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

Reserved on: 05.08.2026
Pronounced on: 14.10.2026
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\# **CNR No. DLHC010370682023**
\+ **CRL.L.P. 473/2023**

STATE (NCT OF DELHI) .....Petitioner
Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. and Insp. Pravesh Kumar and SI Pankaj Kumar

versus

AJAY KUMAR & ANR. .....Respondents
Through: Mr.Abdul Salam and Ms.Shruti Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

CRL.M.A. 25346/2023

1. This application has been filed by the petitioner seeking condonation of delay of 637 days in filing the present petition.

2. For the reasons stated in the application, the delay is condoned.

3. The application stands disposed of.

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CRL.L.P. 473/2023

4. This petition has been filed under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*Cr.P.C.*') seeking leave to appeal against the judgment dated 18.09.2021 passed by the learned Additional Sessions Judge-02, North East District, Karkardooma Courts, Delhi (hereinafter referred to as '*learned Trial Court*'), acquitting the respondents for commission of the offence under Sections 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*') in SC no. 44505/2015 arising out of FIR no.198/2011 registered at P.S. Jyoti Nagar, Delhi.

CASE OF THE PROSECUTION:

5. It is the case of the prosecution that:

> *"A DD No 15A was received by PS Jyoti Nagar on 14 05 2011 regarding an accident, which was marked to SI Om Prakash, who visited the spot of incident with Ct. Suresh, but it was revealed that the injured had already been removed to GTB Hospital by his brother. HC Om Prakash along with Ct Suresh visited GTB Hospital and collected MLC of injured Dharambir, but he was 'unfit for statement' and nature of injuries was blunt. However, HC Om Prakash did not find any eye witness in hospital and even brother of injured Jaiveer also did not meet him. A rukka on the basis of DD No 15A was prepared and got registered FIR under under Section 308 of the IPC. After registration of FIR, investigation was assigned to ASI Rambir. ASI inspected the spot of incident at the instance of brother of injured Jaiveer. He also recorded the statement of Jaiveer and also seized clothes of injured as produced by Jaiveer. ASI also seized blood smeared brick and blood earth control. On*

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> *15.05.2011, an information was received of the death of injured Dharambir from GTB Hospital vide DD No 9B. ASI got conducted the postmortem on the dead body of deceased in GTB Hospital. Jaiveer disclosed the names of the accused, their identity as well as incident, on which basis, on 15.05.2011 accused Ajay Kumar was arrested, whereas on 16.05.2011 accused Vikas was also arrested. Motorcycle used by both accused was also seized. On 21.05.2011 and 27.05.2011, both accused refused to participate in Test Identification Parade Proceedings. Doctor opined the cause of death as a result of 'Antemortem injury to head produced by blunt object'."*

6. As far as the factual background is concerned, the case of the prosecution is based on the statement of PW3/*Jaiveer*, brother of the deceased, who states that on 14.05.2011 at about 3:30-04:00 P.M., he was at his home, when a young boy came and informed him that two persons had been assaulting his brother on the road and he reached near White Temple (Safed Mandir) Main Road and witnessed that respondent no.1/Ajay had caught hold of his brother whereas the other respondent no.2/Vikas had been assaulting the deceased. Accused Vikas hit on the head of the deceased with a brick. He stated that he knew both the accused prior to the incident as they used to roam around in the colony riding a motorcycle bearing No. UP-76E-4191, having insignia of police by blue and red paint and with cross sword. He states that he witnessed his brother fall down on the ground after being hit by accused on his head by a brick, whereafter accused Ajay took the amount of Rs. 12,000/-, which he had given to the deceased, out of the pocket of the pant of the deceased. The accused thereafter

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fled away from the spot with their motorcycle. He made a PCR call and removed his brother to the GTB Hospital, where doctor advised him to arrange blood for the deceased. He told the doctor at the hospital that his brother had been assaulted by accused Ajay and Vikas, but this fact was not recorded by the doctor in the MLC. For arranging the blood, he went outside the hospital. He later narrated this incident to the police. He then accompanied the police to the spot and got the recoveries made.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:

7. Charge-Sheet was filed against the respondents herein and Charges under Section 302/34 of the IPC were framed against them *vide* order dated 07.01.2012, to which they pleaded not guilty and claimed trial.

8. The prosecution then proceeded to examine 19 witnesses to support the case of the prosecution. Statement of the respondents under Section 313 of the Cr.P.C. was recorded. The respondents did not lead any defence evidence.

9. By the impugned order, the learned Trial Court acquitted the respondents of the charges framed. Aggrieved by the said order, the State has preferred the present petition seeking leave to appeal.

SUBMISSIONS OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR

10. Learned Additional Public Prosecutor (‘*APP*’) for the State, Mr.Aman Usman, submits that the learned Trial Court wrongly

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observed that PW-3/*Jaiveer* was an interested and a related witness. He submits that PW-3/*Jaiveer* being the sole eyewitness to the alleged incident, saw the respondents herein hitting the deceased on the head with a brick. PW-3/*Jaiveer* had also identified the respondents as they used to roam around the locality riding a motorcycle having insignia of police with red and blue paint. PW-3/*Jaiveer* had also seen respondent no. 1/*Ajay* taking out an amount of Rs. 12,000/- from the pocket of the deceased after hitting him with a brick and that he was sure about the amount as he, himself, had given the said bundle of notes to the deceased earlier.

11. He further submits that as per the MLC [Ex. PW-9/A], the deceased was brought to the hospital by PW-3/*Jaiveer* and that the presence of PW-3/*Jaiveer* at the spot of crime was further corroborated by PW-18/*Ram Suresh*, father of the deceased.

12. He submits that merely because PW-4/*Bablu* had turned hostile and did not support the case of the prosecution, though he was also an eye-witness to the incident, the case of the prosecution and testimony of PW-3/*Jaiveer* cannot be doubted.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS

13. On the other hand, the learned counsel appearing for the respondents submits that the DD No. 15/A [Ex. PW-1/A] was recorded of an accident having taken place, and that the first call to the police was made through the mobile phone of one Mr. Anokhe Lal, who was not examined as a witness.

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14. He submits that PW-1/*HC Om Prakash* had deposed that no family members of the deceased had met him at the hospital where the deceased was taken to. He further submits that PW-3/*Jaiveer* deposed that he took the deceased to the hospital and had left thereafter to get more blood for the treatment of the deceased. However, the said fact is not corroborated by the doctor, as no request to arrange extra blood for the deceased was ever made by the doctor to PW-3/*Jaiveer*. He submits that PW-3/*Jaiveer* had also deposed that the doctor had given him the clothes of the deceased, whereas the doctor had stated that he had given the clothes to the police and not to PW-3/*Jaiveer*.

15. He submits that the prosecution had also failed to produce or examine the child who allegedly had informed PW-3/*Jaiveer* regarding the incident in question.

16. He submits that PW-4/*Bablu*, who was the other eyewitness to the incident in question, had turned hostile and did not support the case of the prosecution. He had deposed that PW-3/*Jaiveer* had tried to snatch Rs. 50/- from the deceased and in doing so, the deceased had hit his forehead and lips against the rod of an autorickshaw rendering him unconscious. He had also deposed that he had left the deceased at the spot and had come to the house of PW-3/*Jaiveer*.

17. He submits that no investigation was conducted to find out the owner of the motorbike nor any evidence led by the prosecution to connect the same to the respondents/accused.

18. He submits that therefore, no fault can be found in the impugned order and the present petition deserves to be dismissed.

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ANALYSIS & FINDINGS:

19. We have considered the submissions made by the learned counsels for the parties.

20. At the outset, we would note the test to be applied while considering an application under Section 378(3) of the Cr.P.C. In ***State of Maharashtra v. Sujay Mangesh Poyareker***, (2008) 9 SCC 475, the Supreme Court laid down that while deciding an application seeking leave to appeal under Section 378(3) of the Cr.P.C., the High Court should consider whether a *prima facie* case is made out or arguable points have been raised, and not whether the order of acquittal would or would not be set aside. It was held that while it is not a universal rule that each and every such petition should be allowed, at the same time, it also cannot be overlooked that at this stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the Trial Court could not be said to be "perverse" and, hence, no leave should be granted. We quote from the judgment as follows:

> *"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed*

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under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted.

22. In Sita Ram v. State of U.P. this Court held that:

> *"31. ... A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the [concept] that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure."*

We are aware and mindful that the above observations were made in connection with an appeal at the instance of the accused. But the principle underlying the above rule lies in the doctrine of human fallibility that "Men are fallible" and "Judges are also men". It is

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keeping in view the said object that the principle has to be understood and applied.

23. Now, every crime is considered as an offence against the society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed.

24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave."

21. We shall now proceed to test the present petition on the above touchstone.

22. The learned Trial Court, while acquitting the respondents of offence under Sections 302/34 of the IPC, has opined that the conduct

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of the family members of the deceased, including PW-3/*Jaiveer*, of not allowing the police to remove the deceased, who was then injured, to the hospital and, in fact, delaying taking the deceased to the hospital, as fatal to the case of the prosecution. We quote from the impugned order as under:

> *"12. Before deciding the rival contentions, it is necessary to go through the testimonies of PW3 and PW4 coupled with other material available on record It is clear by the contents of the DD entry no 15A that initially the incident was reported as accident and PW3 did not meet the police at the hospital to make a statement, whereas he allegedly met at the spot of incident to ASI Rambir who recorded his statement, as deposed by PW1, but PW3 Jaivir has himself disputed his meeting with any of the police officials on the day of incident, but it will be discussed in details later on PCR call recorded vide document Ex PW13/A has contained some observations against the family members of the deceased that they did not allow the PCR van to remove the deceased to hospital and rather alleged that they will put the entire blame upon the police, in case of demise of injured It is pertinent to mention that by the time the above said documents (Ex PW1/A and Ex PW13/A) were prepared, injured was alive. It is beyond explanation as to why family members of deceased including PW3 and PW18 did not allow the PCR van to remove the injured to hospital whereas there was no angle of enmity between the family members of the deceased and PCR officials It is also beyond explanation as to why they removed the injured to hospital by TSR deliberately whereas the PCR van could have removed the injured to hospital promptly It may be assumed that the purpose of removal of injured to hospital by a personal vehicle by family member must be of his timely and*

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prompt transportation to get treatment, but MLC of the injured has proved that injured was got hospitalized at about 05 55 pm against the incident at about 3 30/04 400 pm It is beyond explanation as to why the hospitalization of the deceased / injured was delayed by PW3 and PW18 despite having serious injuries by him and also that they took about 1 to 1 1/2 hours in transportation of injured to hospital despite that fact that distance was not too long and there was also utmost urgency This conduct of the family members is beyond explanation The possible reason of this delay could be only, either they took him to some other hospital, which has been categorically denied by the PW3 during his cross examination, or that the family members have manipulated certain facts for the reasons best known to them However, this conduct of the family members was definitely fatal to this case.

13. Not only this, the time of incident is also disputed As per rukka, which is Ex PW1/B, time of incident stated to be at 3 40 pm, whereas the first information vide DD No 15A has proved the time of information at 4 55 pm Contrary to it, alleged history of the incident given by PW3 Jaivir to doctors and recorded in the MLC of injured, which is Ex PW9/A, has proved the time of incident was at about 4 00 pm Even it is assumed that incident had taken place between 3 40 to 4 00 pm, but police reached the spot of incident at 16 59 22 (4 59 22 pm) and by that time the injured was with the family members at the spot itself. It is again beyond explanation as to why family members did not remove the injured to hospital during the period between 3 40 pm to 04 59 pm and for what they were waiting Another fact which is also material is that the family members themselves did not remove the injured to hospital in time and also stopped the PCR officials to remove him and got him hospitalized at 5 55 pm and vested the period

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> *of golden hours of treatment which also resulted fata. to injured This conduct of the family members especially brother i e PW3, who claimed himself to be an eye witness, is strange as well as doubtful and has also created a doubt about the actual time of incident Actually this delay in transportation of injured to hospital and difference of timings of incident have given a rise to the doubt that the family members were not present during the incident as alleged In fact, there are many unanswered questions which have to be answered by the prosecution being bound to prove the charges against the accused persons beyond reasonable doubt."*

23. The learned Trial Court then discussed in detail the contradictions in the testimony of PW-3/*Jaiveer*, and tested it on the touchstone of the testimony of an interested witness, concluding as under:

> *"32. …….In view of the above said law, testimony of PW3 has to be judged. He is interested and related witness to the deceased and rather is definitely interested in the conviction of the accused persons. Though he had no previous enmity with the accused as per record, yet his testimony would show that he has tried to manipulate various facts just to get them convicted. It is settled law that the statement of witness u/s 161 Cr.P.C. is not an evidence but this statement may be used to confront the witness and also to seek explanation by drawing his attention to know the reason of change of his version subsequently. In this case, the testimony of PW3 before court viz-a-viz his statement u/s 161 Cr.P.C. recorded by the police would show that he has made many material improvements in his testimony before this court in comparison of his earlier statement before police. Not only this, his statement before the court is full of contradictions and it*

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> *is not the case of prosecution that he deliberately changed his statement to give the benefit to accused persons. Rather, he has made material improvements just to implicate both accused and it will not be safe to rely upon his testimony to convict both accused. As such, he is an interested and related witness and not wholly reliable. Such testimony which is not wholly reliable requires corroboration but there is no corroboration from any other witness as none of the other witness of the persecution witnessed this incident.*

24. The learned Trial Court also emphasized on the testimony of PW-4/*Bablu*, who had not supported the case of the prosecution, though he had been setup by the prosecution as an eye-witness. We quote from the impugned order as under:

> ***"33.*** *Admittedly, testimony of PW4 Bablu has not supported the case of the prosecution and rather has introduced an entirely new case in comparison to the initial case of the prosecution. He has deposed that the deceased Dharambir was snatching Rs. 50/- from him and during this process his forehead and head hit against the rod of the auto rickshaw and this impact caused him unconscious. It is further deposed that Jaivir asked him to leave deceased there since he was under the influence of liquor and would come back after hangover. It is further deposed that Dharambir was lying unconscious and Jaivir informed police after borrowing his mobile phone. He has categorically denied that he witnessed this incident or that both accused reached there by motorcycle bearing no. UP-76E-4191 or that both of them fought with deceased or caused his death. He has categorically denied every fact stated in his statement u/s 161 Cr.P.C. Even he has also denied that the police arrested both accused at his instance or in his presence vide memos Ex.PW4/B to Ex.PW4/D. In fact, the testimony*

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> *of PW4 is entirely against the version of the PW3 which was also not found trustworthy. Contrary to it, PW2 Ct. Suresh has corroborated the version of DD no. 15A that he visited the spot of incident and came to know that it was a case of incident. As such, even by the sole testimony of PW3, the culpability of the accused could not be proved. The prosecution has failed to prove the version of eye witness and most of the facts remained unproved."*

25. The learned Trial Court also refused to place much reliance on the refusal of the respondents to participate in the TIP, observing as under:

> *"**35** Though the accused persons had refused to participate in their TIP proceedings on the ground that they had been shown to the witnesses, yet such refusal was of no use, as both the witnesses allegedly identified them at the spot itself The law pertaining to the mode and manner of identification through TIP as well as court identification has been dealt with In case titled **Rajesh v. State of Haryana, (2021) 1 SCC 118 as under**:*
>
> *xxx*
>
> *In view of the above said law, it stands proved that the refusal of TIP by the accused is not a ground in itself to presume that accused who has refused to undergo TIP proceedings has committed the offence Refusal of TIP may be a ground to draw an adverse inference against the accused provided there must be other corroborative evidence against the accused and identity of the accused cannot be established on sole basis of refusal of TIP being not strong evidence u/s 162 Cr PC r/w section 9 of Evidence Act In the present case, PW3 and PW4 have failed to prove the identity of the accused as assailants and prosecution has failed to established their identity"*

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26. Various other infirmities were also found by the learned Trial Court in the investigation and the case set up by the prosecution.

27. We have also considered the testimony of the witnesses as also the Trial Court Record to determine if the prosecution has been able to make out a *prima facie* case against the respondents to entertain the present petition.

28. As is evident from the above, the first information about the incident is recorded in DD No.15A dated 14.05.2011 (Ex. PW-1/A), which states that information with respect to an 'accident' near the Safed Mandir has been received. Ex.PW13/A is the Delhi Police Control Room Report, which records the various information regarding the above case, including the information received at 5:12:57 PM stating that the family members have taken the injured on a TSR and have refused to shift him to the hospital in the PCR van stating that in case he expires then the police will be blamed for the act.

29. PW-3/*Jaiveer*, the brother of the deceased has stated that the incident had taken place at 4 PM. If he is the eye witness to the incident, why the information of the same was not conveyed to the police till 4:55 PM, is not explained by the prosecution. PW-3/*Jaiveer* also does not explain why the deceased was not allowed to be shifted to the hospital by him in the PCR van, which certainly would have been a faster mode of taking the deceased, who was then in an injured condition, to the hospital for treatment. Emphasis on the above has been placed by the learned Trial Court as well and in our opinion, rightly so.

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30. The case of the prosecution is based on two eyewitnesses, that are, PW-3/*Jaiveer* and PW-4/*Bablu*. In ***Balram v. State of Madhya Pradesh,*** (2024) 20 SCC 490, it was reiterated that though the case of the prosecution can be proved on basis of a single eye-witness, the crucial factor being the quality of the witness and not the quantity of the witnesses, when the case of the prosecution is based on the testimony of an alleged eyewitness, the Court is to determine whether the said witness can be placed in the category of 'wholly reliable', 'wholly unreliable' or 'neither wholly reliable nor wholly unreliable'. It was held that where the witness is found to be 'wholly reliable', the court should have no difficulty in convicting the accused on the testimony of such single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. Equally, if the witness is found to be 'wholly unreliable', the court cannot rely on the testimony of this witness and must discard it. In the third category, where the witness is 'neither wholly reliable nor wholly unreliable', the court has to be circumspect, has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, and separate the chaff from the grain to find out the true genesis of the incident.

31. Applying the above test to the facts of the present case, we find that apart from the testimony of PW-3/*Jaiveer* and PW-4/*Bablu*, there is no other circumstantial evidence placed against the respondents to bring home the charge. There is an absence of motive or pre-meditation as PW-3/*Jaiveer* admits that there is no prior animosity between the deceased or his family with the respondents. We further

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find that the incident is stated to have taken place at a busy public place. However, in spite of that, it is only PW-3/*Jaiveer* and PW-4/*Bablu* that are being set up as eyewitnesses.

32. Coming back to the testimony of PW-3/*Jaiveer*, in his examination-in-chief, he submits that around 3:30-4:00 PM, he was present in his house when a young boy came and informed him that the two persons were assaulting the deceased on the road. This 'young boy' has not been identified. He states that he rushed from the house and reached the spot, which was near the Safed Mandir main road, and saw that the respondent no.1 had caught hold of the deceased while the respondent no.2 was assaulting the deceased. He states that the respondent no.2 hit the head of the deceased with a brick. He states that he knew both the respondents prior to the incident as they used to roam in the colony riding a motorbike bearing no.UP-76E-4191 and that motorbike was bearing the insignia of Police with blue and red paint and with a cross sword. He states that on being hit with a brick by the respondent no.2, the deceased fell down on the ground whereafter the respondent no.1 took out an amount of Rs.12,000/- from the pant pocket of the deceased. Both the respondents thereafter fled from the spot with their motorbike. He states that he then made a call at 100 number to the police and took the deceased to the GTB Hospital where the doctors advised him to get blood for the deceased. He states that he had informed the doctor that the deceased had been assaulted by the respondents herein but this fact was not recorded by the doctor.

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33. While PW-3/*Jaiveer* has stated that the respondent no.2 had hit the deceased with a brick, in his further examination, he states that the brick was in a '*fixed position by the road side*'. He further states that '*the blood stained top of that brick was taken into possession by breaking it*'. If the brick was in a fixed position and had, in fact, to be broken to take the blood stained portion of the same into possession, the testimony of PW-3/*Jaiveer*, that the respondent no.2 had picked up this brick and hit the deceased, cannot be believed.

34. As noted hereinabove, if PW-3/*Jaiveer* was the eyewitness to an incident which was taking place at 3:30-4:00 PM, why did he wait till 4:55 PM to make the call to the police, is also not explained.

35. In his cross-examination, he also admits that while he was at the spot of the incident, the police arrived. Why was the deceased not shifted to the hospital in the PCR van is again not explained. In fact, in the PCR Call Records (Ex. PW13/A), there is an entry that the family of the deceased refused to shift the deceased to the hospital in the PCR. Why would the family do so is unnatural and remains unexplained. In fact, it lends some weight in the testimony of PW-4/*Bablu* that the deceased was hurt accidently and later, PW-3 concocted this story of the deceased being assaulted by the respondents.

36. PW-3/*Jaiveer* also takes a contradictory position in the cross-examination on whether he knew the respondents from before or came to know of their names only after they had been arrested by the police. In this regard, what is important is that in his statement under Section

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161 of the Cr.P.C. (Ex.PW-3/DA), he names the two respondents herein.

37. The MLC of the deceased (Ex.PW-9/A) also describes the history of injury suffered by the deceased as '*physical assault at 4 PM*' without naming the respondents.

38. PW-3/*Jainveer* was also confronted with the statement under Section 161 of the Cr.P.C. given by him, wherein he had not informed that the respondent no.1 had taken out an amount of Rs.12,000/- from the pant pocket of the deceased nor had informed that the motorbike, which the respondents were riding, had insignia of police.

39. The other alleged eyewitness to the case is PW-4/*Bablu*, who turned hostile, however, his testimony and the circumstantial evidence which has appeared in this case, would be important to test the testimony of PW-3/*Jaiveer*. He states that he used to drive a TSR which belonged to PW-3/*Jaiveer* and on the fateful day had gone along with PW-3/*Jaiveer* to jheel as the auto he used to drive was under repair. From there, PW-3/*Jaiveer* went to Rohini Court, where he was to get the traffic challan disposed of, while PW-4/*Bablu* remained at the repair shop. At around 3 PM, PW-3/*Jaiveer* came back to the shop. At 3:30 PM, the deceased along with his father came to PW-4/*Bablu* and asked for Rs.50/- from him to buy liquor. He gave the said amount to the deceased, whereafter the deceased, PW-3/*Jaiveer*, and their father sat in the TSR and they reached Durgapuri from where they went to Shakti Garden. He states that at Saboli railway crossing, the father of the deceased left the auto and went away. The deceased and PW-3/*Jaiveer* thereafter bought ice from

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there. When they reached near the Safed Mandir, he stopped his TSR and PW-3/*Jaiveer* snatched Rs.50/- from the deceased. In the process of snatching, the deceased hit his forehead and lips against the rod of the TSR and fell unconscious. They sprinkled water on his body and his face, however, the deceased did not react. PW-3/*Jaiveer* then asked PW-4/*Bablu* that since the deceased was under the effect of liquor, they should leave him there and once he gets back to his senses, the deceased would come back on his own. PW-4/*Bablu* states that leaving the deceased lying on the ground, he and PW-3/*Jaiveer* proceeded and reached the house of PW-3. He states that after some time, he heard about someone lying injured and when he and PW-3/*Jaiveer* reached the spot where they had left the deceased, they saw the deceased lying unconscious. He states that PW-3/*Jaiveer* thereafter took his mobile phone and gave a call on 100 number to the police. When the police arrived, PW-3/*Jaiveer* and his father PW-18/*Ram Suresh* did not allow the police to lift the deceased from that place.

40. PW-4/*Bablu* was declared hostile and was cross-examined by the learned APP. However, he maintained that he had not seen the respondents hitting the deceased. On his statement under Section 161 of the Cr.P.C. (Ex.PW-4/A), he states that police had obtained his signatures on some blank papers.

41. At least two parts of the story narrated by PW-4/*Bablu* are supported by circumstantial evidence; the first being that PW-3/*Jaiveer* also maintains that there was ice next to where the deceased was lying on the road. He admits that the deceased had bought this ice from a shop nearby. He also admits that the phone, from which a call

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was made to the police, was in the name of PW-4/*Bablu* but stated that he had bought it from PW-4/*Bablu* a month prior to the incident.

42. From the above, one cannot reach a conclusion that PW-3/*Jaiveer* is a wholly reliable or even partly reliable witness. His presence at the spot and having witnessed the incident is doubtful, especially given the delay in reporting the incident to the police and refusing to take the deceased to the hospital for treatment in the PCR van.

43. The learned Trial Court had also laid emphasis on the non-examination of the boy who had allegedly informed PW-3/*Jaiveer* of the assault taking place, and of the other public witnesses, whose presence at the spot cannot be denied by the prosecution.

44. Given the above factors, we do not find a *prima facie* case being made out by the appellant against the respondents and therefore, we are of the view that the impugned judgment by the learned Trial Court does not warrant any interference.

45. The petition is, accordingly, dismissed.

46. A copy of this judgment be sent to the learned Trial Court and to the concerned Jail Superintendent for necessary information and record.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

OCTOBER 14, 2026/ns/as

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