



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

% Reserved on : 28.08.2025
Pronounced on : 02.09.2025

+ **CRL.A. 537/2024**

KAILASH KUMAR & ANR.Appellants
Through: Mr Shailendra Mani Tripathi and
Ms Pooja Shilpkar, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr Pradeep Gahalot, APP for State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellants, having been convicted for the offences punishable under Sections 307/34 IPC, preferred the instant appeal thereby seeking setting aside of the impugned judgment dated 18.01.2024 as well as order on sentence dated 14.03.2024 passed by the Additional Sessions Judge/FTC-02 (Central), Tis Hazari Courts, Delhi in Sessions Case no.27799/2016 arising out of FIR No.69/2012 registered under Section 324 IPC at PS – Sarai Rohilla , Delhi.
2. *Vide* the impugned order on sentence, the appellants have been directed to undergo Rigorous Imprisonment (RI) for seven years with fine of Rs.2000/- each for the offence punishable under Sections 307/34 IPC and in default whereof to further undergo Simple Imprisonment (SI) for one month. Benefit of Section 428 Cr.P.C. was given to the appellant.



3. The investigation commenced on 24.02.2012 on receipt of information at about 11.37 PM regarding quarrel *vide* DD no.59A at 11.45 PM regarding stabbing *vide* DD no. 60A, at Sindhora Kalan. The inquiry in the aforesaid information was assigned to SI Kishore Kumar along with Ct. Udaiveer, who reached the spot of incidence i.e. Sindhora Kalan, whereby they came to know that the injured had been taken to hospital by a PCR.

The injured was declared unfit to give a statement at that time and therefore, on the basis of MLC, FIR came to be registered under Section 324 IPC. Investigating Officer (IO) i.e. SI Kishore Kumar was examined as PW-13. The statement of the injured was recorded on the next date i.e. 25.02.2012 in which he named the appellants and further attributed the knife injury to the appellant/*Amit* and injury by *danda* to the appellant/*Kailash*. Pertinently, while *Kailash* is the uncle of injured, *Amit* is his cousin. During the investigation, initially Section 326 IPC was added, however, the charge came to be framed under Sections 307/34 IPC.

The appellants denied the charge, pleaded not guilty and prayed for trial.

4. Notably, the complainant's father, the appellant/*Kailash* and one, *Bal Kishan* are brothers. The appellant/*Amit* is the cousin of the injured. *Bal Kishan* was examined as PW-7.

5. The prosecution examined the star witness i.e., the injured *Pramod* as PW-1. He deposed that on the night of the incident at about 11 PM, he came out of his house for the purpose of urinating when the appellant/*Kailash* holding *danda* in his hands attacked him whereas the appellant/*Amit* stabbed him in his stomach with the knife. He stated that the appellants were having prior enmity on account of family disputes. He further stated that the



injuries were caused with intention to kill him.

In cross-examination, he deposed that on account of pending disputes, only his father was residing in the premises whereas he, along with his two brothers and mother, was living at the residence of his grandmother (*nani*) at Nand Nagri. On the date of incident, he had not gone to office and rather visited Karol Bagh market whereafter he reached his house about 11 P.M. and when he came out to urinate, the injuries were inflicted upon him. He stated that the distance between his house and that of appellants was about 30 ft. On being asked, he reiterated that on the date of incident, only he had come to the aforesaid house. He further stated that at the time of incident, his father had gone to the temple which was at a distance of about 10 minutes. The distance of his house and the place of urination was about 10-15 steps. He clarified that there was no bathroom inside his house. He denied the suggestion that he was deposing falsely and no such incident had taken place. He had called the PCR from his own mobile. He stated that after receiving injuries, he ran towards the main road instead of his own house as he was feeling giddy. There was a police post at a walking distance of five minutes. The *chowkidar* named Raj Kumar Rattan was also employed.

He did not call either his father or any other person and waited on the road for the police to come. He further denied the suggestion that he had falsely implicated the accused persons on account of personal enmity. Curiously, another suggestion was given that the injured was not happy with the marriage of his uncle, appellant/*Kailash* with his aunt *Sangeeta* for the reason that earlier his uncle used to provide help and after marriage his aunt



used to stop him from doing so. A further suggestion was given that the father of the injured wanted to grab the property occupied by the appellants and for which reason even tried to ask his uncle to leave *Sangeeta*.

Another suggestion was given that on 01.05.2011, father of the injured had gone to the house of the appellants and gave beatings to *Sangeeta*, her daughter and the appellant/*Amit* for which a complaint was lodged with SHO, PS Sarai Rohilla. He denied the suggestion that on 19.07.2011, he had inflicted injuries on the neck of the appellant/*Kailash* and that a police case was registered. He admitted that the appellants have lodged complaints against the injured and his family members prior to the incident.

6. The prosecution has examined *Bal Kishan* as PW-7. He stated that his brother i.e., the appellant/*Kailash* along with his family was residing near his house and that he knows nothing about the case. The witness was declared hostile. He denied that the appellant/*Kailash* and his family used to quarrel with him or his family. He denied having stated to the IO that the appellants used to make false calls to PCR as they wanted to grab the property. One *Manoj Kumar*, brother of the injured was examined as PW-4. He stated that there was a property dispute between the appellants and their family.

7. The prosecution had examined Dr. N.N. Paswan, CMO, Hindu Rao Hospital, Delhi as PW-12. He deposed that the MLC of the injured was prepared by Dr. Vinod Kumar Chauhan, who had left the service of the hospital. As per the MLC report, the nature of injury was opined as 'dangerous' being stabbed in the abdomen.



8. The defence has examined the Chowkidar *Rajkumar Rattan* as DW-1. It came out in his testimony that two police officials had come on the night of the incident on a motorcycle and asked for the address for SK 22 (the alleged place of incident) and whether any quarrel had taken place, which DW-1 denied.

9. The PCR official who carried the injured to the hospital i.e., ASI *Aman Kumar* was examined as PW-10. He stated that on receipt of call at 23.25 hrs., he reached the spot and found the injured, who informed that he was stabbed by the appellants *Amit* and *Kailash*. The witness was not cross-examined despite opportunity.

10. The appellants' counsel firstly contended that the IO neither seized the clothes of the injured nor collected any samples of the earth from the spot of the incident. It was next contended that no weapons of offence was recovered. As no clothes were seized, no sample was sent to FSL. That even otherwise, the perusal of deposition does not make out a case for Section 307 IPC.

11. Learned APP, on the other hand, contended that the injured remained admitted in the hospital from 25.02.2012 to 12.03.2012. The statement was recorded immediately on him being declared fit. The nature of injury has been opined as dangerous.

12. From the above, it is apparent that the only incriminating evidence against the appellants is the oral testimony of the injured and his MLC. Notably, neither the weapon of offence nor the clothes of the injured were recovered.

13. Though the counsel has made much hue and cry about the spot of incident being not fixed as no earth samples were collected, the appellant



has deposed that he lives at his grandmother's house at Nand Nagri and on the date of the incident, he was at his house in Sindhora Kalan. He stated that his father was also present in the house, however, had gone to the temple at the time of the incident. The PCR official i.e., *ASI Aman Kumar* (PW10), who had responded to the emergency call testified that he reached SK 22, Sindhora Kalan, Chowki No.2, P.S Sarai Rohilla, Delhi, where he found the injured person who revealed his name as *Pramod*. The witness further stated that the injured also informed that the injuries were inflicted by the appellants *Amit* and *Kailash*. The witness had got the injured admitted in the hospital. As such the presence of the appellants at Sindhora Kalan at the time of incident stands established. It is also come in the testimony of the witness of the injured that the appellants were residing in the vicinity of the injured with the gap between the two houses being only 30 ft.

14. At this stage, it is pertinent to take note of the fact that the injured himself had claimed that he was ordinarily residing not at the house where the incident occurred, but at the residence of his *nani* at Nand Nagri. On the date of the incident he had not gone to office and after visiting Karol Bagh reached the house at around 11 PM and when he came out to urinate, the appellants *Kailash* and *Amit* inflicted injuries with *danda* and knife. In cross-examination at one place, he had stated that the appellants had seen him reaching the house and therefore, when he came out to urinate, the appellants attacked him and caused injury.

15. The conclusion that emerges from the above, analysis is that the injuries were inflicted by the appellants. Mere non-recovery of weapons of offence and non-seizure of the blood-stained clothes, which could be the



result of a tardy investigation, however, the appellants cannot derive any benefit from the same.

16. The deposition of injured to the extent that he was present in the house at Sindhora Kalan and was inflicted injuries by the appellants is believable. In his deposition, he stated that when he had come out to urinate, the appellants were already ready as they had seen him so they reached and caused injury to him. However, it is not to be forgotten that the parties had a history of disputes and the appellant had gone to the house where he was not ordinarily residing around midnight. It has also come out in the testimony of the complainant that it was dark and there was no light at the time of the incident. There were no eyewitnesses to the incident either. In this factual matrix, the prosecution has failed to prove that the appellants possessed the requisite intention to cause murder. However, considering that they were armed with weapons and caused injury opined to be dangerous to the victim, it is proved that they were guilty for attempting to commit culpable homicide not amounting to murder under Section 308/34 IPC. This Court deems it fit to alter the conviction of the appellants from one under Section 307 IPC to Section 308 IPC, read with section 34.

17. At this stage, the court also takes notes of the medical status report of both the appellants Kailash and Amit which is dated 02.07.2025 under the signatures of Senior Medical Officer, Dispensary, Central Jail No.2, Tihar, New Delhi. With regard to the appellant/*Kailash*, as per the medical status report, the appellant is stated to be a case of diabetes mellitus, hypertension, left bundle branch block (LBBB) with LVEF 45% while in respect of the appellant/*Amit*, he has an old fracture case of dislocation of right, radial head on 10.04.2025 with complaints of restricted movement of right elbow with



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history of trauma in right forearm.

18. The appellants' nominal roll is also on record. As per which, while the appellant/*Kailash* has undergone about two years and four months of the sentence as on 30.06.2025, while the appellant/*Amit* has undergone about approximately two years and six months as on 02.07.2025, including remission.

19. In view of the above, considering that the conviction of the appellants stands altered to that under Section 308/34 IPC, the medical condition of the appellants and the time spent in custody, it is deemed fit to modify the sentence awarded to the appellants to the period already undergone by them. The appellants are directed to be released forthwith, if not required in any other case.

20. The appeal is partly allowed.

21. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 02, 2025

pmc