

**IN THE COURT OF SH. SACHIN SANGWAN :**  
**ADDITIONAL SESSION JUDGE (FAST TRACK COURT – 01):**  
**SOUTH-EAST DISTRICT : SAKET COURTS : NEW DELHI**

**SC No.1407/2016**  
**STATE Vs GAURAV**  
**FIR No.: 95/2011**  
**U/S 147/148/149/302/120B IPC**  
**PS : Amar Colony**

*Particulars of the case*

1. Date of offence	: 12.03.2011
2. Offence complained of	: u/s 147/148/149/302/120B IPC
3. Name of the complainant	: Sh. Manmohan Gupta
4. Name of the accused no.1	: Gaurav
his parentage	s/o Sh. Naresh Sineha,
his residential address	R/o: S-61,101, Nehru Nagar, New Delhi.
Name of accused no.2	: Rahul Tomar
his parentage	s/o Sh. Satender Kumar Tomar,
his residential address	R/o: G-175, Sri Niwas Puri, New Delhi
5. Plea of accused	: Pleaded not guilty
6. Final order	: Both accused acquitted
Date of Institution	: 30.05.2011
Date of Judgment reserved on	: 30.10.2023
Date of Judgment	: 24.11.2023
Ld. Addl PP for State	: Sh. Ashok Debbarma

Ld. Counsel for accused  
Gaurav

: Sh. Arun Sharma

Ld. Counsel for accused Rahul  
Tomar

: Sh. M. D. Farman

### **JUDGMENT**

#### **1. CHARGESHEET**

**1.1** As per the charge-sheet, on 12.03.2011 on receipt of a call at chowki S. N. Puri vide DD No. 25 regarding a quarrel, HC Naresh reached at the spot i.e. L-Market near gate no.7, S. N. Puri, Delhi where he came to know that injured had already been shifted to some unknown hospital. At the same time, another information was received vide DD No.29 regarding admission of one Yash s/o Manmohan Gupta in Trauma Center, AIIMS. Accordingly, SI Ram Niwas along with HC Naresh reached at said hospital where they came to know that Yash died during his treatment. SI Ram Niwas met injured/deceased Yash's father namely Manmohan Gupta and recorded his statement.

**1.2** He stated that on 12.03.2011 at about 07.10 pm he was parking his car in the parking area when two boys came running towards him and asked him whether he was Yash's father and he replied in affirmative. Those boys told him that someone had beaten Yash very badly and he was even stabbed by them. They informed that Yash was sent to home and he should reach home soon. While he was locking his car, 2-3 more boys came running towards him and told him that Yash was in unconscious state. He along with said boys ran towards Yash, near the tracks of H-Block, Ramlila Maidan. He tried to bring Yash towards his car but Yash fell down. He said

that he shall make call on number 100 but those boys told him that they had already made a call. Then he made a call to his friends and told them about knife injuries to Yash. Thereafter, he along with his friends Sanjay Pundhir and Sanjeev Sharma took Yash to AIIMS Hospital. On the way Yash told him that he was not able to breathe. When he asked his son about stabbing of knife, his son told him that 'UM', Gaurav, Rahul Tomar and their 5-6 associates were following him, they caught him and they all had beaten him and also stabbed him.

He firstly took Yash to AIIMS hospital and then to Trauma Center where he was admitted. However, during his treatment, Yash died.

On the said statement of injured's father, the present case was registered and further investigation was handed over to Inspector Sanjeev Solanki. During investigation, Inspector along with his staff reached at PP S N Puri where he met injured's father and verified the facts. Thereafter, said IO along with SI Ram Niwas reached at Trauma Center, AIIMS wherein they got the dead body preserved in Mortuary Trauma Center, AIIMS and seized the blood-stained clothes of injured. Thereafter, the IO recorded the statement of all the friends of deceased namely Aman, Abhishek, Saddam and Mujjim u/s 161 CrPC.

**1.3** Saddam stated that on 12.03.2011 in the evening time, he along with Aman, Abhishek and Mujjim were standing near East of Kailash, Red Light when Yash called him on his phone for going for a walk. They all were waiting for Yash when Yash made a call on his phone no. 9711180801 and told him that 'UM' was pointing him out to his friends. They all came downside from the red light and saw that 5-6 boys were beating Yash near the dustbin and said boys ran away on seeing them. At the same time, Yash

made a call on his phone and they all reached near Yash. He was bleeding from his nose. They washed his mouth. He was feeling giddy. After some time, he, Mujjim and Aman moved towards Yash's house where his father was parking his car. Saddam told the whole incident to his father and his father made calls to 2-3 people and shifted Yash to hospital. He can identify those boys who had beaten Yash.

**1.4** Even witnesses Mujjim, Abhishek and Aman narrated the facts as stated by PW Saddam.

**1.5** Thereafter, Inspector along with SI Ram Niwas took up further investigation. During investigation, they came to know that one boy namely 'UM' resides in S. N. Colony and they reached there where they came to know that 'UM's age was below 18 years. Hence, JWO (Juvenile Welfare Officer) SI Ram Phool was called at the spot. Interrogation was made from Juvenile 'UM' but he claimed that he was not involved in the said incident and rather he was present at the Gym situated at Q Block, Private Colony at S N. Puri at the time of incident and that the owner of said Gym was Manish Kumar. Then after leaving JWO there itself, Inspector along with SI Ram Niwas reached at above mentioned address where they came to know that owner of the gym along with his brother resides at G-200, S N Puri. The Gym owner Manish Kumar and his brother Navneet Prasad were interrogated and they stated that on the date of incident 'UM' pressurized them on phone to mark his attendance in their register but they refused. Said register was seized and statements of Gym owner Manish Kumar and his brother Navneet Prashad were recorded u/s 161 CrPC.

**1.6** Due to contradictory statements of 'UM' and the gym owners, JCL 'UM' was interrogated in detail wherein he admitted that he was involved in Yash's murder along with his associates Gaurav, Rahul Tomar, 'VN', 'SU' and others. His version was written separately. As per his version, he was 10<sup>th</sup> class fail from G. B. Pant School S. N. Puri and had just given 10<sup>th</sup> class exam from Open School. He and Yash were of the similar age and lived in the same colony in Srinivaspuri. They were good friends and in August, 2010 he had borrowed Rs. 2500/- from Yash. Yash came to his house in September, 2010 and complained about this to 'UM's family members. Due to which 'UM' got annoyed with Yash. About two and half months back, 'UM' had befriended one Rahul of Sangam Vihar through his friend Gaurav studying in his G. B. School. Rahul was also studying in the same school. 'UM' had told Gaurav and Rahul about this action of Yash and they all planned to teach a lesson to Yash when the time comes. On 12.03.2011 he called Gaurav and Gaurav further called Rahul. Rahul along with 4-5 boys from Sangam Vihar came to Nehru Park, Aggarwal Sweets. 'UM' and Gaurav also reached there. After that, all of them reached L-Block in S. N. Puri and at the same time on seeing Yash coming, 'UM' pointed out Yash from a distance to Gaurav, Rahul and other boys. Yash was coming while talking to someone on phone. From near T-point L block market Yash started going towards Gurudwara Road where 'UM' and his friends chased him and stopped him before L Block Market. Rahul, Gaurav and 'UM' himself caught him from behind and they all together started beating Yash and one of the boys who came along with Rahul stabbed him on which they all got scared and 'UM' ran away hiding himself and went straight to his home. He had called his trainers at his Gym

namely Manish and Navneet and requested them to mark his attendance in the gym register but they refused despite repeated requests.

**1.7** JCL 'UM's apprehension memo, personal search memo were got prepared and all the proceedings were conducted under JJ Act. Thereafter, IO along with SI Ram Niwas, JWO Ram Phool along with JCL 'UM' reached the house of Gaurav at Nehru Nagar where Gaurav was interrogated. He also admitted his involvement in the incident as per version given by JCL 'UM'.

He also stated that he was having mobile phone bearing no. 9717605189 at that time and he handed over the same to IO.

**1.8** Thereafter the Inspector apprehended Rahul Tomar and during interrogation he stated that he was involved in the yesterday's incident along with his associates namely 'VN', 'SU', 'SS', 'JI', 'SI' and 'GU' and he went to S. N. Puri along with them. Statement of JCL Rahul was recorded separately and he corroborated the version of JCL 'UM' and accused Gaurav.

He also stated that during the incident, the boy named 'VN' had stabbed Yash with a knife on his back.

He further stated he was using mobile phone bearing no. 7503332597 on which Gaurav had made the call to him. 'UM' had called him from his mobile no. 9540099044 and asked him to bring 4-5 boys to teach a lesson to Yash. He told the addresses of the boys who accompanied him during incident to the IO and that they all used to meet daily at Sangam Vihar. The SIM No. 750332597 and the mobile phone having IMEI no. 359741032307718 used by accused Rahul were seized by the IO.

**1.9** During investigation, Rahul accompanied them to the house of 'VN'. 'VN' was interrogated by the IO wherein he admitted his guilt and also admitted that he had stabbed Yash on his backside. His version and apprehension documents were recorded in presence of his family members and his mobile no.7503573637 IMEI No. 35820020056550 was taken into police possession. One knife kept was also recovered at the instance of said 'VN' from under the brick in one corner plot near gali no.16, Sangam Vihar and was also seized.

**1.10** During investigation, IO along with Rahul and 'VN' then apprehended the other juveniles, namely 'GU', 'SS', 'JI', 'SU' and 'SI'. All of them accepted their involvement in the incident and their versions were recorded. Mobile phone of 'SU' bearing no. 9599058539 was seized and during investigation, it was revealed that same mobile was being used by said juvenile at the time of incident.

On 13.03.2011 IO came to know that recovered phone belongs to some known person of said Juvenile.

**1.11** During investigation, Crime scene was got inspected by the crime team who also clicked the photographs of the spot. The blood samples and exhibits were lifted from the crime scene. Autopsy of deceased Yash was got conducted and the dead body was handed over to his legal heir. The blood sample of deceased was also seized.

**1.12** Site plan was prepared at the instance of eye witness Saddam. He also stated that he can identify the boy who stabbed Yash and the other accomplices of 'UM', Rahul and Gaurav. He also told that yesterday Mujim had sent SMS to Yash calling him near the Red Light. His supplementary statement was recorded. Thereafter, all nine JCLs were admitted in

Observation Home Sewa Kutir Kingsway Camp. All case properties were deposited in the malkhana.

**1.13** On 14.03.2011 all nine JCLs were shifted to JJB II Delhi from Observation Home wherein all of them except accused 'UM', Rahul and Gaurav were produced in muffled face. JJB II ordered to keep all the JCLs in Observation home till 28.03.2011. IO also moved an application for TIP of JCLS and the said application was fixed for 15.03.2011 and JCLs were directed to be produced before the Court of Ms. Chetna Singh, Ld. Link MM, Saket Courts, Delhi.

Thereafter, IO along with his staff had gone to the police station wherein he met complainant Manmohan Gupta along with Sanjay Pundhir, Sanjeev Sharma and Sukesh Kumar and recorded their statements them u/s 161 CrPC

**1.14** In his supplementary statement, complainant Manmohan Gupta stated that 3-4 days prior to the incident 'UM' along with his two friends had come to his house for giving Sai Sandhya Card to his son Yash. Yash introduced him to his friends namely 'UM', Rahul and Gaurav. Last year also 'UM' organized Sai Sandhya Programme at his house and had also given card to them and Manmohan Gupta had attended the same along with his family. He produced the said Sai Sandhya card to IO who seized the same. He further stated that Yash used the mobile no.9717271593 issued in the name of Manmohan Gupta and when he along with Yash reached at the hospital, Manmohan Gupta made a phone call to 'UM' and asked him why he had fought with his son Yash but no satisfactory reply was given and rather 'UM' handed over the phone to his father. Manmohan Gupta talked to his father and told that his son 'UM' along with Gaurav, Rahul and 5-6

other boys had beaten his son Yash and also stabbed his son due to which his condition became very serious and again and again he was taking the names of 'UM', Gaurav, Rahul and his other friends who had beaten Yash to which 'UM's father stated that 'UM' was watching TV at his home.

**1.15** Sanjeev Sharma stated that on 12.03.2011 at about 07.00 pm he received the phone call from Yash's father namely Manmohan Gupta who told that Yash was injured and had to be taken to the hospital and he should come early. Thereupon he visited Manmohan Gupta near Ramlila Ground, Srinivaspuri wherein he met Sanjay Pundhir and Yash's teacher namely Suresh Kumar and they all shifted Yash to AIIMS Hospital in his father's Tata Safari and then again shifted Yash to Trauma Center wherein he died during his treatment.

**1.16** Sanjay Pundhir also corroborated the statement of Sanjeev Sharma.

**1.17** Suresh Kumar was the tuition teacher of deceased Yash and he also stated about shifting of Yash in injured condition by his father in his car to AIIMS. He also stated that on the way to AIIMS hospital, Yash stated that he had a fight with 'UM', Rahul and Gaurav along with 5-6 associates who came along with them and all of them had beaten him. Out of them one boy stabbed him from behind due to which he was under pain and feeling giddy.

**1.18** On 15.03.2011 Link MM Ms. Chetna Singh, Saket Courts fixed the TIP of accused persons for 19.03.2011 and on 21.03.2011 wearing clothes of Yash along with knife were sent to Autopsy Surgeon Trauma Center AIIMS for obtaining his opinion.

**1.19** During investigation, JJB II got verified the date of birth of all nine boys and all of them except Rahul Tomar and Gaurav were found juveniles.

On 29.03.2011 both of said adult accused were produced before the concerned court and their police custody was taken and their disclosure statements were recorded during said PC remand. During investigation, accused Rahul disclosed that phone which was seized by the IO on 13.03.2011 was having Double SIM bearing numbers 7503332579 and 7503332599.

**1.20** On 30.03.2011 both accused were sent to judicial custody. Thereafter, subsequent opinion of Autopsy Surgeon was obtained. After going through the PM report and after examining weapon of offence and the clothes of deceased, Autopsy Surgeon opined that the injuries were possible by the weapon in question and the cut marks on the clothes of deceased were possible by said weapon.

Case exhibits were sent to FSL for forensic opinion.

**1.21** On 17.04.2011 statement of eye witnesses namely Saddam and Mujim were recorded u/s 164 CrPC in the court. During investigation, IO analyzed the call details and found that location of call details of deceased as well of all JCLs/accused was at S. N. Puri and the incident also happened near S. N. Puri which revealed that the said quarrel was done with planning and with intention after gathering. Accordingly, section 25/54/59 Arms Act and 147/148/149/120B IPC were added in the present case.

**1.22** From the investigation it was found that 'UM' called Gaurav and Gaurav called Rahul Tomar, who further called his other friends namely 'VN', 'SU', 'JI', 'SS', 'GU' and 'SI' at Nehru Nagar near Aggarwal Sweets and then they all reached near S. N. Puri L Block Market and on seeing Yash coming from front side, they all followed him near the dustbin on

pointing out of 'UM'. As per their pre-planning, Gaurav, 'UM' and Rahul Tomar caught hold of Yash from front side and 'SU', 'SI', 'GU', 'JI' and 'SS' had beaten Yash and 'VN' stabbed him with knife from back side and on seeing Yash's friends coming, they all fled away from the spot. Accordingly, chargesheet was filed against the JCL as well as accused persons u/s 147/148/148/302/120B/34 IPC and 25/24/29 Arms Act.

**1.23** Separate proceedings were conducted against the JCLs before the JJB Board.

**1.24** The present case chargesheet was filed against accused Gaurav and Rahul who were declared major.

## **2. CHARGE**

**2.1** On the basis of the charge-sheet, charge u/s 147/148/302 IPC read with section 149 IPC as well as u/s 120-B IPC was framed against both accused Gaurav and Rahul. Both accused pleaded not guilty to said charges and claimed trial. Accordingly, prosecution was directed to lead evidence in support of the charge-sheet.

## **3. PROSECUTION EVIDENCE**

**3.1** In support of its case, prosecution has examined 34 witnesses.

S. No.	Name of the witnesses	Nature of the evidence
PW-1/PW-16	HC Hari Ram	Duty Officer who recorded the FIR
PW-2	Ct. Anil Tomar	Police official who delivered the copies of FIR to senior police officer and the Illaka

		Magistrate
PW-3	Man Mohan Gupta	Complainant of the case/father of the deceased Yash
PW-4	Ct. Jagbir Singh	Duty Constable at AIIMS Trauma Center who handed over deceased's wearing clothes to the IO
PW-5	HC Naresh Kumar	Police official who reached the spot and the hospital initially and got the FIR registered.
PW-6	HC Praveen Kumar	Police official who obtained the opinion on the weapon/clothes
PW-7	HC Ghanshyam	Police official who deposited the case exhibits at FSL, Rohini
PW-8	Sh. Sukesh Kumar	Tuition teacher of deceased Yash who accompanied the deceased with his father to the hospital.
PW-9	Manish Prasad	Owner of the gym where JCL 'UM' used to go for exercise
PW-10	Navneet Prasad	Brother of PW9
PW-11	Aman	Acquaintance of deceased Yash, who used to attend tuition classes in the same

		tuition center
PW-12	Manish Gupta	Witness to identification of dead body of deceased Yash
PW-12 (wrongly again numbered as PW12)	Ct. Dinesh	Crime Team Photographer
PW-13	Inspector Naresh Kumar	Crime Team In charge who prepared the crime team inspection report
PW-14	Saddam	Eye witness/friend of deceased Yash
PW-15	Inspector Mahesh Kumar	Draftsman, Crime Branch who prepared the scaled site plan
PW-17	Muzim	Eye witness/friend of the deceased Yash
PW-18	Sanjeev Sharma	Friend of the father of the deceased
PW-19	Sanjay Pundir	Friend of the father of the deceased
PW-20	Dr. D. K. Singh	Doctor who conducted autopsy on the dead body of deceased Yash
PW-21	Shri Sudhanshu Kaushik	Judicial Officer who recorded the statements of Muzim and Saddam u/s 164 CrPC
PW-22	Inspector Ram Niwas	Witness to apprehension of all

		JCLs and the accused and recoveries effected from them. Witness to seizure of blood samples/exhibits from the spot.
PW-23	Chander Shekhar	Nodal Officer, Bharti Airtel who proved the CAF of mobile numbers 9958126735, 9818001009, 9717271593 and also SIM change form of mobile number 9717271608
PW-24	Saurabh Aggarwal	Nodal Officer, Vodafone mobile who proved the CDRs of mobile number 9711180101, 9811351151, 9873368733 and 9811262328
PW-25	Dr. K. Manoj	Doctor who appeared on behalf of Dr. Jitender Goswani, who had prepared the MLC of deceased Yash and had given opinion on the same
PW-26	Bhunesh Kumar	Medical Record Technician who identified the signatures of Dr. Jitender Goswami on the MLC of deceased Yash
PW-27	Shishir Malhotra	Nodal Officer, Aircel Limited

		who proved the CDRs of mobile phones 9716205189 and 7503573757
PW-28	V. Lakshmi Narasimhan	FSL expert who conducted physical examination of clothes of deceased and one button actuated knife.
PW-29	Dr. Dhruv Sharma	FSL expert who conducted biological examination of the case exhibits
PW-30	HC Naresh	Witness to recovery of knife from JCL 'VN'
PW-31	Ajit Singh	Alternate Nodal Officer, Idea Cellular Limited who proved the destruction of CAF and CDR of mobile numbers viz. 9540099044 and 9540373715 for the period from 11.03.2011 to 13.03.2011
PW-32	Yogesh Tripathi	Alternate Nodal Officer, Reliance Communications Ltd. who proved the CAF of mobile no. 9015655808 issued in the name of subscriber Deepali Sharma
PW-33	Inspector Sanjeev	IO of the case

	Solnaki	
PW-34	ACP Govind Sharma	Police official who proved certificate u/s 65B IEA regarding the record of CDR and CAFs of mobile numbers received on his official e-mail ID during the investigation

**3.2** During the trial, the inquiry file from JJB was summoned. As inquiry had been concluded therein, the said file was attached with the present case file. The prosecution witnesses have exhibited certain documents from the JJB file and some of the witnesses have referred to the documents already exhibited in the JJB file. Accordingly, the prosecution has exhibited following documents/objects in support of its case:-

No.of exhibit	Nature of exhibit
Ex.PW1/A	FIR
Ex.PW3/A (in JJB File)	Complaint of Manmohan Gupta
Ex.PW3/B (in JJB File)	Dead body identification memo
Ex.PW3/C (in JJB File)	Receiving of dead body of deceased Yash
Ex.PW3/D (in JJB File)	Seizure memo of card for Sai Sandhya scheduled on 23.03.2011 at the residence of JCL 'UM'
Ex.P1 (in JJB File)	Above mentioned card
Ex.PW4/A (in JJB File)	Seizure memo of the parcel containing clothes of deceased Yash
Ex.PX (in JJB File)	Original attendance register maintained at Gym by PW9
Ex.PW9/A (in JJB File)	Seizure memo of abovementioned attendance register by the IO

Ex.PW9/B (in JJB File)	Apprehension memo of JCL 'UM'
Ex.PW9/C (in JJB File)	Apprehension memo of JCL 'SU'
Ex.PW9/D (in JJB File)	Version of JCL 'UM'
Ex.PW9/E (in JJB File)	Seizure of mobile phone from accused Gaurav
Ex.PW9/F (in JJB File)	Apprehension memo of JCL 'VN'
Ex.PW9/G (in JJB File)	Personal search memo of JCL 'VN'
Ex.PW9/H (in JJB File)	Seizure of mobile recovered from the possssion of JCL 'VN'
Ex.PW9/I (in JJB File)	Version of JCL 'VN'
Ex.PW9/J (in JJB File)	Sketch of knife recovered from the possession of JCL 'VN'
Ex.PW9/K (in JJB File)	Seizure memo of the knife recovered from above mentioned JCL
Ex.PW9/M (in JJB File)	Apprehension memo of JCL 'SS'
Ex.PW9/N (in JJB File)	Apprehension memo of JCL 'SI'
Ex.PW9/O (in JJB File)	Apprehension memo of JCL 'GU'
Ex.PW9/Q (in JJB File)	Apprehension memo of JCL 'JI'
Ex.PW9/R (in JJB File)	Personal search memo of JCL 'SS'
Ex.PW9/S (in JJB File)	Personal search memo of JCL 'SI'
Ex.PW9/T (in JJB File)	Personal search memo of JCL 'GU'
Ex.PW9/U (in JJB File)	Personal search memo of JCL 'SU'
Ex.PW9/V (in JJB File)	Personal search memo of JCL 'JI'

Ex.PW9/W (in JJB File)	Version of JCL 'SS'
Ex.PW9/X (in JJB File)	Version of JCL 'SI'
Ex.PW9/Y (in JJB File)	Version of JCL 'GU'
Ex.PW9/Z (in JJB File)	Version of JCL 'SU'
Ex.PW9/ZA (in JJB File)	Version of JCL 'JI'
Ex.PW9/ZB (in JJB File)	Seizure memo of recovered mobile phone from JCL 'SU'
Ex.PW9/ZC (in JJB File)	Site plan of the place of incident
Ex.PW9/ZD (in JJB File)	Seizure of sealed container containing earth control sample, blood samples as well as vomiting samples from the spot
Ex.PW9/ZE (in JJB File)	Seizure memo of blood in gauze of the deceased
Ex.PW11/A (in JJB File)	Statement of PW11 Aman recorded before JJB
Ex.PW12/A (in JJB File)	Statement of PW12 regarding identification of dead body of deceased Yash
Ex.PW12/B (in JJB File)	Inquest proceedings
Ex.PW12/A1 to A6 (in JJB File) (in JJB File)	Six photographs of the spot
Ex.PW12/A7 (colly) (in JJB File)	Negatives of abovementioned photographs
Ex.PW13/A (in JJB File)	Crime team report
Ex.PW15/A (in JJB File)	Scaled site plan
Ex.PW17/A	164 CrPC statement of PW Muzim
Ex.PW20/A (in JJB File)	Post mortem report

Ex.PW20/B (in JJB File)	Sketch of a button actuated knife
Ex.PW20/C (in JJB File)	Doctor's opinion on the post mortem of deceased Yash
Ex.PW21/A	Questions put by the Judicial Officer to ascertain the capacity of witness for making statement
Ex.PW21/B	Certificate of Judicial Officer regarding the authenticity of 164 CrPC statement
Ex.PW21/C	164 CrPC statement of PW Saddam
Ex.PW21/D	Certificate of Judicial Officer regarding the authenticity of 164 CrPC statement
Ex.PW22/A (in JJB File)	DD No.25 regarding quarrel at L Block, Srinivaspuri
Ex.PW22/B (in JJB File)	DD No.29 regarding hospitalization of one Yash by his father
Ex.PW22/C (in JJB File)	Rukka
Ex.PW22/D	Apprehension memo of accused Gaurav
Ex.PW22/E	Personal search memo of accused Gaurav
Ex.PW22/F	Disclosure statement of accused Gaurav
Ex.PW22/G	Apprehension memo of accused Rahul Tomar
Ex.PW22/H	Personal search memo of accused Rahul Tomar
Ex.PW22/I	Disclosure statement of accused Rahul Tomar
Ex.PW22/J	Disclosure statement of accused Gaurav
Ex.PW22/K	Disclosure statement of accused Rahul
Ex.PW22/L	Pointing out memo of place of occurrence
Ex.PW22/P1	knife recovered from the possession of JCL Vishwa Nath Pratap Singh
Ex.PW22/P2, P3, P4 and P5	Four mobile phones recovered from the possession of accused Rahul, 'SU', 'VN' and Gaurav
Ex.PW22/P3 (colly)	Clothes of the deceased

Ex.PW23/A, Ex.PW23/B Ex.PW23/C	and	Certified copies of CAF of mobile numbers 9958126735, 9818001009 and also SIM change form of mobile number 9717271608
Ex.PW23/D		Reply regarding non availability of CDR of abovementioned mobile numbers for the period from 11.03.2011 to 13.03.2011
Ex.PW23/E		CAF of mobile number 9717271593 issued in the name of complainant Manmohan Gupta
Ex.PW24/A		CDR of mobile number 9711180101 for the period from 11.03.2011 to 15.03.2011
Ex.PW24/B		Certificate u/s 65B IEA regarding the abovementioned CDR
Ex.PW24/C		CAF of above-mentioned mobile number
Ex.PW24/D		CDR of mobile number 9811351151 for the period from 12.03.2011 to 13.03.2011
Ex.PW24/E		Certificate u/s 65B IEA regarding the abovementioned CDR
Ex.PW24/F		CAF of abovementioned mobile number
Ex.PW24/G		CDR of mobile number 9873368733
Ex.PW24/H		Certificate u/s 65B IEA regarding the abovementioned CDR
Ex.PW24/J		CAF of abovementioned mobile number
Ex.PW24/K		CDR of mobile number 9811262328
Ex.PW24/L		Certificate u/s 65B IEA regarding the abovementioned CDR
Ex.PW24/M		CAF of abovementioned mobile number
Ex.PW25/A (in JJB File)		MLC of deceased Yash
Ex.PW27/A (in JJB File)		CAF of mobile no. 9716205189 for the period from 11.03.2011 to 13.03.2011
Ex.PW27/B (in JJB File)		CAF of mobile no. 7503573757 for the period from 11.03.2011 to 13.03.2011
Ex.PW27/C (in JJB File)		Print out containing e-mail transaction between Aircel Limited office and ACP Lajpat Nagar

Ex.PW28/A	FSL report dated 03.05.2012 regarding examination of clothes of deceased and one button actuated knife
Ex.PW29/A	Detailed report of six parcels examined by PW29
Ex.PW29/B	Detailed report of serological examination dt.29.06.2012 of exhibits by PW29
Ex.PW30/P-1	Knife recovered from possession of JCL 'VN'
Ex.PW31/A (in JJB File)	Report of PW31 regarding destruction of CAF of mobile numbers 9540099044 and 9540373715 for the period from 11.03.2011 to 13.03.2011
Ex.PW31/B (in JJB File)	Guidelines issued by the Ministry of Communication and Information Technology, Department of Telecom regarding above mentioned destruction
Ex.PW32/A (in JJB File)	CAF of mobile phone no.9015655808
Ex.PW32/B to Ex.PW32/D (in JJB File)	Annexures of documents provided by the subscriber Deepali Sharma at the time of issuance of abovementioned number
Ex.PW32/E (colly) (in JJB File)	Call details of abovementioned mobile number for the period from 11.03.2011 to 16.03.2011
Ex.PW32/F (in JJB File)	Certificate u/s 65 IEA regarding the calls of abovementioned mobile phone
Ex.PW33/A (earlier exhibited as Ex.PW9/A in JJB-II)	Seizure of mobile phone make MAXX recovered from JCL Rahul
Ex.PW33/B	Application moved by IO in the Court of Ms. Mona Tardi Karketta, Ld. MM for obtaining one day police custody remand of accused persons Rahul Tomar and Gaurav
Ex.PW33/C (in JJB File)	Application moved by IO before Ld. Link MM for recording statement of witnesses Saddam and Muzeem u/s 164 CrPC

Ex.PW33/D		Application of IO for obtaining statement of witnesses namely Saddam and Mujeem recorded u/s 164 CrPC
Ex.PW33/E (in JJB File)		Application of IO for obtaining CAF of mobile numbers 9716205189, 7503332597, 7503573537, 9599038539, 9540099044, 9711180101, 9717271593 and 9015655808
Ex.PW33/F (in JJB File)		Application of IO for obtaining CAF of mobile numbers 9717271608, 99581267735, 7503332599, 7503332597, 9599038539 and 9540099044
Ex.PW33/G (in JJB File)		Application of IO for obtaining CAF of mobile numbers mentioned in Ex.PW33/F as well as mobile numbers 9716205189, 7503573537, 9711180101, 9717271593 and 9015655808
Ex.PW33/H & Ex.PW33/I (in JJB File)		Letter of IO written to Nodal Officer, Idea as well as Aircel cell zone for providing CAF and call details of mobile numbers 9540373715 and 9540099044 and 9716205189, 7503332597, 7503332599 and 7503573537
Ex.PW33/P-1 and Ex.PW33/P-2		One Mobile phone bearing IMEI number 3532222/03/254305/3 make Nokia Black colour along with one SIM recovered from the possession of accused Gaurav
Ex.PW33/P-3, Ex.PW33/P-4 and Ex.PW33/P-5		Mobile phone make Maxx of black color bearing IMEI no. 35974103237718 and two SIM Cards recovered from the possession of accused Rahul
Ex.PW33/P-6 & Ex.PW33/P-7		One mobile phone make Nokia of black colour bearing IMEI no.352705/04/660024/1 and one SIM card recovered from JCL SU

Ex.PW33/P-8 and Ex.PW33/P-9	One mobile phone make Sigmatal of black colour bearing IMEI number 358420056550 and one SIM card recovered from the possession of JCL VN
Ex.PW34/A	Certificate u/s 65B of IEA regarding CDRs and CAFs of mobile number 9717271608, 9958126735, 7503332599, 7503332597, 9599038539, 954009904, 9716205189, 7503573537, 9711180101, 9717271593 and 9015655808

**3.3** Though 34 witnesses have been examined by prosecution but the main witnesses of the case are:

- i. PW-3, Manmohan Gupta, complainant/father of the deceased,
- ii. PW-8 Sukesh Kumar, tuition teacher of deceased,
- iii. PW-14 Saddam, friend of deceased Yash,
- iv. PW-17 Muzim, friend of deceased Yash,
- v. PW-18 Sanjeev Sharma, friend of father of deceased,
- vi. PW-19 Sanjay Pundhir, friend of father of deceased and
- vii. PW-33 Inspector Sanjeev Solanki, IO the case.

**3.4** PW-3 Manmohan Gupta deposed that in the year 2011 he was residing in Srinivaspuri and on 12.03.2011 at about 07.00 pm he was parking his vehicle. Meanwhile, 2-3 boys came running and asked him if he was father of Yash and he replied in affirmative. They informed him that someone had badly beaten Yash and stabbed him. They also informed that Yash had been sent home and they asked him to reach home immediately. He was still locking the vehicle when 2-3 other boys came running and said that Yash had become unconscious. Therefore, he ran towards Yash sitting on the pavement of H-Block, near Ramlila ground. He

took his son Yash along with him but Yash fell down. He wanted to make a call to the police at 100 number but the other children informed him that they had already informed the police. Thereafter, he informed his 2-3 friends that Yash was stabbed by someone and his friends Sanjeev Sharma and Sanjay Pundir reached there. He took Yash in his vehicle along with both of his friends and they started towards AIIMS Trauma Center. He asked Yash as to how he was feeling and he replied that he was having difficulty in breathing. He asked him as to with whom he had quarreled and was stabbed. Yash stated that Rahul, 'UM', Gaurav and 5-6 other boys had caught hold of him, beaten and stabbed him. Firstly, they reached at AIIMS hospital but he was directed to take his son Yash to Trauma Center and accordingly he got him admitted therein. During the treatment, his son Yash expired. Gaurav, Rahul, 'UM' and 5-6 other boys were responsible for the death of his son Yash. Thereafter, police came in the hospital, made inquiries from him and recorded his statement Ex.PW3/A. Post mortem of deceased Yash was got conducted the following day.

On 13.03.2011, he reached at AIIMS Trauma Center wherein he identified the dead body of his son Yash and his statement Ex.PW3/B was recorded by the IO in this regard. He received dead body of his son Yash vide receipt Ex.PW3/C. Thereafter, he conducted last rites of his son.

On 14.03.2011 he went to PS Amar Colony where he handed over a card of Sai Sandhya which was to be held on 23.03.2011 at 'UM's residence. Said card was given by accused Gaurav, 'UM' and Rahul at his residence about 2-3 days prior to the incident and at that time he was introduced to accused Gaurav and Rahul by his own son Yash and he was already acquainted with accused 'UM'. IO seized said card Ex.P1 vide

memo Ex.PW3/D. His son Yash used to keep mobile phone also but the said mobile phone was owned by him and was in his name.

When his son was under treatment in the hospital, he made a phone call to accused 'UM' and confronted him that his son was naming him along with Gaurav, Rahul and 5-6 other boys. However, he did not give any satisfactory answer and handed over his telephone to his father. He told his father that his son Yash was stabbed and he named 'UM', Rahul, Gaurav and 5-6 other boys, to which he replied that his son was sitting and watching TV at home. He had conversation with accused 'UM' and his father for about 8-10 minutes. It was about 09.00 pm.

During PW3's testimony, he identified the accused Gaurav and Rahul in the court.

PW3 was duly cross examined by Ld. Counsels for the accused persons.

**3.5** PW-8 Sukesh Kumar deposed that in the year 2011 he was residing in Srinivaspuri, Delhi along with the family and was running a tuition center with the name and style of Horizon Study Circle.

On 12.03.2011 at about 07.00 pm he was on his way and on seeing the crowd, he stopped there and entered the crowd to find out as to what the matter was. He was informed that Yash was stabbed by someone. He had also seen the father of Yash present there with his vehicle at that time and he was trying to contact someone on phone. He asked him as to what the matter was but he was not in a position to reply so he waited and told that he could also accompany him if he so desired. Thereafter, he went and dropped his motorcycle at his residence and immediately returned to the spot. By then, two other persons had also reached there to accompany the

father of Yash. They put Yash in the car and they all headed towards AIIMS, from where they were referred to Trauma Center. After some formalities, they started the treatment of the Yash. After sometime, they were informed that Yash was stable so he along with two other persons, who had also accompanied left Trauma Center and went back home and in the night he was informed that Yash has expired. On their way to AIIMS, father of Yash tried to inquire from him about the matter and he informed that he was stabbed by some boys and he was naming 'UM', Rahul and Gaurav again and again but Yash was not able to converse properly due to the injuries. They tried to give him water for drinking but he could not swallow the same and vomited. His statement was recorded by the police in the police station Amar Colony after about 1-2 days of the incident.

In answer to a leading question by Ld. Addl. PP, the witness admitted that on their way to AIIMS, Yash stated that the quarrel took place between him and Rahul, 'UM', Gaurav and 5-6 other boys who had come with them. They had beaten him and one of them gave stab injuries on his back due to which he was feeling pain and giddiness.

PW8 was duly cross examined by Ld. Counsels for the accused persons.

**3.6** PW14 Saddam, friend of deceased Yash deposed that in the year 2011 he was studying in class 7<sup>th</sup> in G. B. Pant School and on 12.03.2011 he along with Aman, Abhishek and Muzim were present at red light of East of Kailash and were waiting for Yash to go for a walk (*ghumne*) at about 06.00-7.00 pm. Meanwhile he received a call from mobile number of Yash on his mobile phone number 9711180101 who informed that '*UM' is pointing towards him and showing him to his friends, come immediately*'.

He ran and crossed the red light and saw that 5-7 boys were beating Yash. After seeing him, they ran away. One of them was having knife in his hand. Yash came towards him and he was bleeding from his nose. Yash embraced him and he noticed that Yash was having a cut on his back as he was bleeding. He took him to the water tank which was nearby mandir and made him wash his face. Yash informed him that he was feeling giddy and therefore, he took him in a rickshaw towards his house. All of his abovenamed friends were also with them. Yash vomited and fell down from rickshaw and then he pointed towards his father, who was parking his car. He informed Yash's father who made phone calls to some persons and took him to the hospital in his car. Police inquired him and recorded his statement.

During PW14's testimony, he correctly identified both the accused in the court.

PW14 was duly cross examined by Ld. Counsel for accused persons.

**3.7** PW17-Muzim deposed that in the year 2011 he was studying in class 8<sup>th</sup> in G. P. pant School, Srinivas Puri, Delhi. He knows Abhishek, Aman and Saddam. Saddam was residing near his house and he know Abhishek and Aman through Saddam. He knew Yash, who was his friend.

On 12.03.20211 at evening time he along with Abhishek, Aman and Saddam were present at the red light East of Kailash. Saddam made a phone call to Yash and called him for a walk, who said that he was coming in 5-6 minutes. Meanwhile, Saddam received a phone call of Yash who said that he had departed from his house and '*UM' ne uske piche ladke laga diye hain*' and thereafter Yash's phone was disconnected. Thereafter, he along with Abhishek, Aman and Saddam proceeded towards

Sriniwaspuri from the red light of East of Kailash and they saw that 5-6 persons were giving beatings to Yash near a dustbin. They accelerated their speed and reached there and the assailants ran away from there. 'UM', Gaurav and Rahul with others were the assailants who were giving beatings to Yash. One of the assailants was having a knife in his hand. They reached near Yash and the blood was oozing out from his nose. Yash said that he was feeling burning sensation on his back and they checked his back and found that there was a knife blow on his back. His face was washed on a tap. They were trying to take Yash to his house. Meanwhile, they saw that father of Yash was parking his vehicle and they informed all the facts to his father. His father called his friends and they took Yash to the hospital. Thereafter, he went to his house.

On the same day, at night time police came at his house, took him to the PP S. N. Puri and police made inquiries from him. He told all the facts to the police and police recorded his statement.

During investigation, police took him to a place for identification of other assailants other than those present in the court and he identified the said assailants also.

Police also took him to Saket Court before the Ld. MM and he told all the facts to Ld. MM, who recorded his statement.

During PW17's testimony, he identified accused Rahul and Gaurav present in the court. He also exhibited his statement recorded u/s 164 CrPC on 07.04.2011 vide Ex.PW17/A.

PW17 was duly cross examined by Ld. Counsels for the accused persons.

**3.8** PW18 Sanjeev Sharma deposed that on 12.03.2011 he had gone to a kirtan (religious congregation) in Defence Colony and when he reached home at about 07.30 pm, he received phone call from his friend Shri Manmohan, who informed him that his son Yash had suffered some injury and on receiving the same, he immediately rushed to H-Block Committee Park of Shrinivaspuri where Manmohan was found present at the said park and he stated that Yash had to be shifted to hospital. Other persons namely Mr. Sukesh and Sanjay Pandhir were also present at the park at that time and they decided to take Yash to hospital for first aid. Firstly, they took Yash to AIIMS but they were told to take him to Trauma Center and thereafter they shifted Yash on stretcher to Trauma Center. Later on, he got to know that Yash had passed away. On the way to hospital, they had no talk with Yash.

Since the witness resiled from his earlier given statement, he was cross examined by Ld. Addl. PP for State.

During his cross examination, he denied the suggestion that he had deposed falsely being won over by the accused persons and for saving the accused persons.

PW18 was duly cross examined by Ld. Counsels for the accused persons.

**3.9** PW-19 Shri Sanjay Pundir deposed that on 12.03.2011 at about 07.00 pm he received a phone call from Shri Manmohan Gupta who told him that his son Yash had suffered some injury so he should contact him. He immediately reached Ramlila ground, Srinivaspuri where Manmohan Gupta, Shri Sanjeev Sharma, one Sukesh and few public persons were found present and they took Yash, son of Shri Manmohan Gupta in his car

to AIIMS but the AIIMS referred Yash to Trauma Center so they took him and got him admitted therein. After some time, Yash passed away. He further deposed that on the way of hospital, Yash did not speak with him and in his presence, Yash was only writhing with pain and he did not speak with anyone. Police never called him to record his statement.

Since the witness resiled from his earlier given statement, he was cross examined by Ld. Addl. PP for State.

During his cross examination, he denied the suggestion that on way to the hospital, Yash had told him that he he had a quarrel with 'UM', Rahul and Gaurav along with their 5-6 associates and one of them had stabbed him.

He stated that he heard the names of Rahul and Gaurav. He saw Rahul and Gaurav for the first time in court and cannot identify them as to which of them was Rahul or Gaurav. He denied the suggestion that he had been won over by the accused persons so he was deposing falsely to save them.

PW19 was duly cross examined by Ld. Counsels for the accused.

**3.10** PW33-Inspector Sanjeev Solanki, IO of the case, deposed as per the contents of the charge-sheet.

PW33 was duly cross examined by Ld. Counsel for accused.

#### **4. EXAMINATION OF ACCUSED U/S 313 CrPC**

**4.1** After conclusion of prosecution evidence, accused Rahul Tomar and Gaurav were questioned u/s 313 CrPC regarding incriminating circumstances appearing against them. They stated that they are innocent and have been falsely implicated in the present case.

**4.2** Accused Rahul stated that he was not present at the said place i.e. spot of incident during the alleged incident. He admitted that Saddam was studying in his school but he stated that he did not know Mr. Man Mohan. He stated that no mobile was recovered from him, however, later on police took one phone from his house. Accused stated that there was only one SIM Card. Accused stated that the mobile was of MAX Company. He knows 'VN' but nothing was recovered from his possession in his presence. Accused along with other accused persons/JCLs were brought in the police station. Accused stated that his signatures were taken on blank documents. Accused admitted that he was medically examined and sent to Sewa Kutir, Kingsway Camp. Accused admitted that he was sent to Sewa Kutir but he did not know about the invitation card. He admitted that he was declared major. He claimed that his signatures were taken on blank documents but he had not given any disclosure statement. Accused stated that he was studying in class 11<sup>th</sup> in G. B. Pant Sarvodaya Bal Vidyalaya at Srinivaspuri and his exams were going on. Meanwhile, some police officials came at his house and asked him to accompany them for some inquiry. His signatures were taken on some documents and he was made to sit in the police station. He was told that he will be released soon and later on, he was sent to Sewa Kutir and subsequently, he was sent to Tihar Jail. The present case is a false case against him and he is innocent.

**4.3** Accused Gaurav stated that he was also not present at the said place of incident at the time of alleged incident. He admitted that Saddam was studying in his school but he stated that he did not know Mr. Man Mohan. Accused admitted that his mobile was taken from him by police. Accused stated that he neither know 'VN' nor he was taken to the house of

'VN'. Accused along with other accused persons/JCLs were brought in the police station. Accused's signatures were taken on blank documents. Accused stated that his phone was seized by the police. Accused admitted that he was medically examined and sent to Sewa Kutir, Kingsway Camp but he did not know about the invitation card. Accused admitted that he was declared major. He claimed that his signatures were taken on blank documents and he had not given any disclosure statement. Accused stated that he was studying in G. B. Pant Sarvodaya School at Srinivaspuri in class 12<sup>th</sup> and his exams were going on. He had some dispute with PW Saddam and probably said Saddam named him in the present case due to said dispute. When the incident happened, he was present at his home and was watching cricket match of world cup. He has been falsely implicated in the present case and he is innocent.

## **5. DEFENCE EVIDENCE**

**5.1** Both accused chose not to lead defence evidence and matter was listed for final arguments.

## **6. ARGUMENTS**

**6.1** Thereafter, arguments of both parties were heard. Ld. Addl. PP for State has submitted that eye witnesses have deposed against both accused and have identified them during the trial. The murder weapon has been recovered from one of the associates of the accused and the call details of the accused and their associates also prove the complicity of the accused in the alleged offence. Even the dying declaration of the deceased

has been duly proved. Accordingly, the case of prosecution stands duly proved against the accused persons.

**6.2** On the other hand, Ld. Counsels for accused have argued that out of four eye witnesses, one could not be traced and examined by the prosecution. Out of remaining three eye witnesses, one eye witness namely Aman has turned hostile to the case of prosecution. The other two eye witnesses have deposed against the accused persons. However, there are number of inconsistencies in their statements. Neither of the accused were named in their 161/164CrPC statements or in their statements recorded before JJB during trial of the JCLs. Accordingly, it is submitted that none of the eye witness is a reliable witness. In regard to the alleged murder weapon, it is submitted that same was not recovered at the instance of either of the accused standing the trial and moreover there is no eye witness to the recovery of said weapon at the instance of the JCL 'VN'. In regard to dying declaration, it is submitted though the father of deceased has claimed that deceased had named accused persons as the accomplices of JCL 'UM' in the attack but the friends of the father of deceased have not supported his version regarding such dying declaration. Rather they have deposed that deceased was not in a condition to even talk properly. Accordingly, the dying declaration cannot be believed. As far as the call detail record of accused persons is concerned, it is submitted that same has not been proved properly and even otherwise same is not of much relevance. Accordingly, it is submitted that prosecution has failed to prove any of the alleged offences against the accused persons.

## 7. POINTS FOR DETERMINATION

7.1 The relevant legal provisions applicable in the present case are reproduced herewith:

Section 147 IPC provides “*Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both*”.

Section 148 IPC provides “*Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*”

Section 302 IPC provides “*Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.*”

Section 120-B IPC provides “*Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.*”

7.2 The evidence against the accused persons consists of direct evidence through eye witnesses, indirect evidence in the form of dying declaration and circumstantial evidence in the form of murder weapon and the CDRs. However, the defence has disputed each of such evidence. Thus, from the facts of the case, arguments of the parties and relevant provisions of law, the following points for determination arise: -

1. Whether the testimonies of eye witnesses are credible?
2. Whether the alleged dying declaration can be relied upon?

3. Whether the circumstantial evidence is sufficient to prove or corroborate the allegations against the accused persons?

4. Whether the accused persons are liable to be convicted for all or any of the offences charged against them?

**8. APPRECIATION OF EVIDENCE AND APPLICATION OF LAW**

**8.1** The main witness of the case is PW14 Saddam. He has explained in his testimony that he along with other witnesses reached at the spot since he had received a call from mobile number of Yash on his mobile no. 9711180101 wherein Yash informed him that he was being targeted by 'UM' and his friends. Thus, it was only after that call that PW14 along with other witnesses rushed to the spot and saw the assault. It is to be noted here that CDR details of aforesaid mobile number has been filed as Ex.PW24/A. As per the case of prosecution, the mobile number being used by Yash was 9717271593. The CDR of said mobile has also been filed by the prosecution along with its CAF Ex.PW23/E. Since PW14 has deposed that he received the call at about 06.00-07.00 pm, therefore, there ought to be a record regarding such call exchange at the given time on 12.03.2011. However, perusal of the CDR Ex.PW24/A shows that from 05.24 pm to 07.18 pm, six calls were made/received on the phone of PW Saddam. However, none of the said calls were made from/to the mobile number being used by Yash i.e. 9717271593. There is one call exchange between said numbers but at 07.50 pm. More so, the said call has not been made from the phone of Yash to the phone of Saddam. Rather said call has been made from the phone of Saddam to Yash. Since the father of deceased got

the information about the incident at around 07.10 pm, therefore, it does not appear possible that the call made at 07.50 pm was a call made prior to the incident. Thus, a doubt appears regarding the fact which caused the presence of PW14 at the given spot at the time of incident.

**8.2** Proceeding further, PW14 identified both accused as two of the boys amongst the group of boys who had given beatings to Yash at the time of incident. The prosecution has relied heavily on the said identification. However, it is to be noted that during his cross examination, PW14 has deposed that he knew accused Gaurav and Rahul prior to the incident. However, admittedly he did not mention the names of accused Rahul and Gaurav when he first met father of Yash after the incident though he mentioned the name of JCL 'UM' as one of the assailants. More importantly in his 164 CrPC statement Ex.PW14/DB, he has not mentioned the names of accused Gaurav and Rahul. Likewise, in his 161 CrPC statement Ex.PW4/DA, he did not mention the names of accused Gaurav and Rahul. In case PW14 had seen the said accused during the assault and he knew them prior hand by name or even as the students of their school, their names/general identification as schoolmates ought to have been mentioned by him in his 164 CrPC statement or 161 CrPC statement. It is also to be noted that when PW14 deposed before the JJB, even then the names of accused Gaurav and Rahul were not mentioned in his statement Ex.PW14/DA. Though accused Gaurav never faced trial/inquiry before the JJB, however, PW14 admitted that accused Rahul was facing trial before JJB at that time. Even otherwise, PW14 ought to have named all the assailants in his testimony before JJB if he knew their identities. Here it is also to be noted that TIP of the other JCLs was conducted during the

investigation. However, none of the accused facing trial here were subjected to any TIP. Thus, the accused were identified by eye witness for the first time during the trial only. Here another thing is to be noted i.e. when the TIPs of the JCLs were conducted, out of six JCLs subjected to TIP, only three JCLs could be identified by PW14 Saddam and he failed to identify three of the JCLs. The record of the said TIPs have been filed as a part of JJB file which was summoned and was attached with the present case file. It may also be noted that admittedly PW14 did not give any physical description of any of the assailants. Thus, from the overall facts, it becomes doubtful whether PW14 had actually seen the assailants or the assailants had escaped by the time PW14 had reached the spot.

**8.3** Likewise, the testimony of PW17 Mujjim suffers from similar infirmities. As discussed above, PW14 Saddam has claimed that he received a phone call from Yash regarding him being tailed by 'UM' and his associates and thereupon PW14 rushed to the spot with PW17 and their associates. However, PW17 has deposed that it was Saddam who made a phone call to Yash and called him for a walk and Yash replied that he was coming in 5-6 minutes. As per PW17, meanwhile Saddam received another phone call from Yash who said that he had departed from his house and that 'UM' had send some boys after him. Thus, PW17 has referred to two phone calls, first by Saddam to Yash and the second by Yash to Saddam. However, as discussed above, there is no phone call made by Yash to Saddam at all at the time of incident. The only call made by Yash to Saddam was at 07.50 pm and apparently the incident had happened by then.

**8.4** Further, during his cross examination, PW17 has also deposed that he knew JCL 'UM', accused Rahul and Gaurav before the incident. However, admittedly the names of accused Gaurav and Rahul have not been mentioned in his 161 CrPC statement Ex.PW17/DA. Further, even in his 164 CrPC statement Ex.PW17/A, neither the name of accused Gaurav nor Rahul is mentioned. As discussed regarding testimony of PW14 Saddam, the witness PW17 also ought to have mentioned the names of accused in his statement or at least their general identification as the boys whom he knew earlier. Failure to do so diminishes the probative value of his testimony.

Moreover, he has deposed that one of the assailants was having a knife in his hand. However, no such fact has been mentioned in his 161 CrPC statement Ex.PW17/DA. No such fact has been mentioned even in his statement Ex.PW17/DB recorded during inquiry before JJB. Further, during his cross examination, in the inquiry before JJB he deposed that he cannot identify said boy who was wielding the knife. Thus, his testimony is inconsistent in regard to other facts also.

Moreover, in his statement Ex.PW17/DB recorded in inquiry before JJB, PW17 deposed that Yash was being beaten by 4-5 boys and he identified JCL 'UM', 'VN' and 'SS' as three of said boys. During his cross examination by Ld. Addl. PP for State, he also identified four other JCLs as the boys who were present at the spot and were beating Yash. Thus, on one hand, he has deposed involvement of 4-5 boys in the incident but on the other hand he identified seven juveniles present before the JJB as the assailants. Further, during the present trial he has identified the accused Gaurav and Rahul also as two of the assailants amongst the group of boys

who attacked Yash. Even if accused Rahul was appearing before JJB during the testimony of PW17 still PW17 has identified eight persons as the assailants wherein he admittedly witnessed 4-5 persons attacking the deceased. Thus, the number of persons identified by PW17 do not match with his own account of number of persons involved in the incident. Further, he has clarified in his cross examination by Ld. APP during inquiry by JJB that he could not identify the juveniles other than JCLs 'UM', 'VN' and 'SS' in his examination in chief as they were at some distance from him at the spot. Thus, it appears that PW17 was not near the spot at the time of incident. As mentioned earlier, out of TIPs of six juveniles the TIP of three juveniles failed wherein neither PW14 Saddam nor PW17 Mujjim could identify the JCLs 'SS', 'GU' and 'JI'. Rather PW17 failed to identify JCL 'SU' also during TIP. Thus, he failed to identify four JCLs out of six JCLs during TIP but went on to identify all of them in the inquiry before JJB. Thus, in the given circumstances, court has its reservations whether PW17 can be relied upon for identification of accused persons as the assailants. Further, as mentioned above PW17 has deposed that he knew JCL 'UM', accused Gaurav and Rahul before the incident. However, during his examination before JJB vide Ex.PW17/DB he deposed that he did not know Rahul, Gaurav or 'UM' earlier. Rather he deposed that he only knew 'UM' by face and name earlier and he had seen him in his school one or two times as they were in the same school. Thus, the testimony of PW17 is inconsistent on various counts. Since the TIP of accused Rahul and Gaurav was not conducted, the identification of accused Rahul and Gaurav for the first time in the court by PW17 is not a reliable piece of evidence in the given background.

**8.5** The prosecution has also examined another eye witness to the incident i.e. PW11 Aman. However, he has not supported the case of prosecution. He was cross examined at length by the prosecution but he only admitted certain facts of the case of prosecution. Though he admitted his presence with PW Saddam, Mujjim and one Abhishek at the red light of East of Kailash on evening of 12.03.2011, however, he did not admit the phone call exchange between Saddam and Yash. He did not depose having witnessed the incident. However, he deposed that Yash was found injured and that he was taken away by his father in his car. He also admitted that he was using mobile no. 9015655808 and that it was issued in the name of his elder sister Deepali. He also deposed that at the relevant time, Abhishek was using his mobile phone. He also admitted that on 12.03.2011 SMS were sent to Yash through his mobile phone at 04.50 pm, 05.05 pm, 05.08 pm, 05.21 pm and 06.07 pm. As discussed above, there is no record of any call exchange between deceased Yash and PW Saddam prior to the incident. Rather, the SMS exchange between Yash and the mobile of PW11 Aman gives an impression that it was PW11 Aman and deceased Yash who were in touch with each other through phone/SMS. However, the contents of the SMS were not retrieved from the phone and were not proved during the trial. Thus, despite PW11 Aman accepting certain facts of case of prosecution nothing incriminating has come against accused persons in his testimony.

**8.6** Now the next piece of evidence against the accused is the dying declaration of deceased Yash. PW3 Manmohan Gupta has deposed that he and his friends Sanjeev Sharma and Sanjay Pundhir took Yash in his vehicle to AIIMS. He asked Yash about the quarrel who replied that Rahul,

'UM', Gaurav and 5-6 other boys caught hold of him, beat him and stabbed him. Accordingly, PW3 has claimed that said persons are liable for the death of his son. However, the friends of PW3 who accompanied him to the hospital have not supported his claim regarding such dying declaration. PW18 Sanjeev Sharma has deposed that on way to the hospital, they had no talk with Yash. Even during his cross examination by Ld. Addl. PP, he did not depose about any dying declaration. During his cross examination by the defence Counsels, he admitted that Yash was unconscious when PW18 reached in the park. Rather he deposed that Yash was moaning “*hai hai*” only. Likewise, PW19 Sanjay Pundhir has deposed that on the way to hospital, Yash did not speak with him and he was only writhing with pain but he did not speak with anyone. Even in his cross examination by Ld. Addl. PP for State, he did not depose about any dying declaration by Yash. During his cross examination by Defence Counsel, he admitted that he had stated before the JJB that Yash was unconscious while being shifted to hospital. It may be noted here that both PW18 and PW19 were the friends of father of deceased and nothing has come on record to indicate that they were related to any of the accused directly or indirectly or that they had any motive to depose in favour of accused persons. Accordingly, the alleged claim of father of deceased about dying declaration fails to get corroboration from the most likely witnesses in this regard.

Though PW8 Sukesh Kumar, the tuition teacher of deceased Yash has deposed about such dying declaration, however, two things are to be noted in this regard. Firstly, PW8 has himself deposed that Yash was not able to converse properly due to injuries. Thus, he has also admitted such condition of Yash where making of any statement by him was highly

unlikely. Secondly, PW8 has deposed that Yash stated that he was stabbed by some boys and that he was naming 'UM', Rahul and Gaurav again and again. PW8 did not state that Yash has specifically told that he was attacked upon by said boys. Rather, a leading question had to be put to PW8 by the prosecution and only thereafter he admitted that on their way to AIIMS, Yash had stated that quarrel had taken place between him and Rahul, 'UM', Gaurav and 5-6 other boys who had come with them, they had beaten him and one of the them had caused stab injuries on his back, due to which he was feeling pain and giddiness.

Here another thing is to be noted. As per PW3, the alleged dying declaration was made while his son Yash was being taken in the car to the hospital. He has deposed that though Yash was not unconscious when he reached by his side but he was confused (*gaflat*). He again said that he was nervous (*ghabraya hua tha*) at that time. Further, in his statement before the JJB Ex.PW3/DA, he has deposed that when he with the help of other boys took Yash in the car he inquired from Yash as to who had done this and at that time, Yash was not oriented and unconscious. Accordingly, it appears that the deceased was not in his full senses and thus it appears highly unlikely that he would have made any dying declaration under such circumstances.

Moreover, in his statement before JJB vide Ex.PW3/DA, PW3 Manmohan has deposed that he called his friends Sanjay Pundhir and Sanjeev Sharma and they ensured that they will arrive in few moments. PW Manmohan again inquired his son Yash as to who had done this to him and his son replied that 'UM', Gaurav, Rahul Tomar and 5-6 other boys had beaten him brutally and one of them had stabbed knife from backside. In

the meantime, the friends of Manmohan arrived. Accordingly, if the said statement of PW Manmohan is deemed as correct, the dying declaration was made before the arrival of his friends at the spot. Accordingly, the statement of PW3 Manmohan regarding the dying declaration made during the travel to hospital is in contradiction with his statement before the JJB regarding the time line/place of dying declaration. Moreover, he further deposed before JJB vide his statement Ex.PW3/DA that during his treatment when doctor told him that Yash is fine and he shall arrange blood for him, he again inquired Yash about the incident and he replied that 'UM', Gaurav and Rahul and 5-6 other boys had beaten him and one of them had stabbed the knife. Thus, during the inquiry before the JJB, PW3 Manmohan has referred to two dying declarations, one at the spot before the start of travel and second in the hospital. However, in his examination before the present court, he has deposed about one dying declaration during the travel. On the other hand, no such dying declaration during the travel in the car to hospital has been referred to in the examination of PW3 before JJB. Accordingly, the fact of making dying declaration during the travel is seriously doubtful.

It may also be noted that PW3 Manmohan Gupta has deposed that when his son was under treatment in the hospital, he made phone call to JCL 'UM' and he did not give any satisfactory answer and passed on the phone to his father. As per the documents filed with chargesheet, the mobile phone number of JCL 'UM' was 9540099044. The prosecution has filed the CDR of the mobile phone of PW3 i.e. number 9811351151 vide Ex.PW24/D. However, perusal of said CDR shows that on 12.03.2011 i.e. the date of incident 21 calls were made from said number from 07.22 pm

till midnight. However, none of said calls was made to the aforesaid number of the JCL 'UM'. As per PW3, he had conversation with JCL UM and his father for about 8-10 minutes and it was about 09.00 pm. However, no such call is reflected in the CDR in the given time range. It may be noted that even the CDR of the phone number (9717271593) being used by the deceased Yash has also been filed on record. However, even perusal of said CDR filed along with its CAF Ex.PW23/E shows that on 12.03.2011 i.e. on the date of incident no call even from said phone was made around 09.00 pm and the nearest call made in the said time range was at 08.13 and 10.16 pm but both of said calls were received on said phone. Rather, as per the CDR, 8 calls were made/received from said phone from 8.09 pm till midnight but none of the said calls were to or from the aforesaid number of JCL 'UM'. Thus, the claim of PW3 regarding such conversation with the JCL fails to get corroboration from the prosecution's own record and rather said record negates making of any such call. Accordingly, the credibility of PW3 is further diminished by said facts.

**8.7** As far as other circumstantial facts are concerned, the prosecution has relied upon the recovery of the alleged weapon of offence i.e. the knife at the instance of JCL 'VN'. However, few things are to be noted about said recovery. Firstly, said recovery was not effected at the instance of either of the accused facing the trial. Secondly, there is no public witness to support the recovery of knife at the instance of JCL 'VN'. Thirdly, the place of recovery was an open plot accessible to public and not from a place exclusively under the use/control of JCL. Fourthly and most importantly, no blood was detected on the knife in its biological examination vide FSL report Ex.PW29/A. Even in physical examination of

the knife, no traces of fiber (to link the knife with clothes of deceased) were found on said knife vide FSL report Ex.PW28/A. Fifthly, no eye witness has claimed that he can identify the knife used in the offence. The only fact linking the alleged knife to the murder is the subsequent opinion of the forensic doctor. However, the opinion given by the doctor vide Ex.PW20/C is not a definite opinion that the injuries to deceased and the cuts on his clothes were caused by the knife in question only. Said opinion is only a corroborative piece of evidence as it states that the injuries on the body of deceased and cut marks on his clothes were 'possible' by the knife in question. Thus, in nutshell, the alleged knife does not provide any substantive evidence against the accused persons.

**8.8** Another piece of circumstantial evidence relied upon by prosecution is the CDR of accused persons. The CDR of accused Gaurav is Ex.PW27/A. As per the case of prosecution, the location of said phone of accused Gaurav i.e. 9717605189 was in the area of Srinivaspuri thereby showing that he was present at the spot at the time of incident. However, no such location chart have been proved by the prosecution to show such location. Even otherwise, locations of mobile phones are approximate and are only corroborative piece of evidence (Azad @ Gaurav vs. State of GNCT of Delhi & Anr. CrI A. 593/2022 decided on 20.03.2023 by Hon'ble High Court of Delhi). As far as the call exchanges between accused Gaurav with other accused/JCLs are concerned, such call exchange at maximum can show that the caller/called person knew each other but in the absence of recording of such calls, no further conclusion can be drawn. As far as the CDR of the alleged phone of Rahul i.e. 7503332597 is concerned, the prosecution has failed to prove its record and rather only PW34 ACP

Govind Sharma have been examined to prove certificate u/s 65B Indian Evidence Act regarding the details of the CDRs received on his official e-mail regarding various phone numbers related to the case (including the aforesaid number). However, PW34 was neither the concerned person who furnished such CDRs nor he had any knowledge about the contents of CDRs. He only received the record of such CDRs on his official e-mail. However, even the relevant e-mail through which such CDRs were received have not been proved by PW34. Accordingly, the circumstantial evidence regarding the CDRs is incomplete and even otherwise same does not help much to prove the case of prosecution.

**8.9** Proceeding further, even if the case of prosecution is considered on its face value the ingredients of the main offence i.e. 302 IPC appear to be missing qua the accused Gaurav and Rahul. Both of said accused have been charged for the said offence along with section 120B IPC. Thus, the case of prosecution is that deceased was murdered by said accused along with other juveniles in furtherance of a conspiracy. The essentials of a single conspiracy require that there must be a common design with common intention of all to work in furtherance of such common design. The entire agreement has to be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. In most of the cases, there is no direct evidence regarding any meeting of the conspirators discussing such conspiracy and the existence of conspiracy has to be implied from the other overt acts of the conspirators. However, it is not the case of prosecution that either of the accused facing the trial stabbed the deceased boy. It has not been deposed by any witness that either of the accused had exhorted the

JCL 'VN' to stab the deceased. Further, it is not the case of prosecution that accused or the other JCLs (except 'VN') were armed with any weapon, much less any deadly weapon. Rather, all of them (except 'VN') were barehanded. Further, it is not the case of prosecution that when JCL 'VN' arrived at the spot he was brandishing the knife openly. Rather, the disclosure statement/version of accused and even other juveniles show that they had come to the spot for causing beatings to Yash and that JCL 'VN' took out a knife from his pocket and stabbed the deceased. These facts indicate that there was no joint preparation to kill the deceased and there was no event at the spot also wherein such intention was formed or manifested. Though the disclosure statements of the accused cannot be read in view of bar under section 25 Indian Evidence Act, however, even if same are considered along with the aforesaid circumstantial facts, it appears that accused persons had no intention to kill the deceased Yash and they intended only to cause beatings to him. Rather, it appears that even the accused and JCLs (other than 'VN') never foresaw such turn of events. Therefore, ingredients of offence u/s 302 IPC are apparently missing against the accused persons. However, the accused cannot be convicted even for other offences of causing hurt or rioting etc. as their presence at spot and their participation therein is also not proved beyond reasonable doubts.

## **9. CONCLUSION**

**9.1** Thus, in view of aforesaid discussion, none of points for determination could be determined in affirmative against the accused

persons. Hence, in view of the above said discussion, accused Gaurav and Rahul Tomar are acquitted from all the charges levelled against them.

**(Announced in the Open Court on  
24<sup>th</sup> November, 2023)**

**(Sachin Sangwan)  
Additional Sessions Judge (FTC-01): South  
East: Saket District Court: New Delhi.**