

**IN THE COURT OF SHRI PUNEET PAHWA
SPECIAL JUDGE (NDPS)/ADDITIONAL SESSIONS JUDGE/
NORTH EAST DISTRICT KARKARDOOMA COURTS
DELHI**

**SESSIONS CASE NO. 275/2022
CNR No. DLNE01-002871-2022**

STATE	Versus	(1). NAUSHAD S/o Sh. Chhotey Khan R/o E-16/A-44, T-Huts, New Seelampur, Delhi.
		(2). KAMRUDDIN S/o Mohd. Yasin R/o. E-16/A-57, T-Huts, New Seelampur, Delhi.

FIR No.	:	601/2022
PS.	:	New Usmanpur
U/s.	:	302/34 IPC

Chargesheet Filed On	:	12.09.2022
Judgment Reserved On	:	20.05.2026
Judgment Announced On:		02.06.2026
Decision	:	ACQUITTAL

JUDGMENT:

1. In the present case, on receipt of information vide DD No. 132-A, SI Dev Kumar alongwith HC Ranbir reached at open ground of waste scrap of wire, near CNG Pump, Shastri Park, Delhi, where, they came to know that injured was taken to JPC hospital. Crime team was called at the spot and exhibits were lifted. Thereafter, SI Dev Kumar and Ct. Ranbir reached at JPC hospital, where, SI Dev Kumar collected the MLC of the injured Javed, wherein, patient was brought to the casualty with alleged history of 'physical

assault by two neighbours' and 'brought dead' were mentioned. FIR was registered u/s. 304 IPC. The dead body of the deceased was sent to the Mortuary of GTB hospital. During investigation, site plan was prepared. Exhibits were lifted from the spot. Deceased was identified as Javed S/o. Habib by his relative namely Shaukeen S/o. Md. Hasan. After interrogation, both the accused persons, namely, Kamruddin and Naushad were arrested. During course of investigation, PM report was received. As per the PM report, the cause of death is opined as 'Haemorrhagic shock as a result of antemortem injury to abdomen produced by blunt force impact'. On the basis of PM report, Sec. 302 IPC was invoked in the present case. After completing the investigation, chargesheet u/s.302/34 IPC was filed against both the abovenamed accused persons.

2. During trial, on dated 06.12.2022, charge under sections 302 r/w. Sec. 34 IPC was framed against both the accused persons, namely, Kamruddin and Naushad.

3. To prove the abovesaid charge against the accused persons, the prosecution examined as many as 14 witnesses.

PROSECUTION EVIDENCE

4. **Sh. Nadeem** has been examined as **PW-1**. He deposed that deceased Javed was his Jija. On 31.05.2022 at about 7:30 PM, when he was present in an open plot at Usmanpur area, where, he had gone to throw the waste material, one boy informed him about the death of his Jija, namely, Javed near JPC hospital. He immediately reached at

JPC hospital, where doctor informed him that Javed had already expired. He also deposed that after postmortem, the dead body of Javed was handed over to his family members in GTB hospital.

5. He identified his signature at points A on various documents i.e. complaint Ex.PW1/A; site plan dated 01.06.2022 Ex.PW1/B; statement dated 07.06.2022 Ex.PW1/D; and the seizure memo of sleepers dated 31.05.2022 Ex.PW1/E. He also correctly identified the accused persons in the court, as they lived near his house, but he did not depose anything incriminating against any of the accused persons and had turned hostile. He was cross-examined by Ld. Addl. PP for the State. He even denied any enquiry having been made from him by the police.

6. **Smt. Salma** has been examined as **PW-2**. She was wife of the deceased Javed and deposed that on 31.05.2022 at about 8:30 PM, she was present at her house. One boy had informed her that her husband Javed was lying in the field. Thereafter, she rushed to the house of her father and saw that one boy was carrying her husband on his shoulder. Her husband was made to lay on a cot. She also deposed that the doctor, who was living adjacent to her father's house had checked her husband and confirmed that he had already died. Someone had told her that accused Naushad and Kamruddin had beaten her deceased husband.

7. She further deposed that after postmortem in the GTB hospital, the dead body of Javed was handed over to her and she took the body of her deceased husband at Khanpur,

Bulandshehar, U.P. for last rites. She also correctly identified the accused persons in the court.

8. It is worth noticing that PW-2 did not fully support the case of the prosecution at the time of her examination in chief and she also denied any enquiry having been done from her by the police. But when she was cross-examined by Ld. Addl. PP for the State, she, to some extent, deposed against both the accused persons. She admitted that Sameer, son of accused Kamruddin had threatened her to kill her and her son, in case, she deposes against accused Kamruddin. She further admitted that she resiled from her previous statement because relatives of both the accused had threatened her.

9. **Smt. Shahjahan** has been examined as **PW-3**. She deposed that on the date of incident, at about 7:00 PM, she had gone to the fields situated at Shastri Park, Delhi for calling back her son Umer, when she saw that crowd had gathered there and two persons were beating another person and those two persons were in inebriated condition. She also deposed that after giving beatings, both the said persons threw the said person upon the garbage in a garbage dump. Later on, she came to know the said two persons had killed that person. Since, she had also not fully supported the case of the prosecution, she was also cross-examined by the Ld. Addl. PP for the State, as she could not identify the accused persons to be the same persons who were beating the deceased. Even, in her cross-examination, she did depose about the alleged incident of beatings being given by the two persons to another

person, but she did not depose anything incriminating against the present two accused persons and again failed to identify them. Infact, in her cross-examination by the counsel for the accused, she very categorically stated that the two accused persons were not present at the place of occurrence.

10. **SI (Retired) Jagbir Singh** has been examined as **PW-4**. He deposed that in the intervening night of 31.05.2022/01.06.2022 at about 1:20 AM, he got the present FIR registered u/s. 304 IPC and sent the copy of FIR and original Tehrir to Insp. Prabhanshu. He proved the copy of FIR, as Ex.PW4/A; certificate u/s. 65-B Indian Evidence Act, as Ex.PW4/B; and endorsement on the Tehrir, as Ex.PW4/C.

11. **Sh. Shokeen** has been examined as **PW-5**. He has deposed that about 1½ years ago on 31st May at about 8:00-8:30 PM, when he was sitting in his shop, he was informed about lying of his son-in-law Javed on the garbage of Pikkas in front of CNG Pump, Shastri Park. Thereafter, he shut down his shop and reached at the said place, where, he found that 3-4 boys of his mohalla were bringing his son-in-law Javed on a cot. He also deposed that the said boys told him that Naushad and Kamru had killed his son-in-law Javed. Thereafter, police came at the spot and took Javed to JPC hospital, where, Javed was declared dead.

12. He has further deposed that postmortem of the body of Javed was conducted in the GTB hospital, where, after postmortem, he had identified the dead body of Javed. He proved his statement regarding identification of the dead body of Javed, as Ex.PW5/A. He also correctly identified the

accused persons in the court. He was also cross-examined by Ld. Addl. PP for the State as well as by Ld. Counsel for the accused persons.

13. **HC Lokender Singh** has been examined as **PW-6**. He has deposed that on 07.06.2022, on the instruction of Insp. Prabhanshu, he went to the GTB hospital and brought the inquest papers and postmortem report of deceased and handed over the same to the IO.

14. **HC Ranbir** has been examined as **PW-7**. He has deposed that on 31.05.2022, on receipt of DD No. 132A, he alongwith SI Dev Kumar had reached at the spot, but, no eyewitness met them. He came to know that one Javed was taken to JPC hospital. Thereafter, he went to the JPC hospital, where, he came to know that Javed was declared as brought dead by the doctor. He also got the dead body of Javed preserved at GTB hospital. Even, he had resiled from his previous statement and was cross-examined by Ld. Addl. PP for the State as well as Ld. Counsel for the accused persons.

15. **ASI Mahender Singh** has been examined as **PW-8**. He has deposed that on 31.05.2022, he alongwith photographer HC Ajit and other team members had reached at the spot and inspected the scene of crime. He proved his scene of crime report, as Ex.PW8/A.

16. **Sh. Ankit Gupta** has been examined as **PW-9**. He has deposed that on 31.05.2022, he was posted as CMO, JPC Hospital. On that day, he had examined one patient Javed and declared him brought dead. After examination, he had also prepared MLC No. 21274/22 regarding examination of Javed

and proved the same, as Ex.PW9/A.

17. **Dr. Tarun Kumar Singh** has been examined as **PW-10**. He has deposed that on 01.06.2022, he was working as Sr. Resident at UCMS and GTB hospital, on that day, he conducted autopsy on a dead body and prepared detailed report Ex.PW10/A. He has also deposed that on 23.08.2022, he had given subsequent opinion as per the query raised by the IO and proved the same, as Ex.PW10/B.

18. **ASI Ajeet Singh** has been examined as **PW-11**. He has deposed that on 31.05.2022, he was posted as Photographer at Mobile Crime Team and on that day, on receipt of information, he alongwith ASI Mahender reached at the spot, where, he had taken 12 photographs of scene of crime from different angles from his digital camera. He proved the said photographs as Ex.PW11/A (colly.), as well as the certificate u/s. 65-B Indian Evidence Act, as Ex.PW11/B.

19. **Sh. Mahesh Kumar (Retired ACP)** has been examined as **PW-12**. He has deposed that on 05.07.2022, he was posted as ACP Draughtsman. On the day, he had reached at the spot and took measurements of the scene of crime and prepared rough notes at the instance of Insp. Prabhanshu Kumar. He has also deposed that on 02.08.2022, on the basis of rough notes and measurements, he had prepared scaled site plan and proved the same as Ex.PW12/A.

20. **Insp. Prabhanshu Kumar** has been examined as **PW-13**. He has deposed that on 01.06.2026, after receiving the case file, he had reached at the spot and prepared site plan (Ex.PW1/A) at the instance of complainant Nadeem.

Thereafter, he reached at the mortuary of GTB hospital and prepared request (Ex.PW13/A) for postmortem of the deceased Javed. He also proved Form No. 25.35(1)(B), as Ex.PW13/B and the identification statement of Nadeem with respect to dead body of deceased Javed, as Ex.PW13/C. He has also deposed that on the same day, accused Naushad was arrested, vide arrest memo Ex.PW13/D. His personal search was conducted, vide personal search memo Ex.PW13/E. After interrogation, his disclosure statement was also recorded, vide Ex.PW13/F. He also prepared pointing out memo of the scene of crime at the instance of accused Naushad and proved the same as Ex.PW13/J.

21. PW-13 has also deposed that on 23.08.2022, he had submitted an application regarding subsequent opinion for cause of death in the Department of Forensic Medicine, UCMS, GTB hospital and proved the same, as Ex.PW13/K. After completion of the investigation, he had prepared the chargesheet and submitted before the concerned Court.

22. **SI Dev Kumar** has been examined as **PW-14**. He has deposed that on 31.05.2022, on receipt of PCR Call, vide GD No. 132A, he alongwith HC Ranbir reached at the spot, where, he came to know that injured Javed had been shifted to JPC hospital. Thereafter, he alongwith HC Ranbir reached at JPC hospital and collected the MLC of Javed, who was declared as brought dead, as per the said MLC. He has also deposed that thereafter, he had prepared a letter for preservation of the dead body of Javed at the mortuary of GTB hospital. He proved the carbon copy of the said letter, as

Ex.PW14/A. On the basis of statement of complainant Nadeem, he had prepared rukka Ex.PW14/B and got the present FIR registered through the Duty Officer. He also identified the red colour pair of slipper of deceased, which was seized by him, in the photographs pasted on 3rd page and 4th page (Ex.PA & PB).

23. All in all, the prosecution has relied upon the following documentary evidences:-

Exhibit No.	Description of Exhibit	Proved/Attested by
Ex.PW1/A	Statement of complainant	PW-1 Nadeem
Ex.PW1/B	Site plan without scale dated 01.06.2022.	
Ex.PW1/C	Supplementary statement of the complainant regarding preparation of site plan.	
Ex.PW1/D	Supplementary statement of the complainant 07.06.2022.	
Ex.PW1/E	Seizure memo of sleepers dated 31.05.2022.	
Ex.PW4/A	Copy of FIR No. 601/2022.	PW-4 SI (Rtd.) Jagbir Singh
Ex.PW4/B	Certificate U/s. 65-B Indian Evidence Act regarding registration of FIR.	
Ex.PW4/C	Endorsement on the Tehrir.	
Ex.PW5/A	Statement of Shokeen regarding identification of the dead body of the deceased.	PW-5 Sh. Shokeen
Ex.PW8/A	Crime Scene Report.	PW-8 ASI Mahender Singh
Ex.PW9/A	MLC No. 21274/22 of patient Javed.	PW-9 Dr. Ankit Gupta
Ex.PW10/A	PM report of deceased Javed.	PW-10 Dr. Tarun

Ex.PW10/B	Subsequent Opinion.	Kumar Singh
Ex.PW11/A	12 photographs pasted on 4 papers of scene of crime.	PW-11 ASI Ajeet Singh
Ex.PW11/B	Certificate U/s. 65-B Indian Evidence Act.	
Ex.PW12/A	Scaled Site Plan dt. 05.07.2022.	PW-12 Sh. Mahesh Kumar (Rtd. ACP)
Ex.PW13/A	Request for postmortem of deceased Javed.	PW-13 Insp. Prabhanshu Kumar
Ex.PW13/B	Form No. 25.35(1)(B).	
Ex.PW13/C	Statement of Nadeem regarding identification of the dead body of the deceased.	
Ex.PW13/D	Arrest memo of accused Naushad.	
Ex.PW13/E	Personal search memo of accused Naushad.	
Ex.PW13/F	Disclosure statement of accused Naushad.	
Ex.PW13/G	Arrest memo of accused Kamruddin.	
Ex.PW13/H	Personal search memo of accused Kamruddin.	
Ex.PW13/I	Disclosure statement of accused Kamruddin.	
Ex.PW13/J	Pointing out memo of scene of crime.	
Ex.PW13/K	Application regarding subsequent opinion for cause of death.	
Ex.PW14/A	Carbon copy of letter for preservation of the dead body of deceased Javed.	PW-14 SI Dev Kumar
Ex.PW14/B	Rukka.	
Ex. PA	Photographs pasted on 3 rd	

	page which depicted red colour pair of slippers of the deceased.	
Ex. PB	Photographs pasted on 4 th page which depicted red colour pair of slippers of the deceased.	

STATEMENT OF ACCUSED

24. All the incriminating circumstances appearing in evidence against both the accused were put to them as required u/s 313 CrPC. Both the accused persons stated that IO did not conduct the investigation in fair manner. They have nothing to do with the alleged offence. They were falsely implicated in the present case. Accused persons did not opt to examine witnesses in their defence.

SUBMISSIONS OF THE PARTIES

25. I have heard counsel for the accused persons and Ld. Addl. PP for the State.

26. Sh. F. M. Ansari, learned Addl. PP for the State has submitted that all the witnesses including the public witnesses have supported the case of the prosecution to the extent that all the essential ingredients of the offences against both the accused persons have been duly proved. He has contended that even though the material witnesses have turned hostile, but when they were cross-examined by Ld. Addl. PP for the State, they supported the case of the prosecution and thus, the charge against both the accused persons has been proved beyond reasonable doubt, therefore, both the accused persons are liable to be convicted in the present case for committing the offence punishable u/s. 302 r/w. 34 IPC. Ld. Addl. PP for the

State further argued that PW-2 Salma had admitted that she was threatened by the relatives of the accused persons, that is why, she resiled from her previous statement, which explains the circumstances in which she turned hostile and thus, that part of her testimony, where she supported the case of the prosecution can still be relied upon.

27. On the other hand, Ld. Counsels for both the accused has argued on the contrary. They have submitted that the evidence on record is not sufficient enough to prove the guilt of the accused persons beyond reasonable doubt so as to bring home their guilt within the definition of murder, as per Sec. 300 IPC. Accused persons neither had any intention nor knowledge to commit the offence of murder. Even their identities remained disputed. Ld. Counsels have also submitted that all the public witness did not fully support the case of the prosecution, as there are several contradictions in the depositions of the public witnesses examined by the prosecution. Having been turned hostile, the prosecution witnesses lost all their credibility and thus, their testimonies cannot be looked into for any purpose and the accused persons are entitled to be acquitted.

28. I have considered the rival submissions, put forth by both the sides.

FINDINGS

29. Both the accused persons, namely, Naushad and Kamruddin have been charged for committing the offence u/s. 302/34 of IPC for committing murder of deceased Javed S/o Habib, by way of beating with picus (like danda) and fist blows.

30. To prove it's case, the prosecution has examined 14 witnesses, out of which, 04 witnesses are public witnesses

(including the complainant) and remaining are either formal or official in nature. The depositions of PW-1 Nadeem, PW-2 Salma, PW-3 Smt. Shahjahan and PW-5 Shokeen are most crucial so as to prove the prosecution story.

31. Mainly, the entire case of the prosecution is based upon the testimonies of four public witnesses i.e. PW-1 Nadeem, PW-2 Salma, PW-3 Smt. Shahjahan and PW-5 Shokeen. Admittedly, the accused persons were previously known to PW-1, PW-2 & PW-5, whereas, PW-3 did not know the accused persons from before the alleged incident.

32. So far as the happening of the alleged incident of 31.05.2022 at about 7:30 PM is concerned, all the above four witnesses have duly deposed regarding the said incident. PW-1 has very categorically stated that on 31.05.2022, at about 7:30 PM, when he was present in an open plot in Usmanpur area, one boy came to him and informed him that his Jija Javed had expired in an open plot near JPC hospital. Thereafter, he went to the JPC hospital, where, the dead body of his Jija was handed over to him and they performed the last rites of Javed at his native village at Khanpur, District Bulandshehar, U.P. So, his testimony is only to the effect that he had received the information of demise of his Jija Javed at around 7:30 PM on 31.05.2022. He did not depose anything incriminating against any of the accused persons, although, he had admitted his signatures on his statement made to the police, which is Ex.PW1/A. However, he had very categorically stated that police did not make any enquiry from him on 07.06.2022.

33. PW-2 Salma, who was the wife of the deceased also did not fully support the case of the prosecution and her

testimony is only to the effect that on 31.05.2022 at about 8:30 PM, when she was present at her house, one boy came to her house and informed her that her husband was lying in the field adjacent to Kuda Khatta. Thereafter, she rushed to the house of her father and saw that one boy was carrying her husband on his shoulder. Doctor came to check him, but, confirmed that he had already died.

34. Again in her examination-in-chief, she did not depose anything incriminating against any of the accused persons. However, when she was cross-examined by the Ld. Addl. PP for the State, to some extent, she supported the case of the prosecution and stated that on 31.05.2022 at around 3:00 to 3:30 PM, both the accused persons came to her house and asked about the whereabouts of her husband and she told them that he had gone to his work. Thereafter, both the accused started abusing her husband and told that 'AAJ JAVED NAHI BACHEGA, HUM USE JAAN SE KHATAM KAR DENGE'. Thereafter, on the same day, at about 7:00 PM, her deceased husband returned home and after some time, he went outside the house and on the same day, at about 7:30 PM, she came to know that both the accused persons had brutally beaten her husband at Shastri Park near CNG Pump and hit her husband with thick danda on his waist and legs and brutally murdered. She further admitted that he had stated to the police that both the accused had caused death of her husband. During her cross-examination by the Ld. Addl. PP for the State, she also explained the circumstances, in which, she turned hostile, as son of accused Kamruddin and other relatives of both the accused had threatened her and she was having two minor children. She was

scared and was having danger to her life and lives of her minor children from the relatives of both the accused persons.

35. Although, PW-3 Smt. Shahjahan had very categorically deposed regarding the alleged incident of beatings being given by two persons to another person at about 7:00 PM in the field situated at Shastri Park, Delhi, but she stated that she could not identify any of the said two persons, even if, they are produced before her. During cross-examination by Ld. Addl. PP for the State, she reiterated that she could not say whether the accused persons present in the court were the same or not, who had beaten the said injured on that day.

36. Lastly, in the testimony of PW-5 Shokeen, it came on record that on 31.05.2022 at about 8:00-8:30 PM, when he was sitting in his shop, 3-4 persons had come to his shop and told him that his son-in-law Javed was lying on the garbage of Pikkas in front of CNG Pump in the area of Shastri Park. He shut down his shop and proceeded to the said CNG Pump, where, he saw that 3-4 boys were bringing his son-in-law and told him that Kamru and Naushad had killed his son-in-law Javed.

37. Now, it is to be seen whether the testimonies of abovesaid four witnesses can be relied upon in part or in total and if yes, to what extent, they can be relied upon and whether on the basis of the testimonies of above four witnesses, conviction can be based or not.

38. On the issue of appreciation of evidence of a hostile witness, a three Judge Bench of the Hon'ble Supreme Court in the case of **Khujji alias Surendra Tiwari v. State of Madhya Pradesh, (1991) 3 SCC 627**, relying on the judgments of

the Hon'ble Supreme Court in the cases of **Bhagwan Singh v. State of Haryana**, (1976) 1 SCC 389; **Sri Rabindra Kumar Dey v. State of Orissa**, (1976) 4 SCC 233; **Syad Akbar v. State of Karnataka**, (1980) 1 SCC 30 has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be depend-able on a careful scrutiny thereof.

39. The Hon'ble Supreme Court, in the case of **C. Muniappan and Others v. State of Tamil Nadu**, (2010) 9 SCC 567 has observed thus:

"81. It is settled legal proposition that (Khujji case, SCC p. 635, para 6)

'6... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'

82. In **State of U. P. v. Ramesh Prasad Misra**, (1996) 10 SCC 360: (AIR 1996 SC 2766)] the Hon'ble Supreme Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by the Hon'ble Supreme Court in **Balu Sonba Shinde v. State of Maharashtra**, (2002) 7 SCC 543: (AIR 2002 SC

3137)], **Gagan Kanojia v. State of Punjab**, (2006) 13SCC 516: (AIROnline 2006 SC 574)], **Radha Mohan Singh v. State of U.P.**, (2006) 2 SCC 450: (AIR 2006 SC 951)], **Sarvesh Narain Shukla v. Daroga Singh**, (2007) 13 SCC 360: (AIR 2008 SC 320)] and **Subbu Singh v. State**, (2009) 6 SCC 462: (2009 AIR SCW 3937).

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence can-not be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. **Vide Sohrab v. State of M.P.**, (1972) 3 SCC 751 : (AIR 1972 SC 2020), **State of U.P. v. M.K. Anthony**, (1985) 1 SCC 505: (AIR 1985 SC 48), **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**, (1983) 3 SCC 217: (AIR 1983 SC 753), **State of**

Rajasthan v. Om Prakash, (2007) 12 SCC 381: (AIR 2007 SC 2257), Prithu v. State of H.P., (2009) 11 SCC 588: (AIR 2009 SC 2070), State of U.P. v. Santosh Kumar, (2009) 9 SCC 626: (2009 AIR SCW 6177) and Statev. Saravanan, (2008) 17 SCC 587: (AIR 2009 SC 152)"

40. Therefore, in view of the above settled law, it is clear that even if a witness turned hostile, his/her testimony is not to be discarded altogether and the Court has to appreciate the testimony of the hostile witness keeping in mind the circumstances in which the witness has deposed and whether enough corroboration is there in the prosecution case so as to lend credence to those portions of the testimony which duly supported the prosecution story so as to bring home the guilt of the accused persons beyond reasonable doubt.

41. Dr. Ankit Gupta, CMO prepared the MLC of injured Javed and declared the injured as brought dead. He proved the MLC of Javed as Ex.PW9/A. Postmortem of the dead body was conducted by Dr. Tarun Kumar, who as per the postmortem, reported the cause of death as 'Haemorrhagic shock as a result of antemortem injury to abdomen produced by blunt force impact'. Dr. Tarun Kumar had opined that injury No. 1 and 2 were responsible for the death of the deceased. Time since death was about $\frac{3}{4}$ th of a day. He proved the postmortem report, as Ex.PW10/A. As per the report, there was grade 5 injury to spleen as per which, it was sufficient to cause death of the deceased.

42. Although, it has been proved on record that total 8 injuries were present on the body of the deceased and as per the opinion of the doctor, the said injuries (specially injury no.

1 and 2) were sufficient in the ordinary course of nature to cause death, but the cause of those injuries and the identities of the assailants could not be proved by the prosecution beyond reasonable doubts.

43. So far as the testimonies of PW-1, PW-2 and PW-5 are concerned, admittedly, as per their own statements, they were not the eyewitnesses to the alleged incident and they were not present at the spot when the alleged beatings were being given to the deceased and it is only after some time, they were told about the incident by some other persons regarding beatings being given to the deceased Javed. Thus, even if, their testimonies are being relied upon, their testimonies are not sufficient to bring home the guilt of the accused persons being hearsay witnesses. All the three witnesses i.e. PW-1, PW-2 and PW-5 have very categorically stated that they were told about the incident by some other persons and that person or persons, who had informed them about the alleged incident have never been examined by the prosecution, nor they were even mentioned in the list of witnesses, despite the fact that they were from the same neighbourhood/locality.

44. So far as the testimony of PW-3 is concerned, although, as per the prosecution, she was the eyewitness of the alleged incident, as she had herself seen and deposed about the beatings being given by two persons to another person, but she could not depose anything about the identity of the accused persons, or the assailants and she has very categorically stated that even if, those two persons are brought

before her, she could not identify them. Thus, even by, her testimony the prosecution has been able to prove only that the alleged beatings were given by two persons to another person i.e. the deceased Javed. Admittedly, PW-3 never stated that she had known either of the accused or the deceased. Thus, even though, the prosecution has been able to prove the alleged incident of beatings being given by two persons to the another person on the fateful day of 31.05.2022 at about 7:30 PM, but the prosecution has failed to bring on record any cogent evidence on record to prove the identity of the accused as those two persons only had inflicted injuries upon the deceased.

45. PW-1, PW-2 and PW-5 are only the hearsay witnesses and PW-3 being not able to identify the actual assailants, in the considered opinion of this Court, thus, conviction cannot be based on their testimonies only. Even if, their testimonies are being relied upon, despite having been turned hostile, the other witnesses are either formal / official in nature or the doctor, who had only proved the various aspects of the investigation and the postmortem report of the deceased and other injuries suffered by the deceased, which in itself is not sufficient to bring home the guilt of the accused persons beyond reasonable doubt.

46. Therefore, in view of the above discussion, this court has no hesitation in holding that both the accused persons, namely, Naushad and Kamruddin are entitled for benefit of doubt and thus, they stand acquitted for the charged offences, in the present case.

47. Bail bonds stand cancelled. Surety bonds stand discharged.

48. Both the accused are directed to furnish bail bonds as per Sec. 437-A CrPC.

49. Case property, if any be confiscated and same be destroyed as per rules.

50. File be consigned to Record Room, after due compliance.

**Announced in the open court
on 02nd day of June, 2026**

**(PUNEET PAHWA)
Special Judge (NDPS)/Addl. Sessions Judge/
North East District/Karkardooma Courts/Delhi**