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

CNR No. DLHC010380332026

+ **CRL.A. 787/2026**

SALMAN KHAN

.....Appellant

Through: Mr. Faisal Ishtiaque, Ms. Humaira Khan & Mr. S.D.Khan, Advs .

versus

STATE NCT OF DELHI & ORS.

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for State.
SI Akash, P.S.:- Jamia Nagar, Delhi

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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17.08.2026

CRL.M.A. 25087/2026 (exemption) and CRL.M.A. 25088/2026 (exemption)

Exemptions allowed, subject to all just exceptions.

Application stands disposed of.

CRL.M.A. 25089/2026 (delay of 57 days in filing of appeal)

1. For the reasons stated in the application, the delay of 57 days in filing the appeal stands condoned.
2. The application stands disposed of.

CRL.A. 787/2026



3. The present appeal has been preferred by the appellant to challenge the impugned order of acquittal dated 30.01.2026 passed by the Additional Single Judge (FTC-02), South-East District, Saket Courts, New Delhi, whereby the respondents have been acquitted for the offence under Sections 308/506(Part-II)/341 and 34 of the Indian Penal Code, 1860 (IPC).

4. The factual matrix of the case reveals that on 25.01.2014 at about 3:30 pm, PW-1/Complainant was proceeding from his hostel towards the ATM of Indian Bank situated within the university campus, when the accused, who was known to the complainant, named Shanu, stopped him and enquired about his address and, upon being questioned back, agitatedly and furiously slapped him. Hereafter, the accused called for his associates, namely, Wasim, Bairoz Khan and Kamraan @Annu, who, after reaching the place of incident, assaulted PW-1, and at the same time, accused Bairoz allegedly took out his knife and inflicted a stab injury on him. When PW-2 Rizwan, who is a friend of PW-1 Salman, tried to intervene in the situation to rescue PW-1, the accused also assaulted him; in such actions and incidents, PW-2 sustained head injuries, which are said to be caused by a blow that resulted in bleeding. Before running away from the spot of the incident, the accused persons also extended threats to the victims that, in any scenario, if the plan to complaint against them, the accused would kill the complainant. Following this, the injured were taken to the Holy Family Hospital by one person, named Rajbir

5. In furtherance of the said incident, a PCR call was received at the Police Station Jamia Nagar. In adherence to the said call, the constable went to the Holy Family Hospital and collected MLC's of two injured persons. Consequently, statements were recorded on 28.01.2014 only and



resultantly, an FIR for offences under Sections 323/324/341/506/34 of the IPC was officially registered against the accused persons. The MLCs were opined on 08.02.2014 which reflected simple injuries caused by sharp object. After due investigation by the authorities, the chargesheet was filed. Based on the material on record, the Trial Court had framed the charges for offences under Sections 308, 341, 506 (II) and 34 of the IPC, and the accused were arrested during investigation on 20.03.2014 and thereafter were released on bail. The whereabouts of one of the accused name Salman could not be traced, hence, he was accordingly kept in column 12 of the chargesheet, which was filed against the remaining four accused.

6. On 14.09.2017, while the Metropolitan Magistrate was hearing the arguments, he took note of the fact that the injury was caused at the vital part of the body, on head, which was prima facie an offence under Sections 307/308 of the IPC and accordingly the case was committed to the Court of Sessions. And proceeding with the same, the Sessions Court framed charges under Section 308/506 (II)/ 34 of the IPC against all four accused and a separate charge under Section 341 against accused Shanu, to which they all pleaded not guilty and claimed trial.

7. To prove its case, prosecution examined seven witnesses including the injured/ complainant, the other injured person, the doctor who deposed MLCs of both the injured, inspector, the investigating officer, the duty officer and inspector who completed the investigation and filed the chargesheet. However, the accused in their statements of Section 313 of Cr.P.C denied all the allegation and states that these are all false implications.

8. After the trial was conducted, the Trial Court, via the impugned



judgment dated 30.01.2026, has acquitted all four accused persons from the aforesaid offences. With due consideration of the same, the Trial Court noted certain contradictions in the evidence and also observed several lapses in the findings. Paragraph Nos. 25 to 35 of the decision passed by the Trial Court cover these discrepancies and deficiencies in detail and are extracted as under:

“25. PW-1 stated that the accused Bairoz caused a stab injury to him. However, during his testimony, PW-1 categorically admitted that he was not 100% sure whether the stab injury was caused by accused Bairoz. He further stated that due to the passage of time, he could not remember who caused injuries on the head of PW-2. PW- 2, on the other hand, deposed that accused Bairoz hit him on the head with a "gun". No such weapon was recovered, seized, or shown to have been used, and the medical evidence also does not support the use of any firearm. The uncertainty of PW-1 regarding the assailant and the contradictory version of PW-2 regarding the weapon used strike at the core of the prosecution case, particularly when the identity and role of the accused are in issue. It is settled law that where identification of the assailant is doubtful, the accused is entitled to benefit of doubt.

26. It is also not necessary that in every case corroboration from an independent witness is required for conviction, as the conviction can be based on the testimony of injured witnesses but such testimony must be consistent, cogent, and reliable, which is not the case in the present case.

27. The prosecution has failed to establish any pre-arranged plan or meeting of minds among the accused. The role attributed to each accused is vague and uncertain and the evidence does not disclose coordinated action. Section 34 IPC cannot be invoked in a mechanical manner in absence of clear proof of common intention.

28. The testimony of the PW-2 that the accused persons have extended threats to kill him and the PW-1 while they were fleeing away from the spot, has not been corroborated by the PW-1. PW-1 has not deposed anything about giving of any threat by the accused persons to them. Therefore, uncorroborated testimony of PW-2 cannot be relied upon. Especially when there are various discrepancies in the testimonies of the PW-1 and PW-2 as discussed above, which also creates doubt with regard to the presence of the accused persons at the spot on the date of the incident.

29. There are also discrepancies in the statements of the witnesses and the medical documents i.e. MLCs, Ex.PW3/B and PW3/D with regard to the



place where the incident had actually occurred. PW-1 and PW-2 in their testimonies have stated the place of the incident near the ATM of Indian Bank, which is situated inside the University campus, whereas the MLCs, Ex.PW3/B and PW3/D and DD No.30A, Ex.PW4/A show the place of the incident to be near bus stand in front of Jamia Nagar University and not inside the University campus.

30. PW-1 has also deposed that he did not visit the spot alongwith the police but he had told the exact place of the occurrence to the police but in his cross-examination, he has stated that the place of occurrence shown in the site plan is wrongly mentioned and the site plan was not prepared in his presence. It is not disputed that the ATM of the Indian Bank was located inside the University campus. PW-2 in his cross-examinations has stated that he had not entered the University campus on the date of the incident. The site plan, Ex.PW5/B also does not show the vicinity around the place of the occurrence. Therefore, all these discrepancies with regard to the place of the incident also creates doubt on the case of the prosecution.

POINT NO.2:- Whether there was any intention or knowledge attributed to the accused persons for attracting the offence under Section 308 IPC?

31. PW-3 has deposed that as per the MLCs, Ex.PW3/B and PW3/D, the injuries on both the injured persons were opined as simple caused by sharp object. As per the afore-said medical documents, no injury was opined to be dangerous or sufficient to cause death. There is also no evidence came on record to show the intention or knowledge on the part of the accused persons to cause death of the injured persons, which is a sine qua non for attracting Section 308 IPC. The Hon'ble Supreme Court in Sarfu Prasad v. State of Bihar (AR 1965 SC 843) has held that mere causing of injury does not attract Section 308 IPC unless intention or knowledge is clearly established.

POINT NO.3:- Whether the prosecution has proved its case beyond reasonable doubt?

32. Besides the inconsistencies and contradictions in the statements of the material witnesses as discussed above, the investigation also suffers from notable lapses. In the present case, the Investigating Officer has not collected any CCTV footage showing the place of the incident despite the fact that the place of the incident being inside the University campus, was covered by the CCTV cameras. The Investigating Officer has also not collected any CDR of the phone of the accused persons to show their location at the place of the incident on the date of the incident. There is also no recovery of weapon of offence in the present case. The delay in recording statements of the injured persons have also not been explained satisfactorily.



33. It is also the defence of the accused persons that on the date of the incident, it was a Saturday and there were no classes on that day. PW-1 has also stated in his cross-examination that his college used to open from Monday to Friday. No investigation has been done by the IO in this regard or to show that on the date of the incident, it was not Saturday. PW-1 has deposed that his shirt was taken by the doctor in the hospital which was handed over to the police. The said shirt has also not been produced during the examination of the PW1 to prove the same. Though, defective investigation by itself is not fatal, when coupled with weak and inconsistent ocular evidence, it further entitles the accused to benefit of doubt.

34. Criminal law mandates that the prosecution must prove its case beyond reasonable doubt. In the present case. The identity and role of the accused are doubtful. Testimonies of injured witnesses are inconsistent. Independent corroboration is absent. Ingredients of Section 308 IPC are not established. Common intention is not proved. The cumulative effect of these deficiencies creates a reasonable doubt, which must necessarily operate in favour of the accused.

Conclusion.

35. In view of the above discussions, this Court finds that the prosecution has failed to bring home the guilt of the accused persons beyond reasonable doubts. Consequently, all the accused persons, namely Shanu, Bairoz Khan, Wasim and Kamraan @ Annu, are hereby acquitted for the charged offence under Sections 308/506 (Part-II)/34 IPC and 341 IPC.”

9. The jurisprudence surrounding the appeals against acquittal is well-established. Privy Council in ***Sheo Swarup v. King Emperor***¹, in a formulation that continues to anchor this branch of the law, held that while the High Court possesses full power to review the evidence in an appeal from an order of acquittal as it does in an appeal from conviction, it must nonetheless always give proper weight and consideration to parameters produced hereinunder:-

“But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:

1. The views/opinions of the trial judge as to the credibility of the

¹1934 SCC Online PC 42



witness;

2. *The presumption of innocence in favour of the accused;*
3. *The right of the accused to the benefit of any doubt; and*
4. *The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.”*

10. The principle discussed above was later substantiated in much detail by the Supreme Court of India in ***Chandrappa and ors. v. State of Karnataka***² wherein the Court reiterated that an order of acquittal strengthens the presumption of innocence much more strongly. That it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court. In this case, a possible view on the evidence of the prosecution had been taken by the trial Court, which ought not to have been disturbed by the appellate Court

11. The said principle was further discussed in length in the recent judgment of the Supreme Court in ***Mallappa and Ors. V. State of Karnataka***³ the court held-

25. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at stages of the trial and finally culminates in a fact when the case ends in acquittal. presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same appeal.

26. No doubt, an order of acquittal is open to appeal and there is no

² (2007) 4 SCC 415

³ (2024) 3 SCC 544



quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or revisit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "two-views theory" has been judicially recognised by the courts and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

12. In *Sanjeev v. State of H.P.*⁴ - the court held that-

7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh v. State of Karnataka*, *Anwar Ali v. State of H.P.*⁴).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.*⁵).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala*).

13. Furthermore, In *H.D. Sundara v. State of Karnataka*⁵, The Supreme



Court discussed the scope of an appeal against an acquittal order; the material portion of the said decision reads as under:

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis supplied)

14. The Supreme Court’s decision in ***Ramesh Babulal Doshi v. State of Gujarat***⁶ highlights the analytical discipline that an appellate court must bring to this exercise. It requires that the appellate court, before embarking upon any independent reappraisal of the evidence, must pose a threshold question first: that whether the findings of the trial court suffer from any of the recognised infirmities, namely, that the approach adopted by the court is

⁴(2022) 6 SCC 294

⁵(2023) 9 SCC 581

⁶(1996) 9 SCC 225



vitiated by manifest error of law or fact, or that it results in a miscarriage of justice, or that the conclusion is one that could not have been reasonably reached on the material on record.

15. Only when this threshold question is answered in the affirmative, the appellate court proceeds to reappraise the evidence and substitute its own conclusion; if it is answered in the negative, the acquittal must stand undisturbed, and however persuasively an alternative view might be constructed. Paragraph No. 7 of **Ramesh Babulal** (supra) is reproduced as under:

“7. Before proceeding further, it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong, for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof, the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.”

16. The Supreme Court in **Ghurey Lal v. State of Uttar Pradesh**⁷ reinforced this position by holding that an appellate Court

⁷(2008) 10 SCC 450



reviewing an acquittal must attach due weight to the trial Court's finding, because the presumption of innocence is "further strengthened" by it, and must reverse the acquittal only where there exist "very substantial and compelling reasons".

17. In respect of Section 34 of the IPC, as rightfully observed by the trial court, the invocation of common intention does require a pre-arranged plan and evident prior meeting of minds. In **Jasdeep Singh @Jassu v. State of Punjab**⁸ The court discussed with respect to section 34 IPC and pointed out-

20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intentment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of

⁸(2022) 2 SCC 545



bringing about a particular result. A common intention qua its existence, is a question of fact and also requires an act "in furtherance of the said intention". One need not search for concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

18. The court has repeatedly settled the law that common intention must be clearly distinguished from a same or similar intention, and that there must be evidence of a preconceived plot. In the absence of corroborative testimony or circumstantial evidence depicting coordination, the trial court correctly rejected the application of Section 34 IPC.

19. Similarly, for the offence of Section 308 IPC, the trial court relied upon **Sarju Prasad v. State of Bihar**⁹ where the court asserted that mere causing of an injury doesnot automatically attract the penal provisions of Section 308 IPC unless the specific intention or knowledge to cause death is clearly established. Keeping in mind the said principle laid down by the Apex Court, in the present case the MLC explicitly mentions the injuries to be simple in nature, without being dangerously life-threatening; hence the essential ingredients of Section 308 IPC were not manifested substantially.

20. Likewise, a delay of three days in lodging the FIR, the material contradictory testimonies of PW1and PW2 with respect to the time, manner,weapon, and the person inflicting the blow are all the relevant factors which take the case back to the very foundation of the prosecution case and cannot be simply set aside or ignored as minor discrepancies. All these factors resulted in making the opinion of the trial court substantial to extend the benefit of doubt to the accused persons.

21. Applying the aforesaid principles to the present factual matrix, the

⁹ AIR 1965 SC 843



Court does not encounter any adverse reasoning or manifest error in law that warrants interference.

22. Therefore, bearing in mind the aforesaid facts and circumstances, the view taken by the Trial Court is a probable and possible view based on the materials on record and the evidence adduced. Relying upon it and supporting the same, this Court does not find justification to allow the present appeal and accordingly, the same stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 17, 2026

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