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

% ***Judgment Reserved on: 15.04.2026***
Judgment pronounced on: 23.04.2026

\+ **CRL.A. 1001/2017**

MOHD TALHA & ORS .....Appellants

Through: Mr. Mehmood Pracha, Mr. Sanawar, Mr. Kshitij Singh, Ms. Nujhat, Mr. Sikander, Advocates.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Utkarsh, APP for the State with SI Ankita, P.S. Mehrauli. Mr. Harsh Ahuja, Mr. Ajay Chowdhary, Mr. Mukul Singh, Advocates for R-2 & 3 with Respondents person.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C), the accused persons, namely, the first accused (A1), the second accused (A2), the third accused (A3) and the fourth accused (A4) in Sessions Case No. 6987/2016 on the file of the Additional Sessions Judge, South District, District Court Saket, New Delhi, assail the judgment dated 27.09.2017 and order on sentence dated 11.10.2017 as per

which they have been convicted and sentenced for the offence punishable under Section 308 read with Section 34 of the Indian Penal Code, 1860 (the IPC). The rank of accused persons are referred to as arrayed in the chargesheet/ final report.

2. The prosecution case as per the chargesheet/ final report is that on 31.12.2011, at about 01:30 PM., A1 to A4, along with one Umer (the CCL) in furtherance of their common intention, caused injuries using deadly weapons, to PW1 and PW2 with such intention and under such circumstances that, had death been caused, they would have been guilty of murder, thereby committing an offence punishable under Section 307 read with Section 34 IPC.

3. On the basis of Ext. PW1/A FIS/FIR of PW1, given on 31.12.2011, Crime no. 1/2012, Mehrauli Police Station, that is, Ext. PW7/B FIR was registered by PW7, Head Constable (HC). PW17, Sub-Inspector, conducted investigation into the crime and

on completion of the same filed the charge-sheet/final report alleging commission of the aforesaid offence.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.PC. Thereafter, in compliance of Section 209 Cr.P.C, the case was committed to the Court of Session concerned. On appearance of A1 to A4 and after hearing both sides, the trial court as per order dated 16.04.2012, framed a Charge under Section 307 read with Section 34 IPC, which was read over and explained to them, to which they pleaded not guilty. On the same date, Meherban Ali, father of A1 and A4 shown in Colum 12 of the final report/ Charge sheet was discharged by the trial court.

5. On behalf of the prosecution, PWs. 1 to 17 were examined and Ext. Ex. PW1/A-B, PW3/A-B, PW5/A-B, PW6/A, A1-A2, B1-B2, C1-C2, D, E, F1-F3, G, PW7/A-B, PW12/A,

PW15/A-E, PW16/A-B, PW17/A-B,CW1/A-C, Mark A, B, X, Y, XX were marked.

6. After the close of the prosecution evidence, A1 to A4 were questioned under Section 313(1)(b) Cr.PC regarding the incriminating circumstances appearing against them in the evidence of the prosecution. A1 to A4 denied all those circumstances and maintained their innocence. It was submitted by A1 that on 31.12.2011 at about 01:20-01:30 PM, while he was standing in front of his house, he saw PW1 and PW2 quarrelling with his cousins, namely, Sultan (A2) and Suhail (A3). When he tried to intervene, PW2 caught hold of him and PW1 attacked him with a knife on the upper part of his body. He attempted to save himself by bending backwards. The knife pierced through his right hand from near his elbow. The wound started bleeding. Members of the public present apprehended PW1 and PW2 and started beating them by throwing them on the ground. A PCR call was made by his cousin, Sultan (A2). He was then taken to the AIIMS

trauma centre by his aunt for medical examination, where his statement was recorded by the police. A1 also submitted that FIR No. 02/2012 dated 01.01.2012, Mehrauli police station has been registered against PW1 and PW2. A2 to A4 gave the same version as submitted by A1.

7. After questioning A1 to A4 under Section. 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, noncompliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

8. On behalf of the accused persons, DW1 was examined. Ext. DW1/A1 to DW1/A6 were marked in support of the defence.

9. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 27.09.2017, found A1 to A4, guilty of the offence punishable under Section 308 read with Section 34 IPC. Accordingly, *vide* order on sentence dated 11.10.2017, they have been sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of ₹1,00,000/- each, and in default of payment of fine, to undergo simple imprisonment for a period of 3 months each. Aggrieved, A1 to A4 have come up in appeal.

10. The learned counsel for A1 to A4 submitted that the case dairy (CD) prepared by the police during the course of investigation as contemplated under Section 172 CrPC needs to be examined, as a perusal of the same would reveal that the investigation conducted by the prosecution was defective, biased

and manipulated in a manner so as to implicate A1 to A4. Referring to Rule 25.56 (1) of the Punjab Police Rules, 1934 (the Rules) applicable in Delhi also, it was submitted that each page of the CD is required to be signed by the Magistrate concerned. It is apparent that the Rules require the production of the entire CD before the Magistrate concerned and an obligation cast upon the Magistrate to sign or initial each page of the CD. This apparently has not been done in this case. Hence, there was every possibility of interpolations and manipulations of the CD including in the Section 161 statement of the witnesses. The fact that the Section 161 statements have been manipulated is clear from the testimony of PW1 and PW2, who tried to make improvements in the case. Therefore, it was submitted that to comprehend the actual facts, it is necessary for the Court to call for the CD and peruse the same. Reliance was placed on the dictum in **Rakesh v. State, 2010 SCC Online Del 2119** in support of the argument.

10.1. The learned counsel for A1 to A4 further submitted that as deposed by PW1 and PW2, there is no proof of an injury having been caused by a *danda* or an iron rod. On the contrary, the medical evidence reflects that the injuries were the result of stone blows, which supports the defense version that PW1 and PW2 were apprehended and beaten by the members of the public. The learned counsel for A1 to A4 also questioned the circumstances surrounding the shifting of PW2 from the trauma centre, AIIMS to Apollo Hospital, New Delhi. This shifting was done to manipulate and create records to support the prosecution case. It was also pointed out that there was a delay of seven days in signing the MLC by PW14, the doctor who is alleged to have examined the injured in this case, which again raises doubts. It was submitted that the witnesses examined by the prosecution are not trustworthy and lack credibility in as much as there exists prior animosity between A1 to A4 and PW1 and PW2, which cast doubt on the veracity of the testimony. None of the family members present at

the time of the incident nor have any independent public witnesses been examined to corroborate the case of PW1 and PW2.

10.2. It was further submitted that the chain of custody of the material objects or the case property has not been properly established. This aspect will be clear on an inspection of the material objects and hence it is necessary for this Court to call for the material objects, that is, Exts. PW6/G, PW2/A, PW17/A, PW6/E as well as Ext. P3, iron rod. An examination of the material objects would show that there are no blood stains on them. It was also submitted that the role of one of the assailants, namely, Meharban Ali, who, according to PW2, is also alleged to have taken part in the attack, has not been referred to at all in the impugned judgment, which is an infirmity committed by the trial court. The discharge of one of the persons alleged to be involved in the attack also affects the credibility and reliability of PW1 and PW2. The learned counsel further questioned the MLCs, prepared in respect of PW1 and PW2, contending that the same are

incomplete and had chances of manipulation, particularly in view of the admissions made by PW14, the doctor, that the MLCs were not signed by him on 31.12.2011, but on a later date. It was further submitted that no explanation has been furnished for the delay of about 10 hours in lodging the FIR, which casts further doubt on the prosecution story. The clothes allegedly worn by PW1 and PW2 at the time of the incident were recovered after an inordinate delay of 54 days. The trial court failed to appreciate that Ext. PW3/A DD no. 15A, regarding the quarrel that took place between PW1 and PW2 and A1 and A2 was recorded pursuant to a PCR call made at 01:45 PM from the phone of A3 whereas Ext. PW3/A DD No. 19B, pertaining to the alleged incident of stabbing in this case, was recorded pursuant to a PCR call made at 01:55 pm from the phone of A2. Despite the police being informed of the quarrel at an earlier point of time, the police without registering a crime went on to register the present crime about which information was received subsequently. The FIR against PW1 and PW2 for assaulting A1

was registered only thereafter, which is another aspect which shows that the investigation was biased and everything was done to help PW1 and PW2. It was also submitted that permission to produce additional evidence may be granted, which would show that it was actually A1 who was injured in the attack by PW1 and PW2.

10.3. *Per contra*, the learned Additional Public Prosecutor (APP) submitted that the CD can be called for or looked into only for the purpose stated in Section 172(3) Cr.P.C. and not for any other purpose. It was further submitted that no objection or allegation regarding any manipulation or interpolation of the CD or defects or illegalities in investigation had been raised before the trial court and hence the same cannot be raised at the appellate stage. No material to substantiate any case of injury being caused to A1 has been brought on record and so the defence version cannot be believed. The absence of independent witnesses is no reason to disbelieve the version of PW1 and PW2. It was further

submitted by the APP that it is a settled position of law that the testimony of an injured witness carries great evidentiary value and ordinarily commands a higher degree of reliability. The allegation of delay in lodging the FIR is devoid of merit, as both the victims were injured and PW2 had sustained grievous injuries as reflected in the MLC. In such circumstances, it was natural and reasonable to first secure immediate medical treatment before approaching the police for registration of the FIR. The learned APP further submitted that no allegation regarding any defect in the chain of custody of the material objects had been raised before the trial court. The same has been urged for the first time at the appellate stage and hence liable to be entertained. It was further submitted that Meherban Ali mentioned in Column No. 12 of the chargesheet as a suspect, was discharged by the trial court by order dated 16.04.2012 on the ground that there was no sufficient material to proceed against him. Hence, no infirmity has been committed by the trial court in not referring to him in the impugned judgment. It

was contended that, in contrast, the involvement of A1 to A4 stands duly established from the materials on record. Therefore, no parity can be claimed by them on the basis of the discharge of the aforesaid person. There is no infirmity in the impugned judgment calling for an interference by this Court, argued the prosecutor.

11. Heard both sides and perused the materials on record.

12. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. In Ext. PW1/A FIS/FIR of PW1, recorded on 31.12.2011, it is stated thus: "*Today, on 31.12.2011 at around 1:30 PM, when I was at my home, I heard a commotion outside. When I stepped out of my house, I saw that my younger brother Haneef* (PW2) *was being assaulted and beaten by my neighbors Suhail* (A3), *Sultan* (A2), *and Umer* (CCL) *(who are the sons of Yameen Ali), along with Talha* (A1) *and Zubair* (A4) *(who are the sons of Meharban Ali). All of them were fighting and beating up my brother Haneef* (PW2). *Talha* (A1) *had a wooden stick in his hand, and Suhail* (A3) *had an iron rod in his hand.*

When I tried to intervene and save my brother, they started fighting and beating me up as well. Suhail (A3) *struck my brother Haneef* (PW2) *on the head with the rod, due to which he sustained a head injury and fell down. Furthermore, Talha* (A1) *struck me with the stick, causing injuries to several parts of my body. Seeing the incident, people from the neighborhood gathered around, and then all of them [the accused persons] ran away. Somebody informed the police. A PCR van arrived at the spot and brought me and my brother Haneef* (PW2) *to the hospital. I and my brother Haneef* (PW2) *have been injured by Suhail* (A2), *Sultan* (A3), *Umer* (CCL), *Talha* (A1), *and Zubair* (A4) *with whom our family has had a pre-existing dispute. They have injured both of us brothers. Legal action should be taken against all of them…*"

13. PW1, when examined before the trial court, deposed that he knows A1 to A4, as they are his neighbours. On 31.12.2011 at about 01:30 PM, while he was at home, he heard a commotion. When he came outside, he saw his brother (PW2) being beaten by

A1 to A4 and Umer (the CCL). Suhail (A3) was armed with an iron rod and Talha (A1) was carrying a danda. PW2 was beaten with the iron rod and danda. When he tried to intervene to save his brother, A1 to A4 beat him as well. Talha (A1) inflicted danda blows on his head and other parts of his body, due to which he sustained bleeding injuries, which required 28 stitches. PW2 sustained injury on his head due to the attack made by Suhail (A3) with the iron rod. PW1 further deposed that someone from the neighbourhood informed the police, following which a PCR van arrived and took them to the Trauma Centre. His statement was recorded by the police, that is, Ext. PW1/A. PW1 identified the dress he was wearing at the relevant point of time which has been marked as Ext. P1 (collectively).

13.1. PW1, in his cross examination, admitted that he is an accused in a case filed by one Nikhat Gul alleging commission of the offence punishable under Section 308 IPC. PW1 denied the suggestion that he had stabbed A1 with a knife on 31.12.2011 at

02:30 PM in front of the parking near premises no. 31/1, ward no. 1, Mehrauli and had caused an injury on his right arm, at which time PW2 was also present. He denied that Talha (A1) on being stabbed had raised alarm, pursuant to which many mohalla people had gathered at the spot. According to PW1, it was he who had raised alarm when his brother was stabbed. PW1 was unable to say as to who had informed the police or whether A3 had informed the police. PW1 denied the suggestion that he and his brother had attacked Talha (A1), at which time many mohalla people had gathered at the spot or that when the mohalla people intervened in the quarrel, he had fled from the spot while PW2, his brother, was caught by mohalla people at the spot. PW1 also denied the suggestion that he and PW2 had sustained injuries after the intervention of the mohalla people or that they had sustained injuries while fleeing the spot. According to PW1, both of them had sustained injuries in the quarrel that occurred and that no mohalla people had intervened. The PCR had reached the spot

within about 10 minutes and the PCR officials had taken them to the trauma centre within about 20 minutes. The local police reached the Trauma Centre within about 30 minutes of their arrival there. No family members had reached the Trauma Centre before the arrival of the local police. Ext. PW1/A statement was recorded by the police after about one hour of reaching the Trauma Centre. He had not been examined by the doctor prior to the recording of his statement and that his medical examination had been conducted after the recording of his statement. His statement was recorded by the police while he was in the emergency ward, at which time, PW2 was on a stretcher inside the emergency. PW1 deposed that his family members reached the Trauma Centre after about two hours. He denied the suggestion his family members had reached the Trauma Centre along with the police prior to the recording of his statement. PW1 also denied the suggestion that he had been tutored by his family members before making his statement or that he had falsely implicated A1 to A4 to pressurise them to withdraw

the case filed by Nikhat Gul. According to him, PW2 had earlier filed a complaint case in the year 2009 against Nikhat and others alleging offences punishable under Section 308 IPC.

13.2. PW1 further deposed that the local police met him for the first time at the Trauma Centre when his statement was recorded. He initially deposed that thereafter the police had not met him, but corrected himself and deposed that police met him again on 01.01.2012 when the site plan was prepared at his instance and on 03.03.2012 when he and his brother were taken to the Trauma Centre for collection of blood samples. He admitted that he had not personally produced his blood stained clothes to the police, but PW2 and his father had handed over his clothes to the police at the police station. He is unaware whether his clothes had been handed over about one or two months after the incident. PW1 admitted that he was facing one criminal case registered under the Gambling Act, which had been registered prior to the incident in this case.

14. PW2, the brother of PW1 when examined, deposed that on 31.12.2011 at about 01:30 PM, he was returning home on his motorcycle after withdrawing ₹1,50,000/- from Central Bank of India, Mehrauli. As soon as he reached near his house and stopped his motorcycle, Sultan (A2), Suhail (A3) and Umer (the CCL) came out of their apartment and started beating and abusing him. Meharban Ali along with his sons Talha (A1) and Juber (A4) came there. Talha (A1) and Juber (A4) were having *dandas* in their hands. Thereafter, all five of them, that is, A1 to A4 and Umer (the CCL) started beating him. Suhail (A3) brought an iron rod from the former's house and gave a blow on his head. Meharban Ali exhorted all the accused persons to kill him, and thereafter all of them beat him with iron rod and dandas, as a result of which, he fell down. The accused persons had also hurled stones at him. Seeing the incident, PW1, his brother, came to his rescue and when the latter intervened, the accused persons also beat him. PW1 sustained injuries on his head. PW2 deposed that he sustained

injuries on his head, below his left eye, waist and other parts of the body. He became unconscious and the money withdrawn by him from the bank was lost during the incident. PW2 further deposed that the accused persons are also accused in a case alleging commission of offence under Section 308 IPC, in which case he was a witness, due to which he was beaten up. He was discharged from the hospital on 11.01.2012 and his statement was recorded thereafter. He went to the police station on 21.02.2012 and handed over his blood stained clothes and those of his brother, which were seized *vide* Ext. PW2/A memo. He identified his clothes marked as Ext. P2. On 03.03.2012 he and PW1 were taken by the police to AIIMS Trauma Centre where his blood sample was taken.

14.1. PW2, in his cross examination, denied the suggestion that on 31.12.2011, PW1, his brother, had attacked Talha (A1) with a knife which caused injury on the right arm of the latter or that he had accompanied his brother during such attack. PW2 denied that pursuant to the said attack, A1 had raised alarm at

which time people had gathered at the spot or that PW1 had fled the spot and that he had been apprehended by the public. He denied that police was informed by Sultan (A2) or that he and his brother had sustained injuries while trying to save themselves from the clutches of the public. PW2 further denied the suggestion that he had falsely implicated the accused persons to pressurise the latter to compromise a case filed by them against him and his brother. He also denied the suggestion that they had implicated the accused persons in connivance with the police. PW2 deposed that he is unaware as to when the police had arrived at the spot, as he was unconscious and regained consciousness in the hospital after about 6 to 7 days. PW2 deposed that his statement was recorded on 12.01.2012 at his house after he was discharged from the hospital on 11.01.2012. PW2 denied that his statement was recorded at the instance of his family members. PW2 further denied the suggestion that when PW1 attacked A1, only Sultan (A3) was present along with A1. PW2 further denied the suggestion that Meharban Ali

was neither present nor had he instigated the accused persons. He further denied that he had falsely named Meharban Ali at the instance of his brother. On 31.02.2012 he had gone to the police station with his father to hand over the blood stained clothes he was wearing on the date of the incident. He had not handed over the clothes on 12.01.2012 as he was on bed rest at that time.

15. PW4, the father of PW1 and PW2 deposed that on 31.02.2012 he along with his sons went to Mehrauli police station and had handed over the blood stained clothes of the latter to PW17, the Investigating officer (IO). PW17 sealed the clothes *vide* Ext. PW2/A seizure memo.

15.1. PW4, in his cross-examination, deposed that he came to know about the incident at about 2.00 PM when he was at his work site. PW4 further deposed that his son was an in-patient in the hospital for about 10 to 12 days. PW4 denied the suggestion that on 31.12.2011, the clothes had not been blood stained and that the clothes were later manipulated to appear blood stained. PW4

admitted that criminal cases were pending between his son and the family members of the accused persons, but no criminal case was pending between his sons and A1 to A4. PW4 deposed that he is unaware whether his sons had attacked A1 or whether his son had received injuries due to a fall while fleeing from the spot.

16. PW8, Head Constable, when examined, deposed that on 31.12.2011, while posted at Mehrauli police station, at about 01.45 PM, copy of Ext. PW3/A DD No. 15-A was assigned to him to take action regarding a quarrel and was informed that the injured persons were at house No. 31/1, Ward No. 1, Mehrauli. He also received the following information (Ext. PW3/B DD No. 19-B) on phone – "*mere bhai ko chaku maar diya hai*" at a place near MTNL Office, Ward No. 1, near Bhul Bhullaiya Road. He along with Constable Prakash proceeded to the crime spot. There they were informed that the injured had already been removed to hospital by the PCR officials. Thereafter, they reached Trauma Centre, AIIMS and collected the MLCs of PW1 and PW2 *vide*

Mark-X and Mark-Y. PW1 was declared fit for statement, whereas PW2 was unfit. He recorded Ext. PW1/A statement of PW1 in which the latter named the five accused persons. On the basis of Ext. PW1/A, he registered Ext. PW7/B FIR for commission of offence punishable under Section 308 read with Section 34 IPC. Thereafter, he returned to the scene of crime. Sub-Inspector Pushpender (PW17) reached the scene at about 01.00 AM on 01.01.2012, pursuant to which, he handed over the DD entry and MLCs to the former. PW8 further deposed that Talha (A1) had also given a statement to PW17 that he had sustained injury in the incident, and hence a cross case was registered. He further deposed that he had investigated the cross case bearing FIR No. 02/2012 of P.S. Mehrauli.

16.1. PW8, in his cross examination, admitted that he had reached the scene after receipt of Ext. PW3/A DD No. 15-A. He had first recorded Ext. PW1/A of PW1 in the case. PW8 denied the suggestion that Ext. PW1/A of PW1 had been recorded at the

police station or that the statement of A1 had been recorded before Ext. PW1/A was recorded. PW8 admitted that he had recorded Ext. PW2/A statement of Talha (A1) in FIR No. 02/2012.

17. PW14, Junior Resident, Trauma Centre, AIIMS deposed that on 31.12.2011 at about 02:24 PM, he had examined PW1 with alleged history of assault. On examination, he found laceration over middle scalp, right parietal region and occipital region, and bruises over both shoulders, both upper arms and left calf. He had prepared Ext. PW17/A MLC. According to PW14, the injuries were simple in nature caused by a blunt object. On the same day, he had also examined PW2 and prepared Ext. PW17/B MLC report. There was laceration over left parietotemporal region on the scalp, swelling over left side of face and multiple bruises over both shoulders, both upper arms, lower back and both thighs. He opined that the injuries were grievous in nature caused by a blunt object.

17.1. PW14, in his cross examination, admitted that on 31.12.2011, he had handed over the MLCs to the police, on which date he had not signed the MLCs. He also admitted that on 31.12.2011 he had not recorded his opinion in the MLCs regarding the nature of injuries or the weapon used. He further admitted that the dates of admission and discharge have not been mentioned in the MLCs. PW14 denied the suggestion that his opinion regarding the nature of injuries and weapon have been given at the instance of the police or that he had not properly examined the injured.

18. PW12, Senior Consultant, Neuro Surgeon, Apollo hospital, who brought the records relating to treatment of PW2, deposed that the latter had come to the hospital with an alleged history of assault on 31.12.2011 at about 01:30 PM. Following the assault, the injured had lost consciousness and had an episode of vomiting. As per the records, PW2 was initially taken to Trauma Centre, AIIMS, New Delhi and thereafter shifted to Apollo Hospital, New Delhi. On 01.01.2012, he examined PW2 and

performed a surgery on the head of the patient. During the surgery, pieces of stone were found in the head of PW2. There were also fractured bone fragments. Blood clot inside the skull was removed during the surgery. On 02.01.2012, the pieces of stone removed during surgery, were handed over to the security personnel police at Apollo Hospital *vide* handing over form Mark Y in his presence and in the presence of Dr. Sunit Mediratta. The patient remained under treatment till 11.01.2012 and Ext. PW12/A is the discharge summary.

18.1. PW12, in his cross examination, admitted that the discharge summary had not been prepared by him. PW12 admitted that the details spoken to by him relating to the alleged history of assault and date of discharge was based on the medical records.

19. PW17, Sub-Inspector, Malviya Nagar Police Station, New Delhi, the IO deposed that, after he took over the investigation, PW1 had informed him that Yamin Ali and Meharban Ali, the fathers of the accused persons, were residing in

Moonlight Apartment and on receiving the information, he proceeded to the said apartment and arrested A1, who was identified by PW1. A1 was interrogated and his Ext. PW17/A '*disclosure statement*' recorded. On 06.02.2012, A2, A3 and A4 surrendered before the trial Court. He moved an application for their arrest and interrogation which was allowed and their custody was handed over to him. He interrogated the said accused persons who made '*disclosure statements*' Ext. PW6/F1, F2 and F3. He arrested the accused persons *vide* Ext. PW6/C1, Ext. PW6/B1 and Ext. PW6/A1 memos and conducted their personal search vide memos Ex. PW6/C2, Ex. PW6/B2 and Ex. PW6/A2.

19.1. The iron rod used by Suhail (A3) was recovered at the instance of A3 and seized *vide* Ext. PW6/E memo. A1 to A4 were brought to PS Mehrauli along with the case property and the case property was deposited in the malkhana. PW1 and PW2 produced their blood stained clothes which were seized *vide* Ext. PW2/A memo. During investigation he collected blood samples of PW1

and PW2 on 03.03.2012 and seized the same *vide* Ext. PW17/A *memo*. The samples were sent to FSL for examination. PW17 identified Exts. P1 and P2 clothes of PW1 and PW2. According to him, Ext. P5 is the iron rod recovered at the instance of Suhail (A3).

19.2. PW17, in his cross examination, denied the suggestion that he had deliberately not taken any action on the complaint of the accused persons despite coming to know from the neighbours that on 31.12.2011, PW1 had caused stab injuries to A1 at which time PW2 was also present. He has no knowledge regarding any complaint made by the brother of A1 in this regard. He denied the suggestion that he was aware that PW1 and PW2 had sustained injuries during their attempt to flee the scene. PW17 further denied the suggestion that no disclosure statement had been made by the accused persons or that the iron rod had been planted. According to PW17, the iron rod was recovered from the terrace of Moonlight Apartment. PW17 denied the suggestion that he had deliberately

not made the neighbours as witnesses as they were not willing to support the case. On his asking, PW2 had produced his blood stained clothes and that of PW1 after about a week of his discharge from the hospital. He had visited the hospital two days after the incident. The clothes of the injured were not handed over to him by the doctor.

20. Now, the question is whether the trial court was justified in finding A1 to A4 guilty of the offence punishable under Section 308 read with Section 34 IPC based on the aforesaid materials on record. I shall first deal with the submission of the learned counsel for the appellants/ A1 to A4, that the CD needs to be called for and examined by this Court. I refer to Rule 25.56 (1) of the Rules applicable to the Union Territory of Delhi also to which reference was made. The said Rule reads:-

*"**25.56. Procedure when the investigation cannot be completed within 24 hours***

(1) When an investigating officer requires authority to detain an accused person in police custody beyond the limits prescribed in

section 61 of the Code of Criminal Procedure, 1898, he shall make an application therefor in accordance with the provisions of section 167 of the said Code in Form 25.26(1), to which he shall attach the case diaries or copies thereof.

The Magistrate will record his orders on the above application, which will not be returned to the police, but will form part of the Magistrate's proceedings. The Magistrate shall sign and date every page of the case diaries or copies thereof in token of having seen them. Applications for remand shall be prepared in duplicate by the carbon copying process, and a copy of the Magistrate's orders will be made by the police officer on the carbon copy of the application, which will then be attached to the police file of the case. The copy will be attached to the charge-sheet when the case is finally sent for trial. Case diaries will not form part of the judicial file. The orders of the High Court in connection with the granting of remands to police custody are contained in Appendix No. 25.56(1).

(2) XXXXXX

(3) XXXXXX"

(Emphasis Supplied)

21. Relying on the aforesaid Rule, it was argued that it was obligatory on the part of the jurisdictional magistrate to have signed and dated every page of the CD or copies of the CD, in token of having seen them. Such a course of action has never been adopted or taken or followed by the jurisdictional magistrate/trial

court and hence, there was every possibility of manipulation of the CD including the 161 statements of the prosecution witnesses. Reference was made to the testimony of PW2 wherein, he has implicated Mehraban Ali, the father of A1 and A4, also in the crime. It was pointed out that the FIS/FIR of PW1 never refers to the role of Meherban Ali. The first 161 statement of PW1 and PW2 also does not refer to his role. But a subsequent 161 statement of PW2 refers to the role of Meherban Ali. Incorporation of the subsequent 161 Statement of PW2 is a clear manipulation by the IO and hence this was pointed out as a ground for the Court to call for the CD and to examine it.

22. Section 172 Cr.P.C., which deals with case diaries, reads thus:-

"***172. Diary of proceedings in investigation.***

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and statement of the circumstances ascertained

through his investigation.

(1-A) The statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary.

(1-B) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872, shall apply."

(Emphasis Supplied)

23. This Section firstly lays down that every police officer making an investigation should maintain a diary of his investigation. It is well known that each State has its own police regulations or otherwise known as police standing orders and some of them provide as to the manner in which such diaries are to be maintained. These diaries are called case diaries or special diaries. The Section itself indicates as to the nature of the entries that have

to be made and what is intended to be recorded is what the police officer did, the places where he went and the places which he visited etc. and in general it should contain a statement of the circumstances ascertained through his investigation. Sub-section (2) is to the effect that a criminal Court may send for the diaries and may use them not as evidence but only to aid in such inquiry or trial. The aid which the Court can receive from the entries in such a diary usually is confined to utilising the information given therein as foundation for questions to be put to the witnesses particularly the police witnesses and the Court may, if necessary, in its discretion use the entries to contradict the police officer who made them. Coming to their use by the accused, sub-section (3) clearly lays down that neither the accused nor his agents shall be entitled to see them merely because they are referred to by the Courts. But in case the police officer uses the entries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then provisions of S.161 or S.145 as the case

may be of the Evidence Act would apply. It can therefore be seen that the right of accused to cross examine the police officer with reference to the entries in the General Diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the limitations of S.145 and 161 of the Evidence Act and for that limited purpose only the accused in the discretion of the Court may be permitted to peruse the particular entry and in case if the Court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use the entries even to that limited extent does not arise. Further, assuming that there is failure to keep a diary as required by S.172 Cr. P.C, the same cannot have the effect of making the evidence of such police officer inadmissible and what inference should be drawn in such a situation depends upon the facts of each

case. It is well settled that the entries of the police diary are neither substantive nor corroborating evidence and they cannot be used by or against any other witness than the police officer and can only be used to the limited extent indicated above (See **Shamshul Kumar v. State of UP, 1995 KHC 876: (1995) 4 SCC 430**). (See also **Queen-Empress v. Mannu 1897 SCC OnLine All 39; Dal Singh v. The King-Emperor AIR 1917 PC 25; Habeeb Mohd. v. State of Hyderabad (1953) 2 SCC 231; Khatri and Ors. v. State of Bihar 1981(3) eILR(PAT) SC 1; Mukund Lal v. Union of India 1989 (1) SCC 622; Malkiat Singh v. State of Punjab (1991) 4 SCC 341)**

24. The learned counsel for the appellants/A1 to A4 admit the legal position that the accused do not have the right to call for the CD. But the submission is that the court has every right to do so and in the case on hand, for the court to understand the actual events that transpired and to understand the manipulations done during the course of the investigation conducted, it is absolutely

necessary for the court to call for the CD and peruse the same. I am afraid I am unable to agree to the argument advanced by the learned counsel for the appellants/A1 to A4. PW7, the IO, when in the box was never asked about any manipulation(s) alleged to have been done in the CD. It is true that a suggestion is seen made to PW17 that he had not conducted a proper investigation. However, there is not even a suggestion seen put to PW17 that the 161 statements had been manipulated in the CD or that the manipulated supplementary statement of the witnesses had been incorporated in the CD. This argument has been raised for the first time before this court and no such argument is seen raised before the trial court. As per illustration (e) to Section114 of the Evidence Act, official acts are presumed to have been performed regularly, unless otherwise shown. Moreover, the Rules, relied on, do not in any manner override the provisions of the Cr.P.C. The said Rules are meant for the guidance of the police officers of the State and supplement the provisions of the Cr.P.C., but do not supplant them **(Paramjit**

Singh alias Mithu Singh v. State of Punjab (2007) 13 SCC 530).

24.1 Further, in the case of defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused solely on account of the defect; to do so would tantamount to playing into the hands of the I.O. if the investigation is designedly defective (**Karnel Singh v. State of M.P. (1995) 5 SCC 518**). In **Paras Yadav v. State of Bihar, (1999) 2 SCC 126**, it has been held that if the lapse or omission is committed by the investigating agency or because of negligence, the prosecution evidence is required to be examined *de hors* such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by courts. (See also **Ram Bihari Yadav v. State of Bihar, (1988) 4 SCC 517; Amar Singh v. Balwinder Singh (2003) 2 SCC 518 and Dhanej Singh v. State of Punjab 2004 KHC 757 : (2004) 3 SCC 654**). In these circumstances, I do not find the need to call for and peruse the CD.

25. Going by the prosecution case, Exhibit P5 iron rod used by A3 for assaulting PW2 was recovered at the instance of the former. According to PW17, Ext. PW6/E is the seizure memo as per which the iron rod was seized. The seizure memo reads :-

> *"**Memo of Identification and Recovery of Rod (P-3)***
>
> *In the presence of the following witnesses, the accused Sohail Khan, s/o Yamin Ali, r/o H. No. 31/I, Ward-I, Mehrauli, New Delhi, during the investigation of the aforementioned case and while in police custody, voluntarily and without any pressure, led the way to Moonlight Apartment.*
>
> *Inside this apartment building, where the accused resides in a ground-floor flat, he went to the top floor roof. From a corner of the roof, he produced an iron rod that was lying there and stated: "This is the same rod which I took from my flat on 31/12/2011 during the fight and used to hit Mohd. Hanif on the head, causing him injury."*
>
> *Upon measurement, the iron rod was found to be 2 feet 6½ inches in length. There were traces of sand/cement sticking to the rod, and it had a lacquer-like appearance. A parcel (bundle) of the rod was prepared using a white cloth and sealed with the seal 'P.K.'. The recovered rod parcel was taken into possession as evidence (Vajah Saboot) via this memo. After use, the seal was handed over to Constable Kailash, No. 1288/SD."*

(Emphasis supplied)

26. Section 27 of the Indian Evidence Act, 1872 reads:-

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. "

26.1. Section 27 is an exception to S.25 and 26 which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody unless it is made in immediate presence of a Magistrate. S.27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus, even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under S.27. The extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information

given must relate distinctly to this fact. Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that *'I will produce a knife concealed in the roof of my house*' leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. If, however, to the statement the words be added *'with which I stabbed A*', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant. (**Chinnaswamy Reddy v. State of Andhra Pradesh, AIR 1962 SC 1788**).

26.2 In **State of Himachal Pradesh v. Jeet Singh**, **AIR 1999 SC 1293)**, the Apex Court relying on the dictum in **Pulikuri Kottaya, AIR 1947 PC 67**, held that the discovery of fact referred to in S.27 of the Evidence Act is not the object recovered but the

fact embraces the place from which the object is recovered and the knowledge of the accused as to it. The ratio in **Pulikuri Kottaya** (*Supra*) has received unreserved approval in successive decisions of the Apex Court and to name a few - in **Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872; K. Chinnaswamy Reddy v. State of Andhra Pradesh (AIR 1962 SC 1788; Earabhadrappa @ Krishnappa v. State of Karnataka (1983) 2 SCC 330; Shamshul Kanwar v. State of U.P. (1995) 4 SCC 430; State of Rajasthan v. Bhup Singh (1997) 10 SCC 675** and also in several other later decisions. The manner of proving the disclosure statement under S.27 of the Evidence Act has been the subject matter of consideration by the Apex Court in various judgments, some of which are being referred to.

26.3 The statement which is admissible under S.27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words,

the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in S.27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The

extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. (See **Bodh Raj v. State of Jammu and Kashmir, (2002) 8 SCC 45**).

26.4 In **Babu Saheba Goudar Radragoudar v. State of Karnataka, 2024 KHC 6222: AIR 2024 SC 2252**, it has been held that the statement of an accused recorded by a police officer under S.27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of **State of Uttar Pradesh v. Deoman Upadhyaya, AIR 1960 SC 1125**. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate

what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

26.5. In the case of **Mohd. Abdul Hafeez v. State of Andhra Pradesh, 1983 (1) SCC 143**, it was held that if evidence otherwise confessional in character is admissible under S.27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person. Therefore, it is only that part of the statement which distinctly relates to the discovery of the fact that is admissible.

27. Coming back to the case on hand, as is evident from Ext. PW6/E, seizure memo, the same does not satisfy the test laid

in the aforesaid decisions. PW17 ought to have spoken to the words of A3 when examined before the trial court. Apparently, the same has not been done and hence, the recovery of Ext. P5 iron rod alleged to have been made as per the disclosure statement of A3 cannot be accepted.

28. Be that as it may, it is well settled that recovery of the weapon used for commission of the offence is not a *sine qua non* for concluding regarding the guilt of the accused. (See **Rakesh v. State of U.P., (2021) 7 SCC 188**). If the remaining materials on record is creditworthy, the same can certainly be relied on.

29. The next argument advanced by the learned counsel is with regard to the nature of injuries sustained by PW1 and PW2. It was submitted that the MLCs and the testimony of the doctor probabilizes the defense version that the mob that had gathered at the scene of crime had attacked PW1 and PW2 with stones, causing injuries and hence, the reason why pieces of stone were found during the surgery conducted on PW2. In the light of such

evidence, the version of PW1 and PW2 of assault with iron rod and *danda* is improbable and highly unlikely, argued the learned counsel.

30. Exts. PW17/ A and PW17/B are the MLCs of PW1 and PW2 respectively, Ext. PW17/A shows that PW1 had sustained injuries, simple in nature, namely, lacerations over the middle of the scalp, right parietal region, and occipital region, with bruises over both shoulders, both upper arms, and the left calf; Ext. PW17/B shows that PW2 sustained injury, grievous in nature, namely, laceration over the left parietotemporal region of the scalp, swelling over the left side of the face, and multiple bruises over both shoulders, both upper arms, the lower region of the back, and both thighs. The injuries according to the doctor have been caused by a blunt weapon. PW1 in his FIS/FIR says that when A1 to A4 attacked PW2, the latter had fallen down. This is spoken to by PW2 also. PW2 has also a case that A1 to A4 had hurled stones at him. When PW1 and PW2 were in the box, A1 to A4 had no

case that the mob that is alleged to have gathered on hearing their cries for help had manhandled PW1 and PW2. On the other hand, their only suggestion to PW1 and PW2 is that the both of them might have sustained injuries during the course of their attempt to flee from the scene of crime. There is never a case for A1 to A4 and not even a suggestion is seen put to PW1 and PW2 that the mob that is alleged to have gathered there hearing the cries of A1 had manhandled/assaulted or attacked PW1 and PW2 and caused injuries to them. It was only when questioned under Section 313(1)(b) Cr.P.C., A1 to A4 had developed a case that the mob had caused injuries to PW1 and PW2. The testimony of PW1 and PW2 regarding the manner in which they sustained injuries has not been discredited. As noticed earlier, PW1 and PW2 deposed that PW2 had fallen on the ground when he had been attacked. This explains the presence of pieces of stone found in his head injury, which were removed during surgery. Therefore, the argument that the defence version stands probabilized also cannot be accepted.

31. Now coming to the argument that PW14, the doctor who initially examined PW1 and PW2 admitted that on 31.12.2011, when he had examined the injured, he had not signed the MLCs. Referring to this testimony, it was argued that this is yet another aspect which would indicate the manipulations done to create evidence in support of the prosecution case.

32. I have already referred to the testimony of PW14 in which he refers to the injuries seen on PW1 and PW2. PW12 refers to the details of the surgery conducted and the removal of pieces of stone found in the head injury of PW2. PW12 also deposed that there were fractured bone fragments and blood clot which were removed from the skull during the surgery. PW14 is the first doctor who had examined PW1 and PW2 in this case. PW14 while in the box spoke of the nature of the injuries seen on PW1 and PW2. He admitted that his signatures at point 'A' in the MLCs were put on 06.01.2012. As on 31.12.2011, the nature of injuries is recorded as "pending investigation". The opinion that the injury of

PW1 was simple and injury of PW2 was grievous in nature and that the injuries had been caused by a blunt weapon is seen recorded on 06.01.2012.

33. A wound certificate is only a previous statement of the author thereof if he is examined. It may be used for any purpose under Sections 145, 155, 157 and 159 of the Evidence Act. What the doctor has observed at the time of examination of the injured is direct evidence. Therefore, he should depose to the contents of the certificate while in the box. His such deposition is substantive evidence and not the certificate. The certificate can only be used to corroborate the testimony of the doctor. The certificate can be marked as an exhibit only after the doctor deposes to the contents thereof. (See **Munshi Prasad v. State of Bihar, (2002) 1 SCC 351; State of U.P. v. Mohd. Iqram, (2011) 8 SCC 80; Krishnan Kutty v. State of Kerala 2015 (2) KHC 322: ILR 2015 (2) Ker 484)**.

34. When PW14 was in the box, the appellants/A1 to A4

never had a case that he had done some manipulations in the certificates. On the other hand, the only suggestion is that his opinion regarding the nature of injuries and the weapon used was given at the instance of the police. On going through the testimony of PW14 and PW12, I do not find any reason(s) to disbelieve them. Further, the presumption under illustration (e) to Section 114 is also available to the prosecution that official acts have been regularly performed unless otherwise shown. In the case on hand, no materials have been shown or brought on record to show that PW12 or PW14 had manipulated the records to help the prosecution. In such circumstances, I find no reasons to disbelieve the medical evidence on record.

35. Further the presence of A1 to A4 at the scene of crime is not disputed. The details of the injuries are spoken to by PW12 and PW14. A1 to A4 also do not have a case that PW1 and PW2 were not injured on the date of the incident. Their only case is that PW1 and PW2 might have sustained injuries during the course of

their attempt to flee from the scene of crime. PW1 and PW2 speak of the manner in which they had sustained injuries. Though they were extensively cross examined nothing was brought out to disbelieve their version.

36. It is true fact that from the materials on record, it appears that the parties are in inimical terms. But that alone is no reason to disbelieve PW1 and PW2. That had made this Court only more cautious in examining the evidence on record. On going through the testimony of the prosecution witnesses, I do not find any reason(s) to disbelieve the case of PW1 and PW2 regarding the manner in which injury was caused to them, which is also supported by the medical evidence on record.

37. Further, it was submitted that the trial court has nowhere referred to the role of Meharban Ali in the impugned judgment. PW2 in his examination-in-chief has a case that Meharban Ali, father of A1 and A4 had exhorted A1 to A4 to attack and kill them. However, there is no such case for PW1. It

was also pointed out that after a lapse of several days, an additional 161 statement of PW2 was recorded by the police in which a reference has been made to the role of Meharban Ali. Therefore, pointing to this aspect it was argued that this was an attempt made by PW2 to implicate an innocent person, which would also raise doubts about his credibility.

38. Column 12 of the chargesheet/final report in the case reads thus:- " *Detail of accused of not charge sheeted. (suspect) (Use separate sheet for each accused) N/A*

S. No. .....

a) Name.....Meherban Ali....."

39. The charge sheet/final report was submitted by the Investigating Officer under Section 173 Cr.P.C. Sub-section (2)(i) of Section 173 Cr.P.C. says that as soon as the investigation is completed, the officer in-charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State

Government, stating the names of the parties; the nature of the information; the names of the persons who appear to be acquainted with the circumstances of the case; whether any offence appears to have been committed and, if so, by whom; whether the accused has been arrested; whether he has been released on his bond and, if so, whether with or without sureties; whether he has been forwarded in custody under section 170 and in case of sexual offences whether the report of medical examination of the woman has been attached. Therefore, it is only on completion of investigation, the final report is submitted before the jurisdictional magistrate/Court. PW17, the IO has no case that it was before the completion of investigation he had submitted the final report. The final report also refers to the offence committed and the persons who committed the same. PW17 has no case that apart from A1 to A4, any other person(s) is/ are involved in the crime. In such circumstances, referring to Meharban Ali as a suspect after completion of investigation, appears to be without any basis and

that seems to have been quite unnecessary. Admittedly, the trial court *vide* order dated 16.04.2012 has discharged Meharban Ali. The said order has not been challenged.

40. It is true that PW2 has spoken regarding the role of Meherban Ali also. However, the materials on record does not support or substantiate the said version. PW2 seems to have slightly exaggerated his version. Merely because that part of his testimony is disbelieved and rejected, it does not mean that his entire testimony needs to be rejected because the maxim "*Falsus in uno, falsus in omnibus*", meaning, false in one thing, false in everything, is not part of Indian law and jurisprudence and is, at best, a rule of caution. The entire evidence of the witness need not be discarded only because some of his statements are proved to be factually incorrect. However, such testimony would have to be viewed with care and caution before it is accepted and acted upon. (**See George v. State of T.N., 2024 SCC OnLine SC 3730; Arun v. State of M.P., 2025 SCC OnLine SC 668 : 2025 KHC 7225;**

Edakkandi Dineshan v. State of Kerala, (2025) 3 SCC 273: 2025 KHC 7016)

41. Ext. PW1/A FIS/FIR is seen recorded on 31.12.2011 at 11:45 PM. On the basis of the same, Ext. PW7/B FIR was registered on 01.01.2012 at 00:15 hours. The materials on record show that PW2 was in quite a serious condition, when he was taken to the hospital. The crime is seen registered within about an hour and a half of recording the statement of PW1. It is true that the incident in this case took place on 31.12.2011 at about 01:30 PM. Materials on record show that soon after the incident PW1 and PW2 were taken to the hospital for treatment. The argument advanced is that Ext. PW1/A FIS/FIR was given by PW1, after consulting his family members and therefore, there was every possibility of embellishments and improvements in the prosecution case. However, there is no material(s) on record to show that after PW1 and PW2 were taken to the hospital for treatment and before the statement of PW1 could be or had been recorded, there was

any possibility of any of the family members intervening and tutoring PW1. According to PW1, he and PW2 were taken from the scene to the emergency ward of the hospital. The presence of the family members has not been spoken to by any of the prosecution witnesses. No suggestion was also put to any of the witnesses that when PW1 and PW2 were taken from the scene of crime, any of their relatives had also accompanied them in the PCR van. On the other hand, the case of A1 to A4 when questioned under Section 313(1)(b) Cr.P.C. is that their aunt had accompanied A1, (who is alleged to have been assaulted by PW1 and PW2), when he was taken to the hospital. There is no material(s) on record to the effect that there was anybody or that any of the family members were around PW1 or that they had in any way influenced or tutored him to give the statement. Further, all delays are not fatal. In the light of the materials on record, I do not find any substantial unexplained delay in the registration of the crime.

42. Reference was also made to the delay in seizing the blood stained clothes worn by PW1 and PW2. Materials on record do reveal that there was delay in seizing the clothes. However, in the light of the other materials on record, I find that the same has not affected the prosecution case because A1 to A4 have never a case that PW1 and PW2 were not injured. Their only stand is that they had not caused the injuries and that the injuries were not caused to PW1 and PW2 in the manner spoken to by the witnesses. That being the position, the delay in seizing the blood stained clothes worn by PW 1 and 2 is immaterial.

43. A further argument was advanced that the material objects/case property should be called for by the Court and personally inspected, which would show that the chain of custody of the material objects has not been established. An examination of the objects would also reveal no blood stains in the weapon that was alleged to have been used or in the clothes that were alleged to have been seized.

44. The incident in the case on hand took place in the year 2011. Fifteen years have elapsed since the date of the incident. At this late stage, examining Ext. P5, the iron rod or the clothes worn by PW1 and PW2 would not in any way help this Court. Further, the material objects or the case property that the learned counsel wants this Court to examine in addition to Ext. P5 iron rod are Exts PW6/G Seizure memo of one plastic bottle containing parcel of stones removed by doctor during surgery; PW2/A seizure memo of the blood stained clothes; PW17/A seizure memo of blood gauze and PW6/E seizure memo regarding recovery of Ext. P5 iron rod. I have already held that even in the absence of the blood stained clothes and Ext. P5 iron rod, there is ample material on record to come to a conclusion regarding the guilty of the accused. Therefore, examination of the aforesaid objects is absolutely unnecessary.

45. Yet another argument advanced was regarding the shifting of PW1 and PW2 from the AIIMS Hospital to the Apollo

Hospital for treatment. It was submitted that AIIMS Hospital is one of the best hospitals in the country and so there was no need to shift the injured. But they were shifted to a private hospital deliberately to fabricate evidence and manipulate the case in such a manner to help PW1 and PW2. Neither PW1, the doctor who first examined the injured or PW12, the doctor who performed the surgery on PW2 was asked the reason for the shifting. Likewise, neither PW1 and PW2 nor PW17, the IO, was asked the reason for the shifting. No material(s) have been brought on record to probabilize the argument that it was for manipulation of records, this shifting had been done. Therefore, this Court is unable to accept the said argument also.

46. It was also submitted by the learned counsel for the appellants/A1 to A4 that PW2 has a case that an amount of ₹1,50,000/- was lost in the incident. Referring to this testimony of PW2, it was argued that the attempt of PW2 was to implicate the appellants in a more grave crime like the offence contemplated

under Section 394 IPC, but the same is not supported by any sort of evidence. This was also pointed out as a reason for disbelieving PW2.

47. It is true that PW2 deposed that on the said day he had withdrawn an amount of ₹1,50,000 from the bank and that it was while he was on his way home, the incident had occurred. PW2 only deposed that he lost the money during the course of incident. According to him, he lost consciousness on being attacked and that he had fallen on the ground. PW2 has never a case that the money had been taken away or stolen by the appellants/A1 to A4. Therefore, the IO has rightly not charged the appellants for any offence punishable under Section 394 IPC.

48. It was further submitted that A1 to A4 may be given the liberty to adduce additional evidence. Liberty was sought to produce the wound certificate of A1 and other evidence produced in the counter case in which PW1 and PW2 hererin are the accused persons. In the said case PW1 and PW2 have been acquitted and

hence, an appeal has been preferred against the said verdict as **CRL.A. 209/2019** which was heard by this court along with this appeal.

49. It is well settled that when there is a case and a counter case or cross case, the evidence will have to be considered separately. In deciding each of the cases, the Court can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case has to be decided on the basis of evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments advanced in the cross case. (See **Mitthulal v. State of M.P., (1975) 3 SCC 529 : AIR 1975 SC 149**; **Nathi Lal and Others v. State of U.P. and Another 1990 SCC (Cri) 638).** In such circumstances, the request for receiving additional evidence cannot be allowed and this Court will have to decide this appeal only on the basis of the evidence

that is available on record and not decide the case on the basis of materials in the cross case or cross appeal. Moreover, A1 to A4 had ample opportunity to produce whatever evidence they wanted on their behalf before the trial court. There is never a case for appellants/A1 to A4 that no such opportunity had been given by the trial court. No reasons have been given as to why that opportunity was never availed. That being the position, I find no reason(s) to invoke the provisions of Section 391 Cr.P.C.

50. In the light of the aforesaid discussion, I do not find any infirmity in the impugned judgment calling for an interference by this Court.

51. In the result the appeal *sans* merit is dismissed.

52. Application(s), if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

APRIL 23, 2026
p'ma/rs/kd