or knowledge is established against appellant no. 1 in the present case. He neither called for nor procured the knife, and there is no consistent evidence that he directed the manner in which, or the part of the body upon which, Vinay was to be assaulted. Even if it is accepted, that he became aware of the knife while restraining Vinay, that circumstance establishes, at its highest, an intention to facilitate the causing of hurt with a dangerous weapon. It does not without anything further, establish that he intended to facilitate an injury likely to cause death or knew that the assault upon Vinay was likely to have that consequence. The injury actually sustained by Vinay was medically classified as "*simple*" and "*blunt*", and the medical evidence does not show that it endangered his life or that its

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depth, force or other characteristics were such as would ordinarily suggest a likelihood of death. The subsequent and graver assault upon Gaurav cannot supply this missing mental element either, since appellant no. 1 neither restrained Gaurav nor assisted in the knife blows inflicted upon him. Thus, even if death had resulted from the act proved against appellant no. 1 in relation to Vinay, the evidence does not establish that he would have been guilty of culpable homicide not amounting to murder. The essential mental element of Section 308 IPC is therefore absent, while his common intention stands established only to the extent of facilitating the voluntary causing of hurt to Vinay with a dangerous weapon, thereby attracting Section 324 read with Section 34 IPC.

55. In view of the foregoing discussion, the prosecution has failed to establish that appellant no. 1, Pramod Kumar Verma, shared the intention to cause the life-threatening injuries subsequently inflicted upon Gaurav. His criminal liability must therefore, remain confined to the act proved against him above, namely, restraining Vinay while Kapil caused simple hurt to him with a knife. The said act satisfies the ingredients of the offence punishable under Section 324 read with Section 34 IPC, and not those of either Section 307 read with Section 34 IPC or of Section 308 IPC. Consequently, the conviction of appellant No.1 under Section 307 read with Section 34 IPC is liable to be altered to one under Section 324 read with Section 34 IPC.

Quantum of sentence *qua* appellant no.1

56. On the question of sentence, appellant no. 1 did not wield the weapon and his participation remained confined to restraining Vinay, who sustained a simple injury. The occurrence took place in the year 2012 and more than fourteen years have since elapsed. He was stated to be about sixty (60) years of age even at the stage of sentencing in the year 2017 and the fine and

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compensation imposed by the concerned learned Trial Court stand paid. These circumstances, together with the alteration of his conviction to Section 324 read with Section 34 IPC, justify a proportionate reduction of the substantive sentence.

57. In ***Ved Pal v. State of U.P., 1987 Supp SCC 596***, the Supreme Court altered the conviction of the accused from Section 307 IPC to Section 324 of IPC and imposed rigorous imprisonment (RI) for a period of one (1) year where the injuries proved on record did not disclose the intention required for Section 307 IPC.

58. In the facts and circumstances of the present case and taking into account the mitigating circumstances above, the ends of justice would, in the opinion of this Court, be adequately served by sentencing appellant No.1 i.e. Pramod Kumar Verma, to simple imprisonment (SI) for a period of six (6) months for the offence punishable under Section 324 read with Section 34 of IPC.

CONCLUSION

59. Accordingly, the conviction of appellant No.2 i.e. Kapil Verma, and appellant No.3 i.e. Monu Verma, for the offence punishable under Section 307 read with Section 34 of IPC is affirmed. The sentences imposed upon them by the concerned learned Trial Court for the same also stand affirmed.

60. However, the conviction of appellant No.1 i.e. Pramod Kumar Verma, under Section 307 read with Section 34 of IPC is, as a result of the aforesaid discussion, altered to a conviction under Section 324 read with Section 34 of IPC. He is thereby sentenced to undergo simple imprisonment (SI) for a period of six (6) months for the same. He shall be entitled to the benefit of set-off under Section 428 CrPC.

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61. The fine of ₹2,500/-, which already stands paid, shall remain undisturbed. The compensation already deposited pursuant to the impugned order on sentence shall also remain undisturbed.

62. The award of compensation of ₹40,000/- to PW-4, Gaurav and of ₹25,000/- to PW-5, Vinay Kumar Saini, shall also remain undisturbed.

63. The impugned judgment of conviction dated 06.02.2017 and the impugned order on sentence dated 23.02.2017 stands modified to the aforesaid extent.

64. The present appeal is accordingly, partly allowed in the aforesaid terms and conditions and is thereby, disposed of.

65. The order dated 21.03.2017 suspending the respective sentences of the appellants and continuing their release on bail during the pendency of the appeal stand vacated.

66. The appellants shall surrender before the concerned learned Trial Court within a period of four (4) weeks from the date of pronouncement of this judgment to undergo the remaining part of their respective sentences. In the event of their failure to surrender within the stipulated period, the concerned learned Trial Court shall take appropriate steps in accordance with law.

67. Pending application(s), if any, also stand(s) disposed of.

68. Interim order(s), if any, also stand(s) vacated.

69. A copy of this order be sent to the concerned Jail Superintendent as well as the concerned learned Trial Court for information and necessary compliance.

70. This judgment be uploaded on the website *forthwith*.

MADHU JAIN
(JUDGE)

NOVEMBER 26, 2026/PG/b

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