2025 INSC 1322

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP (Crl.) No (s). 697 of 2024)

RAJ KUMAR @ BHEEMA ....APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. The instant appeal is directed against the final judgment and order dated 29th September, 2022, passed by the Division Bench of the High Court of Delhi at New Delhi[1] in Criminal Appeal No. 281 of

[1] Hereinafter, referred to as the "High Court".

2021, whereby the appeal preferred by the appellant Raj Kumar @ Bheema[2] came to be dismissed, affirming the judgment dated 12th February, 2021, rendered by the learned Additional Sessions Judge, South East, Saket Courts, New Delhi[3]. By the said judgment, while the accused-appellant was acquitted of the charges under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999[4], and Sections 396, 307, 397, 412 read with Section 34 of the Indian Penal Code, 1860[5], he was convicted for the offence punishable under Section 302 IPC, whereas the remaining co-accused were acquitted. The High Court further affirmed the order on sentence dated 20th February, 2021, whereby the accused-appellant was sentenced to

[2] Hereinafter, referred to as the "accused-appellant".
[3] Hereinafter, referred to as the "trial Court".
[4] For short, 'MCOCA'.
[5] For short, 'IPC'.

undergo imprisonment for life with a fine of Rs.5,000/-, and in default whereof, to further undergo simple imprisonment for a period of one month.

PROSECUTION CASE

4. On the intervening night of 2nd/3rd November, 2008, at about 1:50 a.m., an information was received at Police Station, New Friends Colony through wireless operator, regarding an incident of house breaking by night at House No. 81, Sukhdev Vihar, near Escort Hospital, where the intruders were allegedly assaulting the occupants of the premises. At about 2:00 a.m., further information was received at the said Police Station, which was reduced into writing *vide* DD No. 29A, as per which, Head Constable Bhagirath (PW-7) informed that SI Sanjeev Solanki (PW-17) may be sent to the spot.

5. Pursuant thereto, SI Sanjeev Solanki (PW-17), accompanied by Constable Ashok Kumar (PW-9), proceeded to the place of occurrence and apprised the Additional S.H.O., who arrived there shortly thereafter. Upon entering the premises, they found the sliding door of the drawing room broken, the side grill bent, the house ransacked, and the household articles scattered. A large pool of blood was noticed in the lobby, where the dead body of an elderly male (deceased-Madan Mohan Gulati) was lying, alongside certain articles. Bloodstains and articles in disarray were also observed in the adjoining bedroom.

6. On hearing faint cries emanating from the adjoining bedroom, the police officials rushed inside and found an elderly lady, later identified as Smt. Indra Prabha Gulati (PW-18), lying in an injured condition. She was immediately shifted to AIIMS Hospital by the PCR. Thereafter, SI Sanjeev Solanki

(PW-17), accompanied by Inspector S.K. Sharma (PW-15), proceeded to the Trauma Centre, AIIMS, where Smt. Indra Prabha Gulati (PW-18) was under treatment. Medico-Legal Certificate (MLC)[6] of the injured, Smt. Indra Prabha Gulati (PW-18) was prepared on 3rd November, 2008, by Dr. Sharwan. The MLC recorded that the injured was fit for statement and noted multiple grievous stab injuries, including blood clots around the nether region, scalp-deep wounds, and a lacerated wound near the right eyebrow. The nature of the weapon used to cause the injuries was opined to be sharp.

7. Upon being declared fit, the statement (*Fard bayan*)[7] of Smt. Indra Prabha Gulati (PW-18) was recorded by SI Sanjeev Solanki (PW-17) and based on the said statement, Inspector S.K. Sharma (PW-15)

[6] Exh. 21/A.
[7] Exh. PW-17/A.

prepared a *rukka* and handed it over to SI Sanjeev Solanki (PW-17), pursuant to which an FIR[8] came to be registered at Police Station, New Friends Colony, for the offences punishable under Sections 394/397/302/307/34 of IPC.

8. On 5th November, 2008, body of the deceased Madan Mohan Gulati was identified by his son-Vivek Gulati, and by his nephew-Servesh Gulati (son of the deceased's younger brother). The post-mortem examination of the deceased was thereafter carried out, and the post-mortem report was issued wherein the cause of death was opined to be shock and haemorrhage on account of multiple antemortem injuries. The opinion on the weapon of offence (knife/*chheni*) was also obtained from the doctor.

[8] FIR No. 601/2018 dated 3rd November, 2008.

9. The accused-appellant was apprehended on 21st November, 2008, based on the description allegedly provided by the injured eye-witness, Smt. Indra Prabha Gulati (PW-18). It is alleged that the accused-appellant gave a disclosure statement[9], and in furtherance thereof, he led the police party to an open area near bushes situated at Pul Prahladpur, from where a blood-stained Eagle brand pant was recovered from a pit. The pant was duly seized and sealed. On the following day, while the appellant was on police remand, his disclosure led to the arrest of the co-accused persons.

10. On 25th November, 2008, pursuant to a supplementary disclosure statement[10], the appellant purportedly led the police party to the bushes near the railway track behind Priyanka Camp, from where

[9] Exh. PW 14/A.
[10] Exh. PW-14/N.

one *chheni* was recovered. The same was also seized and sealed. Thereafter, the accused-appellant also facilitated the recovery of the robbed articles, namely, one idol of Lord Ganesha and a Panasonic CD player, from his *Jhuggi*.

11. Shri Vivek Kumar Gulati, son of the deceased and Smt. Indra Prabha Gulati (PW-18) identified the case property in the Test Identification Parade[11] conducted on 6th December, 2008. The proceedings[12] of the TIP were conducted by Shri Devendra Kumar Jangala (PW-16), learned Additional District Judge, West, Tis Hazari Courts.

12. On 24th December, 2008, TIP was organized in respect of the accused Raj Kumar @ Bheema, Jawahar, Ranbir @ Sintu, and Naeem @ Mota; however, they refused to participate in the same.

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[11] For short, 'TIP'.
[12] Exh. PW16/B.

Upon comparison, the fingerprints of the accused Jawahar and Ranbir @ Sintu were found to tally with the chance prints lifted from the spot. The site inspection plan was prepared, and the material exhibits were forwarded to the Forensic Science Laboratory[13] on 22nd January, 2009. Upon completion of the investigation, chargesheet in connection with the said FIR came to be filed on 2nd February, 2002, against the accused, namely, Raj Kumar @ Bheema, Ramesh Kumar @ Shankar, Naeem Khan @ Mota, Jawahar, and Ranbir @ Sintu, in the Court of the learned ACMM, for offences punishable under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the MCOCA, and Sections 396, 307, 397, 412 read with Section 34 of IPC. One of the accused, namely, Kastoori, could not be traced out despite best efforts, and proceedings under Sections 82 and 83 of

[13] For short, 'FSL'.

the Code of Criminal procedure, 1973[14] were initiated against him and his name was placed in Column No. 2 of the chargesheet. Since the offences were triable exclusively by the Court of Sessions, the learned ACMM, after compliance with the provisions of Section 207 CrPC, committed the case to the Court of Sessions for trial, where charges were framed against the accused. They abjured their guilt and claimed trial.

13. During the course of trial, the prosecution examined 27 witnesses and exhibited 25 documents in consolidated form to prove the guilt of the accused. The accused Ramesh @ Shankar examined one witness in defence. Upon closure of prosecution evidence, statements of the accused persons were recorded under Section 313 CrPC affording them an opportunity to explain the incriminating material

[14] For short, 'CrPC'.

appearing against them. The accused-appellant, in answer to Question No. 82, categorically stated, *"I am innocent and have been falsely implicated in the present case. PW-17 Inspector Sanjeev Solanki was known to me prior to the present case, and he has falsely implicated me in this case."*

FINDINGS OF THE TRIAL COURT

14. Upon consideration of the arguments advanced by the prosecution and the defence, and after appreciating the evidence available on record, the trial Court, *vide* judgment dated 12th February, 2021, acquitted the accused persons other than the appellant Raj Kumar @ Bheema, holding that the case against him stood proved beyond reasonable doubt only for the offence punishable under Section 302 IPC. He was acquitted of the remaining charges. The conviction was primarily based on the testimony of the eye-witness, Smt. Indra Prabha Gulati (PW-18),

who identified the appellant during her testimony (recorded over video conferencing) while failing to identify the remaining accused, coupled with the purported recovery of weapon of offence at the instance of the accused-appellant.

15. Further, the trial Court, *vide* order dated 20th February, 2021, directed the accused-appellant to undergo sentence as mentioned hereinabove.[15]

FINDINGS OF THE HIGH COURT

16. In appeal by the accused-appellant, the High Court affirmed the findings of the trial Court *vide* judgment[16] dated 22nd September, 2022, finding no infirmity in the judgment and order passed by the trial Court, holding that the prosecution case essentially rested upon the identification of the accused-appellant by the injured witness and the recoveries effected at

[15] *Supra* para 3.
[16] Crl.A. 218/2021.

his instance. The High Court rejected the submission advanced on behalf of the appellant that the identification of the appellant by Smt. Indra Prabha Gulati (PW-18) was doubtful as she failed to identify the other accused, on the ground that, insofar as the present accused-appellant was concerned, she was categorical in her testimony that he was one of the assailants.

17. The High Court observed that non-recovery of the appellant's finger prints from the place of incident would not absolve him of participation in the offence, which stood established by the identification made by the injured victim, Smt. Indra Prabha Gulati (PW-18). It was further noted that pursuant to the disclosure made by the appellant, the pant allegedly worn by him at the time of incident was recovered, on which human blood was detected, and no plausible explanation was forthcoming from the appellant as to the presence of

human blood on his wearing apparel. The Court also held that merely because the son of the deceased and the injured victim, who had identified the robbed articles in TIP, did not appear in the witness box to identify the recovered articles, would not discredit the rest of the evidence led by the prosecution, which was sufficient to prove the guilt of the appellant for the offence alleged, beyond reasonable doubt.

18. Aggrieved, the accused-appellant is before us in the present appeal by way of special leave.

Submissions on behalf of accused-appellant

19. Learned counsel for the appellant, vehemently and fervently urged that the High Court fell in grave error in affirming the conviction of the accused-appellant recorded by the trial Court, which is wholly unsustainable in law. It was contended that the prosecution case rests entirely upon the testimony of the old and infirm witness Smt. Indra Prabha Gulati

(PW-18), who was admittedly suffering from weak eyesight. Accordingly, her testimony is riddled with inconsistencies and is far too unconvincing so as to form the sole basis for upholding a conviction for an offence punishable with capital punishment.

20. It was further contended that Smt. Indra Prabha Gulati (PW-18) identified the appellant in Court through video conferencing on 8th May, 2017, after an inordinate delay of nearly eight and a half years from the incident dated 2nd November, 2008, while notably failing to identify any of the other accused. It was urged that in his statement under Section 313 CrPC, the accused-appellant specifically alleged that PW-18 had been tutored, as his photographs had already been shown to the witness prior to her deposition.

21. It was averred that there were material contradictions and improvements in the testimony of PW-18. In her initial statement under Section 161

CrPC, she mentioned that the assailants were armed with "knives, screwdriver, and rods," but made no reference to a *"chheni."* The introduction of the *"chheni"* for the first time during her sworn testimony recorded after a lapse of more than eight years was a material improvement, evidently tailored to align with the alleged recovery. Moreover, she failed to identify any of the co-accused, all of whom were acquitted, rendering her solitary identification of the appellant highly doubtful.

22. Learned counsel urged that the prosecution placed reliance upon the alleged recoveries of a blood-stained pant, a *"chheni,"* and articles such as a Ganesh idol/CD player at the instance of the accused-appellant. The first recovery attributed to the accused-appellant was allegedly made pursuant to his disclosure statement from an open area near bushes at Pul Prahladpur, wherefrom a blood-stained

pant was recovered. The prosecution alleged that the said pant had been worn by the appellant at the time of the incident. However, the blood-stains detected on the garment did not test positive for the blood group lifted from the scene of occurrence. It was thus contended that the said article could not be connected with the present case, even after forensic examination[17].

23. It was further urged that the said recovery cannot be read in evidence under Section 27 of the Evidence Act, 1872 inasmuch as in his disclosure statement[18] dated 21st November, 2008, the accused-appellant did not state that he could get the article recovered from an open place near Pul Prahladpur, which, in any event, was accessible to all and sundry. The learned counsel urged that all the recoveries were

[17] Ex. PW-24/B read with Ex. PW-24/A.
[18] Exhibit PW 14/A.

made without any independent witness being associated to corroborate the same. It was further averred that the alleged weapon of offence, namely the *"chheni,"* was shown to have been recovered after a lapse of 22 days from bushes near a railway track. The said article was never shown to Smt. Indra Prabha Gulati (PW-18) for identification, no photographs were taken at the time of recovery, and no independent witness was associated in the process.

24. Placing reliance on the judgment of this Court in ***Koppula Jagdish v. State of Andhra Pradesh***[19], learned counsel further urged that the High Court failed to appreciate that the appellant was wrongly convicted for the offence under Section 302 IPC simpliciter, inasmuch as no separate charge under Section 302 IPC was framed against him. It was

[19] (2005) 12 SCC 425.

pointed out that in the present case, all the accused were charged under Sections 394, 397, 302, 307, read with 34 IPC, and except for the appellant, all other co-accused have been acquitted.

25. It was also urged that Shri Vivek Gulati, son of the deceased, who had identified the robbed articles during the TIP, did not appear in the witness box during the trial to prove and identify the articles allegedly recovered at the instance of the accused-appellant, and hence, no adverse inference ought to be drawn against the appellant on this count.

26. He, thus, implored the Court to accept the appeal and set aside the impugned judgment(s).

Submissions on behalf of respondent-State

27. *Per contra*, Shri Vikramjeet Banerjee, learned Additional Solicitor General, supported the impugned judgment and urged that the appellant Raj Kumar @ Bheema was correctly identified by the injured eye-

witness, Smt. Indra Prabha Gulati (PW-18), in her examination-in-chief as well as in her cross-examination, as the person armed with a "*chheni*" and a rod, who inflicted blows upon her and her husband, resulting in the death of the latter. It was further submitted that the said weapons were recovered from the appellant pursuant to his disclosure statement, thereby corroborating the version of the injured witness Smt. Indra Prabha Gulati (PW-18).

28. It was further contended that, as per the opinion rendered by Dr. Arvind Kumar (PW-1) with regard to the weapon of offence, Exhibit V, i.e., the recovered *"chheni,"* could be one of the weapons used in the offence and that injuries marked B, C, and D on the person of injured Smt. Indra Prabha Gulati (PW-18) were possible by the said weapon.

29. The conduct and antecedents of the appellant, including his status as a history-sheeter, repeated involvement in criminal cases, and acts of misconduct during incarceration, clearly reflect a persistent pattern of unlawful behaviour. Considering the heinous nature of the offence, being the murder (for gain) of a senior citizen, the accused-appellant does not deserve any indulgence, and the gravity of the crime and the attendant circumstances warrant dismissal of the appeal filed on his behalf.

30. He thus implored the Court to dismiss the appeal, urging that the High Court had rightly affirmed the conviction of the accused-appellant and the sentence awarded to him by the trial Court. It was further urged that upon an independent and comprehensive appraisal of the evidence on record, including the consistent testimonies of Investigating Officer Shri S.K. Sharma (PW-15) and Smt. Indra

Prabha Gulati (PW-18), both the trial Court and the High Court had recorded concurrent findings that the prosecution had proved its case beyond reasonable doubt, and hence no interference is warranted in the impugned judgment.

Discussion and Analysis

31. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments, the material available on record, as well as the written submissions filed on behalf of both sides.

32. Since the appellant seeks reversal of concurrent findings of fact recorded by the trial Court as well as the High Court, this Court is required to tread with circumspection. It has been consistently held by this Court in a catena of decisions that unless the findings are shown to be perverse or rendered in disregard of material evidence, this Court would be

slow in interfering with concurrent conclusions of the Courts below. Reference in this regard may be made to the decision of this Court in the case of ***Mekala Sivaiah v. State of Andhra Pradesh***[20], the relevant para of which is quoted hereinbelow:

> "15. It is well settled by judicial pronouncements that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. **Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice**."
>
> (Emphasis is supplied)

33. Keeping the aforesaid principle in mind, this Court would proceed to consider the appeal at hand to examine whether there is some manifest error or illegality in the impugned judgment**,** and if any grave and serious miscarriage of justice has been

[20] (2022) 8 SCC 253.

occasioned on account of misreading or ignoring of material evidence in the present case.

34. Evidently, on a perusal of the judgments under challenge and upon considering the submissions advanced by learned Standing Counsel for the State, it emerges that primarily three circumstances have been relied upon by the prosecution to bring home its case against the appellant:

i. The identification of the appellant in Court by the prosecution witness Smt. Indra Prabha Gulati (PW-18) during her sworn testimony.

ii. The refusal of the appellant to participate in the TIP, leading to an adverse inference being drawn against him.

iii. Recovery of weapon of offence stained with human blood.

A. Identification by the Sole Eye-Witness

35. It is undisputed that the fulcrum of the prosecution case is based on the testimony of Smt. Indra Prabha Gulati (PW-18). Thus, for the sake of ready reference, we quote the entire deposition of the said witness below: -

> **"ON S.A.**
>
> On 03.11.2008 I was present in my house at 81 Sukhdev Vihar, New Delhi. It was the intervening night of 2nd and 3rd November, 2008 and time was 11.30/11.45pm. I and my husband heard the noise of falling of utensils. My husband went to see the same**. I also followed him and we saw five persons had entered into our house from the door of drawing room. Out of those, one/two persons were in the kitchen and four persons came through door of drawing room. They were having *chheni*, screwdriver and knives in their hands.** They asked for keys from my husband. We told them to wait and the **one boy who came from drawing room and was having iron rod and chheni in his hands, gave the blow from the iron blow on the head of my husband. He fell down. I was also given blow and became unconscious. I do not remember now by whom the blow was given**. I remained in the hospital for about two months. Someone called the police and I was taken by the police to the hospital. I am having an 8 inch cut on my

stomach. I remained in Trauma Center. I was also having bandage on my head and it might be possible that blow was given on the head also. I made statement to the police in the hospital itself. It was given orally whatever was in my memory as I was on hospital bed.

I remained in Moolchand Hospital for one month and 10 days. I never met with the police for this case after my discharge from the hospital. I have never seen those boys who came into my house thereafter.

At this stage, scanned image of signatures on statement is shown to the witness through video-link and after seeing it the witness states that the same pertains to her which are at point A.

I can identify the accused if shown to me.

At this stage, accused persons who are facing charges in this case, are shown through audio-video link one by one and after seeing accused the witness states that he is the same boy who was having chheni and rod and was giving blows to my husband. (The name of accused is Raj Kumar).

Next accused is shown and after seeing him the witness states that she is not remembering complete and she is remembering face of only one as she became unconscious. (The name of accused is Ranbir).

Next accused is shown and after seeing him the witness states that she does not know anything about him. (The name of accused is Jawahar).

Next accused is shown and after seeing him the witness states that she is remembering somehow and it was 12.00midnight and 8 years have passed she is not remembering further. She further states that she cannot say whether he

was among those persons or not. (The name of accused is Naeem)
Next accused is shown and after seeing him the witness states that the boy shown first be stand with him so that she may identify again. The accused Raj Kumar is shown with this accused to the witness. After seeing the accused Raj Kumar, the witness states that he is one among those boys but she is not sure about second boy. (The name of second boy is Ramesh Kumar).

XXN by Sh. Sunil Dutt, Ld. Addl. P.P for the State.

It is correct that when my husband fell down after blows given to him, I was also given rod blows and knife blows.
I do not remember that I fell down in Angan as I was unconscious. I was told by the police officials that I was taken to the room by the boys dragging me. I do not know that they after breaking open the almirah in the room took away Rs.20000/- and the jewellery articles. I do not remember whether I raised noise or not or that I remained lied on the floor of the room. (Vol. I regained my consciousness in the Trauma Center). It is wrong to suggest that the number of boys who entered into the house was 3-4. (Vol. They were five in number).
I did not go to Patiala House Court on 26.12.2008. (Vol. My son went to Patiala House court as I was ill). It is wrong to suggest that in the Patiala House Court I identified four boys as Raj Kumar @ Bheema, Ranbir @ Shintu, Jawahar and Naeem @ Mota and stated to the police that they were the boys who gave blows to my husband and me in my

house and took away cash and jewellary from my house. (Vol. I did not go to PHC only my son went there).

XXN by Sh. Mihi Lal Chaudhary, counsel for accused Jawahar.

As far as I remember I regained consciousness after three/four days in the Trauma Center and at that time I was on ventilator.

XXN by Sh. S.M. Sallauddin, counsel for accused Raj Kumar and Naeem, XXN by Sh. V.P Kaushik, counsel for Ramesh Kumar, and XXN by Sh. Sallauddin Khan, counsel for accused Ranbir.

I do not remember the date when police met me for the first time and the last time.

I cannot tell the name of the police official by whom my statement was recorded. It was recorded in the hospital. The signatures were taken in the hospital and I do not remember now whether it was in Trauma Center or Moolchand. At that time police officials were present and my son was also present. My son and daughter met me in the Trauma Center. I do not remember the date when they came to me in the Trauma Center. It may be 4th or 5th. As far as I remember I left India on 27.12.2008. I do not remember whether my statement was written as I told or not. (Vol. Due to the incident I was unconscious and was not fit completely). I do not remember how many pages were got signed by me from the police. I do not remember whether I signed any blank paper or not. If my signatures were taken it might be that something was written on the papers then my signatures were

taken. I do not remember whether the writing were in hindi or english language. **The witness is confronted with the statement Ex.PW17/A and is asked that in the same 'Chheni' word is not mentioned in the same. I do not remember about the colour of the screwdriver. I do not remember what was the length of the iron rod. The accused Raj Kumar was worn black shirt. I do not remember about the clothes of remaining boys.**

I do not remember the name of tenant of that time. He was from Hyderabad. He was in the premises for about 2/2 1/2 years prior to incident. They vacated the premises after the incident as they were also afraid. I do not remember whether the verification of the tenant was got conducted from police or not. We were not having permanent servant or chowkidar at that time but however, Kamla was part-time domestic helper. She was working for the last 15 years. She was residing in a room taken on rent in the Sukhdev Vihar. Her husband was residing with her occasionally. I do not know name of her village. (Vol. She had told me but due to my age I have forgotten the same).

I retired on 28.02.1997. It is correct that Kamla was residing in the jhuggi of Sukhdev Vihar. It is correct that in my presence no inquiries were made from Kamla and her husband not their statement was recorded in my presence. The tenant has vacated my premises before I discharge from hospital. I do not know whether inquiries were made by the police from my tenant in my presence. **At the time of incident, I was using spectacles occasionally as I was having long sight (dur ki nazar kamzor thi). At**

present I use the spectacles whenever I have to do some work of near distant. At present I am not wearing contact lenses. It is correct that I did not receive injury on my head and I received injury on my right side of forehead. I cannot say whether there was any stitching on the forehead or not but there was a bandage. I do not remember the number of lenses which I was using at that time.

The Counsel wants to contradict the witness with her statement Ex.PW17/A that in the same there is no description about the clothes and physique of the boys. (it will be looked by the court during the arguments as the witness is being recorded through video-conferencing). It is wrong to suggest that police did not take any statement from me and my signatures were taken on a blank paper. I never visited police station in respect of this case. **I was shifted from Trauma Center to Moolchand after 20 days. I was discharged from Moolchand hospital on 24 or 25.12.2008. I did not go to police after 25.12.2008. Police have not met me after 25.12.2008 till I left India**. I do not remember how many times police met me while I was in Trauma Center. Perhaps, once or twice they met me. During those visits inquiries were made from me about the manner of the incident and the assailants. **I do not remember the date when I regained my consciousness**. **As far as I remember police did not come to me while I was in Moolchand Hospital.**

I do not know the name of chowkidar as it was kept by my son after the incident. It is wrong to suggest that the boy who has been identified by

me today i.e. Raj Kumar was not involved in the incident or that I have been shown the photographs by the police.
The co-assailants were calling him "Bhima aur maar, bhima aur maar to him". It is wrong to suggest that my counsel has sent photograph of Bhima to me and after seeing him I am identifying him today. It is wrong to suggest that my counsel has tutored me on telephone and upon tutoring I am deposing today or that copy of the statements has been sent to me and after going through the same I have deposed today. It is wrong to suggest that the dosier of Bhima with the police has been sent to me by the counsel. It is wrong to suggest that Bhima was not involved in the incident occurred in the intervening night of 2nd and 3rd November, 2008 or that I am naming him at the instance of police.

Dated: 8th May, 2017."

(Emphasis supplied)

36. Based upon the testimony, it is clear that the witness Smt. Indra Prabha Gulati (PW-18) had shifted to the United States of America immediately after the incident, and her statement came to be recorded through video conferencing on 8th May, 2017, i.e., after a gap of eight and a half years from the occurrence. She stated that out of the five assailants who had entered the house, one or two

went towards the kitchen, while four entered through the drawing room door. They were armed with a *chheni*, screwdriver, and knife, and demanded the keys from her husband. Upon his request for some time, one of the assailants, who was carrying an iron rod and a *chheni*, inflicted a blow on the head of her husband, who collapsed. She too was given a blow, though she could not recollect as to who had inflicted the injury. She further stated that she remained admitted in Moolchand Hospital for about one month and ten days. She categorically asserted that she never saw the assailants thereafter and that she neither met the police nor did she go to the Patiala House Courts after being discharged.

37. The Public Prosecutor requested the witness to identify the accused on the video display and from amongst the accused present in the dock, who were shown to the witness, she identified the accused-

appellant as the assailant who was armed with a *chheni* and a rod and who had inflicted blows upon her husband.

38. The witness further stated that she could remember the face of only one accused, as she had become unconscious, and thus she was unable to identify any of the other assailants who were presented for identification. The learned Public Prosecutor sought permission of the Court to cross-examine the witness on the ground that she was not narrating complete facts disclosed during investigation. However, in response to the suggestions of the Public Prosecutor, she gave discrepant answers.

39. To a material suggestion, the witness replied: *"I did not go to Patiala House Court on 26.12.2008"* and volunteered that her son had gone to the Court as she was unwell. She denied the suggestion that she

had identified four boys, namely Raj Kumar, Ranbir, Jawahar, and Naeem @ Mota, in the Patiala House Court and affirmed to the police that they were the assailants who inflicted blows on her husband and looted cash and jewellery from the house.

40. In her cross-examination, the witness stated that she had left India on 27th December, 2008. She admitted that she could not recollect whether her statement had been recorded in the manner she had spoken. She volunteered that owing to the assault**,** she became unconscious and was not fully fit. She further stated that the accused-appellant Raj Kumar was wearing a black shirt, but she could not recollect the clothes of the other assailants.

41. Learned defense counsel sought to confront and contradict the witness with reference to her previous statement[21] under Section 161 CrPC on the aspect

[21] Exh PW-17/A.

that there was no description of the clothes or physique of the assailants in such statement. *The trial Court observed that the effect of such omission/improvement would be considered at the stage of final arguments, since the witness was being examined through video conferencing*. The witness further stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008, and that she did not go to the police after 25th December, 2008. She was confronted with a pertinent suggestion that the police had shown her the photographs of Raj Kumar and that her counsel had also seen the photograph and tutored her for identifying the appellant, which she denied.

42. We must take note of and resolve a very important feature being a procedural irregularity which has arisen in this case. As would be evident from the discussion made hereinabove, the evidence

of the star prosecution witness Indra Prabha Gulati (PW-18) was recorded through video conferencing because she had in the intervening period shifted to Canada.

43. During the course of cross-examination, the defence tried to confront the witness (PW-18) with her previous statement so as to elicit a contradiction/highlight an omission. However, the trial Court observed that this objection would be considered at the time of final adjudication because the witness (PW-18) was not present before the Court and the document being the previous statement in writing could not be shown to her *(supra)*.

44. However, on going through the trial Court's judgment, we do not find any discussion made regarding this pertinent objection by the defence.

45. The Evidence Act/ Bharatiya Sakshya Adhiniyam, 2023 provide the procedure for evidence

as to the matters in writing and cross-examination as to previous statements in writing. Section 147 of the BSA (144 of the Indian Evidence Act and Section 148 of the BSA (Section 145 of the Indian Evidence Act) are reproduced hereinbelow for the sake of convenience: -

> **"147. Evidence as to matters in writing**.—Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. Explanation.— A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant fact.
>
> **148. Cross-examination as to previous statements in writing.—**A witness may be cross-examined as to previous

> statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

46. A plain reading of the above provisions would make it clear that wherever questions are required to be put as to the matters in writing/previous statements in writing, the attention of the witness must be drawn to the document/statement itself. Thus, a question would arise as to how this procedure would be followed in cases where the evidence of the witness is being recorded over video conferencing.

47. In this age of advancement of technology, instances are galore where, the evidence of witnesses are being recorded over video conferencing. In such circumstances, none of the parties should be put to

a dis-advantage merely because the witness is not in attendance before the Court, and the document/previous statement in writing with which such witness is sought to be confronted, cannot be shown/put to him.

48. Therefore, we hereby clarify and direct that in every case where, it is proposed to record the statement of a witness over video conferencing and any previous written statement of such witness or a matter in writing is available and the party concerned is desirous of confronting the witness with such previous statement/matter in writing, the trial Court shall ensure that a copy of the statement/document is transmitted to the witness through electronic transmission mode and the procedure provided under Section 147 and Section 148 of the Bharatiya Sakshya Adhiniyam (corresponding Section 144 and Section 145 of the Evidence Act) is followed in the

letter and spirit, so as to safeguard the fairness and integrity of the trial.

49. This direction is being issued with a view to avoid procedural irregularities and to prevent disadvantage to any party before the Court, and also to uphold the principles of fair trial, effective cross-examination, and proper appreciation of evidence.

50. From the statement of the witness, the following material facts emerge:

(a) She identified the accused-appellant in Court while being examined through video conferencing, nearly eight and a half years after the incident.

(b) She admitted that she had been discharged from Moolchand Hospital on 24th or 25th December, 2008.

(c) She used to wear spectacles as her distance vision was weak. At the time of dock

identification, the witness was not wearing spectacles.

(d) Not even a bare suggestion was put to her by the Public Prosecutor that she had been taken to the police station or jail for TIP proceedings. Most material is the fact that the witness emphatically denied the suggestion of the Public Prosecutor that she had gone to the Court on 26th December, 2008, and identified the assailants.

Identification in Court after delay – Unsafe and Improbable

51. It is trite that the evidence of an eye-witness must be of sterling quality and unimpeachable character. It should not only inspire the confidence of the Court but must also be of such a nature that is acceptable at its face value.

52. We may note that the possibility of identification of the accused-appellant by Smt. Indra Prabha Gulati (PW-18) in Court, after a lapse of nearly eight and a half years from the incident, is extremely unlikely. In her testimony, the witness candidly admitted that her distance vision was weak and that she could not see objects at a distance without spectacles. It is also borne out from the record that even at the time of the incident, she was aged about 73 years and was infirm. She was not wearing spectacles at the time of her deposition *via* video conferencing**.** In this background, her purported identification of the assailant after such a long lapse of time, that too over video conferencing, does not inspire confidence.

53. Furthermore, when a suggestion was put to the witness by the Public Prosecutor in cross-examination as to whether she had gone to the Patiala House Courts for identifying the four

assailants, the witness emphatically denied the same.

54. In her cross-examination, the witness Smt. Indra Prabha Gulati (PW-18) stated that the accused-appellant Raj Kumar @ Bheema was wearing a black-coloured shirt, which is an improvement introduced for the first time after nearly eight and a half years. This appears to be one of the probable reasons for her identification of the accused-appellant. No identifying feature of the assailants was disclosed in her previous statement[22] recorded under Section 161 CrPC, wherein no physical description of the accused persons or clothes worn by them at the time of the incident was mentioned. Such an embellishment casts a serious doubt on the reliability of her dock identification and is suggestive of a clear attempt to fill critical lacunae in the prosecution case.

[22] Exh. PW-17/A.

55. In assessing the credibility of a witness, the testimony must inspire confidence in the judicial mind, and omissions, improvements, or contradictions touching the core of the prosecution version inevitably undermine such assurance. This Court has consistently held that minor discrepancies are not fatal, but material improvements that go to the root of the matter essentially erode the credibility of the witness.

56. In view of the aforesaid glaring facts emerging from the testimony of Smt. Indra Prabha Gulati (PW-18), it would be unsafe to place reliance on her evidence regarding the identification of the accused. Once her identification of the accused-appellant in Court is discarded, no substantive evidence remains on record to connect the accused with the crime.

B. Glaring Infirmities in the Test Identification Proceedings

57. The trial Court, as well as the High Court, drew an adverse inference against the accused-appellant on the ground that he declined to participate in the TIP. However, the fact remains that the very sanctity of the TIP stands under a serious cloud of doubt when it is manifest that Smt. Indra Prabha Gulati (PW-18) did not go for participating in any such identification parade.

58. In this context, it would be essential to advert to the prosecution case regarding the effort made by the Investigating Officer to get the appellant subjected to the TIP.

59. It is the case of the prosecution that the accused was arrested on 21st November, 2008. On perusal of the arrest memo[23], it is apparent that there is no

[23] Exh. PW- 14/B.

mention in the document that the face of the accused was kept *baparda* (muffled) after his arrest. A doubt on the prosecution case on identification thus arises from this very stage.

60. The evidence of the first Investigating Officer Shri S.K. Sharma (PW-15), who effected the arrest of the accused-appellant on 21st November, 2008, has been carefully examined. The Investigating Officer (PW-15), though, stated in his deposition that at the time of the arrest of the accused-appellant Raj Kumar @ Bheema, his face was kept muffled. However, this assertion stands contradicted by the arrest memo, which contains no such recital.

61. The Investigating Officer further stated that the accused-appellant was interrogated and, in furtherance thereof, recoveries were affected *vide* memoranda Exh. PW-14/D, Exh. PW-14/O, Exh. PW-14/P, and Exh. PW-15/H. A careful scrutiny of

these memoranda would show that there is no reference therein that the face of the accused was muffled at the time of the recovery proceedings. This significant omission lends support to the plea taken by the accused-appellant during the TIP and in his statement under Section 313 CrPC that he had already been shown to the witness, and his photographs had been taken by the Investigating Officer, which were later used for dock identification.

62. It is trite that where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept *baparda* to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the

accused before the TIP – whether physically or through photographs – the credibility and sanctity of the identification proceedings would stand seriously compromised.

63. Another material infirmity in the prosecution case relates to the procedural aspects of the TIP. From the evidence of Smt. Indra Prabha Gulati (PW-18), it is evident that she categorically stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008. She did not utter even a single word to suggest that she had been taken to prison or any Court for participating in any such proceedings. Further, the witness was emphatic in stating that neither did she meet the police nor did she visit the Patiala House Courts after being discharged from the hospital**.** It is also pertinent to note that no document pertaining to the treatment or discharge of Smt. Indra Prabha Gulati (PW-18) was

proved on record by the prosecution. Consequently, a grave doubt arises regarding the very possibility of any TIP proceedings having been conducted in the presence of the witness Smt. Indra Prabha Gulati (PW-18) on 24th December, 2008.

64. This conclusion gets support from the evidence of the ACMM, Smt. Surya Malik Grover (PW-12), who, in her deposition, only stated that the Investigating Officer informed her that the identifying witness was standing outside. Significantly, there is no signature of the identifying witness Smt. Indra Prabha Gulati (PW-18) on any of the documents prepared in connection with the TIP.

65. In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted**.** While the refusal of the appellant to participate in the TIP may, *prima facie*, invite an adverse inference,

mere such inference cannot support the theory of identification when the very authenticity of the TIP is under a serious cloud of doubt. When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein, the very foundation of the identification proceedings falls flat to the ground.

66. Furthermore, in such circumstances and considering the significant improvements made by Indra Prabha Gulati (PW-18) from her previous police statement on the aspect of identifying features (black shirt), the dock identification of the accused-appellant made by the injured witness, Smt. Indra Prabha Gulati (PW-18), during the course of her evidence through video-link, recorded nearly eight

and a half years after the incident would be unsafe to rely upon.

C. Recoveries and Non-identification of Articles

67. In addition to the above, the prosecution placed reliance on the alleged recoveries of looted articles at the instance of the accused. However, it is pertinent to note that Smt. Indra Prabha Gulati (PW-18) was not made to identify the said articles during her testimony. Furthermore, Vivek Gulati, son of Smt. Indra Prabha Gulati (PW-18), who is stated to have identified the articles in the TIP, was not examined during the trial. Consequently, the alleged recoveries lose their evidentiary worth and cannot be relied upon, as there is no credible proof that they are the looted articles.

68. The prosecution has tried to claim that the accused-appellant could not offer any explanation for

the presence of human blood on the pant recovered at his instance,[24] which he had allegedly worn at the time of the incident, which circumstance is incriminating. However, indisputably, the blood stains on the pant could not be matched with the blood sample lifted from the scene of occurrence or with the blood group of the deceased or the injured victim, as the Serology report[25] recorded "no reaction" in respect of blood grouping for Exh. 20 (Pant). On this count alone, guilt cannot be fastened upon the appellant, as the recovery by itself is not sufficient to prove the case beyond reasonable doubt. The mere availability of human blood on an article is not sufficient unless it is further corroborated by a matching blood group with that of the deceased.

[24] Exh. PW-14/D.
[25] Exh. 24/B.

69. Once the identification of the accused by Smt. Indra Prabha Gulati (PW-18) is discarded, and the recovery of articles cannot be connected either with the crime or with the accused, no substantive or credible evidence remains on record to link the accused with the offence.

CONCLUSION

70. In view of the discussion made hereinabove, the impugned judgments do not stand to scrutiny. The appeal is, thus, allowed.

71. The judgment dated 29th September, 2022, passed by the High Court, as well as the judgment of conviction dated 12th February, 2021, and the order of sentence dated 20th February, 2021, passed by the trial Court, are hereby set aside.

72. The accused-appellant is acquitted of the charges. He has remained in custody for almost 15

and a half years and shall be released from prison forthwith, if not wanted in any other case.

73. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
NOVEMBER 17, 2025.