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

Reserved on: 29th July, 2026
Date of Decision: 28th October, 2026
Uploaded on: 28th October, 2026

\# **CNR No: DLHC010551332025**

\+ **CRL.A. 1106/2025 & CRL.M.(BAIL) 1095/2026**

ABHISHEK SHARMA ....Appellant

Through: Mr. R.S. Mishra, Mr. Yogendra and Mr. Anand Mishra, Advs.

Versus

THE STATE NCT OF DELHI ....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Mr. Lalit Luthra & Mr Randeep Kumar, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGMENT

Vikas Mahajan, J.

1. This hearing has been done through hybrid mode.

2. The present appeal under Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023 [‘BNSS’] has been preferred by the Appellant, Abhishek Sharma, *assailing* the Judgment of Conviction dated 7th July 2025 and the Order on Sentence dated 15th July 2025 passed by the Ld. ASJ-02, South West, Dwarka Courts, New Delhi in Sessions Case No.728/2021.

3. *Vide* the impugned Judgment dated 7th July 2025, the Appellant was convicted for the offences punishable under sections 302/201/34 of the Indian Penal Code, 1860, arising out of FIR No.52/2021, registered at Police Station-Uttam Nagar.

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4. *Vide* the Order on Sentence dated 15th July 2025, passed by the Trial Court, the Appellant was sentenced to undergo life imprisonment, with all sentences directed to run concurrently. The relevant portion of the said order is reproduced hereunder:

> *"13. In view of facts and circumstances of the case, submissions of the Ld. defence counsel for the convict and Ld. Addl. PP for the State assisted by ld. counsel for complainant, convict namely Abhishek Sharma is hereby sentenced to undergo following punishments: -*
>
> *(i) Imprisonment for 1ife with fine of Rs. 1,000/- for the offence punishable under Section 302/34 IPC for commission of murder of deceased Manoj. In case of default to pay fine, the convict shall undergo simple imprisonment of two months.*
>
> *(ii) Imprisonment for three years with. fine of Rs. 1,000/- for the offence punishable under Section 201/34 IPC for causing disappearance of evidence. In case of default to pay fine, the convict shall undergo simple imprisonment of one month."*

5. Briefly stated, the case of the prosecution, as borne out from the impugned Judgment, is that the Appellant was accused of committing the murder of one Manoj Kumar Jha on 31st January 2021 at about 8:00 PM, at a vacant plot measuring 1300 square yards situated in front of House No. D-69, Vijay Nagar, (hereinafter referred to as the 'Vacant Plot'), along with one CCL[1].

6. It is further alleged that in order to screen themselves from legal punishment, the Appellant and the CCL burnt their upper clothes after the incident, thereby attracting Section 201 IPC.

[1] Child in Conflict with Law

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7. The criminal law was set into motion with receipt of DD No. 78A on 31st January 2021 at Police Station-Uttam Nagar. Pursuant thereto, SI Deepak Kumar along with SI Leela Ram reached the spot i.e. the vacant plot, where a wooden bed (‘*takhat*’) with bloodstains was found lying. No eyewitness was present at the spot at that stage. On enquiry, it transpired that the injured had already been taken to DDU Hospital by his relatives, where, as per MLC No. 887/21, he was declared brought dead, having sustained stab injuries from a sharp weapon. On this basis, FIR No. 52/2021 was registered at Police Station Uttam Nagar for the offence under Section 302 IPC.

8. On 1st February 2021, the statements of PW-1 Tun Tun Kumar Mishra, PW-2 Krishna Nand Jha, PW-3 Vinod Kumar Jha and PW-5 Sulok Kumar Jha were recorded under Section 161 of the Code of Criminal Procedure, 1973 (herein after referred to as the ‘CrPC’).

9. PW Krishna Nand Jha, brother-in-law of the deceased, stated that on 31st January 2021, at about 8:00 PM, he had joined the deceased and one PW Vinod Kumar Jha, who were sitting near a bonfire at the said plot. The deceased walked away to attend a phone call.

10. Shortly thereafter, upon hearing the deceased’s screams, PW Krishna Nand Jha and PW Vinod Kumar Jha rushed to the spot and found him fallen between two cars, bleeding heavily from stab wounds. The accused Abhishek Sharma and the CCL were seen running away from the spot, which was subsequently corroborated by the CCTV footage.

11. On further enquiry, it emerged that on the previous evening i.e. 30th January 2021, between 7:00–7:30 PM, an altercation had taken place at the Vacant Plot between the deceased on the one hand, and the Appellant and CCL on the other, over their consumption of intoxicants at the said plot.

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12. The CCTV footage recovered from a nearby shop showed the Appellant and the CCL were running from the spot after the incident, the one holding the knife was identified as CCL, and the other as the Appellant.

13. On 1st February 2021, the post-mortem was conducted by PW Dr. B.N. Mishra *vide* PM No. 209/21, and the cause of death was opined as cardiogenic shock caused by tearing of the right atrium, as a result of stabbing over the chest with a sharp-pointed weapon such as a knife. Injury no. 1 was found sufficient to cause death in the ordinary course of nature.

14. On 3rd February 2021, the Appellant and CCL were apprehended from DDA Park, Hastsal, Uttam Nagar, on the basis of secret information received by the raiding team comprising HC Gopal Yadav and Ct. Ajay Kumar. The Appellant, being 18 years of age, was arrested, while CCL, being 17 years of age, was apprehended.

15. During personal search, a *buttondar* knife was recovered from the right pocket of CCL's under-pant. The pant and shoes worn by the Appellant and CCL, as depicted in the CCTV footage, were seized. Both are alleged to have disclosed that they had burnt their upper clothes at a plot at Gali No. 12, near Balaji Road, Vikas Nagar, Uttam Nagar, to screen themselves from legal punishment, pursuant to which the remnants of the burnt clothes were recovered from the said spot.

16. CCL was sent to the Observation Home, Sewa Kutir, while the Appellant was remanded to police custody. It may be noted at this stage that, apart from the *buttondar* knife recovered from CCL, the Appellant has separately stated, in his own disclosure statement, to have used a blade in the assault, however, this second weapon i.e. the blade could not be recovered at any stage of the investigation.

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17. The recovered *buttondar* knife was sent to the FMD Department, DDU Hospital, for a medical opinion. *Vide* subsequent opinion dated 2nd March 2021, PW Dr. B.N. Mishra opined that the injuries found on the deceased could have been caused by the said knife. Age verification of both the Appellant and CCL was also conducted during investigation.

18. Upon completion of investigation, a chargesheet, and thereafter a supplementary chargesheet against the Appellant, were filed by the police under Section 173 CrPC, while the CCL was produced before the Juvenile Justice Board and continues to face trial before the said Board, as stated in the status report filed by the State.

19. *Vide* order dated 5th May 2022, the Trial Court framed charges under Sections 302/201/34 IPC against the Appellant, to which he pleaded not guilty and claimed trial.

20. During the course of the Trial, and to prove its case, the prosecution examined 24 witnesses, of whom PW-2 Krishna Nand Jha, PW-3 Vinod Kumar Jha, PW-5 Sulok Kumar Jha, PW-6 ASI Satpal, PW-10 Dr. B.N. Mishra, PW-20 SI Leela Ram (first IO), PW-21 SI Deepak Kumar, PW-22 HC Ajay Kumar, PW-23 HC Gopal Yadav, and PW-24 Inspector Harpal Singh (second IO) were treated as the material witnesses. However, the prosecution's case rests principally on the testimonies of PW-2, PW-3, PW-10, and PW-20 to PW-24.

21. Thereafter, the statement of the Appellant was recorded under Section 313 Cr.P.C., wherein he denied the evidence put to him and alleged false implication, but he did not lead any defence evidence.

22. On appreciation of the evidence on record, the Trial Court by its impugned Judgment dated 7th July 2025 convicted the Appellant under

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Sections 302/201/34 IPC, holding that the prosecution had proved its case beyond reasonable doubt on the basis of the ocular and circumstantial evidence on record. The operative portion of the impugned Judgment reads thus:

> *"73. In the present case, indubitably there is no eye witness and the prosecution had sought to establish the case against the accused person from circumstantial evidence. It is trite to say that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but all the circumstances so established should be of conclusive nature and consistent with the hypothesis of the guilt of the accused. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. On appreciation of entire 'evidence led by the prosecution and applying the law laid down by Hon'ble Supreme Court of India in* ***Sharad Birdichand Sharda (Supra)****, this court has reached on the following conclusions: -*
>
> > *(1) From the facts and circumstances of the case, the prosecution has proved reasonable doubt that deceased Manoj Kumar was killed by accused person Abhishek Sharma who shared common intention with CCL Raju and his guilt has been fully established.*
> > *(2) From the evidence on record, prosecution has successfully established that accused Abhishek had a motive to kill deceased Manoj Kumar and accused Abhishek with CCL Raju had shared common intention to seek revenge for their insult from Manoj Kumar had committed his murder, the facts established by the prosecution indicating towards the guilt of accused persons is consistent.*
> > *(3) The circumstances proved by the prosecution are, conclusive in nature and tendency.*
> > *(4) The facts established by the prosecution have excluded every possible hypotheses except the one which has been proved by the prosecution.*

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> *(5) The chain of evidence led by the prosecution is so complete that it does not leave any ground for conclusion consistent with the innocence of accused person and it has been proved by the prosecution that in all probability, the accused person share common intention with CCL Raju to kill Manoj Kumar."*
>
> ***74. In the light of aforesaid discussion, this court is of the considered opinion that prosecution has proved its case beyond reasonable doubt against accused persons Abhishek Sharma for the offence of murder and 201 IPC r/w Section 34 IPC.***
>
> ***75, Accordingly, accused person namely Abhishek Sharma is convicted under Section 302/201/34 IPC for the commission of murder of deceased Manoj Kumar."***
>
> (emphasis supplied)

23. We have heard Mr. R.S. Mishra, learned counsel for the Appellant and Mr. Ritesh Kumar Bahri, learned APP for the State and have perused the record.

24. The Trial Court after examining the CCTV footage has recorded that the act of stabbing is not captured in the CCTV footage. Further, on the basis of the evidence, it came to the conclusion that there is no eye-witness to the incident of accused stabbing the deceased, and the prosecution has sought to establish the case against the accused from the circumstantial evidence.

25. Upon examination of the testimonies of the witnesses, we also find that none of the prosecution witnesses have stated having actually witnessed the incident of stabbing of the deceased by the accused person. The Trial Court is, therefore, right in observing that the present case is based on circumstantial evidence.

26. The prosecution has pressed into service the following circumstances to bring home the guilt of the Appellant:

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(i) *Motive* – An altercation had taken place between the deceased Manoj Kumar Jha, and the Appellant and CCL on the other hand on 30.01.2021, i.e., one day prior to the date of incident. The deceased had told the Appellant and the CCL not to indulge into intoxication in the 1300 sq.yrds vacant plot and leave from that place. On the very next day, the incident of stabbing had taken place.

(ii) *Presence & identification* - The Appellant had been seen running from the spot after the stabbing incident on the next day i.e. 31.01.2021 by PW-2 and PW-3 confirming his presence and participation.

(iii) *Recovery* - The offence weapon i.e. knife was recovered from the CCL on his personal search. The burnt clothes worn by the Appellant and the CCL were also recovered at their instance.

(iv) *Medical evidence* – (i) The post mortem report proves presence of injuries on the person of the deceased including injury no.1 which was opined by PW-10 Dr. B.N. Mishra to be sufficient in the ordinary course of nature to cause death; and (ii) The subsequent opinion of 2nd March, 2021 by PW-10 Dr. B.N. Mishra establishes that injuries on the dead body of the deceased were caused by the knife produced before him.

27. Insofar as the first circumstance i.e. motive is concerned, PW-3 Vinod Kumar Jha has proved the altercation that had taken place between the deceased and the Appellant. He, in his testimony, has stated that the Appellant on 30.01.2021 was smoking drugs along with his friend in the vacant plot which was used for parking vehicles. He and the deceased told the Appellant

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and his associate not to consume the drugs and they left the spot. However, on the very next date, i.e. 31.01.2021, the said boys who were told to go away from the vacant plot, stabbed the deceased Manoj Kumar Jha, and the Appellant was one of them. The relevant extract from the testimony of PW-3 Vinod Kumar Jha is set out hereinbelow for the sake of ready reference:

> *"On 30.01.2021, accused Abhishek present in the Court today (correctly identified) was smoking drugs alongwith his friend in the vacant plot, which was used for parking. Myself and Manoj Kr. Jha told accused and his associate not to consume drug. They left the spot.*
>
> *On next day i.e. 31.01.2021, I alongwith Manoj Kr. Jha went to the plot as a vehicle of Manoj Kr. Jha arrived there. We were sitting near fire. At about 8.00-8.30 pm, Manoj Kr. Jha received a call and he went towards his vehicles, which were parked at a distance of about 60 meters, while answering the call. Just after 2-3 minutes, I heard the noise of Manoj Kr. Jha, I went towards him.*
>
> *I saw the boys, who were told to go away from the vacant plot, stabbing deceased Manoj Kr. Jha. Accused Abhishek was one of them, who is present in the Court today."*

28. Insofar as circumstance no.(ii) viz. presence and identification of the Appellant is concerned, though it is correct that none of the witnesses had witnessed the actual incident of stabbing but PW-2 Krishna Nand Jha and PW-3 Vinod Kumar Jha have testified having seen the Appellant running from the spot immediately after the incident.

29. PW-2 Krishna Nand Jha, in his examination-in-chief, gave the description of the Appellant and the CCL stating that one was little taller and the other was of short height and the boy who was of shorter height was having knife in his hands. The Appellant was correctly identified by PW-2 during dock identification as one of the boys whom he saw in the CCTV footage. In

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his cross-examination, he stated that *'it is correct that I did not see the faces of the boys, whom I saw running after the incident'*. However, during his re-examination by the learned APP, he stated that he saw the faces of both persons when they looked behind while running from the spot. Likewise, in his further cross-examination, he stated that he saw the faces of the boys when they looked behind while running. The relevant extract from the testimony of PW-2 reads thus:

> *"…. I say two boys, one little taller and other of short height, running from there.* ***I also saw knife in the hands of the boy, who was of shorter height****.*
>
> *xxx xxx xxx*
>
> *I can identify those boys, whom I saw in the CCTV footage.*
>
> ***At this stage, witness points out towards accused Abhishek Sharma (correctly identified) and states that he is one of those boys whom he saw I the CCTV footage****.*
>
> *xxx xxx xxx*
>
> ***XXXXXXX by Sh. R.S. Mishra and Sh. Yogender Kumar, ld. Counsel for accused.***
>
> ***…… it is correct that I did not see the faces of the boys, whom I saw running after the incident.***
>
> *xxx xxx xxx*
>
> ***Re-examination by Sh. Pramod Kumar, ld. Addl. PP for State.***
>
> ***I saw faces of both the persons running from the spot and later on, when CCTV footage was shown to me, I told IO that accused is one of those boys.***
>
> ***XXXXXXX by Sh. R.S. Mishra and Sh. Yogener Kumar, ld. Counsel for accused.***
>
> *I saw both those boys running in the opposite directions. I was closest to them at the distance of 20 feet and both were running in opposite directions.* ***I only saw the face of those boys when they looked behind while running. I had no other opportunity to see the faces of those boys.*** *It is incorrect to suggest that I have deposed falsely that I saw the faces of those boys running from*

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the spot. It is incorrect to suggest that just to support prosecution case, I have deposed falsely."

(emphasis supplied)

30. Likewise, PW-3 Vinod Kumar Jha testified that he had seen the boys, who were told to go away from the vacant plot, stabbing the deceased Manoj Kumar Jha. However, the witness was confronted with his statement recorded under Section 161 Cr.PC where it is not stated that he saw the accused stabbing the deceased. But, in his cross-examination, he again volunteered and stated only to the extent that he had seen the accused persons. The relevant part of the testimony of PW-3 Vinod Kumar Jha is reproduced hereinbelow:

*"[…] **I saw the boys, who were told to go away from the vacant plot, stabbing deceased Manoj Kumar Jha. Accused Abhishek was one of them, who is present in the Court today**."*

XXX By Sh. R.S. Mishra and Sh. Yogender Kumar, Ld. Counsel for accused.

….]When I reached near Manoj Kr. Jha, accused persons were running in opposite directions. Many neighbours came at the spot. I did not notice any specific person as I was busy in taking care of Manoj Kr. Jha. ***Police recorded my statement on next day at the place of occurrence. I told to police that I saw accused stabbing the deceased. (Confronted with the statement of the witness Ex.P3/A, where it is not so recorded.)*** *Police did not call me in the police station after recording my statement. I did not notice as to what cloths were worn by accused. I just saw that they were wearing full sleeves jacket. I did not notice whether they were wearing full pants or shoes. It is incorrect to suggest that I was not present at the spot. Vol. I am visible in the CCTV footage.*

xxx xxx xxx

[At this stage, CCTV footage bearing file no. "ch20210131193307" is played from a pen-drive and is shown to the witness. Pen-drive is now Ex.P-1. In the footage it is appearing at 20:10:40 pm that I am sitting in front of bonfire. Deceased is seen talking over phone and walking towards back

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side of truck. ***After gap of about 40 seconds, accused persons are seen running away from the truck towards the gali.****]*

It is incorrect to suggest that I have wrongly identified accused persons and they are not visible in the footage. ***Vol. Since I was sitting near the spot, I have clearly seen the accused persons. It is incorrect to suggest that I have only seen the accused persons from behind or that I have deposed falsely at the behest of IO.*** *It is incorrect to suggest that accused persons were wearing mask on their face. It is incorrect to suggest that I cannot identify anyone from backside as it was dark and place was not well lit or that it was dark, foggy winter night. It is incorrect to suggest that accused persons were not present at the spot at the alleged time of incident."*

(emphasis supplied)

31. The statement of PW-3 Vinod Kumar Jha to the extent he had seen the boys stabbing the deceased Manoj Kumar Jha is a clear improvement over his statement recorded by the police under Section 161 Cr.PC. Therefore, the Trial Court rightly came to the conclusion that there is no eye-witness to the incident of stabbing, however, the testimonies of PW-2 Krishna Nand Jha and PW-3 Vinod Kumar Jha clearly establishes that the Appellant was correctly identified as one of the two boys, who had come on 31.01.2021 and was seen running after the incident of stabbing. Further, no explanation has been offered by the Appellant about his presence at the crime spot, and he miserably failed to discharge the burden of explaining the circumstances in terms of Section 106 of the Indian Evidence Act, which were in his personal knowledge.

32. The Trial Court after examining the CCTV footage has made the following observations:

"60.2.2. [……] The CCTV footage also shows their presence at the crimes spot. It can be clearly seen from the CCTV footage that the two boys entered 1300 square yards plot from one side

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and after sometime they were seen running from another side. The pace at which the boys were seen running was not normal and it appeared that they were running in a way that nobody catches hold of them. From the CCTV footage it could be seen that fire was lighting and there were three men surrounding it out of which one walked away while talking on phone. Though the act of stabbing is not captured on the CCTV footage but the presence of accused in the 1300 square yards plot, the proximity of time, the body language of the two boys while entering the plot and the pace at which they exited the plot/running pace, all in all point towards the guilt of the accused person. From CCTV footage the overall atmosphere of the place was calm but after the murder there was panic. There was no other person on the spot who adds an element of asynchronicity in the entire place. [……]"

33. The CCTV footage was also played before us during the course of hearing of the present appeal. We fully agree with finding of the Trial Court that though the act of stabbing is not captured on the CCTV but other factors *viz*. (i) presence of Appellant and CCL in the vacant plot, (ii) the proximity of time between the incident of stabbing and their presence, (iii) the suspicious manner in which the two boys entered the plot, and (iv) the manner in which they ran at fast pace immediately after the incident, point towards their involvement in the incident of stabbing.

34. The circumstance no.(iii) is the recovery of offence weapon and the burnt clothes. The offence weapon i.e. knife, Ex.P-2, was recovered from the pocket of pant of the CCL during his personal search vide seizure memo, Ex.PW-23/A, by PW-24 Insp Harpal Singh in the presence of witnesses PW-23 HC Gopal Yadav and PW-22 HC Ajay Kumar. The said witnesses in their testimonies have also given justification for not joining independent witnesses. It is stated by them that the IO had requested 4-5 public persons but

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no public person joined investigation despite request. Their testimony is credible and there is nothing in their cross-examination which could raise doubt about the said recovery. It is trite that the recovery cannot be discarded merely because no independent witness was joined and the same has been effected in the presence of the police officials, especially when testimony of the police officials is found to be credible, and it has not been proved to the contrary.

35. As regards burnt clothes, PW-24 Insp Harpal Singh stated that the same were recovered on the basis of disclosure statements at the instance of the Appellant and the CCL who led the police to a vacant plot and pointed out towards the ash and disclosed that they burnt their upper clothes for destroying the evidence. Almost to the similar effect are the testimonies of PW-22 and PW-23. The remains/ash of burnt clothes were seized *vide* seizure memo, Ex. PW-22/B. Nothing could be elicited during the cross-examination of the said witnesses which could discredit the recovery of burnt clothes.

36. The Trial Court has thus, rightly recorded the following finding as regard the recovery of weapon and the burnt clothes:

> *"60.4.2. In the instant case, weapon of offence is recovered during the personal search of the CCL Raju by PW22, PW 23 and PW 24 and the same is Ex P2 and also the remains of clothes that were burnt by the accused person Abhishek Sharma and CCL Raju to shield them from legal punishment were recovered as Ex 10 on the basis of disclosure statement from a vacant plot gali no.12, near Balaji Road, Vikas Nagar, Uttam Nagar. Pointing out memo of place of incident was also prepared at the instance of accused Abhishek Sharma and CCL Raju which is Ex. PW22/C. The investigating agency had no knowledge regarding the said weapon and the burnt clothes, and same have been recovered at instance of accused person Abhishek Sharma and CCL Raju on the basis of disclosure statements made by them.*

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xxx xxx xxx

60.4.5 Since it is a vacant plot, much public movement is ousted. Moreover, what has been recovered from the vacant plot is also relevant. In the instant case the recovery is the remains of burnt clothes at the instance of the accused person. No passerby would have been interested in remains of burnt material and they would have easily remained intact. The fact that the place from where recovery is effected is in the personal knowledge of the accused person cannot be ignored. The factum of burning the clothes was in the knowledge of accused person Abhishek Sharma and CCL Raju. Most importantly, the remains of burnt clothes had shrunken nylon kind of material and the accused person were seen to be wearing jackets of nylon kind material in the CCTV footage. PW24 has withstood cross examination on the abovesaid aspect."

37. As regards, circumstance no.(iv) *viz. medical evidence* is concerned, PW-10 Dr. B.N. Mishra, who conducted the post-mortem and prepared post-mortem report, Ex.PW10/A, testified that the cause of death was cardiogenic shock caused by tearing of the right atrium as a result of stabbing over the chest by a sharp pointed weapon like a knife, etc., and injury no. 1, as mentioned in the post-mortem report, was sufficient to cause death in the ordinary course of nature. He also stated that *vide* his subsequent opinion dated 2nd March, 2021 (Ex.PW10/B), on the basis of nature of injuries sustained on the body of deceased and the nature of knife produced, he had opined that all injuries sustained on the body could have been inflicted by the weapon of offence i.e. knife. PW-10 was not cross-examined on the material aspects of his testimony despite opportunity.

38. As regards the blade which the Appellant mentioned in his disclosure statement, the same was never recovered at any stage as recorded in the police report filed under section 173 CrPC.

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39. The medical evidence in the form of post mortem report (Ex.PW10/A), subsequent opinion (Ex.PW10/B) and testimony of PW-10 Dr. B.N. Mishra, clearly suggest that all the injuries on the body of the deceased could have been caused by the *buttondar* knife recovered from the CCL, and there is no evidence on record to show the use of any second weapon.

40. The Trial Court also dealt with the contention of the defence that no blood stains were found on the knife and no examination as to the finger prints was done at the behest of the I.O. It was rightly held by the Trial Court that this lapse on the part of the investigating agency cannot be considered to be fatal as the knife was recovered from the CCL during his personal search and it cannot be ruled out that the CCL and the Appellant might have washed the knife so as to remove the blood stains in the same way they had burnt their clothes.

41. Based on the above evidence, the Trial Court concluded that the testimonies of PW-2 Krishna Nand Jha and PW-3 Vinod Kumar Jha are credible and trustworthy and have also been corroborated by the prosecution witnesses as well as the medical/scientific evidence.

42. Further, there is also medical evidence in the form of post-mortem report prepared by PW-10 Dr. B.N. Mishra, who in his testimony opined that injury no. 1, which was the result of stabbing over the chest by sharp pointed weapon like knife, was sufficient to cause death in the ordinary course of nature.

43. Therefore, from the medical evidence on record it is clearly established that the injury was present on the dead body of the deceased. Further, since the CCL was carrying a knife, there was an intention to inflict bodily injury, that is to say, it was not accidental or unintentional. It has also been proved by

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PW-10 Dr. B.N. Mishra that the injury no.1 was sufficient to cause death in the ordinary course of nature. In the given circumstances, there is no doubt that an offence of murder has been committed attracting clause (3) of Section 300 IPC.

44. The prosecution has also succeeded in proving the motive. An incident had taken place on 30.01.2021 i.e. the day prior to the actual stabbing incident, when PW-3 Vinod Kumar Jha and deceased Manoj Kumar Jha had told the Appellant and his associate i.e. CCL not to consume drugs in the vacant plot where they would park their vehicles. There is also cogent evidence in the form of testimonies of PW-2, PW-3 and CCTV footage to show that the Appellant along with the CCL had come on the next day i.e. 31.01.2021 at about 8.00-8.30 pm, when the incident of stabbing took place.

45. Though there is no eye-witness to the actual incident of stabbing, but the Appellant and the CCL were seen running after the incident of stabbing and they have been correctly identified by PW-2 Krishna Nand Jha and PW-3 Vinod Kumar Jha, during dock identification. In the absence of any explanation offered by the Appellant for his presence at the crime spot on the date of incident and further no explanation being offered as regard his conduct i.e. to run away at fast pace immediately after the incident, definitely points towards the involvement of the Appellant.

46. But the question which requires consideration is whether it could be said that the Appellant shared a common intention with the CCL to cause the death of the deceased, Manoj Kumar Jha, since there is not an iota of evidence to throw light on the role played by the Appellant in the commission of the offence.

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47. The legal threshold for invoking Section 34 IPC has recently been reiterated by the Apex Court in ***Constable 907 Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433***, wherein it was observed:

> *"30. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused."*

48. The legal position regarding the application of Section 34 IPC in such factual scenarios is well-settled. In the case of ***Shambhu Kuer v. State of Bihar, (1982) 1 SCC 486***, the Supreme Court dealt with a situation where the Appellant had caught hold of the deceased and scuffled with him, while the co-accused, Mandip, took out a knife and commenced the assault. The Court held that from the mere fact that the Appellant caught hold of the deceased and scuffled with him while the co-accused inflicted the knife blows, it could not be inferred beyond reasonable doubt that the Appellant shared the intention to murder the deceased. The Court concluded that, at most, the Appellant was vicariously liable for an offence under Section 326 read with Section 34 of the Penal Code, 1860. Relevant extract from the said judgment is reproduced hereinbelow:

> *"….**From the mere fact that the appellant caught hold of the deceased and scuffled with him, while Mandip took out a knife and commenced the assault, it cannot be inferred beyond reasonable doubt, that he shared the intention of Mandip to murder the deceased. At the most, he was vicariously liable for an offence under Section 326 read with Section 34, Penal Code.** We therefore, partly allow this appeal, alter the conviction of the appellant to one under Section 326 read with Section 34, IPC and*

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sentence him to imprisonment already undergone, which, we are told, ii about 6 1/2 years."

(emphasis supplied)

49. Similarly, in the case of ***Laxmanji and Another v. State of Gujarat, (2008) 17 SCC 48***, the Supreme Court evaluated a factual scenario where the Appellants were unarmed and caught hold of the deceased, while the principal accused, armed with a "*Rampuri*" knife, inflicted fatal knife-blows. The Court categorically ruled that the unarmed Appellant could not be attributed any common intention to cause the murder of the deceased. The Court observed that while common intention can be formed in the course of the occurrence, if the participation of the accused in the crime is proved but the common intention to murder is absent, Section 34 cannot be invoked to sustain a conviction under Section 302.

"11. The factual scenario as noted above goes to show that the appellant cannot be attributed any common intention to cause the murder of the deceased. In order to bring a case under Section 34 it is not necessary that there must be a prior conspiracy or premeditation. The common intention can be formed in the course of occurrence. ***To apply Section 34 apart from the fact that there should be two or more accused, two factors must be established : (i) common intention, and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability. <u>But if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked</u>.*** *(See Jai Bhagwan v. State of Haryana [(1999) 3 SCC 102 : 1999 SCC (Cri) 388 : AIR 1999 SC 1083].)*

12. In the background facts, the appropriate conviction would be under Section 326 read with Section 34 IPC. Custodial sentence of three years would meet the ends of justice."

(emphasis supplied)

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50. The Supreme Court further cautioned against the mechanical spreading of vicarious liability in ***Viji and Another v. State of Karnataka, (2008) 15 SCC 786***, where Accused no. 1 had merely caught hold of the deceased while the co-accused inflicted the lethal blows. Altering the conviction of Accused no.1 to Section 326 read with Section 34 IPC, the Court held:

> *"20. Now, this Court has held in several cases that there are situations in which several accused participate in an assault and there is often the tendency to spread the liability to all of them whenever a conviction is recorded and vice versa where an acquittal results, regardless of the very fundamental proposition of criminal law that even in such instances* ***where there may be a charge of common intention, unlawful assembly or rioting, that the court is still required to sift the evidence and decide as to whether there is evidence of commonality of intent on the part of all the accused or whether a distinction will have to be made between some of them and the rest****.*
>
> *21. Criminal law undoubtedly admits to the proposition that commonality of intent may develop on the spot but on the other hand, citing the present case, the intention of the group may have been to assault the victim whereas one or more of the persons may have acted otherwise and would possibly qualify individually for a heavier conviction and sentence.* ***Undoubtedly, the court will go by the weapons used, the overt acts attributed, the degree of force that was exerted and such other finer features of the incident while recording its findings. This is very important because it is equally essential that no accused person should end up with a heavier liability than what is strictly contemplated by the law and conversely, that there should not be a failure of justice through too light a consequence or wrongful exoneration. These are all very fundamental principles of evaluation of evidence and of criminal jurisprudence****.*
>
> *xxxx xxxx xxxx xxxx*
>
> *25.* ***We find considerable force in the argument. In view of acquittal of Accused 2 to 6 and in the light of the ocular***

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evidence that Accused 7 assaulted deceased John Peter while Accused 1 merely caught hold of the deceased, in our opinion, ends of justice would be met if we convict Accused 7 for an offence punishable under Section 326 IPC and Accused 1 for an offence punishable under Section 326 read with Section 34 IPC."

(emphasis supplied)

51. In ***Darshan Singh and Anr. v. State, 2013 SCC OnLine Del 5047***, the Division Bench of this Court also took a similar view. The Court was dealing with a case where the Appellants exhorted the main accused by shouting *"bach ke na jaane pave"* before the fatal stab was dealt by the main accused. Despite such overt act, this Court ruled out the application of Section 302 read with Section 34 IPC and altered the conviction of Appellants therein to Section 326 read with Section 34 IPC, observing as under:

> *"31. Now dealing with the last contention of the counsel that the appellants herein were not having common intention under section 34 IPC. Common intention as envisaged under Section 34 IPC is an exception to Rule of evidence. It lays down the principle of constructive liability, wherein if one person also commits the crime, all the other persons who were sharing a common intention with them, will also be liable. A person may be having a similar intention like other, but a similar intention becomes common when they mutually agree to commit an offence conjointly i.e. there is meeting of mind consensus ad idem. This mutual agreement results into a mutual agency, wherein one person represents the other and therefore even if one person commits the offence, it is deemed that all of them have committed the same. It is further pertinent to mention here that for proving common intention, it is essential to prove that there was a meeting of mind.* ***The burden of proving the meeting of minds is on the prosecution. The burden is strict and the court shall not presume anything till proved****.*
>
> ***32. However as far as appellant No. 1 and appellant no. 2 are concerned, there is nothing proved on record by the prosecution***

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that they had any common intention to kill the deceased or that they had any previous knowledge of the fact that the accused was carrying a dagger with him. Merely by uttering words like "bach ke na jaane pave", it cannot be concluded that the appellants were having a common intention with accused to cause death of the deceased*.*

33. In the matter of Sanjeev Alias Sonu & Birender @ Boya v. State of Rajasthan Crl. A. No. 897/2010 Decided On : 24.05.2013, wherein a sudden fight ensued between two groups and on the spur of moment one accused caused a stab injury to the deceased, however prosecution failed to prove that the co-accused share common intention, the division bench of this Court convicted the other co-accused for the offence under section 326 read with Section 34 IPC.

34. In another case of Tirthi Lal v. State of Punjab, Criminal Appeal No. 63-DB of 1996 Decided On : 30.04.1998 (Punjab and Haryana High Court) wherein in a sudden fight hot words were exchanged between the accused and deceased and without any premeditation, co-accused inflicted single knife blow on the body of the deceased, while appellant caught hold of the hands of the deceased. The Court held that the appellant cannot be said to have shared common intention to cause death of the deceased and accordingly he was convicted under section 326 read with section 34 IPC.

35. In the view of the aforesaid, the judgment and the order of the learned Additional Sessions Judge dated 28th August 1998 and 29th August 1998, respectively, convicting the appellants for the offence punishable under Section 302 IPC is modified to the extent that the appellants are convicted under section 326 read with section 34 IPC and accordingly the sentence of life imprisonment imposed upon them by the Ld. trial court is converted to the Sentence of the period already undergone by them*."*

(emphasis supplied)

52. The principle that emerges from these decisions is that even physical participation in the assault does not by itself establish a common intention to

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murder where the fatal blow is dealt by a co-accused with a weapon. Before attributing common intention, the Court must look at the weapon used, the overt acts attributed and the other circumstances of the incident. In each of the above cases, the accused had at least exhorted or caught hold of the deceased, but despite that they were not held vicariously liable for the offence under section 302 IPC, instead they were convicted under section 326 read with section 34 IPC. Similarly, even in the present case, the evidence is completely lacking to attribute any overt act to the Appellant. The case for attributing a common intention to murder is therefore even weaker.

53. Reference may also be had to the decision of the Supreme Court in ***Shri Kishan & Ors. v. State of U.P., (1972) 2 SCC 537***. In the said case, four accused persons had inflicted injuries to the deceased. Apart from the one injury on the head, which proved fatal, the other injuries were not of a very serious nature. The injuries suffered by another injured person were simple in nature. It was not clear from the prosecution evidence as to which one of the accused-appellants inflicted the fatal blow on the head of the deceased. In this factual backdrop, the Hon'ble Supreme Court held that the finding of the High Court in the circumstances go to show that the common intention of the accused was to cause grievance injury to the victim. The fact that one of them exceeded his bounds and gave a fatal blow on the head of the deceased would make him personally liable for the fatal injury, but so far as the other three are concerned, they can be held liable only for the injury which was caused in furtherance of the common intention and not for the fatal injury.

54. Further, it was concluded that as it is not possible from the material on record to find out as to which one of the accused gave the fatal blow, each one of the four accused were held guilty of the offence under Section 325 IPC and

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were sentenced to undergo rigorous imprisonment for a period of five years.

The relevant extract from the said decision reads thus:

> ***"6.*** *There was no previous enmity between the accused-appellants on the one hand and Seru deceased and Sadaphal (PW) on the other. The occurrence was the offshoot of a trifling incident in the nature of a scuffle between two urchins. Nandlal, it appears then went weeping and told his father that he had been beaten by Seru and Sadaphal. The four accused thereupon protested to Seru and Sadaphal for the beating given to Nandlal and also belaboured them with lathis. Five injuries were caused to Seru. Apart from the one injury on the head, which proved fatal, the other injuries were not of a very serious nature. Sadaphal had seven injuries all of which were simple in nature. The prosecution evidence, as observed by the High Court, does not indicate as to which one of the accused appellants inflicted the fatal blow on the head of Seru. As such, none of the accused can be held to be personally liable for the fatal injury. The liability can only be vicarious under Section 34 of the Penal Code, 1860 and, as such, we have to find out as to what was the common intention of the accused in furtherance of which they caused injuries to Seru and Sadaphal. In this context we find that the High Court has arrived at the following finding:*
>
> > *"There could, therefore, be no doubt that the common intention of the appellants was to give a severe beating to Seru and Sadaphal."*
>
> ***The above finding as well as the broad circumstances of the case go to show that the common intention of the accused was to cause grievous injury to the victim. The fact that one of them exceeded 'the bound and gave a fatal blow on the head of the deceased would make him personally liable for the fatal injury, but so far as the other three are concerned, they can be held liable only for the injuries which were caused in furtherance of the common intention and not for the fatal injury. As it is not possible on the material on record to find out as to which one of the accused gave the fatal blow, there is no escape from the conclusion that each one of the four accused can only be guilty of the offence under section 325 read with section 34 Indian***

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> ***Penal Code. We accordingly alter the conviction of each of the accused-appellants from under section 302 read with section 34 Indian Penal Code to that under s. 325 read with s. 34 Indian Penal Code. Each of them is sentenced to undergo rigorous imprisonment for a period of five years on that count.*** *The sentence of rigorous imprisonment for a period of one year awarded to each of the accused under section 323 read with section 34 Indian Penal Code would run concurrently with the above sentence. The appeal is allowed to that extent."*
>
> (emphasis supplied)

55. In the present case as well, the evidence is completely lacking as to who gave the fatal blow.

56. As per the case of the prosecution in the charge-sheet, the knife was seen by the PWs in the hands of the CCL. The recovery of the said knife was also effected from the CCL during his personal search. In the absence of any eye-witness to the actual incident of stabbing, and on the basis of the evidence on record, no finding can be recorded that the stab injury i.e. injury no. 1 which proved to be fatal was inflicted by the Appellant nor there is any evidence on record to show any overt act like holding of hands of the deceased by the Appellant, when the fatal injury was inflicted.

57. Even PW-3 Vinod Kumar Jha in his testimony has only stated to the effect that on 30.01.2021 when the deceased had asked the accused persons not to consume drugs in the vacant plot, they had simply left. In his testimony, he does not speak about any threat to kill the deceased having been extended by the Appellant wherefrom it could be inferred that the Appellant shared a common intention to cause his death.

58. There is only one fatal injury i.e. injury no.1 and there is no evidence to show that the Appellant was carrying any weapon in his hand nor there is

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an iota of evidence to attribute any overt act to the Appellant, therefore, it is also difficult to infer from the evidence that the Appellant shared a common intention to cause the death of deceased Manoj Kumar Jha.

59. However, the fact remains that the Appellant accompanied the CCL, who seems to be carrying a knife in his hand, which definitely establishes that the Appellant shared a common intention of causing grievous hurt by dangerous weapon to Manoj Kumar Jha deceased. The Appellant could, therefore, be held vicariously liable only for an offence under Section 326 read with Section 34 IPC, and not under Section 302 read with Section 34 IPC.

60. The Trial Court, while passing the impugned judgment, however, erred in concluding that the facts established by the prosecution left no hypotheses other than that the Appellant shared a common intention to kill the deceased, Manoj Kumar Jha.

61. We, accordingly, modify the impugned judgment to the extent it convicts the Appellant under Section 302 read with Section 34 IPC, and convict the Appellant for the offence under Section 326 read with Section 34 IPC.

62. The conviction of the Appellant under Section 201 IPC read with Section 34 IPC is upheld, as the prosecution has successfully proved through the testimonies of PW-22, PW-23, and PW-24 that the Appellant burnt his upper clothes to cause the disappearance of evidence and to screen himself from legal punishment. The sentence of 3 years imprisonment and fine of Rs. 1,000/- for the offence under Section 201/34 IPC shall remain undisturbed.

63. A perusal of the Nominal Roll reveals that the Appellant has undergone an actual period of detention of 5 years and 8 months (approx.). Thus, the

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sentence awarded for offence under Section 201/34 IPC, which was directed to run concurrently, has already been served by the Appellant.

64. For the conviction under Section 326 read with Section 34 IPC, the sentence for the period already undergone, according to us, will serve the ends of justice. Ordered accordingly.

65. The appeal is, therefore, partly allowed to the extent indicated above. The pending applications, if any, also stand disposed of.

66. The Appellant shall be released forthwith, if not required in any other case.

67. A copy of this judgment be transmitted to the concerned Jail Superintendent for necessary information and immediate compliance.

68. Order to be uploaded on the website of this Court forthwith.

VIKAS MAHAJAN
JUDGE

PRATHIBA M. SINGH
JUDGE

OCTOBER 28, 2026
aj/jg