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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of decision: 12th August, 2026**Uploaded on: 17th August, 2026*

CNR No. DLHC011642572013

+ CRL.A. 1354/2013

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Aashneet Singh, APP.

versus

SURINDER SINGH

.....Respondent

Through: Mr. Darpan Sachdeva, Adv.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****VIKAS MAHAJAN, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the State of NCT of Delhi being aggrieved by the acquittal of the respondent-accused i.e. Surinder Singh *vide* impugned judgement dated 03.10.2011 passed by the ASJ-02, South East, Saket Courts, New Delhi in Sessions Case No. 95/08, FIR No. 39/08, under section 307 of the Indian Penal Code (hereinafter 'IPC') and section 27 of the Arms Act.
3. Briefly put, the case of the prosecution is that on 12.01.2008, the complainant i.e. Vivek Chhabra [PW-5] along with some people visited the Indo-Chin Bar, Lado Sarai at around 1:30 AM. Later, the complainant and those persons went to the parking area of the bar, and the complainant sat on



the bonnet of the car and due to the same, the driver of the car who was sitting inside misbehaved with him and pushed him. Thereafter they started abusing each other and the driver of the car threatened to kill him and also took out a pistol from his pocket and fired on his leg. The driver of the said car was identified as Surinder Singh, the respondent herein, by the owner of the car namely, Mayank Lakhani [PW9].

4. Upon receipt of DD No. 31, ASI Devender went to the place of incident where the statement of the injured complainant was recorded and the *rukka* was sent, which led to the registration of the FIR under section 307 of IPC and section 27 of Arms Act.

5. The investigation was assigned to SI Aishvir Singh who visited the spot and arrested the respondent-accused, pursuant to which his disclosure was recorded, and seizure of the pistol along with 5 live cartridges, as well as license of the pistol, was made.

6. The injured complainant was taken to Safdarjung Hospital where he received treatment for his injuries. Dr. Satyendra Prakash [PW7] examined the injured and as per the MLC, the injury suffered by the injured was opined as 'grievous'.

7. After investigation, the chargesheet was filed by the Police under section 173 CrPC. *Vide* order dated 23.04.2009 charges were framed against the respondent for offences under section 307 IPC and section 27 of the Arms Act, to which the respondent pleaded not guilty and claimed trial.

8. The prosecution examined as many as 16 witnesses, out of which PW4 Nand Kishore, PW-5 Vivek Chhabra (injured/complainant) and PW-9 Mayank Lakhani, have given the eye-witness account.



9. After the conclusion of prosecution evidence, the statement of the respondent was recorded under Section 313 CrPC, but he did not lead any defence evidence. The Trial Court upon appreciation of the evidence led by the prosecution held that the evidence on record is not inspiring confidence and is full of inconsistencies and contradictions. Accordingly, the respondent was acquitted of the charge for the offence under Section 307 IPC. Likewise, the respondent was also acquitted of the charge under Section 27 of the Arms Act on the ground that the prosecution has failed to prove that the shots from the licensed fire arm were fired by the respondent.

10. We have heard Mr. Aashneet Singh, Id. APP for the State, as well as, Mr. Darpan Sachdeva, Id. Counsel for the respondent and have also perused the record.

11. Before proceeding further, it would be useful to advert to the approach to be adopted while deciding an Appeal against acquittal by the Trial Court. In a recent decision in ***H.D. Sundara and others vs State of Karnataka, (2023) 9 SCC 581***, the Supreme Court reiterated the principles which will govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC and summarized the same as under:

“8. The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC 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 reappreciate the oral and documentary evidence;



8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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)

12. Additionally, the Supreme Court also underscored that in many cases the Trial Judge who eventually passes the order of acquittal has an advantage of looking at the demeanour of witnesses and observing their conduct in the Court, especially in the witness box. The relevant observation reads thus:

“10. There is one more aspect of the matter. In many cases, the learned trial Judge who eventually passes the order of acquittal has an occasion to record the oral testimony of all material witnesses. Thus, in such cases, the trial court has the additional advantage of closely observing the prosecution witnesses and their demeanour. While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the learned trial Judge. As observed in the commentary by Sarkar on the Law of Evidence, the demeanour of a witness frequently furnishes a clue to the weight of his testimony. This aspect has to be borne in mind while dealing with an appeal against acquittal.”

(emphasis supplied)



13. Now reverting to the facts of the case, we note with the assistance of learned APP as well as the learned counsel for the respondent, that only three out six eye-witnesses cited by the prosecution, testified having witnessed the incident. The said three witnesses are PW-4 Nand Kishore; PW-5 Vivek Chhabra (complainant) and PW-9 Mayank Lakhani.

14. The other three public witnesses namely, PW-1 Kuldeep Tiwari (Bouncer at Indo-chin Bar), PW-2 Saurav Batra, PW-3 Sahil Batra have not testified having seen the incident, thus, they did not support the case of prosecution. PW-1 stated that he came out of the Bar after hearing a noise of the firing. Likewise, PW-2 and PW-3 also testified that when they came out of the club they found one person in an injured condition, whose name they later came to know as Vivek Chhabra. So none of these witnesses had seen the incident.

15. The Trial Court noted on the basis of the evidence on record, that the prosecution has come out with two different versions of the incident. We have examined the testimonies of the three eye-witnesses, and find the conclusion of the Trial Court to be correct.

16. The first version has come on record through the testimony of PW-5 Vivek Chhabra, the injured/complainant, who stated that he along with his friends namely, Sahil Batra, Vaibhav Arora and 2-3 other friends had gone to Indo-chin Club at Saket, New Delhi. After the club closed, he came out along with his friends at about 02.00 A.M. The respondent was sitting in a car outside the club and they were standing by taking support of his car. The respondent came out of the car and had some verbal duel with him and Sahil Batra. When he intervened, the respondent first fired in the air and then fired a shot on his leg.



17. The second version has been narrated by an independent witness i.e. PW-4 Nand Kishore, who was the security guard in the Indo-chin Bar. He deposed that at about 01.30 A.M, 4-5 persons came out from the bar and then were again re-entering the bar. He asked them not to go into the bar as the bar had closed but they insisted to go again to have drinks. Two of them fetched some glasses from one car and then they stood near a big car and started having drinks by keeping the drinks on the bonnet of the said car. When the person sitting in the said car objected to this, first those boys dragged the said person on the side and one of the boys exhorted other to beat the said person who was objecting them from drinking on the bonnet of the big car. The person in the big car was having a pistol with him, he took out the same but it was snatched by those 4-5 boys. In the on-going scuffle a shot was fired from the said pistol, and thereafter he saw one of the boys out of those 4-5 boys having an injury on the foot which was bleeding. Within 4-5 minutes, the police had arrived at the spot. The person who was injured had already gone from the spot, while the police took the person who was objecting the boys from drinking, to the police station.

18. The testimony of PW-9 Mayank Lakhani, the owner of the big car and the employer of the respondent, is closer to the version given by PW-4 Nand Kishore, inasmuch as he stated that Vicky was grappling with the respondent, and the respondent was trying to snatch his gun back from Vicky.

19. The witness PW-3 Sahil Batra, who as per PW-5 Vivek Chhabra, had a verbal duel with the respondent-accused, rather feigned complete ignorance as to who had caused the bullet injuries to Vivek Chhabra, and stated that when he and his brother Saurav Batra came out of the club, they



found Vivek Chhabra in an injured condition.

20. On the basis of the above two contradictory versions, the Trial Court concluded that the evidence led by the prosecution is too uncertain and ambiguous to point out towards the guilt of the accused, rather it would suggest that the true facts have not been brought before the Court.

21. In his statement PW-7 Dr. Satyendra Prakash, who prepared the MLC, Ex. PW7/A, of injured Vivek Chhabra, initially said that the injuries suffered by the complainant were sufficient to cause death in the ordinary course of nature, but when questioned by the Court as to the basis of such observation, he deposed that he had given the statement considering the situation where the injury had caused a fracture as well as crushed the bone. He stated that in such situations, air embolism can occur which may cause death. On further specific query of the court whether injury in this case was of the nature which could have caused death, he responded in the negative. In this backdrop, the Trial Court held that PW-7 has in a very casual manner stated that the injury was sufficient to cause death in the ordinary course of nature. We also note that even the MLC does not record that the injury was sufficient to cause death in the ordinary course of nature, rather the injury is *below the knee, on lateral side and posterior*, which is not a vital part of the body.

22. The relevant extract from the Trial Court judgment are set out hereinbelow for the ease of reference:

“ 10. Now PW-5 Vivek Chhabra has also deposed in his cross examination that after the incident, Mayank Lakhani had also come out of the Bar. It may be mentioned here that Mayank Lakhani was the owner of the car in which the accused was the driver/PSO.



PW-5 deposed that Mayank Lakhani talked with the accused Surinder Singh and then he came to know that he was the driver of Mayank Lakhani. The statement of PW-5, thus, shows the presence of Mayank Lakhani on the spot. This leads to the statement of PW-9 Mayank Lakhani who deposed that at about 1.15 am, he came outside the Bar in the parking and saw the accused standing near his car. Four boys were also standing near him. Two of them had caught hold the accused Surinder Singh. One of the boy out of those four, was sitting on the bonnet of his car and one of them perhaps Vicky was grappling with the accused and the accused was trying to snatch his gun back from Vicky. He further deposed that he heard the sound of a gunshot. He deposed that the accused had ran away from the spot and he called the accused on his mobile phone but the accused did not pick up the phone. He deposed that he went near his car and found some pieces of glass lying there and a bottle of alcohol containing very little alcohol in it near the bumper on the front side. He took his car and left the place. He could not find accused Surinder Singh at that time. Now this witness states about some glass pieces lying near the car and a bottle of alcohol containing very little alcohol in it. This would lead to the statement of PW-4 Nand Kishore who was the security guard in the Indo-chin Bar and Restaurant, Saket, New Delhi.

11. He deposed that at about 1.30 am, 4/5 persons came out from the Bar and they were again re-entering the Bar. He asked them not to go into the Bar as the closing hours were over but they insisted to go again and to have drink. Two of them fetched some glasses from some car and they stood near a big car. He deposed that they started having drinks by keeping the drinks on the bonnet of the said car. He further deposed that one person sitting in the said car objected to this. He further deposed that first those boys dragged the said person on the side and one of them



boy exhorted the others to beat the said person who was objecting them to drink on the bonnet. That person in the big car was having a pistol with him, he took out the same, but it was snatched by those 4/5 persons. In the on going scuffle, fire was shot from the said pistol. He further deposed that he had seen one of the boy out of those 4/5 persons having an injury on the foot which was bleeding. He further deposed that within 4/5 minutes, the police had arrived at the spot. The person who was injured in the scuffle had already gone from the spot.

12. Now this statement of PW-4 Nand Kishore is again contrary to the prosecution case. He has been very categorical in his statement that ***the fire was shot when there was a scuffle between the accused and the other persons who had snatched his pistol. This statement of PW-4 Nand Kishore is the positive statement on behalf of the prosecution which is contrary to its own version. Thus, prosecution itself has come out with two versions of the incident. In the first version, the accused had fired shot at Vivek Chhabra. In the second version, there was a scuffle in which the fire was shot and the pistol was snatched from the accused before the fire was shot.***

13. The statement of PW-9 Mayank Lakhani, who also deposed that he had seen the incident is much closer to the version given by PW-4 Nand Kishore. He had deposed that Vicky was grappling with the accused and the accused was trying to snatch his gun back from the Vicky. It means that the pistol of the accused was snatched by the complainant Vivek Chhabra from him.

14. This is the statement of the public witnesses who have deposed contrary to each other making the prosecution version of the case highly doubtful.

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17. ***Thus, the evidence by the prosecution is too uncertain and ambiguous to point out towards the guilt of the accused rather it would suggest that the true facts have not been brought before the Court and the investigation is not done in a proper manner.***

18. Before parting with the judgment, I would also refer to the statement of PW-7 Dr. Satyendra Prakash who prepared the MLC of injured Vivek Chhabra. In his cross examination, he deposed that the injuries in this case were sufficient to cause death in the ordinary course of nature. On what basis he said so was a matter of query for the Court. Therefore a court question was put to him, as to whether the injury in this case was of such a nature to cause death to which he replied that the injury was of such a nature as to cause death. He was questioned, on what basis he had opined the injury in this case sufficient to cause death. He deposed that he had given the statement as per the situation where the injury had caused a fracture as well as crushed the bone. The reason why he said that the injury was sufficient to cause death, is that in such a situation air embolism can occur which "may" cause death. There is a subtle but significant difference between an injury which is "sufficient" to cause death in "ordinary" course of nature and an injury which "may" cause death. ***As per statement of PW-7, death might occur if "air embolism" occur in the crush bone. So injury by itself could not have caused death. He has in a very casual manner stated in the Court that the injury was sufficient to cause death in the ordinary course of nature.***

19. Thus, the evidence on the record is not inspiring confidence and is full of inconsistencies and contradictions. Therefore, the accused deserves the acquittal in this case for the offence U/s 307 IPC. As regard the charge U/s 27 of the Arms Act, it is the case of the prosecution that the accused was having a valid license but he used the firearm in contravention



of Section of the Arms Act. Since the prosecution has even failed to prove that the shots were fired by the accused from his firearm, there is no question of his using the "firearm" in contravention of Section 5 of the Arms Act. Hence, he deserves an acquittal for the offence U/s 27 of the Arms Act as well. The accused Surinder Singh is hereby acquitted of the charges U/s 307 IPC and Section 27 of the Arms Act. He is on bail. His bail bond stands cancelled and surety stands discharged. Documents of the surety, if any, be returned to him on proper receipt and identification.

23. Considering that the prosecution came out with two versions of the incident, the Trial Court held that the evidence on record is not inspiring confidence and is full of inconsistencies and contradictions. It further held that it has not been proved that the shot which caused injury to the complainant was fired by the respondent. Accordingly, the respondent was acquitted of the charges under section 307 IPC and section 27 of the Arms Act.

24. In view of the facts and circumstances noted hereinabove, we are of the considered opinion that the view on the evidence taken by the Trial Court is possible and plausible view. The version of PW-5 complainant stands contradicted by the version given by an independent witness i.e. PW-4 Nand Kishore, who stated that the shot got fired in the on-going scuffle after 4-5 persons had snatched the pistol from the respondent-accused. The statement of PW-4 is further corroborated to an extent by another public witness PW-9 Mayank Lakhani, who stated that the respondent-accused was trying to snatch his gun back from Vicky. The other three public witnesses i.e. PW-1, PW-2 and PW-3 did not support the case of the prosecution at all. There is thus, no perversity in the judgment of the



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Trial Court. We, therefore, do not find any valid or substantial reasons to interfere with the acquittal of the respondent.

25. The appeal lacks merit, therefore, the same is dismissed.

**VIKAS MAHAJAN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

AUGUST 12, 2026

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