



2026:DHC:6745



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

Date of reserving: 6th August, 2026

Date of Decision: 17th August, 2026

IN THE MATTER OF:

+ CRL.A. 695/2009

PREM RAJ & ANR.

.....Appellants

Through: Ms. Suman Arora, Adv.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
the State with SI Rahul, PS Mayapuri.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. An information through DD No. 74B, dated 15.03.2000 of Police Station Mangolpuri, Delhi set the police machinery in action, which was recorded at 11:30 PM. The said DD was assigned to SI Neeraj, which was to the effect that some anti-social elements are fighting with each other having knife, as was reported by one Kewal Krishan, R/o K-1166, Mangolpuri. While SI Neeraj was assigned the said DD and was on his way, another information came from the Police Control Room ('PCR'), which was reduced into writing as DD No. 75B dated 15.03.2000, which was recorded at 11:40 PM in PS Mangolpuri. It is mentioned that the same had already been assigned to SI Neeraj (PW-11) who reached at the place of incident alongwith Const. Ranbir Singh (PW-3), where he came to know that the injured in the incident had already been removed to Sanjay Gandhi Hospital



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by the vehicle of the PCR. He went there at Sanjay Gandhi Hospital and found Amol, Rajesh and Shambhu admitted in the hospital, whose MLCs no. 385, 384 & 386 respectively were obtained by SI Neeraj Kumar. Amol was not fit for statement and, therefore, statement of Rajesh was recorded since both Rajesh and Shambhu were fit for statement as per the medical opinion.

2. The statement of Rajesh (Ex. PW-2/A), recorded by SI Neeraj was endorsed by him through the endorsement Ex. PW-11/A, which led to the registration of the FIR (Ex. PW-1/A), under Section 308/323/341/34 of Indian Penal Code, 1860 ('IPC').

3. Since Rajesh and Shambhu had not sustained any such injuries which required hospitalisation, therefore, SI Neeraj came back to the spot alongwith Rajesh and Shambhu i.e. in the alley in front of H. No. K-1166, Mangolpuri and at the instance of Rajesh, a site plan (Ex. PW-11/B) was prepared. Statement of other injured Shambhu was also recorded and bricks, stones and wooden pieces (*phatte*), which were lying there at the scene of occurrence, were seized by SI Neeraj through memo Ex. PW-3/A and were sealed with the seal of NK.

4. Accused Prem Raj and his sons Krishan and Chetan Prakash were specifically named by Rajesh Kumar, therefore, Prem Raj and Kewal Krishan both were arrested, whereas Chetan Prakash was found to be a juvenile. Till the investigation was underway, statement of Amol could not be recorded since he was not only admitted in the hospital at that time, but was in *coma*.

5. Against the backdrop of these facts and circumstances, the chargesheet was filed under Sections 308/323/341/34 IPC. Charge under Section 308/34 IPC and 323/34 IPC was framed against accused Prem Raj



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and Kewal Krishan.

6. The case of the prosecution traversing through 11 witnesses and statement of accused of Prem Raj and Kewal Krishan, resulted into conviction of both of them under Section 308/34 IPC and 323/34 IPC through the impugned Judgment dated 24.08.2009. Order on Sentence dated 27.08.2009, sentenced both of them to undergo Rigorous Imprisonment ('RI') for a period of three years with a fine of Rs. 25,000/- each under Section 308/34 IPC and in default of payment of fine, they were ordered to undergo RI for nine months each, whereas under Section 323/34 IPC, both were sentenced to undergo RI for one year with a fine of Rs. 1000/- each and in default of which, 2½ months each RI was awarded to them.

7. The Appellants assailed the impugned Judgment on several counts, all of which have been enumerated by the learned counsel for the Appellants in the written submissions filed, which primarily revolves upon the fact that the case of the prosecution is not credible enough to hold the Appellants guilty, inasmuch as the testimonies are full of contradictions and one of the so called injured i.e. Rajesh has disowned the case of the prosecution and has turned hostile. There was no motive and one of the injured i.e. Amol has not been cited as a witness, leave alone, had their statement recorded and examined and for that matter, one Anil has totally vanished from the scene, though it has been stated by the witnesses/injured that he too was with them while they were consuming liquor in H. No. 1176, Mangolpuri, where all four i.e. Amol, Rajesh, Shambhu and Anil had gathered.

8. Learned counsel for the Appellants has questioned the case of the prosecution in the written submissions on 12 counts. The same are hereby taken one by one exactly in her own words from the written submissions filed by learned counsel for the Appellants:



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1. **Argument No.1 (Gross anomaly by prosecution):**– *Most pertinent to note that Amol Jha, for whom charge u/s 308/34 IPC was framed has not been cited as witness by the prosecution. Order dated 24.10.2007 of trial court at page 225 records the fact. However, judgment is silent over this aspect.*

It seems that the learned counsel for the Appellants has not cared to go through the record as in that eventuality, this argument could not have been there at all. Amol Jha is the person, who was hit on his head and had become unconscious. He was removed to the hospital, initially at Sanjay Gandhi Hospital, from there to Lok Nayak Jai Prakash Narayan Hospital and finally to Apollo Hospital and till the chargesheet was filed, he remained Comatose, therefore, there was no question of recording his statement or examining him as a prosecution witness. Amol Jha remained in coma ever since he was hit, as PW-5 Shambhu who was examined on 05.11.2001 has expressly stated so. Dr. Mahesh Kaith examined as PW-10 has proved his discharge summary reflecting that Amol Jha was discharged from Apollo Hospital on 11.01.2002, but he was still in the same vegetative state. As such, learned Trial Court had no occasion to examine and discuss his testimony as he could not be there as a witness in the chargesheet and not even examined during investigation, therefore, there was no occasion to discuss his testimony, as it was not there.

2. **Argument No.2 (Motive on wrong facts):**– *Motive on wrong facts wrongly arrived at the conclusion that there was tenant-The impugned judgment has landlord dispute between the parties. As per judgment, injured Amol Jha and Shambhu (and probably Rajesh too) were living at House No. 1176. On the contrary, it is a matter of record that the address of all the accused is House No. 1166, Mangol Puri (page 54). PW5 in his evidence, stated that the*



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landlord of House no. 1176 was Kalu Ram, a resident of Uttam Nagar (Page 76). Therefore, there is no relation of tenant-landlord between the parties and clearly cannot be a motive.

The issue of motive has been brought by the learned counsel for the Appellants, whereas the case of the prosecution does not talk about any motive, as it was an instant fight. In any case, one of the victims was residing in H. No. 1176, Mangolpuri, whereas the Appellants were there in H. No. 1166, Mangolpuri. There is no connection with them in any capacity, apart from the fact that they may have been neighbours. The victims/injured were tenants in H. No. 1176, which belong to one Kalu Ram, R/o Uttam Nagar. Therefore, there was no occasion to bring in anything like a landlord-tenant dispute. A non-existent issue has been tried to be introduced as a landlord-tenant dispute, but it was not there at all. The argument is factually non-existent. In any case, the motive, in view of the direct evidence, becomes insignificant.

The Hon'ble Apex Court in a catena of judgments has held that the prosecution is not required to prove motive, when it relies on testimony of a trustworthy eye witness. Reference can be made in this context to the judgments titled as *Raghunandan v. State U.P.*, (1974) 4 SCC 186, *Guru Dutt Pathak v. State of U.P.*, (2021) 6 SCC 116 and *Chandan v. State (NCT of Delhi)*, (2024) 6 SCC 799.

3. **Argument No.3 (Contradiction from prosecution witness themselves):**— *Settled legal proposition — where the prosecution evidence is totally inconsistent with medical evidence, it amounts to a fundamental defect in the prosecution case and unless reasonably explained, may discredit the entire case of the prosecution. It has been case of Prosecution throughout that the*



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three injured namely Rajesh, Shambhu and Amol Jha sustained injuries by the accused while all the injured and all the accused were at the Ground Floor, outside the house of the accused. Per Contra, the Expert-opinion of PW-10 Dr. Mahesh Kaith, CMO, Apollo Hospital, suggests that "if a full-sized brick falls from a height of 20 ft., the injuries suffered by patient Amol Jha could be caused in such a case" (Page 83). Ld. Sessions Judge held that eye witness PW5 was not confronted with the expert opinion (Page 59). The settled law is that where medical evidence makes ocular version completely improbable, conviction cannot stand safely and the benefit necessarily goes to the accused. (*Abdul Sayeed v State of M.P.*- Supreme Court on 14.9.10 in Cr. Appeal No. 1243/2007 and *Gangabhavani v Rayapati Venkat Reddy & Ors.*-- Supreme Court on 04.09.13 in Cr. Appeal No. 84/2011).

4. **Argument No.4:-** Moreover, the Complainant Rajesh (PW2) also got recorded in the FIR (Page 128) that as a stone hit him, he looked up to know who had hit him, which clearly suggests that accused were not responsible for any causing any injury to the injured.
5. **Argument No.5 (Unreliable story of prosecution):-** The Complainant, Rajesh (PW2) resiled from his early statement and denied having seen the accused at the scene of alleged scuffle. Still the Ld. Sessions Judge concluded that since PW2 had identified the accused, the accused were guilty of hitting the injured. (Page 48, 49). Clearly identification of accused was very natural owing to them being neighbours.

While relying upon the judgment in *Abdul Sayeed vs. State of M.P.*, (2010) 10 SCC 259 and *Gangabhavani v. Rayapati Venkat Reddy & Ors.*, Criminal Appeal No. 84 of 2011 and 86 of 2011, it has been contended on behalf of the Appellants that there is a mismatch between the ocular evidence and medical evidence to the extent that ocular version gets totally uprooted, then in that case, the conviction cannot be recorded against the accused on the strength of the deposition made by the injured. However, learned



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counsel for the Appellants is unable to point out anything, which may belie the ocular version coming through the mouth of the injured witness. PW-2 Rajesh Kumar has though turned hostile, but has not denied the incident, rather stated that he too had sustained injuries, specifically stating that while he was in the process of starting his two wheeler scooter, he was hit by a stone on his head in the alley in front of H. No. 1176-1177, Mangolpuri on 15.03.2000. He has basically tried to rule out the involvement of the Appellants since he pleaded his ignorance about the complicity of them, rather based his knowledge on being told by somebody from the vicinity. He, however, says that the injuries were sustained by Shambhu and Amol also. Despite the cross-examination by learned APP, the witness PW-2 maintained his stand as was there in the examination-in-chief.

Learned counsel for the Appellants has with the aid of testimony of PW-2 and Dr. Mahesh Kaith, examined as PW-10, submitted that the injuries sustained by Amol Jha was on account of a full size brick falling on his head from a height of 20 ft. In fact, it was a kind of suggestion given to PW-10 Dr. Mahesh Kaith, who only opined, that such an injury could be there if a full size brick falls on the head of the victim from a height of about 20 ft. This has been interpreted by learned counsel for the Appellants as a true fact as a stone was in fact, thrown on injured Rajesh examined as PW-2. However, a probability cannot take the place of the factual position inasmuch as only Rajesh got hit by a stone on his head, which came from somewhere, whereas rest of the other including Amol, were thereafter, assaulted with stone and



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wooden planks in a one to one fight. The statement of PW-2 Rajesh nowhere refers that Amol was hit on his head by some stone or brick, which was thrown from somewhere up. If the testimony of PW-2 is read in conjunction with the statement of PW-5 Shambhu, then it can be clearly inferred that whatever happened to Amol Jha or to Shambhu or for that matter to Rajesh, was all in the fight which took place in the alley, except that one stone that hit Rajesh, while he was starting scooter. Shambhu too endorsed this fact that the injured Amol Jha fell unconscious and was still in Coma, unable to speak or move when the evidence of Shambhu was recorded on 05.11.2001, whereas the incident took place on 15.03.2000.

The judgments relied upon by the learned counsel for the Appellants talks about the testimony of the injured witness and a distinction and comparison has been made between the medical and the ocular evidence, wherein a number of authorities on the subject were taken into consideration by the Hon'ble Supreme Court and it was ruled that where the evidence of the witnesses of the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic experts, then it amounts to a fundamental defect in the prosecution's case, unless reasonably explained, then the entire case of the prosecution gets dislodged. Thus, what is important is that either medical or the technical evidence should go hand in hand with the testimony of the witnesses and any inconsistency, which remains unexplained and if so drastic having the potential of totally erasing the case of the prosecution, then in that case, the entire case of the prosecution



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goes. Incidentally, this very judgment *Abdul Sayeed's case* (supra), while referring *State of Haryana v. Bhagirath & Ors.*, (1999) 5 SCC 96, it has been observed as follows:

“Drawing on Bhagirath's case (supra.), this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

Taking into account the judgment in *Solanki Chimanbhai Ukabhai v. State of Gujarat*, AIR 1983 SC 484 and *State of U.P. v. Hari Chand*, (2009) 13 SCC 542, it has been observed as follows:

“Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.”

It is evident that the oral or ocular evidence can only be



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disbelieved where the medical evidence makes it improbable. Thus, the evidence on record has to be evaluated comprehensively juxtaposing the medical and the ocular evidence with each other and analysing them, but also vis-a-vis the facts of the case. If it is found that the medical evidence and the ocular evidence are going in different directions, then the ocular evidence can be discarded, otherwise, testimony of the eye witnesses more particularly of the injured cannot be thrown out on the ground of inconsistency between it and the medical evidence.

The injured witness, whereas, has been given primacy and importance, which aspect has also been dealt with in *Abdul Sayeed's case* (supra), wherein, it has been observed as follows:

*"The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide **Ramlagan Singh & Ors. v. State of Bihar**, AIR 1972 SC 2593; **Malkhan Singh & Anr. v. State of Uttar Pradesh**, AIR 1975 SC 12; **Machhi Singh & Ors. v. State of Punjab**, AIR 1983 SC 957; **Appabhai & Anr. v. State of Gujarat**, AIR 1988 SC 696; **Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra**, (1995) 6 SCC 447; **Bhag Singh & Ors. (supra)**; **Mohar & Anr. v. State of Uttar Pradesh**, (2002) 7 SCC 606; **Dinesh Kumar v. State of Rajasthan**, (2008) 8 SCC 270; **Vishnu & Ors. v. State of Rajasthan**, (2009) 10 SCC 477; **Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh**, AIR 2009 SC 2261; **Balraje alias Trimbak v. State of Maharashtra**, (2010) 6 SCC 673)."*

Reference can also be made to the judgments i.e. *Jarnail Singh*



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v. State of Punjab, (2009) 9 SCC 719, *Shivalingappa Kallayanappa v. State of Karnataka*, 1994 Supp (3) SCC 235, *State of U.P. v. Kishan Chand*, (2004) 7 SCC 629 and *Krishan v. State of Haryana*, (2006) 12 SCC 459.

The evidence on record especially that of PW-2 and PW-5 when gone into, would reveal that the ocular evidence is in tandem with the medical evidence and therefore, the judgments relied upon by the learned counsel for the Appellants for the purpose advocated by her, is not applicable, on the contrary, it goes against her cause.

6. **Argument No.6 (Intentional omission by prosecution knowing it to be a false case):**— *Intentional omission by prosecution knowing it to be a false case--The injured Shambu (PW-5) was not produced by the prosecution before the JJB though Complainant Rajesh had already resiled. Resultantly, the juvenile accused was acquitted. (page 115). The Ld. Sessions judge wrongly stated that the JJB judgment has no bearing on the present case.*

Learned counsel for the Appellants has asserted that injured Shambhu, examined as PW-5 in these proceedings was not examined before the Juvenile Justice Board ('JJB'), which according to her was an intentional omission in order to cover up truth as it was a false case. However, the evidence on record in this case cannot be ignored. The witness in question has been examined in the proceedings before the learned Sessions Judge and given the narrative, there was no occasion to infer anything arriving in favour of the juvenile. In any case, the acquittal of the juvenile recorded by the JJB, has no bearing on the proceedings before the learned Trial Court as both the proceedings were independent. Thus, this argument is brushed aside having no



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substance in it.

7. **Argument No.7 (Ignoring the credibility of witness):**– *It is an admitted case that all the injured viz. Rajesh (PW-2), Shambhu (PW-5) and Amol Jha were drunk at the time of incident (Page 75-PW5, 128-FIR and 44 Judgment). Therefore, their versions lack credibility.*

Learned counsel for the Appellants has put forth the contention that all three injured i.e. Rajesh, Shambhu and Amol Jha were drunk at the time of incident, therefore, their version cannot be relied upon. Because of influence of liquor, their cognitive faculties were not working in a responsible and credible manner. This fact, according to learned counsel for the Appellants takes away their testimony. Learned counsel for the Appellants is correct to the extent that they had consumed alcohol, which has been reflected in the MLC of both Rajesh and Shambhu, but can they be treated as drunk? It would be a far-fetched assertion unless an opinion is there to the effect that they were drunk. The alcohol may have played some role in the fight, but then the faculties were not crippled by the alcohol as can be seen from the fact that in the MLCs that per the doctor has only found smell of alcohol and has not opined that they were drunk. Even if they were drunk, still they cannot be assaulted in the manner in which they were without any provocation.

8. **Argument No. 8 (Ignoring another key witness):**– *As per the FIR, filed on the behest of PW2 Rajesh, there was another friend of theirs namely ANIL, who was also present and was having alcohol with the three injured. However, Prosecution has failed to record his version.*

Learned counsel for the Appellants has tried to gain mileage out



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of non-availability of Anil, who according to her was with the trio Rajesh, Shambhu and Amol, while they were consuming liquor in H. No. 1176, Mangolpuri. It seems that Anil was not found there, was not present there during the drinking session or left the place early inasmuch his presence at the spot has not been deposed by anyone when the incident took place. Therefore, he was neither joined in the investigation nor examined nor cited as a witness. This in itself, is of no consequence. Accordingly, this argument is also brushed aside having no substance in it.

9. **Argument No.9 (No discovery of weapons of offence):**— *As per Expert Opinion (page 83) the cause of injury to Amol Jha was a full-sized brick. No such brick has been seized/produced by the Prosecution. On the other hand, the IO allegedly seized four stones and a wooden plank exhibited as P1-P4 and P5. However, none of the exhibits bore any blood stains (Page 87).*
10. **Argument No.10 (Unreliable version of witnesses because of lack of light at the spot of incidence):**— *IO Neeraj Kumar (PW11) stated that when he reached at the spot, there was no street light (Page 86). The situation remained the same after the IO reached again at the spot after visiting the hospital and therefore, he prepared seizure memo and rough site plan in the light of the scooter. (Page 87). PW5 also stated the same when asked to identify the stones exhibited as Ex. P1-P4, however, he said there was some street light in the lane (Page 75). However, the Ld. Sessions Judge has chosen to push this aspect under the carpet. (Page 57, 58).*

Learned counsel for the Appellants has again fallen back on the so called expert opinion of Dr. Mahesh Kaith (PW-10) and stuck to the two lines in the cross-examination, however, it was only a possibility, which has been stated by the doctor, whereas the eye witnesses are there, who have not stated this fact that a brick had



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fallen on the head of Amol Jha he, in any case, was not in a position to say so, rather stated that he was hit by a stone on his head when the Appellants alongwith the juvenile came down in the street and the fight ensued, that too based upon the record.

On the other hand, the articles or so called weapons of offence i.e. stones and wooden plank, which were seized, have the potential and possibility of causing the kind of injury sustained by the victim Amol Jha, which has not been ruled out. Rather, PW-10 on the basis of record says that the victim was hit on the head by a brick. If somebody is hit on his head by a stone or a brick with force, then the impact would be the same as has been opined by PW-10, by a brick falling from a height of 20 ft., so it either falls on the head from a height and gets momentum and gathers force or the same kind of force can be there, if somebody hits anyone on the head with a certain degree of powerful blow.

The other limb of the arguments is that no blood stains, etc. were found on any of the stones or the wooden plank seized by the police. It has come in the evidence that the alley where the fight took place or alley in which the fight took place was a poorly lit area and in these circumstances, the possibility cannot be ruled out that all those stones/bricks, which were used could not be seized. In any case, it is not necessary that blood would be there on the stone or on the wooden plank. The location of the injury reflects that the stone or the plank hit the victim from above and the blood has a tendency to flow downwards. Therefore, it is not necessary that the blood stains should be there on the plank or the stone in such circumstances.



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A poor visibility arising out of poor lighting has been put forth by the learned counsel for the Appellants to assert that the stones, etc., could not have been identified and thus, seizure of those stones and wooden plank cannot be connected with the incident. However, PW-5 has stated that there was some streetlight in the lane indicating that it was though a poorly lit area, but not completely dark. In any case, the nature of injuries sustained by the victims corroborates and raises a strong possibility of the use of wooden plank and stones, therefore, the seizure and identification of the stone and wooden plank cannot be treated as unreliable or inconsequential.

11. **Argument No.11 (Clear lapse on the part of prosecution by not searching the past history of the injured):**— *The IO Neeraj Kumar (PW11) admitted that he did not consider it necessary to find out the criminal record of injured Rajesh and Shambhu (Page 88).*

There was no occasion with the Investigating Officer to check the antecedents of Rajesh (PW-2) and Shambhu (PW-5), as they were at the receiving end and not the aggressors. In any case, if something of this nature was available, even though they may be involved in some criminal matters, still no adverse inference can be drawn in view of the facts of the case. This in itself would not help the Appellants in view of what has come on record.

12. **Argument No.12 (Mismatch of timings and place of incident and arrest of Prem Raj and Kewal Krishan):**— *According to FIR, the time of incidence is 11.15 p.m. (Page 128). However, as per PW5 it was 10 p.m. dated 15/03/2000 (Page 75). According to prosecution, accused Prem Raj was arrested at his residence on 17.03.2000 and accused Kewal Krishan was arrested at his uncle's shop on 30.05.2000, (Pages 144 and 145). The absence of any independent witness on the same casts a deep shadow over the*



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prosecution version. The IO, PW11 could not explain away on this aspect (Page 87). Impugned judgment disbelieved the version of the accused that they were called to the Police Station Mangol Puri and were arrested there on very vague reasons (Page 60 and 61).

A very feeble argument has been put forth with regard to the time of the incident and arrest of accused Prem Raj and Kewal Krishan coupled with the absence of independent witness to the incident or to the arrest of the accused persons/Appellants. This contention is bereft of any strength inasmuch as the time of incident is by large available. It is not as material as sought to be pointed out in view of the fact that the witnesses have deposed about the incident took place at around 11:00 PM or so, whereas one of them i.e. Shambhu has stated it at 10:00 PM. This itself is not going to take away the entire incident inasmuch as the other evidences are there in the shape of the DD entries and the MLC, etc., from where the timings can be inferred. One of the witnesses giving a different time, does not makes the case of the prosecution unbelievable in view of the fact that injuries are there, that too of such a serious nature where one of the injured may still be under coma after about two decades, as can probably be inferred from the discharge summary of Amol Jha Ex. PW.10-/A, the relevant part of which is reproduced hereinunder:



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**CONDITION AT DISCHARGE
AND FUTURE PLAN**

He was having spontaneous eye opening, moving limbs on deep pain stimulation. Some time responds to the sounds by turning head or by limb movements. He is afebrile and having no seizure. Vitals stable and on continuous physiotherapy.

ADVICE

1. Physiotherapy as advised.
2. RT feeding as advised.
3. Tab Phenobarbitone (60 mg) thrice daily to continue
4. Tab Baclofen (10 mg) thrice daily to continue
5. Cap Symbiotik (250 mg) thrice daily for three days
6. Ciplox ear drops 2 drops thrice daily
7. Gentacin ear drops 2 drops thrice daily
8. Cap Vizylac 1 once daily
9. Follow-up with us after six months with prior appointment, please. (For appointment please ring Ms Sapna at (011) 692 5858 or 692 5801, e.d. 1953.)
10. To contact the Emergency of the Apollo Hospital in case of any problem.

It is pertinent to note that the victim Amol Jha was discharged on 11.01.2002, whereas the incident took place on 15.03.2000. In such circumstances, it is unlikely that the victim would have been able to regain his consciousness or would be able to live a normal life, unless some miracle had happened/or happens. He was in Coma till the order on sentence was passed on 27.08.2009.

The absence of independent public witness is inconsequential so far as the incident is concerned, inasmuch as it took place at around 11:00 PM and finding anybody at that time is unlikely and then again the tendency of the general public to be not part of the proceedings relating to the police or the courts on account of the perceived harassment which normally deters general public. In any case, there is no reason to disbelieve the injured and that absence of the independent public witness is thus, immaterial and nugatory. And so is the position in respect of arrest of Appellants. No public witness being a part of arrest of Appellants, is of no consequence.

9. In view of the foregoing discussion, learned counsel for the Appellants is unable to carve out a case in favour of the Appellants or to



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point out any flaw in the impugned judgment so as to intervene in the findings recorded by the learned Trial Court against the Appellants. As a result, the judgment of conviction is upheld.

10. On the aspect of sentence, nothing much has been argued by learned counsel for the Appellants, however, the sentence awarded to the Appellants cannot be treated as commensurate to what has been done by them. The Order on Sentence dated 27.08.2009 itself reflects that the victim Amol Jha was still in a vegetative state. The incident pertains to the year 2000 and the situation vis-à-vis Amol Jha remains unaltered for about nine years. There is no word thereafter as to what has happened to him, but irrespective of what happened after 2009, what has been undergone by the victim Amol Jha and his family for the last nine years, cannot be ignored and is very difficult to visualise. Day to day life, leave alone a normal life, must have been a harrowing experience. In such circumstances, the Appellants do not deserve any lenience. There was no notice for enhancement of sentence given to the Appellants and there were no arguments either. As a result, the sentence awarded to them is also maintained.

11. As a result, the appeal stands dismissed bereft of any substance.

12. Appellants be called upon to surrender forthwith to undergo the remaining sentence. Needless to say that they shall be entitled to the benefit of set off under Section 428 Cr.P.C.

13. Copy of the judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J

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