



2026:DHC:6282-DB



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

Reserved on: 06.05.2026
Pronounced on: 05.08.2026

CNR No. DLHC010061782002
+ **CRL.A. 609/2002**

FIROZ @ SAGAR

.....Appellant

Through: Mr. Devraj Singh, Mr.
Rameezuddin Raja, Ms.Tanya
Sharma and Ms.Aditi Sharma,
Advs.

versus

STATE

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010062372002
+ **CRL.A. 662/2002**

SHEHZAD

.....Appellant

Through: Ms.Shilpa Ohri (Amicus
Curiae), Mr.Kunal Sharma,
Mr.Yash Punjabi, Mr.Himanshu
Sharma and Mr.Himanshu
Maru, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010064052002
+ **CRL.A. 814/2002**



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SANJAY KUMAR

.....Appellant

Through: Mr.M. L. Yadav, Mr.Prashant,
Mr.Piyush Saini and
Mr.Hardeep Godara, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010065542002
+ CRL.A. 949/2002

RAJESH KUMAR

.....Appellant

Through: Mr.Dinesh Malik (DHCLSC)
and Mr.Puneet Jain, Advs.

versus

STATE

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010062362003
+ CRL.A. 127/2003

NASIM AHMED @ SAGAR

.....Appellant

Through: Mr.Rohan J. Alva (DHCLSC)
(Amicus Curiae) and Mr.Anant
Sanghi, Advs.

versus

STATE

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.



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CNR No. DLHC010096872004
+ CRL.A. 451/2004 & CRL.M.A. 5261/2004
RAHISH KHANAppellant
Through: Mr.Ragib Gayyur, Adv.

versus

STATE (NCT OF DELHI)Respondent
Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. These appeals have been preferred by the appellants, namely, Firoz @ Sagar, Shehzad, Sanjay Kumar, Rajesh, Nasim Ahmad @ Sagar and Rahish Khan, against the impugned judgment of conviction dated 12th July, 2002 and the order on sentence dated 18th July, 2002, passed by the learned Additional Sessions Judge, Delhi [**“Trial Court”**] in Sessions Case No. 17/1998, arising out of case FIR No. 751/1997, registered under Sections 302/34 of the Indian Penal Code, 1860 [**“IPC”**] and Section 27 of the Arms Act, 1959 [**“Arms Act”**] at Police Station [**“P.S.”**] Nangloi, convicting all the appellants of the offence punishable under Section 302 read with Section 34 of the IPC.
2. Appellant Rahish Khan has also challenged his conviction for the offence punishable under Section 25 Arms Act, in Sessions Case No. 18/1998, arising out of case FIR No. 759/1997, registered at P.S.



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Nangloi by filing a common appeal.

3. Since these appeals involve identical questions of fact and law and assail the common impugned judgment, they are being disposed of together by this common judgment.

Brief Facts

4. In brief, the prosecution case is that on 19th September, 1997, appellants Rajesh Kumar and Nasim approached the victim Nar Singh, resident of House No. 105, Kavita Colony, Nangloi, Delhi, for taking a room on rent. Nar Singh owned a three storeyed house, in which he had let out rooms to various tenants. He agreed to let out one room to them on the first floor of his house on a rent of Rs. 900/- per month. Nasim paid a sum of Rs. 400/- as advance and agreed to pay the balance amount at the time of taking possession of the said room. At about 7:00-8:00 pm, the same day, Rajesh and Nasim returned to occupy the rented room. They stayed in the rented room during the evening hours.

5. At about 10:00 pm, Nar Singh and his two wives, namely Smt. Chandra Prabha (PW-9) and Smt. Rekha (PW-3), along with their two children, had gone to sleep. Nar Singh slept on a cot at the roof of the house, while PW-3 and PW-9 slept in the gallery of the first floor with the children. At around 2:00 am, Chandra Prabha (PW-9) felt that someone was pressing her face and neck. She woke up and found that 4-5 boys had surrounded their cots. One of the boys had lifted the elder son, namely Navneet, with his hands, while another boy had an open knife in his hand. PW-9 cried loudly, and upon hearing the same, PW-3 Rekha, who was sleeping on her cot, also got up and



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immediately switched on the light of the gallery and started shouting loudly “*Chor Chor*”. On hearing the noise, the other tenants also got up. On seeing them, those boys jumped into the *gali* from the first floor and ran away.

6. Immediately thereafter, PW-3 Rekha along with PW-9 Chandra Prabha rushed to the second floor of the house and found Nar Singh lying in a room, smeared with blood. He was tied with ropes and his mouth was gagged with a cloth.

7. Someone gave a call to the Police Control Room. PCR van came at the spot. HC Ishwar Singh (PW-11) of the PCR van, accompanied by a tenant namely Ajmer Singh (PW-18), rushed Nar Singh to DDU Hospital, where he was declared “brought dead”. It is also the case of the prosecution that on the way to the hospital, the deceased made a statement, wherein he categorically implicated appellant Rahish, his two new tenants, and their associates.

8. PW-27 SI Azad Singh, Investigating Officer [“IO”], took up the investigation of the case. He recorded the statement of Chandra Prabha (PW-9), which is Ex. PW-9/A, wherein she stated that she suspected the involvement of two tenants, who came to reside at about 8:00-9:00 pm, but were missing. On such statement, SI Azad Singh prepared the *rukka* Ex. PW-27/A and got registered the FIR No. 751/1997 (Ex. PW-16/A), under Sections 302/34 IPC, PS Nangloi.

9. The Crime team was called at the spot. The Crime Team inspected the spot and prepared its report. The photographs of the spot were taken. The site plan of the place of occurrence (PW-27/B) was prepared and MLC of the victim (Ex. PW-1/A) was collected. Exhibits



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were lifted from the spot and were kept in separate *pullandas*, which were sealed with the seal of “ASK” and seized *vide* separate seizure memos. The exhibits were sent to Forensic Science Laboratory [“FSL”] for examination.

10. On 21st September, 1997, the post-mortem of the deceased Nar Singh was conducted by PW-2 Dr. Komal Singh. The cause of death as per the post-mortem report (Ex. PW-2/A) was suffocation caused by closure of mouth by means of a foreign material (may be a cloth piece).

11. On 23rd September, 1997, during investigation of case FIR No. 747/1997, appellant Rahish Khan was apprehended by ASI Karan Singh (PW-25) on suspicion. On his search, a button actuated knife was recovered from the right pocket of his pant. A separate FIR bearing No. 759/1997 was registered under Section 25 Arms Act at PS Nangloi. Appellant Rahish Khan was arrested in the said case. Upon interrogation, he gave disclosure statement regarding his involvement in case FIR No. 751/1997 and stated that he along with his associates had committed murder of the deceased Nar Singh and that the recovered knife was used in the said offence. He was then formally arrested in case FIR No. 751/1997. Pursuant to his disclosure statement, appellants Nasim, Shehzad, Sanjay and Firoz were apprehended from Dass Garden, near Baprola Village, Nangloi, Najafgarh, Delhi. They were got medically examined.

12. The aforesaid five appellants were produced in court on 24th September, 1997. Their Test Identification Parade [“TIP”] was conducted on 25th September, 1997, but they refused, stating that they



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were shown to the witnesses in the Police Station.

13. On 04th October, 1997, appellant Rajesh Kumar surrendered before the court. He was formally arrested in case FIR No. 751/1997. Upon interrogation, he gave disclosure statement. He was produced in court for TIP, but he also refused to join the same.

14. On completion of the investigation, charge sheet was filed against all the appellants under Sections 302/395/511/34 IPC. A separate charge sheet was filed against appellant Rahish Khan under Section 25 of the Arms Act.

Proceedings before the learned Trial Court:

15. The appellants were charged for an offence punishable under Section 302 IPC, besides a separate charge framed against appellant Shehzad for the offence punishable under Section 27 of the Arms Act and another charge framed against appellant Rahish Khan for the offence punishable under Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

16. In order to prove its case, prosecution examined 29 witnesses. Dr. Rani Vohra (PW-1) proved the MLC of the deceased; Dr. Komal Singh (PW-2) conducted the post-mortem of the deceased; Smt. Rekha (PW-3) and Smt. Chandra Prabha (PW-9) are the two wives of the deceased and are the main witnesses of the occurrence; Constable Siri Ram (PW-4), Lady Constable Prabha (PW-5), Constable P.P. Virgese (PW-6) and Constable Chander Pal (PW-7) are the witnesses of investigation; Sh. Ram Singh Khatri (PW-8) and Sh. Mahinder Singh (PW-13) are the witnesses of identification of the body of the deceased; Lady Head Constable Darshan (PW-10) is the formal



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witness of investigation; Head Constable Ishwar Singh (PW-11) took the deceased to the hospital in the PCR van; Constable Surinder Kumar (PW-12), Constable Desh Raj (PW-14) and Head Constable Siri Bhagwan (PW-15) are the witnesses of investigation, who assisted the IO SI Azad Singh in the investigation of the case; Jeet Singh (PW-15A), who is the brother of deceased Nar Singh and was present at the house when the appellants Nasim and Rajesh came and contacted his brother for taking room on rent; Head Constable Ram Mehar (PW-16) is the Duty Officer who recorded the FIR (Ex. PW-16/A); Constable Ranbir Singh (PW-17) is the witness of investigation; Ajmer Singh (PW-18) was one of the tenants in the house, who accompanied the deceased to the hospital in the PCR van; Head Constable Om Prakash (PW-19) prepared the scaled site plans of the place of occurrence (Ex. PW-19/A & Ex. PW-19/B); Head Constable Joginder Singh (PW-20) assisted the IO in the investigation conducted from 07th October, 1997 to 09th October, 1997, Mr. Sudhir Kumar Jain (PW-21), the then learned MM had conducted the TIP of appellant Rajesh Kumar; Mrs. R.S. Nag (PW-22), the then learned MM granted judicial remand to all the appellants produced before her except appellant Rajesh Kumar; Constable Dharambir Singh (PW-23), took photographs of the spot; Sh. Rakesh Garg (PW-24), the learned MM had conducted the TIP of the appellants except appellant Rajesh; ASI Karan Singh (PW-25) recovered the knife and arrested the appellant Rahish Khan in case FIR No. 751/1997; Sh. Bhagat Singh (PW-26) is the landlord of appellant Rajesh Kumar, and according to him, the other appellants were also staying with him in the same



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room; SI Azad Singh (PW-27) is the IO of the case and Constable Jaiveer (PW-28) is the witness to the recovery and arrest of appellant Rahish Khan.

17. Statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”], wherein they denied all the incriminating evidence put to them and claimed that they were innocent and were falsely implicated. They refused to lead evidence in their defence.

Impugned Judgement of Conviction and Order on Sentence:

18. The learned Trial Court, in the impugned judgment of conviction, held all the appellants namely Firoz @ Sagar, Shehzad, Sanjay Kumar, Rajesh Kumar, Nasim Ahmad and Rahish Khan guilty of the offence under Section 302/34 IPC. Appellants Shehzad and Rahish Khan were also held guilty under Section 25 Arms Act.

19. *Vide* the order on sentence dated 18th July, 2002, all the six appellants were sentenced to undergo Imprisonment for Life with fine of Rs. 1000/- each under Section 302 IPC read with Section 34 IPC, and in default of payment of fine, they were directed to undergo further Rigorous Imprisonment [“RI”] for one year each.

20. Appellants Shehzad and Rahish Khan were further sentenced with one year RI each for the offence punishable under Section 25 Arms Act.

21. Feeling aggrieved, the appellants preferred the present appeals. The sentences awarded to the appellants were suspended during the pendency of the appeals.

22. During the pendency of the appeal, *vide* order dated 11th July,



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2025, appellants Shehzad, Nasim @ Sagar and Rajesh Kumar were declared Proclaimed Offenders. *Amicus Curiae* were therefore appointed to assist us on their behalf.

Submissions made by the learned counsel for appellant Firoz @ Sagar

23. Sh. Devraj Singh, learned counsel appearing for the appellant Firoz @ Sagar, has assailed the judgment of conviction as being contrary to law and evidence on record, contending that the learned Trial Court failed to appreciate that the prosecution's case rests entirely on circumstantial evidence, thereby requiring every incriminating circumstance to be proved beyond reasonable doubt and to form a complete and unbroken chain pointing towards the guilt of the accused. It was argued that prosecution has failed to establish such a chain and that the evidence on record is riddled with material inconsistencies, omissions and improvements.

24. The learned counsel submitted that there is no evidence demonstrating any common intention on the part of the appellant to commit the murder of Nar Singh nor is there any evidence establishing his presence at the place where the deceased was found murdered. It was urged that the learned Trial Court erroneously inferred common intention despite the absence of any material indicating that the appellant participated in or shared the intention to commit the offence. Furthermore, that the prosecution failed to prove any motive attributable to the appellant, which assumes considerable significance in a case founded solely on circumstantial evidence.

25. It was further argued that the investigation suffered from



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serious infirmities, including the alleged fabrication of dying declaration by the IO, which was rightly disbelieved by the Trial Court itself on the ground that there was no evidence that deceased was in a fit condition to make any such statement. It was submitted that the IO's attempt to create false evidence casts serious doubt on the fairness of the investigation.

26. The learned counsel further submitted that the identification of the appellant by PW-3 Smt. Rekha and PW-9 Smt. Chandra Prabha was wholly unreliable. It was argued that the learned Trial Court itself recorded that PW-9 had undergone severe trauma and shock upon being assaulted and discovering that her husband had been killed, which necessarily impaired her faculties of observation and rendered her identification of the appellant unsafe. It was further pointed out that PW-9 did not name the appellant in the initial complaint, on the basis of which the FIR was registered.

27. The learned counsel further submitted that the eye-witnesses had insufficient opportunity to observe and remember the features of the alleged assailants, as the incident occurred suddenly under frightening circumstances, and therefore in such state of mind, it was not possible for them to identify any of the appellants, allegedly present in the gallery of the house in the intervening night of 19th/20th, September, 1997.

28. It was further argued that PW-3 made several material improvements in her statement recorded under Section 161 Cr.P.C., including assertions regarding restoration of electricity, switching off of the light, the accused carrying ropes, threats allegedly extended by



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the appellant to kill Navneet, blood on the face of PW-9, recovery of a black bag containing ropes, the arrival of neighbours, the accused jumping from the first floor, the handing over of keys to Rajesh and Nasim and the conversations allegedly made on the evening preceding the incident. These omissions and subsequent improvements, according to the learned counsel of appellants, materially affected the credibility of the testimonies of the prosecution witnesses.

29. The learned counsel further contended that although fingerprints and footprints were lifted from the scene, but none matched the appellant, thereby, negating his presence at the spot. It was also submitted that the learned Trial Court erroneously relied upon the alleged recovery of a bag containing ropes from the gallery, despite PW-3 having omitted this fact in her statement under Section 161 Cr.P.C. In these circumstances, it was urged that the prosecution has failed to establish the appellant's involvement beyond reasonable doubt, and therefore, the impugned judgment deserves to be set aside.

Submissions made by the learned *Amicus Curiae* for appellant Shehzad

30. Ms. Shilpa Ohri, learned *Amicus Curiae* for the appellant Shehzad, submitted that the conviction and sentence awarded by the learned Trial Court is unsustainable. It was further argued that the close relatives of the deceased were set up as eye-witnesses in a desperate bid to solve a blind murder.

31. It was argued that appellant Shehzad has been falsely implicated solely on the basis of the disclosure statement of appellant Rahish Khan, which is inadmissible in evidence.



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32. It was further contended that the arrest of appellant Shehzad, allegedly made on 23rd September, 1997, from Dass Garden near Baprola Village, near Nangloi-Najafgarh Road, along with other appellants at the instance of Rahish Khan, who was already arrested in another case, is only a made up story, as the appellant could not be expected to be available at the place of arrest together with the other appellants. Moreover, PW-26 Bhagat Singh, owner of the house from where appellant Shehzad and other appellants were apprehended by the police, has not identified any of the appellants in court. It is also argued that the place of arrest is a thickly populated area, but no independent public witness was joined in the arrest proceedings.

33. It was further submitted that the testimony of PW-3 Rekha reveals that the accused persons had been shown to the witnesses in the court premises prior to the TIP, thereby, vitiating the entire TIP proceedings. Moreover, even prior to the TIP, accused persons had been taken from place to place and even at the spot and were shown to the witnesses, and therefore, appellant Shehzad was justified in refusing to participate in the TIP.

34. The learned *Amicus Curiae* also assailed the alleged recovery of the blood-stained knife, contending that PW-18 Ajmer Singh had noticed the knife lying outside the house immediately after the incident, whereas, the investigating agency purportedly seized the same only at a later stage, making the recovery highly doubtful and tainted.

35. It is also argued that the knife allegedly recovered from the *gali* is not connected either with the crime or with the appellant Shehzad.



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The forensic evidence also does not support the prosecution case, as the FSL result recorded “no reaction” in respect of knife recovered just outside the house. Moreover, no public person is witness to the seizure memo. It was thus argued that the recovery of knife shown is planted.

36. Lastly, the learned *Amicus Curiae* submitted that in a case based on circumstantial evidence, motive assumes considerable significance, but in this case, the prosecution has failed to establish any motive on the part of appellant Shehzad to commit the murder. Hence, based upon the aforesaid submissions, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant Shehzad be acquitted of all charges.

Submissions made by the learned counsel for the appellant Sanjay

37. Mr. M.L. Yadav, learned counsel, who appeared for appellant Sanjay, submitted that the entire prosecution case rests solely upon circumstantial evidence and that the prosecution has failed to establish a complete and unbroken chain of circumstances, pointing only towards the guilt of the appellant. The learned counsel argued that the testimonies of PW-3 Smt. Rekha and PW-9 Smt. Chandra Prabha are wholly unreliable, being self-contradictory as well as materially inconsistent with each other on crucial aspects of the prosecution case. It was submitted that their testimonies do not inspire confidence, and therefore, their evidence ought not to have been relied upon by the learned Trial Court.

38. It was further contended that even according to the prosecution case, there is no specific allegation against appellant Sanjay. The



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appellant was not previously known to the witnesses. He contended that the appellant Sanjay was shown to the witnesses after his arrest, thereby, rendering the TIP meaningless.

39. It was further argued that no recovery whatsoever was effected from the appellant or pursuant to any disclosure made by him.

40. It was also argued that there is a categorical finding by the learned Trial Court that the testimonies of the two prosecution witnesses namely HC Ishwar Singh (PW-11) and Ajmer Singh (PW-18) were replete with falsehood and were not above board. In fact, their testimonies have not been believed by the learned Trial Court on material points.

41. On a cumulative assessment of the above circumstances, it was argued that prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

Submissions made by the learned counsel for appellant Rahish Khan

42. Mr. Ragib Gayyur, learned counsel, who appeared for the appellant Rahish Khan, submitted that the impugned judgment of conviction is contrary to law and founded merely on conjectures and surmises without proper appreciation of the evidence on record. The learned counsel submitted that testimonies of PW-9 Smt. Chandra Prabha, PW-3 Smt. Rekha, PW-15 Jeet Singh and PW-18 Ajmer Singh are full of infirmities, discrepancies and contradictions.

43. PW-3 Smt. Rekha had testified in her examination-in-chief that when she raised an alarm for help, the accused persons remained in their house till the arrival of their neighbours, but in her cross-



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examination, she deposed that their tenants had reached when accused had run away. Further, PW-3 had testified that accused persons had surrounded her sister Smt. Chandra Prabha only and not her. She admitted that the moment she woke up, none caught hold of her nor grappled with her, but during her cross-examination, she admitted that the accused persons had also caught her.

44. It was contended that the learned Trial Court overlooked significant material improvements made by PW-3 in her deposition by introducing facts, which did not find place in her previous statement to the police, including that accused Nasim was carrying a bag containing ropes, accused Rajesh and Nasim had demanded the keys of their rented room, electricity had returned before they went to sleep and the accused had switched off the light, that the person carrying the knife was Shehzad and that accused fled by jumping over the boundary wall upon arrival of the neighbours. According to the learned counsel, these material improvements clearly indicate that PW-3 was not present at the spot and was planted as a witness.

45. The learned counsel further submitted that the testimony of PW-9 Smt. Chandra Prabha also suffers from serious infirmities and does not inspire confidence. It was argued that her version, that accused Nasim had pressed the mouth of PW-3 Smt. Rekha, is contrary to the prosecution's case, while her statement regarding the presence of 7 to 8 tenants in the house is inconsistent with the testimony of PW-3, who deposed that there were 10 to 12 tenants residing therein. It was also pointed out that PW-9 stated that PW-3 had informed her that the person carrying the knife had suffered an



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injury on his left leg, whereas, PW-3 made no such assertion. According to the learned counsel, these contradictions create serious doubt regarding the presence of PW-9 at the scene of occurrence.

46. It was also argued that even as per the prosecution case, no specific role has been attributed to the present appellant and none of the prosecution witnesses has specifically established his presence at the place of occurrence.

47. It was also argued that the alleged recovery of knife from the appellant at the time of his arrest, is unsupported by any independent witness and rests solely upon the testimony of PW-25 ASI Karan Singh, thereby, rendering the recovery doubtful. It was also contended that there is no evidence to establish as to whether PW-18 Ajmer Singh and appellant were known to each other prior to the incident. PW-3 Smt. Rekha and PW-9 Smt. Chandra Prabha have also not supported the said version. It was thus argued that prosecution has failed to prove its case against the appellant beyond reasonable doubt, and therefore, the impugned judgment and the order on sentence are liable to be set aside.

Submissions made by the learned counsels for the appellants Nasim & Rajesh Kumar

48. Mr. Rohan J. Alva and Mr. Dinesh Malik, respective Advocates for the appellants Nasim and Rajesh, additionally submitted that despite the witnesses claiming that appellants Nasim and Rajesh were known to them being newly inducted tenants, their names do not figure in the earliest version of the prosecution, that is, DD No. 66-B (Ex. PW-7A) or the statement given by Smt. Chandra Prabha, which



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formed the basis of registration of the FIR.

49. It was submitted that PW-9 Smt. Chandra Prabha had not seen the appellants Nasim and Rajesh at the place of occurrence. She merely suspected them because they were missing from the house. Moreover, no rent agreement or rent receipt has been placed on record to prove that the appellants were inducted as tenants in the premises.

50. It was further argued that the appellants were not known to the deceased and his family members, thus, no previous enmity is established. It was also argued that prosecution has failed to establish the motive for the murder to be the lust for money as not a single article or penny had been taken away by the appellants after the incident.

51. The learned *Amicus* for appellant Nasim also reiterated that the learned Trial Court erred in drawing an adverse inference regarding the appellants' refusal to participate in TIP proceedings. He submitted that the appellant Nasim had categorically stated that he had been shown to the prosecution witnesses at Police Station prior to the TIP. He placed reliance upon the Judgment of the Supreme Court in ***Raj Kumar @ Bheema v. State NCT of Delhi***, 2025 SCC OnLine SC 2465, to submit that in such a case the admissibility and sanctity of TIP proceedings would stand compromised.

Submissions made by the learned Additional Public Prosecutor

52. Mr. Aman Usman, learned Additional Public Prosecutor [“APP”] submitted that there are no infirmities in the impugned judgment passed by the learned Trial Court.

53. He submits that there is sufficient evidence to establish the guilt



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of all the appellants. He submitted that the learned Trial Court gave well reasoned findings and recorded the conviction based on sound appreciation of evidence and settled principles of law, and therefore, calls for no interference by this Court.

54. It was contended that prosecution proved through the testimonies of PW-3 Smt. Rekha and PW-9 Smt. Chandra Prabha that appellants Nasim and Rajesh had taken room on rent in the house of the deceased on the very day of the incident and returned in the evening with their belongings, and during the intervening night, they along with other appellants entered the premises and murdered Nar Singh by tying him with ropes and forcibly suffocating his mouth with cloth pieces, resulting in death by Asphyxia and thereafter tried to overpower PW-3 and PW-9.

55. It was submitted that prompt lodging of the FIR immediately after the occurrence rules out any possibility of embellishment or false implication, as even in the earliest version suspicion was expressed against the newly inducted tenants and their associates.

56. It was argued that the medical evidence of PW-2, Dr. Komal Singh, the post-mortem report, the recoveries effected from the spot and the FSL Report completely corroborate the ocular version of PW-3 and PW-9 and establish that the death was homicidal in nature.

57. The learned APP further submitted that even though there was no eye-witness to the commission of murder, the prosecution has successfully proved an unbroken chain of circumstantial evidence, including the presence of the appellants immediately after the occurrence, armed with knives and rope and their abscondence



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thereafter and subsequent identification by the prosecution witnesses.

58. It was further submitted that the absence of the names of Rajesh, Nasim and Rahish Khan in the *rukka* is of no consequence, as FIR is not an encyclopaedia of the occurrence, and it only sets the criminal law in motion. It was contended that the names of the appellants and their individual roles played by them were duly disclosed in the statement of PW-3 Smt. Rekha recorded under Section 161 Cr.P.C. shortly thereafter and in the testimonies of PW-3 and PW-9 recorded before the court.

59. It was further contended that the refusal of the appellants to participate in the TIP justified the adverse inference drawn by the learned Trial Court, particularly when, there was no evidence to substantiate the allegation that they had been shown to the witnesses before the TIP. The prosecution witnesses had ample opportunity to see the appellants in electric light during the incident, while PW-3 and PW-15A had also seen Rajesh and Nasim earlier in the day when the room was let out to them.

60. It is argued that there was no previous enmity between the witnesses and the appellants, and therefore, there was no conceivable reason for the prosecution witnesses to falsely implicate strangers while allowing the real offenders to escape. It was also argued that the absence of specific overt act against each individual appellant in the FIR is immaterial as the evidence unmistakably establishes that all the appellants acted in furtherance of their common intention.

61. The learned APP further submitted that the subsequent conduct of the appellants furnishes strong corroboration to the prosecution



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case. They were apprehended from a common hideout, a blood-stained knife was recovered from appellant Rahish Khan and the medical examination of appellant Shehzad revealed injuries consistent with the prosecution case that he suffered injuries while jumping from the first floor after the commission of the offence.

62. It was further submitted that the statements made by the appellants before the learned Metropolitan Magistrate during remand proceedings, though may not be treated as judicial confessions, nevertheless, constitute extra-judicial confessions, lending corroboration to the prosecution case. In furtherance he relied upon a judgment of the High Court of Patna in ***Nand Kishore Singh & Anr. v. State of Bihar & Ors.***, 1991 SCC OnLine Pat 101, in support of his submissions.

63. It was submitted that the minor discrepancies highlighted by the defence are natural and inconsequential and do not affect the core of the prosecution case. On a cumulative appreciation of the evidence, it was submitted that the prosecution has proved every incriminating circumstance forming the chain of circumstantial evidence, which points only towards the guilt of the appellants and is wholly inconsistent with any hypothesis of innocence. The learned Trial Court, therefore, rightly convicted the appellants under Section 302 read with Section 34 IPC and appellant Shehzad and Rahish Khan additionally under Section 25 of the Arms Act, warranting no interference by this Court. It was thus submitted that appeals are devoid of merit and are therefore liable to be dismissed.

64. In furtherance of his submissions, he relied on a judgment of the



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Supreme Court in the case of *Mohd. Anwar v. the State (NCT of Delhi)*, (2020) 7 SCC 391.

Reasoning and Analysis

65. We have considered the arguments advanced by the learned counsels for the appellants and the learned APP on behalf of the State and have perused the material on record.

66. There is hardly any dispute with regard to cause of death of the deceased. PW-1, Dr. Rani Vohra, who examined the victim and prepared the MLC Report, Ex. PW-1/A, found following injuries on his person:-

- i) CIW 4 x 1 cm on extensor aspect of left forearm;
- ii) CIW 4 x 2 cm on lateral aspect of right upper cheek below the right eye;
- iii) CIW 5 x 1 cm on right frontal bone and part of parietal bone;
- iv) CIW 5 x 1 cm on left parietal bone (front side);
- v) Abrasion 5 x 2 cm on right shoulder.

67. PW-2, Dr. Komal Singh, Chief Medical Officer, DDU Hospital had conducted the post-mortem on the body of the deceased Nar Singh. She proved the post-mortem report, Ex. PW-2/A. She deposed that the cause of death was by closure of mouth by means of foreign material (may be a cloth piece). She further stated that all the injuries were ante-mortem and were of the same duration. In cross examination, she clarified that the cause of death was not due to any injury caused with blunt object but was because of suffocation.



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68. On the basis of the MLC and the post-mortem report proved on record, it is established beyond doubt that the death of Nar Singh was homicidal in nature.

69. Admittedly, there is no eye-witness of the murder of Nar Singh. The prosecution's case substantially rests upon the testimonies of PW-3, Smt. Rekha and PW-9 Smt. Chandra Prabha, who witnessed the presence of the appellants inside the house immediately before the discovery of the body of the deceased, as also PW-18 Ajmer Singh, a tenant in the same house, who saw the appellants fleeing from the place of occurrence immediately after the incident. The presence of PW-3 and PW-9, the two wives of the victim, as also the presence of PW-18 Ajmer Singh, a tenant in the same property, at the place of occurrence is natural. However, they being the material witnesses, their testimonies still need to be carefully scrutinized to find out as to whether they inspire confidence.

70. The case of the appellants Firoz @ Sagar, Shehzad and Sanjay Kumar is somewhat different from the other three appellants, and therefore, their case is being dealt with separately.

Case of Firoz @ Sagar, Shehzad & Sanjay Kumar

71. If the prosecution case is to be believed, PW-3 and PW-9 had seen all the appellants and identified them in court, while PW-18 Ajmer Singh had seen the appellant Rahish Khan amongst 4-5 persons running in the *gali*.

72. Admittedly, the names of appellants Firoz @ Sagar, Shehzad and Sanjay Kumar do not find mention in the statement of Smt. Chandra Prabha Ex. PW-9/A made to the police. In fact, the names of



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none of the appellants are mentioned in the said statement. She only suspected that their newly inducted tenants, who were missing from their room, and their associates were behind the incident. Even though, in court, PW-9 identified all the appellants, but when cross-examined, she admitted that she did not know Shehzad prior to the incident. She admitted that she had identified Firoz in court, and that is how she came to know of his name. With regard to the appellant Sanjay also, she stated that she did not know his name.

73. PW-3 Smt. Rekha also identified all the appellants. However, in cross-examination, she admitted that she had not seen Firoz before the incident. She admitted that she had not given the name of Firoz in her first statement as the person who lifted her son Navneet. She further stated that she had not told the police that the person holding the knife was Shehzad.

74. Thus, admittedly, appellant Firoz @ Sagar, Shehzad and Sanjay Kumar were not known either to PW-3 or PW-9 prior to the occurrence. Admittedly, they were not caught from the spot and were arrested after four days.

75. Where the accused is not previously known to the witnesses, holding TIP at the earliest opportunity is considered desirable. The object of conducting TIP is to ensure that the witness identifies the accused from amongst several persons without any prompting. If the accused are strangers to the witnesses, their dock identification without prior TIP is not reliable. In **Nazim & Ors. v. State of Uttarakhand**, 2025 SCC OnLine SC 2117, the Apex Court explained that TIP is only part of the investigative process and that the



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substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The Hon'ble Court in that case extended the benefit of doubt to the accused, observing that the accused persons were strangers to the key witness and that their dock identification, unsupported by any TIP, was unreliable.

76. The decision of the Supreme Court in **Rajesh Govind Jagesha v. State of Maharashtra**, (1999) 8 SCC 428, lays down that the absence of test identification may not be fatal, if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Such a parade may not be necessary in a case where the accused person is arrested on the spot immediately after the occurrence.

77. However, the facts of the present case stand on a materially different footing. There is no physical description, identifying features or other particulars appellants Firoz @ Sagar, Shehzad and Sanjay Kumar either in the FIR or in the statements of the witnesses recorded under Section 161 Cr.P.C. Hence, in these facts and circumstances, the present case does not satisfy the exception carved out in **Rajesh Govind Jagesha** (supra).

78. PW-9 Smt. Chandra Prabha stated in her cross-examination that she had identified the accused persons in court after 3 to 4 days of the incident, and which date could be 24th September, 1997. According to her, the accused persons were brought in muffled face, and thereafter, their faces were uncovered. PW-3 Smt. Rekha also deposed that after



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3 to 4 days of the incident, she along with her sister Chandra Prabha and PW-15A *Jeth Jeet Singh* came to Tis Hazari Court as the police officials had told that culprits of the case had been arrested and the police officials also told them that they had to identify the assailants. According to her, when the five accused persons were produced in court, they were in muffled face and refused to participate in the Test Identification Parade. In cross-examination, she deposed that she had seen the accused Firoz in court premises when they were called for the identification of the accused. PW-18 Ajmer Singh also confirmed that on 24th September, 1997, he came at Tis Hazari Court, where he identified Rahish Khan amongst the five persons, whom he had seen running away from the spot. He could not identify the other accused persons nor could tell their names.

79. It is apparent from the testimonies of PW-3, PW-9 and PW-18 that they came to the court on 24th September, 1997 for the identification of the appellants, and on that day, PW-3 and PW-9 identified all the appellants except Rajesh, who were produced before the court for TIP.

80. Mr. Rakesh Garg, the then MM (PW-24) deposed that the application for the TIP of five accused persons namely Nasim, Sanjay, Firoz @ Sagar, Rahish and Shehzad was assigned to him, being the link MM, but the application was adjourned to 25th September, 1997 *vide* order Ex. PW-24/B with direction to the accused persons to keep their faces muffled for their TIP. He further deposed that on 25th September, 1997, all the aforesaid accused persons were brought in muffled face, but they refused to participate in the TIP.



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81. From the testimony of PW-24, it is evident that on 24th September, 1997, the TIP of the appellants could not be conducted, and, in fact, it was conducted on 25th September, 1997. However, as discussed, PW-3, PW-9 and PW-18 had already identified the appellants on 24th September, 1997, and therefore, conducting the TIP on 25th September, 1997 was rendered meaningless.

82. Though, the refusal to participate in the TIP may in appropriate cases permit an adverse inference, such an inference cannot be drawn where the accused establishes a reasonable apprehension that he had been exposed to the witnesses prior to the identification proceedings. The Supreme Court has recently in the case of **Raj Kumar alias Bheema** (supra), held as under:

“62. It is trite that where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept baparda to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the accused before the TIP - whether physically or through photographs - the credibility and sanctity of the identification proceedings would stand seriously compromised.

xxx

65. In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted. While the refusal of the appellant to participate in the TIP may, prima facie, invite an adverse inference, mere such inference cannot support the theory of identification when the very authenticity of the



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TIP is under a serious cloud of doubt. When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein, the very foundation of the identification proceedings falls flat to the ground.”

83. PW-3, PW-9 and PW-18, during cross-examination, candidly admitted that they had seen and identified the accused persons in court about 3 to 4 days after the incident, that is, on 24th September, 1997. Such statement lends credence to the appellants' contention that their identity had already been revealed before any Test Identification Parade could be meaningfully conducted. Once the possibility of prior exposure is established, the very purpose of TIP, namely to test the memory and veracity of a witness by identifying an unknown offender at the earliest opportunity, stands substantially diluted.

84. Consequently, the refusal of the appellants to participate in the TIP cannot be treated as an “adverse circumstance” against them and any subsequent dock identification would be no identification in the eyes of law.

85. The prosecution has further relied upon the recoveries effected from the place of occurrence. PW-12 and PW-14 proved the seizure of blood-stained bedding, blood-stained clothes, rope pieces, cot material, copper rings from the spot. These recoveries from the spot may, at best, establish that a violent incident had occurred inside the house of the deceased and that various articles were seized during the investigation, but the prosecution has failed to demonstrate that any of



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these recoveries specifically connect the appellants with the commission of the offence.

86. Similarly, the recovery of a knife from the lane outside the house, also does not materially advance the prosecution's case. It is the case of the prosecution that appellant Shehzad was armed with knife at the time of the occurrence and attributes the knife recovered from the lane to be the same knife which was used by Shehzad. However, the evidence reveals that the knife was recovered from an open place accessible to all, and there is no evidence to show that the knife bore the blood stains matching the blood group of the deceased or that it was used in the commission of the offence. The FSL result (Ex. PB) shows "no reaction" on examination of the knife. Knife was also not shown to the doctor to confirm that the injuries on the person of deceased were possible with the said knife. In fact, the prosecution's case itself is not that deceased succumbed to any stab injuries. In the absence of the knife being linked with the commission of the offence, or with the appellant Shehzad, its recovery from the lane is of no consequence.

87. Moreover, for applicability of Section 25 of the Arms Act, possession of the weapon from the accused has to be proved. Hence, in the absence of recovery of knife from the possession of the appellant Shehzad, the offence under Section 25 Arms Act is not made out against him. Since the identity of the appellant Shehzad is not established, charge under Section 27 of the Arms Act is also not established.



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88. The prosecution has relied upon the disclosure statement made by the appellant Rahish Khan and the consequent arrest of appellants Firoz @ Sagar, Shehzad, Sanjay Kumar and Nasim at his instance. It is well settled that the disclosure statement made to a police officer is inadmissible in evidence and can be used only to the limited extent, as permitted under Section 27 of the Indian Evidence Act. The portion of the disclosure statement implicating the co-appellants is therefore inadmissible in evidence and cannot be relied upon as the evidence of their involvement in the commission of offence.

89. Hence, we are of the view that so far as appellants, namely, Firoz @ Sagar, Shehzad and Sanjay Kumar are concerned, there is no evidence whatsoever to hold them guilty of the charges framed against them.

Case relating to the remaining appellants namely Rajesh Kumar, Nasim and Rahish Khan

90. Admittedly, no one had seen the assailants committing the murder of Nar Singh. The prosecution's case is, therefore, based on circumstantial evidence, which rests mainly on the testimonies of PW-3 Smt. Rekha and PW-9 Smt. Chandra Prabha, who witnessed the presence of the aforesaid appellants inside their house immediately before the discovery of Nar Singh in an injured condition and unconscious state.

91. PW-18 Ajmer Singh, another tenant in the house, had witnessed appellant Rahish Khan fleeing from the place of occurrence along with his associates after the incident, and had chased them. The incident took place in the dead of the night at about 2:00 a.m. The



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presence of PW-3 and PW-9, being the wives of the deceased, and PW-18, being a tenant residing in the same premises on the ground floor, at the spot cannot be doubted. The evidence on record establishes that PW-3 and PW-9 had encountered the intruders inside the house, while PW-18 saw the assailants escaping from the scene of crime after the occurrence and identified Rahish Khan as one of them. Their testimonies are therefore of considerable importance and require careful scrutiny to determine whether they inspire confidence and whether the prosecution has succeeded in proving the identity and involvement of the appellants beyond reasonable doubt.

92. PW-3 Smt. Rekha deposed that on 19th September, 1997 at about 11:00 or 12:00 noon, while her husband and brother-in-law Jeet Singh were present in the house, appellants Rajesh and Nasim came to their house for taking a room on rent. After negotiations, a room at the back portion of the first floor was rented to them at the rate of Rs. 900/- per month. Nasim paid Rs. 400/- as advance to her husband and promised to pay the remaining Rs. 500/- later and then both of them left from there. At about 7:00 or 8:00 pm, they came back and asked for the key of the room from her. She told them that the room was not locked and was lying open. Thereafter, both of them went to their rented room.

93. PW-3 further deposed that her husband went to sleep on the top of the roof on the first floor. She and her sister slept on their beds in the gallery at the first floor. Her elder son Navneet was sleeping with her sister Chandra Prabha and the younger son Divesh was sleeping with her on her bed. She further deposed that about 2:00 or 2:30 am,



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she heard the cries of her sister Chandra Prabha, upon which, she woke up and immediately switched on the light of the gallery and saw that all the accused persons had overpowered her sister Chandra Prabha. One of them was having an open knife in his hand, whose name was Shehzad, one of the accused persons had lifted her son Navneet. Accused Nasim was pressing the throat of her sister Chandra Prabha, while the other accused persons had caught hold of her sister. There were pieces of ropes in the hands of accused persons. On seeing this, she raised the alarm, and immediately thereafter, other tenants and neighbours came there and upon seeing them, all the accused persons jumped in the street from the first floor and then ran away. She also noticed some blood on the mouth of her sister Chandra Prabha. Thereafter, they ran to see their husband, who was sleeping on the top floor of the house at the roof. He was found lying in a room in the second floor in an unconscious condition. His entire body was tied to the bed with a rope, in a pool of blood. Police reached at the spot and took her injured husband to the hospital, where he succumbed to injuries. She also noticed one cloth bag of black colour containing some ropes in the gallery. She stated that she had seen that bag on the shoulder of accused Nasim when he, along with co-accused Rajesh, had come to their house in the evening at 7:00-8:00 pm. She also testified about the recovery of knife from the street where the accused persons had jumped. She further deposed that she knew the accused Rahish Khan, as he had lived as a tenant in their house for about four years and had vacated the house about three months before the incident.



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94. PW-9 Smt. Chandra Prabha also deposed in line with the testimony of PW-3 Smt. Rekha. She also deposed that at about 12.00 or 1.00 pm, accused Rajesh and Nasim came to their premises to take room on rent. They paid Rs. 400/- in advance and at about 7.00 or 8.00 pm, they came to occupy the room taken on rent. She further deposed that at about 2.00 or 2.30 am, someone pressed her. She got up. Her sister, PW-3 Rekha, also woke up and cried loudly. Appellant Nasim had pressed her mouth and Rajesh had pressed her legs. She further stated that PW-3 Rekha told her that accused Firoz had picked up the elder son Navneet. Appellant Shehzad had an open knife in his hand. She further stated that accused Sanjay had a rope in his hand at the time of the incident. Appellant Rahish, who had earlier been their tenants for four years and had vacated the room 2-3 months prior to the incident, was also standing there. She further stated that her sister switched on the light and raised alarm, on which, the other tenants in the property had also come. The appellants then jumped into the *gali*. She further stated that Ajmer and Ansar were amongst the other tenants, who reached there. PW-9 further deposed that her husband was not on the cot on which he used to sleep and was found in a pool of blood in a room, where he was lying tied with ropes. Someone then rang up the police. The PCR van came at the spot and recorded her statement Ex. PW-9/A. According to her, appellants Rajesh and Nasim were not present in their room after the incident.

95. PW-18 Ajmer Singh deposed that on 19th September, 1997 at about 1.00 or 2.00 am in the night, on hearing the noise “*Maar Diya, Maar Diya*”, he woke up and heard the sound of somebody jumping.



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He opened the door, which opens towards the main *gali* and on coming out, he saw 4-5 persons running in the *gali*. One of them was limping and was being taken away by providing support. He identified Rahish Khan, who was also a tenant in the same house. He called him, on which, he threatened him by showing knife and asked him to stop. He immediately raised alarm. While he was coming back after chasing them, he saw an open knife lying near the gate. Upon going at the top floor, he saw Nar Singh lying in a pool of blood. He stated that the deceased Nar Singh was later removed to DDU Hospital in the PCR van.

96. PW-15A Jeet Singh is the brother of deceased Nar Singh. He deposed that on 19th September, 1997, he had gone to visit the house of his brother Nar Singh and at about 12.00 noon or 1.00 pm while he, Nar Singh and his wife Rekha (PW-3) were sitting and talking in a room on the ground floor of the house, accused Rajesh and Nasim came there for taking a room on rent. The rent was settled at Rs. 900/- per month, out of which, they had paid Rs. 400/- as advance, assuring that the balance of Rs. 500/- will be given in the evening, the same day. Thereafter, they left saying that they will come in the evening.

97. The aforesaid witnesses were cross-examined at length by the respective learned counsels appearing for the appellants. There is not even a whisper of suggestion that the witnesses had any inimical relations with the appellants. No previous enmity or ill-will has been established to show that the witnesses had any motive to falsely implicate them. There is no reason why PW-3, PW-9 and PW-15A would falsely implicate innocent persons and let go the real culprits.



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There is no reason to disbelieve the testimonies of the aforesaid witnesses.

98. The defence has assailed the testimony of PW-3 on the ground that she did not name the appellant Rahish Khan in her statement recorded under Section 161 Cr.P.C. It was argued that if she had seen Rahish Khan at the spot, she would have named him in her statement under Section 161 Cr.P.C. before the police. In her cross-examination, PW-3 stated that she had told the names of two accused persons in her statement and had given the description of the other accused. She further stated that she had named Rahish Khan before the police and denied the suggestion that she has deposed falsely about Rahish Khan. She was not confronted with her previous statement under Section 161 Cr.P.C. to show that Rahish Khan was initially not named in the said statement. Statement recorded under Section 161 Cr.P.C. is not a substantive evidence and can be used only for the limited purpose of contradiction after strict compliance of Section 145 of the Indian Evidence Act. The Hon'ble Supreme Court in the case of **V.K. Mishra and Another v. State of Uttarakhand and Another**, (2015) 9 SCC 588, reiterated that the Court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The Hon'ble Court observed that the words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and



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also during the cross-examination of the Investigating Officer. The said principle was recently reaffirmed in *Alauddin & Ors. v. State of Assam & Anr.*, (2024) 12 SCC 224, wherein, the Hon'ble Supreme Court, while referring to the landmark decision in *Tahsildar Singh & Anr. v. State of U.P.*, 1959 SCC OnLine SC 17, held that the contradictory portion of the previous statement must be specifically shown to the witness to afford him an opportunity to explain the alleged inconsistency and only upon such confrontation and proof can the contradictions be treated as proved. The Court further observed that this requirement is a rule of fairness and forms an indispensable safeguard in criminal trials.

99. Thus, only if the contradictory part of the previous statement is proved, the contradictions can be said to be proved, which has not been done in the present case. The defence, in the present case, has thus failed to establish that PW-3 by naming Rahish Khan as one of the intruders, has in any manner made improvement from her previous statement recorded under Section 161 Cr.P.C.

100. Admittedly, PW-9 Smt. Chandra Prabha also in her statement Ex. PW-9/A did not name any of the intruders, including Rajesh, Nasim and Rahish. She only stated that she suspected about the involvement of the newly inducted tenants, who were missing from the premises. The defence contention has been that if she knew Rajesh, Nasim and Rahish prior to the occurrence, there was no reason why their names were not mentioned in the statement Ex. PW-9/A.

101. We do not find merit in the said contention. So far as appellants Rajesh and Nasim are concerned, PW-9 had not seen them at 12:00



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noon or 1:00 pm when they first came for taking the room on rent or even in the night when they occupied the room. Even, PW-3 Smt. Rekha and PW-15 Jeet Singh have not deposed about the presence of PW-9 Smt. Chandra Prabha at the time of letting out the room or even at the time when Rajesh and Nasim came in the night to occupy the room. In her cross-examination, PW-9 clarified that her sister had seen Rajesh when they had come for taking the room on rent. This explains why the names of Rajesh and Nasim were not mentioned by PW-9 in her statement Ex. PW-9/A.

102. Admittedly, the name of Rahish Khan also does not figure in the statement Ex. PW-9/A. In her cross-examination, PW-9 clarified that at the time of incident, PW-18 Ajmer Singh did not say anything to her, but later told her that he had seen Rahish jumping. It is thus clear that PW-9 had not noticed the presence of Rahish Khan at the place of incident and her testimony before the court, naming him as one of the assailants, is based on the information provided to her by Ajmer Singh.

103. The defence has harped much on certain improvements and inconsistencies in the testimonies of the witnesses. In her examination-in-chief, PW-3 deposed that after she raised alarm by shouting “*Chor-Chor*”, the accused persons remained inside the house until the neighbours and tenants reached the spot and fled only thereafter. However, in her cross-examination, she categorically admitted that by the time the tenants came out of their rooms, the accused had already escaped. Likewise, in her statement under Section 161 Cr.P.C., she remained silent regarding Nasim carrying a black



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cloth bag on his shoulder, but in her testimony before the court, she deposed about the same to connect Nasim with the alleged recovery of ropes. Similarly, some other facts deposed during trial, including the assertion that Nasim and Rajesh demanded the keys of the room; that electricity had returned before they went to sleep; that Nasim had switched off the light of the rented room; that Shehzad was the person carrying the knife; that she opened the lock of the channel and that the accused fled only after the neighbours reached, are absent from earliest version recorded by the police. Similarly, the testimony of PW-9 was assailed on the ground that introduction of certain incriminating facts at different stages of the proceedings by her, reveal a pattern of embellishment and improvements, rendering her evidence unsafe to rely upon without independent corroboration.

104. It is important to take note that PW-3 and PW-9 were the witnesses to a gruesome intrusion and attack by the intruders in their house. The incident occurred in the dead of the night, when the witnesses were suddenly awakened from the sleep, they were overpowered by multiple assailants, armed with deadly weapons and immediately thereafter, they discovered Nar Singh in a grievously injured condition. In the said incident, PW-9 was herself also attacked by the intruders. Both these witnesses were in a state of shock. The human conduct and faculties differ from person to person. The learned Trial Court rightly observed that in such a situation, normal errors of observation, due to mental disposition and lapse of time were bound to occur, and therefore, such normal errors of observations cannot be termed as “material discrepancies”. Considering the state of mind in



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which the witnesses were at the time of recording of their statements, the inconsistencies/improvements are normal and bound to be there, howsoever truthful the witness may be, and therefore, cannot be given undue importance. The minor omissions or improvements arising from the normal fallibility of human memory or the effect of trauma cannot be elevated to the status of material contradictions or omissions, so as to discard the otherwise reliable testimony. In ***State of H.P. v. Hukum Chand alias Monu***, 2026 SCC OnLine SC 462, the Supreme Court, *inter alia*, observed as under:-

“8. When it comes to inconsistencies and omissions in testimonies, which is one of the primary grounds on which the reasoning of the High Court rests, it is well recognised that human perception, memory and narration are imperfect. As such, the Court has consistently held that minor inconsistencies or trivial discrepancies in the testimony of witnesses do not by themselves make the evidence unreliable. In State of U.P. v. M.K. Anthony, this Court explained that while appreciating evidence, courts must not attach undue importance to minor discrepancies. Variations in trivial matters that do not affect the core of the case should not lead to rejection of credible testimony in its entirety. The evidence must be assessed as a whole to determine whether it carries the ring of truth. Similarly, in Appabhai v. State of Gujarat, the Court cautioned against placing undue weight on minor contradictions or omissions. Truthful witnesses may differ in detail due to normal lapses of memory or differences in perception. The essential question is whether the inconsistencies materially compromise the backbone of the prosecution narrative. In State of Rajasthan v. Kalki, the Court distinguished between normal discrepancies arising from errors of observation or memory and material



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discrepancies that go to the core of the case. Only the latter undermine the prosecution in a substantial manner. [See also: Rakesh v. State of Uttar Pradesh]

In conclusion, it may be said that a truthful witness may make honest mistakes or omit immaterial details, and such normal variation should not result in wholesale rejection of evidence. However, when omissions or contradictions relate to material facts that form the foundation of the prosecution's version, they assume significance and may create reasonable doubt.”

105. Admittedly, there is no rent agreement or rent receipt to prove that appellants Rajesh and Nasim were inducted as tenants in the house of the deceased. Even in her cross-examination, PW-3 stated that no rent receipt was issued to appellants Nasim and Rajesh at the time of letting out of the room. However, the testimony of PW-3 finds corroboration from the testimony of PW-15A Jeet Singh, in whose presence, the deal was struck and advance was paid by the appellants Rajesh and Nasim to the deceased. Oral tenancies are not unknown where the landlords do not execute rent agreements with the tenants and do not even issue rent receipts to them. Therefore, the testimonies of the witnesses cannot be disbelieved merely because there is no documentary proof of tenancy.

106. In her cross-examination, PW-3 Smt. Rekha corroborated the presence of PW-18 Ajmer Singh, who reached at the spot immediately after the occurrence. PW-18 Ajmer Singh in his testimony, identified the appellant Rahish Khan amongst 4-5 persons, running in the *gali*. There is no cross-examination, not even a suggestion given to PW-18



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that appellant Rahish was not seen by him in the *gali*. Thus, the presence of Rahish Khan in the *gali* with knife is not even disputed by him. The presence of Rahish Khan with open knife near the place of occurrence at 2:00 am, leads to inference of his involvement in the incident.

107. Prosecution is also placing reliance on the alleged dying declaration made by Nar Singh. To prove the same, prosecution relies on the testimony of PW-18 Ajmer Singh and PW-11 HC Ishwar Singh. PW-11 HC Ishwar Singh had removed Nar Singh to DDU Hospital in the PCR van where he was declared “brought dead”. PW-18 Ajmer Singh deposed that he had accompanied HC Ishwar Singh in the PCR van. Both of them deposed that on the way, Nar Singh stated before them that he was assaulted by Rahish Khan, his two new tenants, besides their 2 or 3 associates. It is significant to note that Nar Singh, on reaching the hospital, was declared “brought dead” and PW-3 Smt. Rekha in her cross-examination, had stated that she knew that her husband was dead before he was taken in the PCR van, thus creating a doubt as to whether Nar Singh was really alive on the way to the hospital. Be that as it may, the learned Trial Court rightly observed that it was for the prosecution to prove that deceased was in a fit state of mind to make a statement. In order to pass the test of reliability, the dying declaration has to be subjected to a very close scrutiny because such statement is made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. Only when the dying declaration is found to be



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truthful and reliable, it may form the sole basis of conviction, even though, not corroborated.

108. Admittedly, in the present case, the doctor had no opportunity to examine Nar Singh and confirm whether he was in a fit state of mind to make such statement.

109. Moreover, there are contradictions in the testimonies of PW-11 HC Ishwar Singh and PW-18 Ajmer Singh on material points. HC Ishwar Singh deposed that Nar Singh murmured and told them to take him to hospital immediately as he was hit by Amir Khan, again said, Rahish Khan and two other persons, who were tenants, besides their 2 or 3 associates. However, PW-18 Ajmer Singh testified that Nar Singh stated that he was being killed by Rahish Khan and his associates, who were three in number besides two new tenants in the house. PW-18 deposed that Nar Singh had shouted in the van “*Maar Diya, Maar Diya*”, but this fact is not stated by PW-11 HC Ishwar Singh. Thus, there are contradictions in the testimonies of PW-11 and PW-18 with regard to the statement made by Nar Singh, which is being relied upon as a dying declaration by the prosecution.

110. As per post-mortem report Ex. PW-2/A, Nar Singh had expired due to suffocation caused by closure of mouth by means of foreign material (may be a cloth piece). Since the death was by suffocation due to closure of mouth, the same would rule out the possibility that Nar Singh was alive while being taken to the hospital in the PCR van. That being so, we are of the opinion that the alleged dying declaration is not believable, and is therefore discarded from consideration.



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111. Prosecution is also relying upon the testimony of PW-22 Ms. R.S. Nag, the then MM, before whom, the IO had filed an application for extension of judicial remand. She testified that on 24th September, 1997, all the five accused persons namely Nasim, Sanjay, Firoz, Rahish Khan and Shehzad were produced before her. She asked them as to why they were brought before her, upon which, accused Nasim stated that he along with others had gone to Kavita Colony where Ramesh was killed by knife injury inflicted by Rahish. Rahish, on examination, voluntarily stated that their intention was not to commit murder but to commit theft, but when Ramesh woke up, the incident happened. Ms. Nag deposed that all the accused except Shehzad admitted whatever Nasim and Rahish had stated. Shehzad stated that he was caught from the house, but the other accused maintained that he was along with them.

112. The learned APP has argued that such statement made before the learned Metropolitan Magistrate should be considered as a judicial confession. However, we find no merit in such submission. The procedure for recording the judicial confession is provided in Section 164 Cr.P.C. PW-22 did not depose that she had put any question to the appellants to satisfy herself that the confessional statement was being made voluntarily. She did not depose that she had explained to the accused persons that they were not bound to make such confession. She had not appended her certificate in terms of sub Section (4) of Section 164 of the Cr.P.C. underneath the said confessional statement. The accused were not even administered oath before taking their statements. Under these circumstances, the statement recorded by PW-



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22 cannot be treated as a confessional statement of the appellants, and therefore, the learned Trial Court had rightly not placed any reliance on such a statement. Such statement can also not be treated as an extra-judicial confession, inasmuch as, the statement was given during the course of judicial proceedings before a Magistrate.

113. Furthermore, in their statements recorded under Section 313 Cr.P.C., the appellants Rahish Khan, Rajesh and Nasim were only questioned about Ex. PW-22/A. The incriminating contents of the statement, were not put to them. Consequently, the said statement could not be used as an incriminating circumstance against them, as they were deprived of an opportunity to explain the same. In ***Sujit Biswas v. State of Assam***, (2013) 12 SCC 406, the Supreme Court held that the circumstances which are not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and must be excluded from consideration.

114. The Hon'ble Supreme Court in ***Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr.***, 2025 SCC OnLine SC 913, while referring to its previous decision in ***Raj Kumar v. State (NCT of Delhi)*** (2023) 17 SCC 95, *inter alia*, held as under:-

“22. The prosecution has heavily relied upon the dying declarations of the two victims. As this evidence was not put to the accused in his statement under Section 313 of the CrPC, he was denied an opportunity to explain the same. Hence, this omission causes prejudice to him. Therefore, the evidence of dying declaration will have to be kept out of consideration.”



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115. On the basis of the evidence, it has emerged that PW-3 and PW-9 unequivocally stated that appellants Rajesh and Nasim approached the deceased Nar Singh on the pretext of taking room on rent, had negotiated the rent, paid Rs. 400/- as advance rent and occupied the room in the evening, the same day. This aspect remained substantially unshaken throughout the examination and cross-examination. The identity of appellants Rajesh and Nasim has been proved beyond doubt. PW-18 Ajmer Singh unequivocally established the presence of appellant Rahish Khan immediately after the commission of offence, when he saw Rahish fleeing from the spot with an open knife along with other assailants. All three of them were known to the witnesses since prior to the occurrence. The aforesaid circumstances proved on record establish the guilt of the appellants Nasim, Rajesh and Rahish Khan and are conclusive in nature and consistent only with the hypothesis of their guilt. The chain of evidence is so complete that it does not leave any reasonable ground for a belief consistent with the innocence of the appellants.

116. We are therefore of the view that it were the appellants Nasim, Rajesh and Rahish Khan who had caused the death of Nar Singh.

117. The next question to be decided is whether the proved facts established the offence of murder punishable under Section 302 IPC. The prosecution has attributed the motive that the appellants had entered the house with an intention of committing robbery. Undoubtedly, it is proved that the appellants Rajesh and Nasim had gained entry into the house under the guise of prospective tenants only a few hours before the occurrence. The evidence of PW-3 and PW-9



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shows that the intruders had entered the house during the night and attempted to overpower the family members.

118. Though, the death was undoubtedly homicidal in nature, the medical evidence does not indicate any fatal injury caused by the knife. It is borne from the evidence that appellants were armed with knives. If they had intended to kill Nar Singh, they would have easily stabbed him to death, and had not taken the pain to gag him, tie his limbs with ropes, stab him and then suffocate him with foreign material to cause his death. It appears that the appellants only wanted to ensure that the deceased should not raise any hue and cry. It is a clear case of attempted robbery gone wrong and the homicidal death was incidental to the commission of intended robbery. There is no evidence on record that appellants had any previous enmity or ill-will with the deceased, or that due to such reason, they intruded in the house to kill him. That being so, we are of the opinion that prosecution has failed to establish the charge under Section 302 IPC against the appellants but they are held guilty of culpable homicide, not amounting to murder under Section 304 Part-II IPC.

Conclusion:

119. The impugned judgment of conviction dated 12th July, 2002 and order on sentence 18th July, 2002 *qua* the appellants Firoz @ Sagar, Shehzad and Sanjay Kumar are set aside. Their bail bonds shall remain valid for a period of six months in terms of Section 481 BNSS, 2023 [erstwhile Section 437-A Cr.P.C.]. CRL. A. 609/2002, CRL.A. 662/2002 and CRL.A. 814/2002 are, accordingly, disposed of.



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120. As far as CRL. A. 949/2002, CRL.A. 127/2003 and CRL.A. 451/2004 are concerned, the conviction of appellants Rajesh Kumar, Nasim @ Sagar and Rahish Khan under Section 302/34 IPC is modified to one under Section 304 Part-II IPC read with Section 34 IPC, while the conviction of appellant Rahish Khan under Section 25 Arms Act is maintained.

121. List on 02.09.2026, for arguments on the point of quantum of sentence.

122. The fresh Nominal Roll of the appellants namely Rajesh Kumar, Nasim @ Sagar and Rahish Khan be requisitioned from the Jail Superintendent.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

AUGUST 05, 2026/NA/AK