

**In the Court of Sh. Ashwani Kumar Sarpal, Principal District &
Sessions Judge, East District, Karkardooma Courts, Delhi.**

(SC no. 239/2021)

State vs. Rahul

FIR no.- 777/2015

Under Section- 307 IPC

Police Station- Mayur Vihar

Date of institution-----26.06.2020

Date of decision-----28.04.2026

JUDGMENT:-

- 1) In this case under Section 307 IPC, accused Rahul was arrested on 01.12.2015 and released on bail on 10.12.2015. He was taken in custody on 24.02.2023 again as absented from court and released on fresh bail on 28.02.2023. The chargesheet in this case was filed on 26.06.2020 before Magistrate Court and committed to Sessions Court on 09.04.2021. Charge under Section 307 IPC was framed against the accused on the basis of prosecution

allegation to which he pleaded not guilty.

- 2) It is alleged by the prosecution that on 01.12.2015 on receipt of DD no. 4A, IO ASI Mahavir Singh alongwith Ct. Anees reached at spot i.e. road near Gurudwara, Block no. 36, Trilok Puri, Delhi, where crowd was present there and motorcycle bearing no. DL-7S-BM- 8269 and car bearing no. UP-14-BJ-6606 were found in accidental condition. The motorcycle rider namely Kamal Kishore and car driver namely accused Rahul were also present there. Statement of complainant Kamal Kishore was recorded by IO ASI Mahavir Singh, wherein he stated that on 01.12.2015 at about 12.20 a.m., he was going to his second house Neem ka Gharoda, Harijan Basti, Patpargaj, Delhi on his motorcycle bearing no. DL-7S-BM-8269 and when he reached a little ahead of Gurudwara at Gurudwara Road at around 12.20 a.m., the driver of car no. UP-14-BJ-6606 came from behind in his car and hit his motorcycle due to which he was thrown and fell down at some distance, whereas car dragged his motorcycle for a long distance. Car driver tried to run away but car hit the Pulia of Pocket-3 and stopped. Public persons caught the driver and started beating him.

As soon as he saw the driver, he recognized him being the accused Rahul who was having an affair with his fiancée Neetu with whom complainant is residing in a live in relationship. It is also stated by complainant that few days before Diwali, he saw both of them hugging each other at Neetu's brother's house and he had threatened both of them and since then accused developed grudge against him. Complainant however did not receive any injury in this incident. On basis of this statement, IO got FIR registered and after completion of investigation, the chargesheet was filed in court.

- 3) In order to prove its case, prosecution examined total 08 witnesses and dropped one eye witness Durga Singh on the ground that another eye witness PW-3 has already proved the facts of the case, whereas accused also examined himself in defence. I have heard Addl. PP for State and counsel for the accused and gone through the record.
- 4) PW-1 Kamal Kishore is the complainant and main witness of

prosecution. He in his testimony virtually repeated the same facts which are mentioned above as reported in his complaint, culminated into FIR without any much deviation or change. PW-5 Taslimuddin Siddiqui, Government Approved Surveyor and Loss Assessors after inspection of motorcycle and car in question on 03.12.2015 at the request of IO submitted reports Ex. PW5/A and Ex. PW5/B respectively. According to him, both the vehicle were in off road condition with the fresh damages mentioned in his detailed reports. He also identified photographs of both damaged vehicles Ex. PW1/F and Ex. PW1/G. Non remembering the fact whether IO made oral request or made any written request for examination of these vehicles through him is immaterial, when he clearly disputed that he prepared false and fabricated reports. Photographs of both vehicles which remained undisputed in testimony of all witnesses clearly indicates that reports given by this witness is correct. PW-6 HC Rajesh Kumar proved Malkhana register Ex. PW6/A containing entries of deposit of damaged motorcycle and car in question in Malkhana on 01.12.2015 by the IO as well as articles recovered from the personal search of accused Rahul. PW-8 HC Narendra Kumar working as duty

officer simply recorded DD no. 4A Ex. PW7/A and FIR Ex. PW8/A on receipt of rukka, made endorsement on rukka Ex. PW8/B and proved issuing of certificate U/s 65-B Indian Evidence Act Ex. PW-8/C.

- 5) PW-3 Anil Kumar is an eye witness of the incident who used to ply TSR. Initially he did not remember the exact date but stated that it was month of December, 2015 and winter season and he used to ply auto in night. He stated that he was present at TSR stand alongwith his TSR at 36 Block, Trilokpuri, near Gurudwara and saw that one TATA Manza Car alongwith driver was standing at the gate of Gurudwara. At about 12 midnight, driver of TATA Manza car came at high speed and hit hardly one motorcycle from behind and dragged motorcycle to a long distance. He also stated that motorcycle driver after hit fell down on side after thrown away at some distance and thereafter the driver of the car fled away from there. PW-3 also stated that after travelling some distance, the car hit against Pulia near Mayur Vihar, Market-3 and thereafter stopped. Then, the driver of the car tried to fled away. PW-3 alongwith other TSR drivers caught the car driver after

chasing him and he alongwith other TSR drivers had beaten the accused. Someone from the crowd made a call at 100 number. Police came there and accused was handed over to the police. Though, PW-2 did not remember the registration number of the car but specifically stated that the driver of the car who was waiting for motorcyclist had deliberately hit the motorcyclist with intention to kill him. This witness even identified the car driver in court being the accused as well as photographs of damaged motorcycle and car in question which are Ex. PW1/F and Ex. PW1/G. At last he remembered the exact date of incident. No doubt, this witness PW-3 admitted in his cross examination that he knew complainant PW-1 for the last about 8-10 years but denied the suggestion of the accused that complainant had hit the car of the accused. PW-3 was standing at a distance of about 5-6 meters from the spot. He denied that he used to wear spectacles at the time of incident. His statement was recorded on the same day of incident at the spot and thereafter, he never met police nor visited PS. He denied that he was deposing falsely at the instance of complainant as he was known to him. No ground exists to reject the testimony of this independent eye witness as except

putting some suggestions, no effective cross examination was done on behalf of accused.

- 6) Complainant PW-1 also stated in his testimony that when he saw the driver of the car, he found that he was accused Rahul who was friend of his brother-in-laws, namely, Deepak and Rinku who are brothers of his wife Neetu. PW-1 also identified the accused in court correctly. It means this witness PW-1 knew the accused earlier and thus there is no dispute of any identity. Accused even in his defence while appearing as DW-1 also admitted that he knew the complainant as they were friends at one time. Thus, from testimony of an eye witness PW-3 coupled with the statement of complainant PW-1 clearly proves the case against the accused that he had hit the motorcycle from behind with his car intentionally in order to kill the complainant. There was no requirement to get TIP of accused done from these two witnesses lateron during investigation as PW-3 himself along with others had caught the accused who was trying to run away from the spot and gave him beatings and then handed over him to police whereas complainant PW-1 admittedly knew the accused much

prior to the date of incident. Identification of accused by PW-3 in court after the date of incident cannot be seen as doubtful in the present facts and circumstances. Testimony of eye witness PW-3 also inspires confidence as he clearly admitted that he had given beatings to the accused after catching him at the spot and did not try to exonerate himself in any manner. No doubt, IO PW-7 admitted in his cross examination that complainant PW-1 Kamal Kishore is also a B.C. of area of Mayur Vihar but this fact does not make him unreliable person.

- 7) PW-1 in his testimony alleged that in this incident he had suffered minor injuries as he fell down on one side, though in the complaint Ex. PW1/A, he has stated that he did not suffer any injury. Admittedly, no medical examination of the complainant PW-1 was conducted. It is a judicial noticeable fact that normally in case of minor injuries, no one generally bother too much and thus this fact whether PW-1 suffered minor injuries or no injury is an immaterial fact.
- 8) Regarding motive to commit offence, PW-1 specifically stated that accused Rahul used to visit at his home and once he noticed

his wife Neetu in objectionable position with the accused and he scolded both of them. Thereafter, accused became his enemy and due to it, he tried to kill him on that day of incident by hitting his car against his motorcycle. PW-2 Smt. Neetu also deposed same thing and stated that she was married with complainant PW-1 and was having close friendship with the accused Rahul and one day her husband PW-1 came to know about the same who scolded her and also threatened accused to keep distance with her. PW-2 stated that thereafter, she stopped talking with accused but he was continuously trying to talk to her and to meet her. She also deposed that accused used to say that either he would die or he would kill her husband i.e. PW-1. Infact from her testimony, the motive on the part of the accused to attempt to kill complainant is clearly established. She has even specifically stated the exact words of threats to kill complainant PW-1, as used by the accused which were not denied at all in her cross examination. Even nothing was put in the cross examination of this witness PW-2 that accused was not having any relations with her. Thus, from the testimony of PW-1 and PW-2, the motive on the part of the accused to commit offence is proved. Statement of PW-2 cannot

be rejected as she infact deposed about her own some illegal conduct and relationship and it requires courage to openly tell secrets of life and only honest person can do so. Even PW-1 also handed over 12 photographs to the IO in which his wife Neetu is seen in the company of accused and some of photographs Ex. PW1/H showing hugging and kissing clearly leads to the inference that there was no simple friendship between them but it was more than it. Otherwise also, accused admitted not only in the cross examination of PW-1 but also in his statement u/s 313 Cr.P.C. and in his own testimony while appearing as DW-1 that he was having some friendship with the Neetu. Hence, prosecution is able to establish motive on the part of the accused to commit the offence because complainant PW-1 had not liked the relationship of accused with his wife Neetu.

- 9) According to PW-1, when police officials had reached at the spot, then some public persons had handed over the accused to them in his presence who was formally arrested and his personal search was also conducted. Even public persons had given beatings to the accused when he was apprehended at the spot and lateron his

medical examination was also conducted. Accused has nowhere denied these facts in the cross examination of complainant PW-1 or eye witness PW-3 or IO PW-7. Thus, it is clear that some public persons were there at the time of incident. Prosecution has already examined one eye witness of the incident as PW-3 and dropped another one being unnecessary. The incident had happened on the road at midnight and Kali Temple, Gurudwara and Baratghar situated near the spot were already closed at that time. Hence, non joining of any priest, chowkidar or any other person from temple or Gurudwara is not fatal to the prosecution case. No Petrol Pump is shown in site plan Ex. PW7/D by the IO as it was situated at a distance of about 500 meters away the spot. Mere fact that PW-3 eye witness was earlier known to the complainant is not a ground to hold that he is an interested witness when nothing substantial has come on record in his cross examination to presume that he was not telling correct facts. Accordingly, non joining of all public witnesses who were present at the spot is not material thing as it was not necessary for the prosecution to examine all persons found in crowd in evidence. Examination of one independent witness when inspire confidence

is sufficient for proving the case as court has to see the quality of testimony of witness and not quantity.

- 10) PW-1 not only identified the accused in court but also identified the photographs of both seized vehicles. Photographs of motorcycle Ex. PW1/F clearly shows that it had suffered much damages as the same was dragged by car to a long distance. Condition of bumper of the car as shown in photographs Ex. PW1/G also point out that car had hit motorcycle with force and prosecution version that motorcycle was dragged for long distance appears to be correct. Thus, the conditions of both the vehicles clearly shows that accused being car driver was having intention to kill the complainant PW-1 but he was saved fortunately as he was thrown on one side and car continued to drag the motorcycle for long distance. There was a clearcut case where accused had intention to kill the complainant PW-1.
- 11) There is a dispute what exact relationship was between complainant PW-1 Kamal Kishore and PW-2 Neetu. PW-1 in his cross examination stated that Neetu was even his wife at the time of incident but could not explain how the word *Mangetar*

(Fiancée) came in his complaint Ex PW1/A. This absence of explanation itself is not sufficient to hold that he is an unreliable witness. From the cross examination of PW-1, it has come on record that before marrying Neetu, he was already having living wife namely Shakuntala and one son, who were still living with him. PW-1 though stated that he married to Neetu in 2006 but did not remember the date and month of her marriage nor was having any registration certificate on the ground that it was lost. In her cross examination, PW-2 stated that she did not remember the date and month of her marriage as they never celebrated their anniversary. She also stated that her marriage was solemnized in a temple in Mayur Vihar though prior to that they were living together without any marriage. She also admitted in her cross examination that she was aware of the fact that complainant was already married. This witness infact deposed about her own improper conduct and marrying a man who was already married and lived with him in live in relations, so simple fact that in her statement u/s 161 Cr.P.C. Mark-A, she did not mention the name of PW-1 being her husband and instead stated that she was living in live-in relations with PW-1 even at the time of incident itself is

not sufficient to discard her testimony. IO PW-7 stated that he inquired Kamal Kishore and Neetu in regard to their marital status to which they disclosed that they were residing together in live in relations and not married to each other. Even if for the sake of arguments, it is presumed that Neetu was not legally wedded wife of PW-1 or they were living together in live in relations or their alleged marriage took place not as per law, still that will not make these witnesses unreliable. Contradictions whether Neetu is second wife of PW-1 or simple fiancée itself is not a ground to reject his testimony especially when no effective cross examination was done in respect of incident itself except giving of some suggestions which were disputed by him. Furthermore, this witness PW-1 cannot be disbelieved merely on the ground that he did not remember the exact date or month, when he saw accused with my wife Neetu but he approximately gave date around Diwali festival of 2015. Non remembering of the exact date at the time of recording his statement after about 8 years in court does not make him unreliable witness.

- 12) Taking of contradictory defence by accused at different stages

infact makes the prosecution story more stronger. Accused in the cross examination of PW-1, has given a defence suggestion (which is denied by this witness) that he was having good relations with accused and they used to spent time together regularly and on the day of incident, PW-1 called accused at the spot where they enjoyed a party along with friends of PW-1 and lateron accused was falsely implicated in this case as he was having friendship with Neetu. In the cross examination of PW-3, suggestion is given that complainant had hit his motorcycle against the car of the accused. However, in his statement u/s 313 Cr.P.C., accused stated that complainant PW-1 was his friend but there was a dispute between him and PW-1 with regard to Neetu. He also stated that complainant called him at his shop from where they reached at the spot where motorcycle of the complainant was already parked. Complainant was driving the car and himself hit his motorcycle and then smashed the car against Pulia. He denied hitting motorcycle with his car. Accused Rahul while appearing as DW-1 deposed that complainant Kamal Kishore PW-1 was his friend and was acquainted with him very well since 2012-2013. They used to meet on regular basis. PW-1 Kamal Kishore used to

run a shop at Trilok Puri. One lady namely Neetu used to visit at the shop of Kamal Kishore. He met Neetu at the shop of PW-1 Kamal Kishore and they became close friends. Due to friendship, PW-1 Kamal Kishore became jealous. However, he did not tell him anything. He called him at Trilok Puri on his shop in 2015. They had tea together and talked to each other. Thereafter, he sought permission of Kamal to leave as he become late. He sat in his car. Meanwhile, PW-1 Kamal Kishore requested him to drop him at the 'place of incident' on the pretext that his motorcycle was stationed there. Complainant PW-1 also requested him to let him drive his car so accused handed over keys of his car to complainant who sat on the driving seat. Thereafter, complainant drove the car to the 'place of the incident' and accused was sitting with him in his car. When they reached at the 'place of incident', he drove and collided his car into his motorcycle, which was stationed at the spot. Accused asked PW-1 Kamal Kishore why he had caused damage to his own motorcycle and asked him to stop the car at a side, but complainant did not stop the car and drove and rammed his car into Pulia at the side of the road. PW-1 Kamal Kishore came out from the car and suddenly started

shouting “Bachao Bachao”. Accused also came out from the car and asked complainant why he is shouting. Suddenly 8-10 persons, who were already present at the spot, surrounded him. They were friends of PW-1 Kamal Kishore and they had already present at the spot as per their plan who all started beating him. Someone informed the police in between and police officials reached at the spot. Accused tried to explain his situation to the police officials but they did not pay heed on the same. Thereafter, he has been falsely implicated in this case. DW-1 admitted that he did not give any complaint to the police against PW-1 at any time for his alleged false implication. The defence story which is going against different type of contradictory suggestions given to prosecution witnesses is liable to be rejected as there is no hesitation to say that accused had fabricated a false story in order to create false defence and to mislead the court. in view of the above, testimonies of PW-1 to PW-3 have proved beyond doubt the guilt of the accused and contradictory defence version raised from time to time have made accused DW-1 as an unreliable person.

- 13) PW-4 HC Mohd Anis Khokhar and PW-7 IO SI Mahavir Singh both deposed identical facts that on 01.12.2015, at about 12.20 a.m. on receipt of DD no. 4A Ex. PW-7/A, they reached at the spot where victim/complainant met them. One motorcycle and car were found in accidental condition at the spot. IO PW-7 recorded statement of complainant, prepared rukka and handed over to PW-4 for registration of FIR who reached at police station, got the FIR registered and returned back at the spot and handed over the copy of FIR alongwith the rukka to the IO PW-7. They also stated that when they reached at the spot, the driver of the car namely accused Rahul was also present over there as he was apprehended by the public persons. Thereafter, IO PW-7 seized the motorcycle and car vide seizure memos Ex. PW1/D and Ex. PW1/E, accused was arrested vide arrest memo Ex. PW1/B and his personal search was conducted vide memo Ex. PW1/C upon which PW-4 also signed. IO PW-7 also prepared the site plan at the instance of the complainant which is Ex. PW7/D. Lateron, both motorcycle and car along with the accused were taken to the PS. IO also proved some other aspects of the investigation regarding seizure of some photographs from complainant PW-1,

obtaining inspection reports of both vehicles etc. From the cross examination of both these two police witnesses, nothing material has come on record to doubt their veracity or to presume that investigation done was unfair. Even in their cross examination on number of identical questions put, no difference or contradiction came on record regarding timing when they reached at the spot, by which vehicle they reached there, what was approximate distance between the spot and police station, at what time accused was arrested, at what time PW-4 left spot for police station for registration of FIR and when came back at the spot with copy of FIR etc. Thus, both these police officials have proved different aspects of investigation without any hint of false implication of the accused or conducting unfair investigation.

- 14) Simple fact that PW-4 could not tell the name of two public witnesses who had apprehended the accused at the spot and handed over him to IO is not so serious fact because it is a fact that prosecution examined eye witness/public witness PW-3 and dropped another eye witness being repetitive in nature. Some minor confrontation appearing in statement of PW-4 when

confronted with his statement u/s 161 Cr.P.C. regarding presence of public witness is highly immaterial. Statement of this witness PW-4 was recorded in court after about 8 years of incident, so non remembering of some immaterial facts by him is natural such as whether he had taken the accused to hospital for medical examination or not and at what time his medical examination was conducted.

- 15) Disclosure statement of the accused Ex. PW7/C recorded by IO is inadmissible in evidence so cannot be read. IO specifically denied conducting unfair investigation or prepared site plan while sitting in the PS. Mere fact that he did not supply copy of the MLC of the accused to him itself is not sufficient to disbelieve the IO PW-7. He stated that he gave information of arrest to Smt. Raj Bala, the mother of the accused through telephone but did not remember the telephone/mobile number of mother of accused. He stated that as per arrest memo, he gave information to the mother of accused on her mobile no. 9717584816 and same number is mentioned on arrest memo of accused Ex. PW1/B but denied the fact that this mobile number was recovered from the possession

of accused at the time of his arrest. He denied making overwriting at the time of arrest mentioned in the arrest memo. According to IO PW-7, statement of Neetu Ex. PW7/DA was written by Ct. Anees under his supervision which fact was not mentioned in the case diary. Non signing of this statement by Ct. Anees is not so relevant. Similarly, non mentioning of the date of recording of this statement of Neetu u/s 161 Cr.P.C. under his signature is also not material fact. IO stated that he had asked PW-4 Ct. Anis to take the accused to hospital but MLC does not mention his name and even PW-4 showed ignorance that he has no knowledge who had taken the accused to hospital. PW-4 in his statement u/s 161 Cr.P.C. mentioned that no public witness was present at the spot but according to IO PW-7 public witnesses were there. Such type of immaterial, minor contradictions are not affecting the case on merits especially when statement of complainant and eye witness are reliable and no effective cross examination of them was done. Even if PW-4 recorded the statement of Neetu u/s 161 Cr.P.C. under the supervision of IO, then that is not serious flaw in investigation to hold that it was unfair. Status of complainant being BC of area is no ground that his testimony is also incorrect.

16) In view of above discussions, it is hereby held that there is no ground to disbelieve the testimonies of complainant PW-1 and eye witness PW-3. Accused was waiting near the spot in his car and intentionally hit his car with the motorcycle of the complainant from behind when it approached there and then instead of stopping dragged motorcycle for a long distance. Unfortunately, accused could not escape as his car struck against Pulia and stopped. He was caught at the spot by public person and eye witness PW-3 clearly proved that intention of the accused was to kill the complainant PW-1. Thus, prosecution has proved the case beyond doubt, so accused is convicted under Section 307 IPC. Let he be heard on point of sentence.

Dt- 28.04.2026.

(Ashwani Kumar Sarpal)

Principal District & Sessions Judge

East District, Karkardooma Courts, Delhi.