



2025:DHC:10049



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

% Reserved on : 12.11.2025
Pronounced on : 14.11.2025

+ **CRL.A. 838/2016**
VIJAY @ NOTIAppellant
Through: Mr. Biswajit Kr. Patra and Ms.
Khushboo Gupta, Advocates.

versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State with
SI Ramniwas, P.S. Uttam Nagar.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) Cr.P.C., seeking setting aside of the impugned judgment dated 19.01.2015 and the order on sentence dated 22.01.2015 passed by the learned Additional Sessions Judge-05 (West), Tis Hazari Courts, Delhi, in Sessions Case No. 39/2014 (Old No. 42/2010) arising out of FIR No. 923/2007 registered under Sections 308/34 IPC at P.S. Uttam Nagar.

Vide the impugned order on sentence, the appellant *Vijay @ Noti* was directed to undergo RI for a period of 4 years alongwith fine of Rs.1,000/-, in default whereof he would undergo SI for 2 months, for the offence punishable under Section 308/34 IPC. The Trial Court also extended the benefit under Section 428 Cr.P.C. to the appellant.



FACTS AND OVERVIEW

2. On 15.12.2007, DD No. 47B came to be recorded at P.S. Uttam Nagar, informing the police that one *Pappu* had been admitted to DDU Hospital in an injured condition. Upon reaching the hospital, ASI *Sanwar Mal* obtained his MLC and learnt that he had been referred to Safdarjang Hospital. At Safdarjang Hospital, the injured was found admitted in Ward B, where a minor operation had been performed on him, and he was thereafter declared fit to make a statement. In his statement, *Pappu* stated that on that day, at about 4:00 p.m., he had been beaten by *Vijay @ Noti* (the appellant herein), *Satya Prakash @ Pappu*, *Mahesh*, and *Kake*, with whom he had previous enmity. He alleged that *Satya Prakash* caught hold of him while *Vijay @ Noti* gave him blows with a *khukhari* (sharp-edged weapon). As the appellant attacked his person, he tried to ward off the blow and, as a result, sustained injuries on the wrist of his right hand, in addition to receiving another blow on his head. He further stated that *Mahesh* struck him with an iron bucket, whereas *Kake* gave him leg and fist blows. Due to the injuries, he fell into the nearby drain, and his wife thereafter got him admitted to DDU Hospital. On these allegations, FIR No. 923/2007 came to be registered under Sections 308/34 IPC. Investigation was carried out, including preparation of the site plan and recording of statements of witnesses. The blood-stained clothes of the injured complainant were seized, his wife's statement was recorded, the accused persons were arrested, and, upon completion of investigation, the chargesheet was filed. The Trial Court framed charges against all accused persons under Sections 308/34 IPC, to which the said persons, including the present appellant, pleaded not guilty



and claimed trial.

3. The prosecution examined 16 witnesses in all. The material witnesses were the injured complainant *Pappu* (PW-2) and his wife *Bhagwati* (PW-4), both of whom deposed about the assault in detail. The medical witnesses (PW-7, PW-8, PW-9, PW-10, PW-12, and PW-16) proved the injuries suffered by the complainant. PW-1 proved the registration of the FIR. The police witnesses, including PW-5/SI *Kailash Chand*, PW-6/HC *Krishan Pal*, PW-11/Ct. *Ram Kishan*, PW-13/Ct. *Ranbir Singh*, PW-14/SI *Sanwar Mal*, and PW-15/HC *Vishnu Kumar* deposed regarding receipt of DD entry, recording of the complainant's statement, arrest of the accused persons (including the appellant), and other steps of investigation. PW-3, the MHC(M), proved the deposit of case property. In defence, the appellant examined DW-1/*Narain Dass*, who claimed that the appellant was with him on the day of the incident; no defence evidence was led by the appellant's co-accused persons.

CONTENTIONS

4. Learned counsel for the appellant contends that the prosecution version is unreliable and that the conviction under Sections 308/34 IPC is unsustainable. It is urged that the complainant *Pappu* (PW-2) is a BC of P.S. Uttam Nagar and had prior enmity with the accused persons, which provides a strong motive for false implication. It is further submitted that the alleged weapon of offence, i.e., a *khukhari*, was not recovered; no earth sample was lifted from the spot; and no independent witness was examined. Attention of the Court is also drawn to the deposition of PW-4/*Bhagwati*, who stated in her cross-examination that she had not seen the incident. Learned counsel



further submits that PW-7 opined the injuries to be simple in nature, and even if the prosecution case is accepted in its entirety, at best an offence under Section 323 IPC is made out. He also contends that the Trial Court erred by not properly appreciating the testimony of DW-1/*Narain Dass*, which establishes that the appellant was elsewhere at the time of incident.

5. The contentions are refuted by learned APP for the State, who states that the testimonies of PW-2 and PW-4 are consistent and trustworthy, and are duly corroborated by the medical evidence on record. She submits that prior enmity cuts both ways and, in the present case, provides a clear motive for the assault. Learned APP further submits that the MLC records multiple lacerated wounds on the wrist and head of the injured, and that the absence of recovery of weapon is not fatal to the prosecution case when the testimony of the injured complainant inspires confidence and stands corroborated by the testimony of PW-4. It is further highlighted that PW-2 was assaulted again on 26.09.2010, demonstrating continued hostility from the accused persons.

PROSECUTION AND DEFENCE EVIDENCE

6. PW-2/*Pappu*, the injured complainant, deposed that on 15.12.2007 he had visited Kali Basti alongwith his wife for preparation of election I-card. At about 4:00 p.m., after urinating near the Sulabh Shauchalya adjacent to a barber shop, he was confronted by the appellant and his co-accused persons, namely *Satya Prakash @ Pappu, Mahesh, and Kake*, with whom he had previous enmity. He stated that a verbal altercation ensued, during which *Satya Prakash* caught hold of him and the appellant started giving him blows with a *khukhari*, which he stopped with the help of his hands,



2025:DHC:10049



sustaining a *khukhari* blow on his right forearm, followed by another blow on his head. He further deposed that *Mahesh* struck him with an iron bucket and *Kake* gave him fist and leg blows, causing him to fall into the nearby drain. He added that his wife tried to save him but was pulled away by the accused persons by her hair, whereafter she raised an alarm and the accused persons fled. His wife thereafter took him to DDU Hospital, from where he was referred to Safdarjang Hospital. PW-2 identified the appellant and two other co-accused persons in Court, exhibited his statement recorded in the hospital as Ex. PW-2/A, and stated that his blood-stained clothes had been handed over to the police by his wife.

PW-2 was subsequently recalled for further examination-in-chief, where he stated that on 26.09.2010 the three co-accused persons (other than the appellant herein) again approached him, threatened to teach him a lesson for lodging the present case, and assaulted him with an iron rod and knife. He placed on record the progress notes of DDU Hospital pertaining to the said assault (Ex. PW-2/B) and his discharge summary from Safdarjang Hospital (Ex. PW-2/X). He also identified in Court the blood-stained clothes worn by him at the time of the incident in the present case which had been seized by the police.

In cross-examination, PW-2 admitted that he had previous quarrels with the accused persons and had earlier been convicted in FIR No. 918/1999 under Section 307 IPC, wherein co-accused *Mahesh* was the complainant and the appellant herein had sustained injuries. He further admitted that he had spent about 18-19 years in judicial custody and that he was a BC of P.S. Uttam Nagar. He denied the suggestions that the injuries



were self-inflicted or that he had falsely implicated the accused persons due to prior enmity. His deposition qua the appellant herein has remained consistent and nothing came out in the cross-examination which would shake his testimony.

7. PW-4/*Bhagwati*, wife of the complainant, deposed that on 15.12.2007 she had accompanied her husband to Kali Basti for preparation of election card. She stated that while her husband went to urinate at the Sulabh Shauchalya near the barber shop, she waited on the road, and on returning towards the barber shop she saw that the appellant and co-accused persons, who had prior enmity with her husband, had reached there. She stated that her husband had been caught hold of by the accused *Satya Prakash @ Pappu*, the brother of the accused *Vinod @ Kake*, and the accused *Vikram @ Mahesh* had given an iron bucket blow on the head of her husband. She further stated that the appellant was carrying a *khukhari* and had given blows on the hand and head of her husband, while *Kake* gave fist and leg blows. PW-4 stated that she loudly raised an alarm, whereafter the accused persons fled.

In cross-examination, PW-4 admitted that there had been earlier quarrels between her husband and the accused persons, including FIR No. 918/1999 under Section 307 IPC, in which her husband had been convicted. She stated that many public persons were present at the spot but did not intervene. She further stated that she had not seen the incident as well as the accused persons at the spot. She denied the suggestion that the accused persons had been falsely implicated due to prior enmity.

8. DW-1/*Narain Dass* deposed that on 15.12.2007 the appellant/*Vijay @*



Noti, who is his real brother-in-law, had come to his residence at about 9:30 a.m. alongwith his family and remained there until 11:00 p.m. He stated that no police officials visited his residence on that day and that he learnt only later that the appellant had been implicated in the present case.

In cross-examination by the learned APP for the State, DW-1 admitted that he knew the appellant since the time his real sister married him and stated that the appellant visited his house twice a year as he was fond of “peta” (a kind of mutton). He stated that his wife used to speak with the appellant’s wife on telephone fortnightly or monthly, but did not disclose to him about the appellant’s apprehension in the present case until about one and a half years after the incident. He admitted that he did not approach any police authority or Court to complain that the appellant had been falsely implicated. He denied the suggestion that the appellant had not visited his residence on 15.12.2007 or that his testimony was false or motivated to save the appellant. He stated that he could not admit or deny whether the incident as narrated by PW-2 had taken place at about 4:00 p.m. near the Sulabh Shauchalya at Kali Basti, Krishna Colony, Uttam Nagar.

STATEMENT OF THE ACCUSED UNDER SECTION 313 CR.P.C.

9. In his statement under Section 313 Cr.P.C., the appellant denied all allegations and claimed false implication. He pleaded innocence and stated that PW-2 and PW-4 had falsely identified him in Court. Significantly, the plea of alibi set up by DW-1/*Narain Dass*, namely that the appellant alongwith his family was present at DW-1’s residence at the time of the incident, was not taken by the appellant in his own statement under Section 313 Cr.P.C.



MEDICAL AND FORENSIC EVIDENCE

10. The medical evidence on record regarding the incident dated 15.12.2007 stands proved through PW-7, PW-8, PW-9, PW-10, PW-12 and PW-16, who collectively proved the MLC of the injured complainant/PW-2 prepared at DDU Hospital (Ex. PW-16/A), along with the various endorsements thereon. The MLC records multiple lacerated wounds over the right wrist region, including clean lacerated wounds of varying measurements, a lacerated wound on the temporo-parietal region of the scalp, and swelling in the periorbital area. The injuries were opined to be simple in nature. The overall medical findings are consistent with PW-2's version of having been attacked with a *khukhari* and having been struck with an iron bucket and fist and leg blows.

ANALYSIS AND FINDINGS

11. I have heard the learned counsels for the parties and carefully examined the record. The central question for determination is whether the prosecution has succeeded in establishing, beyond reasonable doubt, that the appellant assaulted PW-2/Pappu in the manner alleged, and whether such acts fulfil the ingredients of the offence under Section 308 read with Section 34 IPC.

12. PW-2 is an injured witness, and the law is settled as far as according special evidentiary weight to the testimony of an injured witness is concerned. His deposition in examination-in-chief is categorical that the appellant inflicted blows upon him with a *khukhari*, and his testimony, as well as that of his wife/PW-4, as well as the medical evidence on record clearly shows that he sustained injuries on his right arm and head. On a



2025:DHC:10049



careful perusal of the medical evidence on record, it becomes apparent that the same corroborates the prosecution version.

13. While PW-2 admitted in cross-examination that he had previous quarrels with the accused persons, that he was a BC of P.S. Uttam Nagar and had earlier been convicted in FIR No. 918/1999, these admissions serve to call for cautious scrutiny but do not render his testimony unreliable. Prior animosity, in the facts and circumstances of the present case, is a double-edged sword. The core allegations made out in the complainant's evidence and the role attributed to the appellant therein, namely that he attacked the complainant with a *khukhari*, remains consistent and is supported by the medical evidence on record.

14. The inconsistencies elicited during the cross-examination of PW-2 relate to peripheral details and do not affect the substratum of the case. His departures from earlier assertions concern who delivered which specific fist or kick blows, or whether his wife intervened. These details, even if inconsistent, do not undermine the central allegation that the appellant struck him with a sharp-edged weapon, which stands corroborated by the MLC. This Court is of the considered view that the discrepancies pointed out do not go to the root of the matter.

15. The wife of the complainant, PW-4/*Bhagwati*, in her examination-in-chief, supported the prosecution version on material aspects, particularly that the appellant was armed with a *khukhari* and delivered blows on PW-2's hand and head. In cross-examination, she stated that she had not seen the incident as well as the accused persons at the spot. This answer, when read in context, appears to be a broad denial to a pointed suggestion rather than a



complete retraction of her presence or her initial version.

16. The plea of alibi set up on behalf of the appellant by DW-1/*Narain Dass* does not inspire confidence at all. The appellant himself did not adopt this plea at any stage during the cross-examination of the prosecution witnesses or in his own statement under Section 313 Cr.P.C. His silence on such a material defence strikes at the foundation of the alibi. Furthermore, DW-1 conceded that he did not approach any authority for more than a year after the incident to state that the appellant was elsewhere at the relevant time. The Trial Court was correct in rejecting the alibi as the same is an afterthought that lacked both credibility and corroboration.

17. In so far as public witnesses are concerned, it is settled law that their non-examination is not fatal to the prosecution case, where the evidence of prosecution witnesses is found to be cogent, convincing, creditworthy and reliable¹. In the present case, there is cogent and credible evidence of PW-2, supported by the testimony of PW-4, as well as the medical evidence on record. This Court is of the considered view that the consistent and corroborated part of PW-2's testimony is sufficient to sustain the prosecution case against the appellant.

18. On the question whether the offence proved is one under Section 308 or merely under Section 323 IPC, the nature of the weapon used, the part of the body targeted and the surrounding circumstances must be taken into account. The appellant is attributed with using a *khukhari* and striking PW-2 on the head, a vital part of the body. Even though the injury has been opined to be simple in nature, the act itself reflects knowledge that such a blow was

¹ Gian Chand Vs. State of Haryana (2013) 14 SCC 420



2025:DHC:10049



likely to cause death. The offence under Section 308 IPC is therefore clearly made out.

19. Considering all of the aforesaid, the conviction of the appellant under Sections 308/34 IPC is upheld. The impugned judgment of conviction and the order on sentence are upheld, and the present appeal is accordingly dismissed.

20. The appellant's latest nominal roll dated 05.11.2025 reflects that although he has already completed his entire substantive sentence in connection with the present case, he is presently lodged in jail in connection with another matter. The nominal roll further reflects that his sentence in default of payment of fine in the present case, namely 2 months SI, remains to be served. It is made clear that in case the appellant does not deposit the fine amount as imposed upon him by the Trial Court, he shall serve the sentence in default of payment of fine.

21. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 14, 2025
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