



with the incident description, “CALLER BOL RHA HAI EK LADKE NE 3/4 LADKO KO CHAKU MAR DIYE HAI” from mobile number 9582384485 recorded by Ct. Inam Ali, 7354/PCR and said information was handed over to SI Rahul at Police Station Ambedkar Nagar. SI Rahul with Ct. Dinesh went to A-1st, 266, Madangir, Delhi and met caller Lekhraj @ Vicky, son of Sohan Lal, resident of A-1st 266, Madangir, who told that his brother Raghuraj as well as Deepak @ Golu had received injuries in quarrel at A-1st, Park and they had gone to hospital, whereas he was also going to AIIMS Hospital. SI Rahul with Ct. Dinesh went to place of incident A-1st, Park but did not find any eye witness there. SI Rahul and Ct. Dinesh reached AIIMS Hospital where injured Raghuraj had been examined vide MLC No. 500309134/22, describing the particulars of injury as ‘*abrasion left side of chest*’ and nature of injury was kept pending investigation, whereas on the MLC No. 500309137/22 of injured Deepak, son of Ramesh, the examining Doctor gave the particulars of injuries as ‘*laceration on left side of temporal side of scalp*’, keeping the nature of injury pending investigation. SI Rahul obtained the MLCs of injured Raghuraj and Deepak. SI Rahul did not meet injured Raghuraj in the hospital, whereas injured Deepak was declared unfit for statement by Doctor. SI Rahul with Ct. Dinesh went to the home of injured Raghuraj at A-1st/266, Madangir but did not meet injured Raghuraj there. On 13/04/2022 again SI Rahul went to home of injured Raghuraj but did not meet injured Raghuraj there. Even SI Rahul could not locate any eye witness of the incident. On 15/04/2022 SI Rahul reached AIIMS hospital and then Doctor declared injured

Deepak fit for statement. Following statement of injured Deepak @ Golu, son of Ramesh, resident of A-1st/101, Madangir, Delhi was recorded. That said Deepak @ Golu was residing with family at aforesaid given address; earlier was doing the work of Gym Trainer but lost employment due to Covid and presently was residing in his home. Raghuraj, son of Sohan Lal was friend of Deepak @ Golu and residing in the same block. Rajesh, son of Mahavir was son of paternal aunt (*bu*a) of Deepak @ Golu and with him the family of Deepak @ Golu had some quarrel due to old talks. At about 10.30 pm on 11/04/2022 Deepak @ Golu with his friend Raghuraj were sitting at A-1st Park and were talking with each other. At that time Rajesh came near them and started hurling abuses to Deepak @ Golu and said, “*aaj tujhe sabak seekha karr rahunga*”. Then said Rajesh started beating Deepak @ Golu with his fists. When Raghuraj tried to get Deepak @ Golu separated, Rajesh then also started beating Raghuraj. Meanwhile Rahul, brother of Rajesh came. Rahul also started beating Deepak @ Golu and Raghuraj and said, “*maro saalo koe*”. Thereafter Rajesh picked up a brick and hit it on the head of Deepak @ Golu with intention to kill him. Deepak @ Golu fell there. Rajesh and Rahul ran away. Deepak @ Golu and Raghuraj came to AIIMS Hospital where Deepak @ Golu was medically treated. Case FIR for offence under Section 308/34 IPC was registered. IO SI Rahul searched for the blood stained brick-stones at the place of incident but could not find them there. Accused were searched but could not be located at their residence. At the instance of Raghuraj, IO SI Rahul prepared site plan on 18/04/2022. On 19/04/2022 IO obtained blood stained clothes of injured Deepak, which were seized after sealing them

in a parcel. On 21/04/2022, accused Rajesh @ Dholu was enquired and arrested. Disclosure statement of accused Rajesh @ Dholu was recorded. Pointing out memo of the place of incident was prepared at the instance of accused Rajesh @ Dholu. Despite search, IO SI Rahul could not locate blood stained brick-stones. Accused Rahul also could not be located. After accused Rahul obtained anticipatory bail, then he was formally arrested on 25/04/2022 and enlarged on bail. Injuries of injured Raghuraj were opined as simple by the Doctor on the MLC. Injuries of injured Deepak were opined as grievous and caused by blunt object by examining Doctor. After receiving opinion on the MLC of the examining Doctor, Section 308 IPC was converted into Section 307 IPC and Sections 323/341 IPC were added. After completion of investigation, charge-sheet for offences under Sections 307/323/341/34 IPC was filed.

2. After compliance of the mandate of Section 207 Cr.P.C for supply of copies; the case was committed to the Court of Sessions by the Magisterial Court as offence under Section 307 IPC was exclusively triable by the Court of Sessions.

3. Vide order dated 24/09/2022 accused Rajesh @ Dholu was admitted to interim bail but was released on 28/09/2022 after acceptance of requisite bond. Accused Rajesh @ Dholu was admitted to regular bail vide order dated 15/12/2022.

4. On 03/01/2023, my Ld. Predecessor framed charges (i) against accused Rajesh @ Dholu for offence under Section 307 IPC and (ii) against accused Rajesh @ Dholu and Rahul for

offences under Sections 307/34 IPC; 323/34 IPC and 341/34 IPC; which were read over and explained to accused persons, who after understanding the same, pleaded not guilty and claimed trial.

5. In order to connect the accused with the offences charged, prosecution had examined in all eight witnesses. Following are the (1) Chart for Witnesses Examined; (2) Chart for Exhibited Documents and (3) Chart for Material Objects/*Muddamals*; with specified details:

**Chart for Witnesses Examined**

<b><u>Prosecution Witness No.</u></b>	<b><u>Name of Witness</u></b>	<b><u>Description</u></b>
PW1	Deepak	Complainant
PW2	Raghuraj	Injured and friend of complainant
PW3	Lekhraj	Brother of injured Raghuraj and given initial information of quarrel to police
PW4	HC Rohtash Singh	Accompanied IO in investigation
PW5	Dr. Trisha Tarunita, Junior Resident Doctor at AIIMS Trauma Centre, New Delhi	Prepared (i) MLC No. 500309137 of complainant/injured Deepak, s/o Ramesh; (ii) MLC No. 500309134 of injured Raghuraj
PW6	SI (the then ASI) Dal Chand	Duty Officer
PW7	SI Rahul	Investigating Officer
PW8	HC Karambir	Mal Khana Mohrar at P.S Ambedkar Nagar

**Chart for Exhibited Documents**

<b><u>Exhibit No.</u></b>	<b><u>Description of the Exhibit</u></b>	<b><u>Proved by/Attested by</u></b>
Ex PW1/A	Hindi hand written complaint of complainant	PW-1 PW-7

Ex PW4/A	Arrest memo of accused Rajesh @ Dholu	PW-4
Ex PW4/B	Personal search memo of accused Rajesh @ Dholu	PW-7
Ex PW4/C	Disclosure statement of accused Rajesh @ Dholu	
Ex PW4/D	Pointing out memo prepared at instance of accused Rajesh @ Dholu	
Ex PW4/E	Seizure memo of blood stained clothes of injured Raghuraj	
Ex PW4/F	Seizure memo of blood stained clothes of complainant Deepak @ Golu	
Ex PW5/A	MLC No. 500309137 of complainant/injured Deepak, son of Ramesh	PW-5
Ex PW5/B	MLC No. 500309134 of injured Raghuraj	PW-7
Ex PW6/A	Copy of FIR	PW-6
Ex PW6/B	Certificate under Section 65B of The Indian Evidence Act	PW-7
Ex PW7/A	GD No. 132A	PW-7
Ex PW7/B	Endorsement on the statement of complainant injured Deepak @ Golu	
Ex PW7/C	Site plan	
Ex PW7/D	Interrogation Memo of accused Rahul	
Ex PW7/E	Formal arrest memo of accused Rahul	
Ex PW7/F	Charge-sheet	
Ex PW8/A	Copy of Malkhana Register No. 19 of year 2022 containing entry no. 2450	PW-8
Ex PW8/B	Copy of Malkhana Register No. 19 of year 2022 containing entry no. 2461	

### **Chart for Material Objects/Muddamals**

<b>Material Object No.</b>	<b><u>Description of the Exhibit</u></b>	<b>Proved by/Attested by</b>
1.	One blue colour jean with cream colour tag, blood stained one white red and blue colour shirt with black colour tag and one torn black and red colour baniyan Ex P1(Colly)	PW-1  PW-7

6. All incriminating evidence and material was put in the form of questions to accused persons by my Ld. Predecessor in their recorded statements under Section 313 Cr.P.C, wherein accused persons pleaded innocence and false implication. Accused Rajesh @ Dholu denied to lead defence evidence.

7. Accused Rahul entered into his defence and examined himself as DW1 in defence evidence. Following is the Chart for Defence Witness Examined; with specified details:-

### **Chart for Defence Witness Examined**

<b><u>Prosecution Witness No.</u></b>	<b><u>Name of Witness</u></b>	<b><u>Description</u></b>
DW1	Rahul	Accused Rahul himself, under Section 315 Cr.P.C.

DW1 testified that at about 11 pm on 11/04/2022 when he came to his home after finishing work, he was talking with his family members, then two police officials came there and enquired from him, on which DW1 stated that he was brother of Rajesh. Those police officials asked DW1 to join them to police station and took him to police station where police officials gave beatings to him and confined him whole night and next day when

SHO instructed to release DW1, then he was able to return back to his home, where his brother Rajesh narrated to him about the incident. The version given by DW1 about the incident was hearsay version allegedly told to DW1 by accused Rajesh @ Dholu. On 12/08/2022, Lekhraj met DW1 outside street and told that he was not present at the place of incident at the time of incident when incident took place. Elicited deposition of DW1 makes it clear of his feigning ignorance of incident alleging to be not present at the place of incident.

8. Accused Rajesh @ Dholu and Rahul gave separate joint statement, submitting not to intend to examine any other witness in their defence and closed defence evidence on 27/11/2024. Accused Rajesh @ Dholu chose not to enter into witness box as defence witness and also did not examine any other witness; even to prove being victim, instead of projected assailant.

9. I have heard the arguments of Sh. Gurbhej Singh Guraya, Ld. Chief Public Prosecutor for State; Sh. Rohit Kudiya, Ld. Counsel for complainant; Sh. Momin Faizal, Ld. Counsel for accused persons and have perused the record including the charge sheet, documents, evidence, brief written submissions of accused persons as well as of complainant and given my thoughtful consideration to the rival contentions put forth.

10. Sh. Gurbhej Singh Guraya, Ld. Chief Public Prosecutor for State prayed for conviction of accused persons for the offences charged on the following premise/grounds. Injured PWs

namely PW1 Deepak and PW2 Raghuraj have fully supported the case of prosecution and their testimonies are reliable, cogent and trustworthy, which are not suffering from any material contradictions, severe infirmities and/or inherent improbabilities. Testimonies of injured persons are also supported with the medical evidence on record in the form of MLCs of the injured persons.

11. Ld. Counsel for complainant in support of the arguments of Ld. Chief Public Prosecutor for State, relied upon the following cases:-

1. *State of Maharashtra vs Balram Bama Patil & Ors., AIR 1983 SC 305;*
2. *Jage Ram & Ors. vs State of Haryana, decided by Hon'ble Supreme Court of India in Criminal Appeal No. 92/2015 on 28/01/2015;*
3. *State of Madhya Pradesh vs Saleem @ Chamaru & Anr., decided by Hon'ble Supreme Court of India in Appeal (Crl.) 822 of 2005 on 13/07/2005.*

12. Sh. Momin Faizal, Ld. Counsel for accused persons vehemently argued for acquittal of accused persons on the following premise/grounds. Initially information in GD No. 132A on 11/04/2022 given by PW3 Lekhraj was, "EK LADKE NE 3-4 LADKO KO CHAKU MAR DIYA HAI". Said narration of events find no place in the case of prosecution. Put forth case of prosecution is entirely different to aforesaid initial information received at Police Station. PW1 in his deposition in Court has made considerable improvements and given version different from his previous statement Ex PW1/A since in deposition in Court he said that accused Rahul also hit him with full brick; which was not so stated in his previous statement/complaint Ex

PW1/A. Even said version of PW1 is belied by the testimony of examining PW5 Dr. Trisha Tarunita, who had observed only one injury on the person of injured Deepak. PW2 Raghuraj has also testified in variance to the case of prosecution and testified that when he (PW2 Raghuraj) tried to intervene; accused Rajesh had hit him with a sharp edged weapon on his left side of ribs near his heart. Also PW2 deposed that Rajesh picked up a stone and hit on the head of Deepak. When examined in Court as PW3; Lekhraj, who had given the initial information recorded in GD No. 132A on 11/04/2022 of “*Ek ladke ne teen char ladko ko chaku mar diya hai*”; PW3 stated that it was a hearsay version. Prosecution has also not been able to prove that the injuries suffered by injured Deepak were grievous, in terms of any of eight kinds of hurt designated as grievous hurt in Section 320 of IPC. Even examining Doctor had observed while preparing MLC of injured Raghuraj that the said injured was having breath alcohol. Even prosecution has failed to prove of any of the accused having any intention to cause death or bodily injury, which he/they knew to be likely to cause death or even having caused such bodily injury as was suffered, in the ordinary course of nature to cause death; to make applicable offence under Section 307 of IPC. Both parties were acquainted with each other and were living as neighbors in the same vicinity. There was no history of previous animosity or hostility between the parties. There was no premeditation of the commission of offence of attempt to murder as none of the arraigned accused arrived at the place of incident with any weapon. No serious injury was caused on the vital organ of the victim. *Per contra*, Deepak @ Golu and Raghuraj were consuming liquor and eating non vegetarian food

in the night of 11/04/2022 in A-1st Park, Madangir; when accused Rajesh @ Dholu entered the park for walk; Deepak @ Golu and Raghuraj abused Rajesh @ Dholu, assaulted Rajesh @ Dholu and even attempted to snatch his mobile phone. On raising of alarm of accused Rajesh @ Dholu, Ramesh, father of Deepak arrived with a danda and handed it to Deepak, after which Rajesh was beaten by all four jointly. Deepak also snatched gold chain of Rajesh @ Dholu. Rajesh called PCR and was taken to AIIMS Trauma Centre, where he was examined vide MLC 500309145/2022 and his injury was opined as grievous. Despite recording the statement of Rajesh; SI Rahul did not register any case against Deepak, Ramesh, Raghuraj and Lekhraj. Accused Rahul was picked up from his home and illegally detained at Police Station Ambedkar Nagar and only on intervention of SHO on 12/04/2022 was released. Accused Rahul made complaint to SHO, which resulted in no action, after which he was compelled to approach the Court of Ld. Chief Metropolitan Magistrate; after which case FIR 91/2023 was registered for offence under Section 325/34 IPC. Investigation was conducted in biased and unfair manner by SI Rahul to favour complainant side. When the clothes of injured Deepak were produced during evidence in Court, then it was observed that the vest (*baniyan*) of black and red colour was torn. The produced one white red and blue colour shirt was not found torn. How can vest (*baniyan*) can be torn without shirt being torn. Even the seized clothes of injured Deepak were not sent for forensic examination to establish the blood of injured Deepak thereon. Ld. Counsel for accused persons relied upon the following precedents and prayed for acquittal of the accused persons:-

1. ***State (Govt of NCT of Delhi) vs Hari Chand & Ors., 2017:DHC:3082-DB;***
2. ***State vs Nibul, 2020:DHC:1511:DB;***
3. ***Shamim Ahmed vs State of NCT of Delhi, 2018:DHC:7385.***

13. In the case of ***State (Govt of NCT of Delhi) vs Hari Chand & Ors. (supra)***; there was absence of the requisite knowledge or intention for commission of offence of attempt to murder, which had resulted in the facts not making out a case under Section 307 IPC.

14. In the case of ***State vs Nibul (supra)***; the incident had taken place in a sudden fight and at the spur of the moment and Court came to the conclusion that there was no intention to cause death of the victim.

15. In the case of ***Shamim Ahmed vs State of NCT of Delhi (supra)***; the case of prosecution rested on the solitary testimony of victim but the story set up by prosecution finds no corroboration from any other material on record including the medical evidence and prosecution failed to show any bullet stuck in the body of victim. Had the victim really received gun shot, there should have been an exit wound since the shot was alleged to have been fired from a very close range. It resulted in acquittal of the accused accordingly.

16. The following judicially evolved principles for appreciation of ocular evidence in a criminal case have been enumerated by ***Hon'ble Supreme Court of India*** in the case of ***Rajan vs The State of Haryana, 2025 INSC 1081:-***

*I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*

*II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*

*III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.*

*IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.*

*V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.*

*VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*

*VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be*

*expected to be attuned to absorb the details.*

VIII. *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.*

IX. *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

X. *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*

XI. *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

XII. *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.*

XIII. *A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.” [See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 1983 Cri LJ 1096 : (AIR 1983 SC 753) Leela Ram v. State of Haryana AIR 1995 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)”*

When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

*“(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

*(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

*(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*

*(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*

*(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*

*(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*

Also was held therein that in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence

tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. [See: **Balu Sudam Khalde and Another v. State of Maharashtra : (2023) 13 SCC 365**].

17. Injured PW1 Deepak and PW2 Raghuraj; fully supported the case of prosecution in relevant material particulars and testified in terms of their statements given earlier during course of investigation. Testimonies of PW1 Deepak and PW2 Raghuraj inspire confidence, appear reliable, cogent and trustworthy, besides being devoid of material contradictions, severe infirmities and inherent improbabilities going to the root of the matter to check and shake the basic version and core of the prosecution case.

18. PW1 Deepak testified that at 10.30 pm on 11/04/2022 at A-1st Park, Madangir, Delhi, he with PW2 Raghuraj were talking, when accused Rajesh @ Dholu came and started abusing PW1 Deepak. Accused Rajesh @ Dholu threatened PW1 Deepak “*tujhe sabak sikha kar rahunga*”. PW1 Deepak protested, asking Rajesh why he was hurling abuses. Then accused Rajesh @ Dholu got enraged and gave fist blow on left side of face of PW1

Deepak. When PW2 Raghuraj intervened and tried to save PW1 Deepak; then accused Rajesh @ Dholu gave beatings to PW2 Raghuraj. At that time accused Rahul, brother of accused Rajesh @ Dholu came there. Then accused Rahul started bearing PW1 Deepak and PW2 Raghuraj. Accused Rajesh @ Dholu lifted a brick from park and hit the brick over the head of PW1 Deepak. MLC Ex PW5/A of PW1 Deepak prepared by PW5 Dr. Trisha Tarunita, Junior Resident at AIIMS Trauma Centre, New Delhi, who medically examined PW1 also finds mention of '*one laceration on left side of temporal side of scalp*'. PW5 opined on 02/05/2022 the injuries of PW1 Deepak to be grievous in nature, caused by blunt object. Fact of the matter is that in the evidence of prosecution in testimonies of injured, aforesaid; Doctor witness PW5, MLC Ex PW5/A or other material placed on record, there is nothing to suggest that the said hurt suffered by PW1 Deepak can be designated as grievous, in terms of Section 320 of IPC as it does not come in the ambit of any of those elicited eight kinds of hurt viz., (i) emasculation; (ii) permanent privation of the sight of either eye; (iii) permanent privation of the hearing of either ear; (iv) privation of any member or joint; (v) destruction or permanent impairing of the powers of any member or joint; (vi) permanent disfiguration of the head or face; (vii) fracture or dislocation of a bone or tooth; (viii) hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. Accordingly, the hurt on person of PW1 Deepak was simple in nature.

19. While appreciating the evidence of a witness, the

approach has to be whether the evidence of the witness read as a whole appears to have a ring of truth. We cannot expect a witness to possess a photographic memory and to recall the details of an incident as if a video tape is replayed on the mental screen. Generally the witness could not have anticipated the incident which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. Even powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on mind of one person whereas it might go unnoticed on the part of another. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. A witness is liable to be overawed by court atmosphere when he/she appears to testify and then such a witness, though wholly truthful but out of nervousness, mixes up facts, gets confused regarding sequence of events, or fill up details from imagination on the spur of the moment; also because of piercing cross examination by Counsel. It is also so because sometimes sub-conscious mind of the witness so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

20. True that as argued by Ld. Counsel for accused persons; there are various discrepancies/improvements in the versions of PW1 Deepak and PW2 Raghuraj; elicited in preceding paragraphs. Fact remains that when read as a whole; the depositions of PW1 Deepak and PW2 Raghuraj, appear to

have ring of truth; with respect to sharing of common intention of arraigned accused at the place of incident, at the time of incident, when brick was lifted by accused Rajesh @ Dholu and hit on the head of PW1 Deepak, causing '*laceration on left side of temporal side of scalp*'. On aforesaid facet, testimony of PW2 corroborates the version of PW1 Deepak. Elicited reasons in preceding paragraph may be some of the reasons of coming into existence of elicited discrepancies/improvements in versions of injured PW1 Deepak and PW2 Raghuraj.

21. Examining Doctor PW5 Dr. Trisha Tarunita vide MLC Ex PW5/B observed on 11/04/2022 at 23:58:40 hours the sole injury of PW2 Raghuraj as '*abrasion left side of chest*', terming it to be simple on 02/05/2022 caused by blunt object. Said medical evidence of course falsifies version of PW2 Raghuraj of accused Rajesh @ Dholu having hit PW2 Raghuraj with sharp edged weapon on left side of rib near his heart. Even PW1 Deepak did not testify of accused Rajesh @ Dholu having hit PW2 Raghuraj with one sharp edged weapon on left side rib of PW2 Raghuraj.

22. PW3 Lekhraj categorically stated in his deposition that he informed the police by making a call at the night of incident on the basis of information received from someone that some one had stabbed his brother PW2 Raghuraj and also stabbed others. The testimony of PW3 is self explanatory of initial information recorded in GD No. 132A on 11/04/2022 that '*Ek Ladke Ne Teen Char Ladko Ko Chaku Maar Diya Hei*'. We cannot put any premium on hearsay version. No mention of vivid details of the

incident also in GD No. 132A are explained by above said version of PW3. Mention of *'breath alcohol'* in examination of PW2 Raghuraj in MLC Ex PW5/B will in no manner disqualify PW2 Raghuraj to be a truthful or reliable witness since there is no clear mention that because of such condition of *'breath alcohol'*, PW2 Raghuraj was not in his senses or was not in a position to narrate any sequence of events on or before his examination by PW5 Dr. Trisha Tarunita. Accused Rajesh @ Dholu had exhorted *'tujhe sabak seekha karr rahunga'* at the outset while threatening PW1 Deepak on the fateful night. Rahul, brother of accused Rajesh @ Dholu joined the company of his brother Rajesh @ Dholu at the place of incident and started beating PW1 Deepak and PW2 Raghuraj at the place of incident and it was after that when accused Rajesh @ Dholu had lifted the brick from the park and hit it over the head of PW1 Deepak and besides that in beating to PW2 Raghuraj, accused persons caused abrasion on left side of chest of PW2 and thus simple hurt. Also arraigned accused wrongfully restrained PW1 Deepak while sharing common intention.

23. Accordingly, facts of the assaults by arraigned accused persons sharing common intention on head of PW1 Deepak by brick and in causing abrasion on left side of chest of PW2 Raghuraj and wrongfully restraining PW1 Deepak stand proved on record by prosecution beyond reasonable doubt.

24. Assault by brick on vital part of body i.e., head of PW1 Deepak resulting in *'laceration on left side of temporal side of scalp'*; brings such an act of accused persons in the ambit of

commission of offence of culpable homicide, not amounting to murder; though blow by brick with force on vital body part i.e., head would be endangering his life. Prosecution has also proved that simple hurt was caused by accused persons, sharing common intention, on person of PW2 whereby PW2 suffered '*abrasion on left side of chest*'. Prosecution also proved that accused persons wrongfully restrained PW1 Deepak.

25. IO PW7 SI Rahul testified that while performing emergency duty in the night of 11/04/2022, he received copy of GD No. 132A, Ex PW7/A regarding stabbing at A-1st Block, Ambedkar Nagar. PW7 with Ct Dinesh went to spot i.e., A-1st Park, Madangir, Ambedkar Nagar, Delhi and met caller PW3 Lekhraj, who informed of injuries received by his brother PW2 Raghuraj and his neighbour PW1 Deepak, who were sent to AIIMS Hospital. No eye witness was found there by PW7. PW7 went to AIIMS Trauma Centre and found two MLCs of injured PW1 Deepak and PW2 Raghuraj recorded and obtained those MLCs Ex PW5/A and PW5/B respectively. When PW7 went inside the Trauma Centre, he found injured Raghuraj already discharged and not present there, whereas injured Deepak @ Golu was found admitted there but declared unfit for statement by the Doctor. On 13/04/2022 when PW7 again visited Trauma Centre, he found injured Deepak getting treatment there but was not discharged but again Doctor declared injured Deepak @ Golu unfit for the statement. Meanwhile PW7 made effort to contact injured PW2 Raghuraj but he could not be contacted. When PW7 visited Trauma Centre on 15/04/2022, he found PW1 was getting treatment there and then PW7 sought permission from the Doctor

for recording the statement of injured PW1 and Doctor declared PW1 fit for statement. PW7 recorded statement Ex PW1/A of injured Deepak and made endorsement Ex PW7/B on it; gave rukka to Duty Officer PW6 SI Dal Chand. PW6 lodged FIR Ex PW6/A; issued certificate Ex PW6/B under Section 65B of The Indian Evidence Act and handed over copy of FIR to Ct. Dinesh. At the instance of PW2 Raghuraj, PW7 IO SI Rahul prepared site plan Ex PW7/C on 18/04/2022. PW1 Deepak came to police station on 19/04/2022 and handed over his blood stained clothes Ex P-1 (Colly), which were worn by PW1 at the time of incident, which were sealed in a parcel and seized vide seizure memo Ex PW4/F by PW7 in presence of PW4 HC Rohtash. During investigation PW7 also collected the blood stained clothes of injured PW2 Raghuraj and sealed them in a parcel and seized vide seizure memo Ex PW4/E. On 21/04/2022 accused Rajesh @ Dholu came to Police Station and was interrogated by PW7. PW7 arrested accused Rajesh @ Dholu vide memo Ex PW4/A in presence of PW4 HC Rohtash Singh. Personal search of accused Rajesh was conducted by PW7 in presence of PW4 vide memo Ex PW4/B. Accused Rajesh led the police party to the place of incident where PW7 in the presence of PW4 prepared pointing out memo Ex PW4/D of place of incident. Disclosure statement Ex PW4/C of accused Rajesh was also recorded. After accused Rahul obtained anticipatory bail, then accused Rahul came to Police Station on 25/04/2022 and PW7 interrogated accused Rahul and prepared interrogation memo Ex PW7/D and formally arrested accused Rahul vide memo Ex PW7/E and enlarged accused Rahul on bail. After obtaining result on MLCs of injured Deepak and Raghuraj, PW7 added Sections 307/323 IPC in the

investigation proceedings. Statements of witnesses were recorded. On completion of investigation, charge-sheet was filed by PW7. PW7 also stated that there no CCTV camera was installed at the place of incident.

26. PW8 HC Karambir is the Mal Khana Mohrar, who testified that as per record on 12/04/2022, the then Mal Khana Mohrar had received parcel containing blood stained clothes of Raghuraj mentioned in entry number 2450 Ex PW8/A in register number 19, whereas on 19/04/2022 SI Rahul deposited with the then Mal Khana Mohrar one sealed parcel contained blood stained clothes of injured Deepak @ Golu, recorded in entry no. 2461 Ex PW8/B in register no. 19.

27. The facts and circumstances of relied upon precedents of Ld. Defence Counsel are different and distinguishable to the facts and circumstances of the case in hand and accordingly, are of no help to the defence to secure the acquittal for any or both accused persons.

28. Above discussions lead me to the conclusion that prosecution has been successful in proving its case beyond reasonable doubt against accused persons namely Rajesh @ Dholu and Rahul for sharing common intention for commission of offence under Section 308 of IPC read with Section 34 of IPC for offence of culpable homicide not amounting to murder and for voluntarily causing hurt on the person of PW2 Raghuraj while sharing common intention and for voluntarily obstructing PW1 Deepak from proceeding in the direction where he had right to proceed and thereby wrongfully restraining him. Accused

persons namely Rajesh @ Dholu and Rahul are accordingly held guilty and convicted for the offences (i) under Section 308 of IPC read with Section 34 of IPC; (ii) under Section 323 of IPC read with Section 34 of IPC and (iii) under Section 341 of IPC read with Section 34 of IPC.

29. Let accused persons namely Rajesh @ Dholu and Rahul be heard on the point of sentence.

**Announced in the open Court  
today i.e., 15<sup>th</sup> April, 2026**

**(Gurvinder Pal Singh)  
Principal District & Sessions Judge  
South District, Saket Court, New Delhi (DK)**