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

Date of reserving Judgment: 04th February, 2026

Date of decision: 27th March, 2026

IN THE MATTER OF:

\+ CRL.A. 124/2004

JAI PRAKASH & ORS. .....Appellants

Through: Mr. Rahul Sharma, Mr. Raj Kishor Garg and Mr. Sachin Dabas, Advs. with Appellants.

versus

STATE .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Suneel Kumar Sahu, PS South Rohini.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The instant case is a burning example of citizen's apathy, individual greed, failure of governance, lack of control and supervision by the superior authorities, all rolled into this one case and can be seen if the facts are examined threadbare.

2. The Police Control Room was informed about an altercation in Sector-3, Pocket F-24, Rohini and when the PCR vehicle reached at the spot, PW-4 ASI Satbir Singh had found three injured persons namely Ram Dass, Jai Prakash and Pradeep, who all were taken to the Sanjay Gandhi

Hospital. The matter was assigned to SI Gulab Singh of the local Police Station, Rohini, who went to the hospital, but found that the injured Ram Dass was unconscious. However, his son PW-1 Ram Gopal was found there, whose statement was recorded by him, which laid the foundation of the instant case, as the same i.e. Ex. PW-1/A resulted into FIR No. 624/01 under Section 341/323/34 Indian Penal Code ('IPC').

3. The incident took place at around 07:00 AM on 27.08.2001 and the FIR came to be recorded on that very day but at about 04:30 PM. The incident has its genesis in a simmering discontent between both the sides that arose over a, seemingly, very trivial issue of tethering the buffaloes, that too in a public park. The victim side lived at around a kilometre from the place of incident whereas the Appellant side was living around 500 yards/meters from the place of incident i.e. park in Sector-3, Pocket F-24, Rohini. Prior to the date of incident, an altercation had already taken place, which was resolved with the intervention of the elders of the families. However, the remnants of discontent arose like a phoenix on the next day morning when the issue of tethering the buffaloes blew up to the extent that a hitherto verbal duel turned into a physical fight. Obviously contradictory versions are there from both the sides blaming each other, but the case was registered against the Appellant's side i.e. Jai Prakash, Kuldeep and Pawan. It was initially under Section 323/341/34 IPC, but the Investigating Officer added Section 308 IPC on the basis of the opinion of the doctor as mentioned in the charge-sheet, coupled with the attending circumstances.

4. The Appellants were arrested at the instance of PW-1 Ram Gopal on 30.08.2001. The requisites of the investigation were completed and a

charge-sheet was filed, which while traversing through the examination of eight witnesses resulted into the conviction of the Appellants vide impugned judgment and the consequent order on sentence, both dated 28.01.2004, awarding Rigorous Imprisonment (RI) for a period of one year under Section 308/34 IPC, whereas a sum of Rs. 500/- was to be deposited as fine and in default of which, one month's Simple Imprisonment (SI) under Section 341 IPC was awarded.

5. Challenging the findings of the impugned judgment, it is asserted on behalf of the Appellants that they have been falsely implicated in this case, whereas they were at the receiving end. It was the other side which, verily, was the aggressor. The testimony of the most vital witnesses i.e. PW-1 and PW-2 is full of inherent contradictions which render it unreliable. There are conflicting and divergent depositions with regard to the presence of the persons at the spot, the weapons/objects used in the offence, who called the police and who all were injured, etc. Learned counsel for the Appellant has pointed out the aforesaid flaws and asserted that this is a manipulated case, which resulted from the biased investigation, as can be seen from the cross-examination of the Investigating Officer.

6. There is, it is asserted, a delay in recording the FIR which remains unexplained and for that matter the learned Trial Court also partially recognised this fact of recording the FIR late, but then did not care to dig into the reasons as to why such a delay was there. It is asserted that the learned Trial Court was supposed to have a comprehensive look at the entire case, and thereafter, only should have analysed the aspect of delay in the FIR to reach to any conclusion which, unfortunately, the learned Trial

Court has not done. In fact, the delay in registration of the FIR is malafide as it gave time to the opposite side to manipulate things, to the prejudice of the Appellant.

7. Learned APP on the other hand, stated that minor contradictions can be there and this fact has been noted by the learned Trial Court in the impugned judgment. The subject matter remains intact that the victims were assaulted by the Appellants through *brick* and *saria* and the body part targeted is very vulnerable, therefore, the learned Trial Court has deduced the correct intention of the Appellants to hold them guilty under Section 308 IPC. Delay in registration of FIR is not unusual and has been in any case, explained by the Investigating Officer in his statement, accepted by the learned Trial Court, therefore, the appeal deserves to be dismissed.

8. The contention of the learned APP is correct to the extent that no testimony can be absolute and free from contradictions improvements or some or the other deficiency. The apparent reason is the limitations of the human memory and its constraints in reiteration of a particular incident. It is one or the other slip in the facts or narration or the chronology which may be there, but as long as the soul of the testimony is kept intact, the contradictions are not going to affect the case, as has been held in various pronouncements. In ***Balu Sudam Khalde vs. State of Maharashtra,*** (2023) 13 SCC 365, it was held as under:

> *" The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:*
>
> *"I. While appreciating the evidence of a witness, the approach*

must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore

cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

9. Reference can also be made to ***Narayan Chetanram Chaudhary v.***

state of Maharashtra, (2000) 8 SCC 457, ***State of Rajasthan v Smt. Kalki & Anr***., (1981) 2 SCC 752, ***Sunil Kumar Sambhudayal Gupta (Dr.) V. State of Maharashtra***, (2010) 13 SCC 657, ***Raj Kumar Singh alias raju alias Batya v. State of Rajasthan***, (2013) 5 SCC 722.

10. However, if the contradictions are such which go to the root of the matter or create such circumstances where doubt and suspicion starts seeping in the case of the prosecution, then the outcome may vary. Therefore, the facts are to be gone into deeply and comprehensively.

11. Both the sides involved in the incident are known to each other and not only living close by but tethering their animals/buffaloes in the same park. Initially, they were tying their animals adjacent to each other, but somehow something happened and both the sides started craving for the same spot in the public park and that laid the foundation of the dispute, which travelling through altercation and the skirmish resulted ultimately, into the instant case. However, there cannot be any doubt or dispute about the identity of the persons involved.

12. The incident took place in the broad daylight at around 07:00 AM and in such circumstances, it seems indigestible that the deposition with regard to the weapon used would be incorrect or that there could be any mix-up or confusion about the weapons or identity of persons. Incidentally, in this case, no formal weapon as such was used, but use of brick and iron rod has been deposed by the two prime witnesses including the injured Ram Dass. Both PW-1 Ram Gopal and PW-2 Ram Dass respectively maintained that, of the two assailants, one was carrying a brick and the other was having an iron rod. However, this fact has not been narrated in

the statement given to the police and for that matter, PW-2 has stated that both the assailants were carrying iron rods as can be seen in the cross-examination of PW-2. He stated to the police that accused Pradeep was armed with a brick which was confronted with Ex. PW2/DA, where it was not so recorded. One of the accused person was carrying a brick while another was carrying a saria according to PW-2, which was confronted with statement Ex. PW-2/DA, where both the accused persons have been shown having a saria each. Whereas, in the examination-in-chief, PW-2 has stated in the following words:

> *"Jai Prakash after arrival started beating me. Meanwhile accused Pawan and Pradeep came there. Accused Pawan was having iron rod and Pradeep was having one brick in his hand. Thereafter, all the three started beating him. Accused Pawan gave blow by iron rod on my head and accused Pradeep gave blow by brick on my head due to which I sustained injuries."*

13. Similarly, witnesses and testimonies are at variance so far as how the police was informed and who took the injured to the hospital. In this context, PW-1 in his examination-in-chief says that he had informed the PCR and he took his father PW-2 Ram Dass to the hospital, as can be seen in his deposition:

> *"I informed PCR and rushed my father to the hospital."*

14. On this very issue, in the cross-examination PW-1 turns around and says that he does not remember as to who informed the police and also did not comment by saying that whether the police was called by the Appellant's side. The relevant part of PW-1's cross-examination is reproduced hereunder:

"I do not know who has informed the police. I cannot say whether the accused persons had called the police."

15. On this very issue, injured Ram Dass examined as PW-2 says in his cross-examination that his son PW-1 Ram Gopal called the police, but he also brings in the possibility of having the Appellants called the police. The relevant part of PW-2's cross-examination is reproduced hereunder:

"My son Ram Gopal had gone to the P.S. and called the police. The police may have been called by the accused persons."

16. Regarding who all were present, again the witnesses have faultered inasmuch as PW-1 says that both his parents were present at the spot when he says that my father was also present there when the assailants started quarrelling with his mother meaning thereby that both the parents were there. However, in the cross-examination, PW-1 contradicts himself when he says that his mother was not present at the spot. Astonishingly, in the presence of the son i.e. PW-1 Ram Gopal, his father PW-2 Ram Dass was allegedly assaulted by the Appellants, but PW-1 despite being there remained as a mute spectator. Had he been there then he too should have had some injuries on his person. This behaviour is contrary to natural human conduct. As a son can't tolerate and would not shy away from saving his father. It seems no such effort was there. Then again as regards the presence of the Appellants, it is not clear rather shrouded in doubt and mystery as to whether Pradeep and Pawan were also present or not at the inception of the incident, or whether they joined later, as different versions are there in the statement of PW-1 and PW-2. In the cross-examination, PW-1 says that both of them i.e. Pradeep and Pawan were present in the

park, whereas PW-2 injured Ram Dass says in his examination-in-chief that it was Jai Prakash, who arrived and started beating him straightaway and in the meanwhile, Pawan and Pradeep came there meaning thereby that these two persons were not present initially.

17. In this context, what has been tried to be portrayed is that the mother of accused Pawan/Pradeep was pushed around by PW-1 Ram Gopal, which brought Pradeep/Pawan at the scene indicating therein that the victims were infact, the aggressor and ignited the fight in which both the sides sustained injuries, as can be inferred and seen from the testimony of SI Gulab Singh and the MLC (Ex.PW-7/DC and Ex.PW-7/DD) of Jai Prakash and Pradeep respectively.

18. The aforesaid contradictions, mix-up and slips may appear trivial and it may be argued that they are not potent enough to uproot the case of the prosecution, but then if it is read comprehensively with the testimony of the Investigating Officer and other witnesses, then one may not be sure about the manner in which the incident took place, the presence of those involved to top it all and bias would clearly appear to be there with the Investigating Officer. The testimony of the Investigating Officer, when juxtaposed to the aforesaid contradictions, variations and mix-ups, then the case would start taking a different turn.

19. The Investigating Officer (IO) examined as PW-7, has admitted the existence of injuries on accused Jai Prakash and the preparation of his MLC, but in the cross-examination, he further stated that he did not initially come to know about injuries to accused Pradeep during investigation, but later, upon seeing the statement of the PCR official PW-4

HC Satbir Singh, he recollected that Pradeep had also sustained injuries. Incidentally, it is the same Investigating Officer (IO) who had recorded the statement of HC Satbir Singh under Section 161 Cr.P.C., where it has been clearly recorded by him that three injured persons namely Ram Dass, Jai Prakash and Pradeep were taken to the Hospital by Police Control Room (PCR) vehicle. As such, the Investigating Officer cannot plead ignorance. It is completely malafide on his part. The IO has also admitted lapses in properly placing the medical documents of the accused on record, thereby establishing unexplained injuries on the Appellant's side and investigative lapses, which weaken the prosecution's version. It is incomplete and one-sided account of the incident. The relevant part of PW-7's cross-examination is reproduced hereunder:

> *"on that occasion accused Jai Prakash was found however, admitted in the hospital. When I reached the hospital initially MLC of the injured was not prepared by that time. So I came back to the court to attend the hearing in the present case after completing my work as Tis Hazari I went back to the hospital in the evening. On that occasion I received two MLCs i.e. of the injured Ram Dass and other of the accused Jai Prakash. However by that time accused Jai Prakash was already discharged from the hospital and was not available there. It is wrong that on that occasion MLC of accused Pradeep was also ready or that I collected. I did not come to know during investigation till the arrest of accused Pradeep and this accused has also been received injuries during the incident. It is wrong that on the day of FIR I met with accused Jai Prakash and Pradeep both today present in court or that in this respect I have recorded their statements. There was no MLC of accused Pradeep in the hospital in respect of the injuries if he had received any he had received on the day of the incident. I do not remember if the PCR staff had told me that injured Pradeep was also admitted by the PCR staff or that his MLC was also prepared in the hospital. I have now seen statement of HC Satbir*

Singh of PCR and now I recollect that the PCR staff had revealed me about the injuries and MLC of accused Pradeep."

20. The testimony of PW-7 further discloses material gaps in the sequence of events leading to the registration of the FIR, which require specific consideration. The IO has stated that upon reaching the hospital, the injured was found unfit for statement and thereafter the statement of PW-1 Ram Gopal, son of the injured was recorded, forming the basis of the rukka and registration of FIR. However, in his cross-examination, he admits that at that stage, the MLC of the injured had not even been prepared and instead of ensuring its preparation or completing the foundational steps of investigation, he left the hospital to attend Court proceedings "in this case only" and returned only later in the evening. It is strange that the Court seized up the matter in the absence of FIR. IO has not explained about the proceedings he attended in the Court qua this case. This movement to Court, at a stage when even the MLC was not prepared and the FIR not registered, introduces an unaccounted interval in the investigative timeline. Significantly, the IO also admits that this movement was not recorded in the rukka, thereby leaving a gap in the record regarding the sequence of events. This aspect assumes importance as it has direct bearing on the issue of delay in FIR and the continuity of investigation, raising the need for explanation as to the stage at which the rukka was actually prepared and the FIR registered. The relevant part of PW-7's cross-examination is reproduced hereunder:

"When I reached the hospital initially MLC of the injured was not prepared by that time. So I came back to the court to attend the hearing of the present case after completing my work at Tis

> *Hazari I went back to the hospital in the evening. On that occasion, I received two MLCs i.e., of the injured Ram Dass and other of accused Jai Prakash."*

He is not only silent about the MLC of Jai Prakash, but did not place it on record either. All this about MLC of Jai Prakash came to light when IO was confronted with MLC Ex. PW-7/DC and same is the position qua the MLC of Pradeep which is Ex. PW-7/DD.

21. The testimony of PW-7 also reveals inconsistencies and delays in the handling and collection of medical evidence, which also needs to be probed deeper. The IO admits that even at the first instance, the MLC of the injured was not prepared and no steps were taken by him to secure the same immediately. Instead, the MLCs of the injured and accused Jai Prakash were collected only later in the evening, after his return from Court. Further, although he admits that both accused Jai Prakash and Pradeep were medically examined after their arrest, he concedes that the corresponding MLCs were not placed on record at the appropriate stage. These aspects indicate that the collection and placement of primary medical evidence was neither immediate nor consistent. The delay in securing such documents, coupled with their initial non-placement on record, necessitates scrutiny as to whether the medical evidence was contemporaneously gathered and whether the investigative record reflects a complete and continuous account of the injuries sustained by both sides. He has not even bothered to place the post arrest MLCs of Jai Prakash and Pradeep. The relevant part of his cross-examination has been reproduced hereunder:

> *"It is correct that I got accused Jai Prakash and Pradeep medically examined after arrest on 30.8.01. I have not placed*

these MLCs also on the record"

22. A careful reading of the testimony of PW-7, the Investigating Officer, shows that except for limited clarification regarding the removal of the injured by the PCR and the existence of injuries on the accused side, his deposition does not assist in resolving the material inconsistencies emerging from the testimonies of PW-1 and PW-2. On crucial aspects such as the nature of weapons used, the specific role and attribution of injuries to each accused, the presence or absence of the mother of the Appellant Pradeep at the spot, the timing and manner of arrival of the accused persons, and the sequence in which the incident unfolded, the IO is either completely silent or has not taken into account or accounted for the relevant events in the course of investigation.

23. The deposition of the IO does not reflect recovery of weapon, nor does it reflect any effort to reconcile the divergent and conflicting situation was taken, where both sides sustained injuries in the same incident. The investigation, as reflected through his testimony, remains confined to procedural steps such as recording statements, preparation of rukka, arrest of accused, and collection of MLCs, without addressing the core factual issue. Consequently, the contradictions in the prosecution's evidence on these material particulars remain unclarified and unresolved, as the IO's statement does not provide any independent or corroborative basis to harmonize or explain them, rather smacks of deliberate acts of withholding material information, biased investigation, suppressing truth and treating the Appellants unfairly. He should have registered a cross case and if not that then he should have at least presented the complete and true facts.

24. In view of the foregoing discussion, it is evident that there are certain aspects in the case of the prosecution, which remained unexplained and there are certain contradictions about the incident itself, involvement of the persons, weapons used etc. and when all these put together juxtaposed to the testimony of the Investigating Officer, then it appears to be a case where the role of the investigating agency is questionable. Not only the Investigating Officer, but the supervisory officers have also not been careful in discharge of their duties and permitted the IO to play with the things. A cross case should have been there, but no such effort was even made rather every attempt seems to have been there to portray the victims as real sufferers, whereas the circumstances reflected that the victims were in-fact the aggressors. In such circumstances, the case should have been registered against the victims and if not so, then certain cross cases must have been registered.

25. The Investigating Officer has put forth very feeble and meek plea to add Section 308 IPC in the chargesheet against the Appellant. According to him, the injury on the head was the prime reason why Section 308 IPC was added, but then he has definitely ignored the multiple injuries sustained by Appellant Jai Prakash including the injury on the head, as can be seen from the MLC of the Appellant Jai Prakash Ex.PW7/DC.

26. There is no answer as to why the MLC of Appellant Jai Prakash Ex.PW7/DC was not even put on record by the Investigating Officer. Similarly, no answer is there as to why the Investigating Officer did not collect the MLC of the Appellants Jai Prakash and Pradeep from Sanjay Gandhi Hospital, whereas he came to know at the very outset that three

injured persons were removed to the hospital by the Police Control Room vehicle. Surprisingly, the plea of ignorance has been put forth by the Investigating Officer, but when confronted with the statement of ASI Satbir Singh examined as PW-4, he conceded that there were three injured persons. Incidentally, he recorded the statement of ASI Satbir Singh under Section 161 Cr.P.C. and in the said statement, the IO has himself recorded about the fact of three injured persons being removed to hospital by PCR vehicle. There is ample evidence to reflect that the investigation was motivated, biased and one-sided. The senior officers also failed to check the Investigating Officer for the reasons best known to them.

27. In these circumstances, when the principle is well settled that hundreds of guilty may escape, but no innocent person shall be punished, then in that case, the finding of conviction recorded against the Appellants and the sentence cannot be sustained, as it is better to acquit a guilty person than to convict an innocent person, which emphasizes the principle of criminal law where protection of innocent is of utmost importance. No one should be punished wrongly. The fair investigation would have certainly resulted into cross-cases thereby giving equal opportunity and level playing field to both sides to address their grievances. In the absence of such an opportunity, the bias had a field day, but the same cannot be permitted to go unnoticed and unaddressed.

28. In the instant case, the Appellant seems to have been punished, if not wrongly, but improperly and, therefore, the impugned Judgment and Order on Sentence cannot be sustained, as a result of which the Appeal is allowed.

29. The impugned Judgment and Order on Sentence both dated 28.01.2004 are set aside.

30. Copy of the judgment be transmitted to the learned Trial Court for information.

VIMAL KUMAR YADAV, J.

MARCH 27, 2026/ps/hk