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

+ **CRL.A. 804/2023**

**STATE**

**.....Appellant**

Through: **Mr. Yudhvir Singh Chauhan, APP  
with SI Pardeep Kumar, PS Ghazipur**

**versus**

**HIRAL LAL**

**.....Respondent**

Through: **Mr. Kunal Malhotra, Mr. Ravinder  
Gaur, Mr. Manish Ikkani, Advs.**

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**27.01.2025**

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1. This is an appeal filed under section 378 of Code of Criminal Procedure, 1973 seeking to challenge the judgment dated 05.12.2018 passed by learned Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi in SC No. 454/2017 arising out of FIR No. 1079/2015, registered under section 308 of IPC, 1860 and thereafter, seeking conviction of the respondent.
2. Mr. Chauhan, learned APP appearing on behalf of the appellant while placing reliance on the evidence of the PW-2 (victim) states that in the present case, it is the respondent who has hit the victim with a piece of brick on his head which caused grievous injuries to the victim. Hence the ingredients of section 308 of IPC, 1860 are made out.
3. A perusal of the impugned judgment dated 05.12.2018 and the



evidence available on record clearly shows that the appellant has not been able to provide enough material for the court to arrive at a finding that the intention or knowledge was existing *vis-a-vis* the respondent. In this regard, para 22 of the impugned judgment is relevant and the same reads as under:

*“22. Before an accused can be held under Sec. 308 IPC, It was necessary to arrive at a finding that the ingredient therefore, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or intention on the part of the accused to cause culpable homicide is required to be proved. In case reported as Bishan Singh Vs. State, AIR 2008 SC 131 65, Hon'ble Apex Court clearly observed that six persons allegedly accosted the injured. They had previous enmity. Although over-act had been attributed against each of the accused who were having lathies, only seven injuries had been caused and out of them only one of them was greivous, being a fracture on the arm, which was not the vital part of the body. The accused, therefore, could not be said to have committed any offence under Sec. 308 IPC. The same would fall under Sec. 323 and 325 thereof.”*

4. Further, the brick which caused the injury to the victim or the clothes that the respondent was wearing at the time of the incident were also not seized or sent to the FSL.

5. In addition, there are also findings in the judgment dated 05.12.2018 indicating that a quarrel erupted between the complainant and the respondent, during which the complainant also struck the respondent with a cutter. Consequently, the complainant was convicted under Section 308 of the IPC in FIR No. 1080/2015 (at the instance of the respondent). Further,



the respondent has already undergone incarceration for a period of 5 months and 5 days.

6. For the reasons noted above, I am of the view that the appellant has not been able to prove its case beyond reasonable doubt and the respondent is entitled to benefit of doubt as per the basic tenets of criminal jurisprudence.

7. For the said reasons, the appeal is dismissed.

**JASMEET SINGH, J**

**JANUARY 27, 2025/DM**

*Click here to check corrigendum, if any*