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

% ***Judgment Reserved on: 10.02.2026***
Judgment pronounced on: 13.02.2026

\+ **CRL.A. 618/2018**

MD SAHID .....Appellant

Through: Mr. Shahid Azad, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) .....Respondent

Through: Mr. Pradeep Gahalot, APP for State with SI Arvind Kumar, PS – Gokalpuri.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973, (the Cr.P.C.), accused no.2 (A2) in SC No. 44559/2015 on the file of the Additional Sessions Judge-02 (North East), Karkardooma Courts, Delhi, assails the judgment dated 24.02.2018 and order on sentence dated 27.02.2018 as per which he has been convicted and sentenced for the offence punishable under Sections 308, 341 and 323 read with Section 34of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 07.03.2014, at about 11:15 A.M., in Gali No. 1, New Mustafabad, Delhi, A1 and A2, wrongfully restrained PW1, and thereafter abused and assaulted him with a hard blunt object/iron rod, and struck him on his head, causing bleeding injuries. Hence, as per the charge-sheet/final report dated 30.05.2015, the accused were alleged to have committed the offences punishable under Sections 323, 341 and 308 read with Section 34 IPC.

3. On the basis of Exhibit PW1/A FIS of PW1, given on 07.03.2014, Crime no. 264/2014, Gokul Puri Police Station, i.e., Exhibit PW7/B FIR was registered by PW7, the then Assistant Sub Inspector. PW9, Sub Inspector (SI) was entrusted with the investigation of the case. PW9 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report alleging commission of the offences punishable under the aforementioned sections.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 03.02.2016, framed a charge under Sections 308, 341 and 323 read with Section 34 IPC, which was read over and explained to them to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 10 were examined and Exhibits PW1/A-G, PW3/A-B, PW5/A, PW6/A-B, PW7/A-B and PW8/A were marked in support of the case.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused denied all those circumstances and maintained their innocence. They claimed that they had been falsely implicated in the case. In fact, PW1 had misbehaved with their niece on the date of incident, which they

questioned. They told PW1 that they intend to lodge a complaint against him. Hence, PW1 to save himself, has falsely implicated them in the case.

7. After questioning the accused under Section. 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

8. DW1 was examined on behalf of the accused. No documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court,

vide the impugned judgement dated 24.02.2018 found the accused persons guilty of the offence punishable under Section 323 read with Section 34 IPC. A2 has also been found guilty of the offences punishable under Sections 341 and 308 IPC. *Vide* order on sentence dated 27.02.2018, A2 has been sentenced to rigorous imprisonment for a period of 3 years and to fine of ₹2,000/-, and in default of payment of fine, to simple imprisonment for a period of 2 months for the offence punishable under Section 308 IPC; to fine of ₹500/-, and in default of payment of fine, to simple imprisonment for a period of 7 days for the offence punishable under Section 341 IPC and to fine of ₹500/- , and in default of payment of fine, to simple imprisonment for a period of 7 days for the offence punishable under Section 323 read with Section 34 IPC. A1 has been sentenced to fine of ₹500/- , and in default of payment of fine, to simple imprisonment for a period of 7 days. A1 has paid the fine also. Aggrieved, A2 has preferred this appeal.

10. The learned counsel for the appellant/A2 submitted that the impugned judgment is vitiated by a complete misappreciation of evidence. It was argued that the conviction is founded primarily on the testimonies of PW1 and PW2, whose depositions are mutually inconsistent and also contradictory to their earlier statements. Despite these material contradictions going to the root of the prosecution case, the trial court erred in placing implicit reliance upon their testimonies without independent or adequate corroboration, rendering the findings unsustainable in law.

10.1. It was contended that the prosecution has failed to establish the true genesis of the incident. The learned counsel pointed out that Exhibit PW1/A FIS was not recorded at the hospital but was admittedly recorded later at the police station. This, coupled with the admitted delay of about one hour in the arrival of the police at the spot, remains unexplained and creates a serious doubt regarding the authenticity, spontaneity, and credibility of the prosecution version.

10.2. The learned counsel for the appellant/A2 further submitted that the materials on record, discloses at best, a scuffle between the parties and does not satisfy the essential ingredients of Section 308 IPC. It was submitted that neither the nature of the injuries nor the surrounding circumstances establish the requisite intention or knowledge necessary to attract the offence of attempt to culpable homicide not amounting to murder. In the absence of such foundational elements, the conviction under Section 308 IPC is wholly unwarranted.

10.3. It was further submitted that trial court failed to consider the defence version in its proper perspective. The defence plea that the injury was self-inflicted remained consistent throughout, yet was neither duly examined nor tested on the touchstone of probabilities. The learned counsel highlighted material inconsistencies in the prosecution evidence regarding the manner and place of recording of statements, particularly the contradiction between PW1 and PW6 as to whether any statement

was recorded at the hospital. According to the learned counsel, these infirmities create reasonable doubt, and the appellant/A2 was entitled to the benefit thereof.

11. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and submitted that the injury sustained by PW1 is undisputed, and the defence itself does not challenge the existence of such injury but merely raises a plea that it was self-inflicted. It was argued that this plea is bald, unsubstantiated, and unsupported by any reliable material. According to the learned Additional Public Prosecutor, the consistent testimonies of the injured witnesses, read in conjunction with the medical evidence on record, clearly establish that the injury was caused by the appellant/A2, and the defence has failed to raise any reasonable doubt in this regard.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case.Exhibit PW1/A FIS of PW1 reads thus:- On 07.03.2014, at about 11:15 A.M., while he was proceeding towards the house of his maternal uncle situated adjacent to his house, the appellant/A2 stopped him and questioned him as to why he was going to the said house. PW1 replied that it was his maternal uncle's house. The appellant/A2 started abusing him and then the brother of A2, namely, A1 also arrived at the spot. The appellant/A2 went inside his house, brought an article, and struck him on the head. When he cried out for help, PW2, his sister tried to intervene, whereupon A2 pushed her down. His brother informed the police. The police arrived and took him as well as his sister to the hospital. His statement was recorded at the police station.

14.1. PW1, when examined before the trial court, while broadly supporting the version given by him in Exhibit PW1/A FIS, made certain additional statements. He deposed that, it was later, he came to know that the article, with which he was struck by A2 was an iron rod. On being beaten by A2, he fell down on the ground and felt giddiness. When his sister reached the spot to save him, the appellant/A2 pushed her and she also fell down. PW1further deposed that when he started bleeding, his sister became semi-conscious. His brother informed the police, pursuant to which the PCR arrived and removed him and his sister to the hospital. He was discharged from the hospital on the same day. PW1 further testified that about 3 to 4 months after the incident, the appellant/A2 met him and threatened to kill him in case he deposed against the latter in the court and also abused him, pursuant to which PW1 made a complaint to the police, pursuant to which both the accused persons were arrested, though he does not remember the exact date of their arrest.

14.2. At this juncture, the prosecutor sought permission to "cross-examine" PW1 on some material points, which was allowed by the trial court. On further, examination by the Prosecutor, PW1 deposed that while he was in the hospital, the police met him and recorded Exhibit PW1/A FIS. He further deposed that on the same day, he showed the place of incident to the police, pursuant to which Exhibit PW1/B site plan was prepared. He further stated that on the same day, both the accused persons were arrested at his instance *vide* Exhibit PW1/C arrest memo and Exhibit PW1/D arrest memo. PW1 further deposed that both the accused persons were interrogated and their disclosure statements were recorded *vide* Exhibit PW1/E and Exhibit PW1/F. He further deposed that both the accused pointed out the place of occurrence and Exhibit PW1/G memo was prepared.

14.3. PW1, in his cross-examination, denied the suggestion that on the date of the incident, he had teased or abused the niece of the appellant. He further denied the suggestion that the injury on

his head was self-inflicted to pressurise the accused persons. PW1further deposed that many persons had gathered at the spot. He came to know 6–7 days after the incident from one Asif that it was an iron rod that was used by A2 to assault him. PW1 deposed that his clothes were stained with blood and that he lost consciousness for about a minute after receiving a blow on his head. The PCR removed them from the spot at about 12:00 noon and they reached the hospital between 1:00–1:30 P.M., where he remained admitted for about two hours. PW1 further deposed that he is unaware as to whether his statement was recorded by PCR officials or by local police, and that he could not remember the exact place or time of recording of his statement as he was in pain. He deposed that his family members were present when his statement was recorded. He further deposed that from the hospital they went to the police station in the PCR van and remained there for about 1–1½ hours, where his signatures were taken on certain

papers, the contents of which was not read over to him. PW1 denied the suggestions that the injuries were self-inflicted.

15. PW2, the sister of PW1, deposed that she does not remember the date, month and year, but the incident had occurred about 2 years ago. On the said day, while she at home at about 11:00 AM, she heard noise coming from the lane (*gali*). On hearing the noise, she came out from the house and saw that both accused persons were beating PW1, her brother . When she tried to save PW1, the accused persons, beat her also and pushed her causing her to fall down, resulting in an injury to her hand. She further deposed that PW1 had received a head injury as the appellant/A2 gave a "*danda*" blow on PW1's head, resulting in a bleeding injury. On seeing her brother bleeding, she was disturbed. She further deposed that someone informed the police, who came to the spot and removed her and her brother to GTB Hospital. Thereafter, on the same day, she was discharged from the hospital

and came back to her house, where her statement was recorded by the police.

15.1. PW2, in her cross-examination, deposed that when she came out of the house, no *mohalla* people were present there, though after the incident many persons from the locality/*mohalla* gathered at the spot. She does not know the names of the *mohalla* people who gathered at the spot after the incident. She further deposed that two police officials came to the spot after about an hour. PW2 further deposed that she cannot recall when her statement was recorded by the police and deposed that she had mentioned in her statement to the police that the accused had inflicted injury on her brother with a "*danda*". She further deposed that they were taken by the police to the hospital in the police vehicle and that her brother Zamil had also accompanied them to the hospital. However, she could not recall the exact time when they reached the hospital. She further deposed that they remained in the hospital for about 4 to 5 hours and that the two police

officials who took them to the hospital remained there, and no other police official met her in the hospital. PW2 further deposed that from the hospital they went to the police station and remained there for about one hour. She further deposed that her statement was recorded at the police station and that the statement of her brother was also recorded, with the statement of her brother being recorded first and thereafter her statement. She further deposed that thereafter they returned to their house from the police station in an auto rickshaw and that no police official met her thereafter. PW2 further deposed that the appellant/A2 gave a "*danda*" blow on the head of PW1 from the front side and that after beating them, the accused persons went to their house. She denied the suggestion that PW1, her brother used to tease and abuse Maria, the niece of the accused. She further denied the suggestion that PW1 had self-inflicted the injury or that the accused persons had been falsely implicated in the present case, or that she was deposing falsely at the instance of her brother.

16. PW3, Constable, Police Station, Karawal Nagar, Delhi, deposed that on 07.03.2014 he was on emergency duty and upon receipt of DD No. 18A, he along with PW6 reached the spot, where they came to know that the injured persons had already been taken to GTB Hospital. He further deposed that thereafter they went to GTB Hospital where PW1 and PW2 were found admitted. PW6 collected Exhibit PW5/A MLC and recorded the statement of PW1. Thereafter, he along with PW6, PW4, and PW1 returned to the scene of occurrence, where the PW9 prepared the site plan at the instance of PW1. PW3 further deposed that thereafter the accused persons were arrested by PW9 at the instance of PW1 vide Exhibit PW1/C and Exhibit PW1/D, arrest memos. He further deposed that the personal search of both accused persons was conducted *vide* Exhibit PW3/A memo and Exhibit PW3/B memo, respectively.

16.1. PW3, in his cross-examination, deposed that 4 to 5 people were present at the scene when they reached there, but the

names and addresses of those persons were not noted or recorded. He further deposed that they reached the hospital at about 11:45 A.M. and that the MLCs of the injured persons were collected from the casualty of the hospital. According to PW3, no statement of any prosecution witness had been recorded by the IO in his presence at the hospital and that they remained in the hospital for about 20 to 25 minutes. He clarified that no statement was recorded in the hospital.

17. PW4, Constable, deposed that on the intervening night of 07.03.2014-08.03.2014, he was on emergency duty at Gokul Puri Police station. He deposed that both the accused persons were interrogated and their disclosure statements Exhibit PW1/E and Exhibit PW1/F were recorded. He further deposed that the accused persons had pointed out the place where the "*danda*" had been thrown, though the same could not be recovered, and that Exhibit PW1/G is the memo was prepared regarding the same.

18. PW4, in cross-examination, deposed that that the disclosure statements were recorded after the personal search memos were prepared and that no separate site plan was prepared for the place where the "*danda*" was searched.

19. PW5 Dr. Parmeshwar Ram, MOIC, OPD, GTB Hospital, deposed that he is acquainted with the handwriting and signatures of Dr. Rahul and Dr. Badri as he had seen them signing and writing in the course of the discharge of their official duties. Dr. Rahul and Dr. Badri had since left the hospital and their whereabouts were not known. According to him, he had seen Exhibit PW6/A MLC of PW1, prepared by Dr. Rahul under the supervision of Dr. Badri (Dr. B.N. Sharma). As per the MLC, there was a laceration over left parietal region of size 3x1 cm and the patient was referred to SR Neuro Trauma. The MLC on record is Exhibit PW5/A which is in the handwriting of Dr. Rahul and bears his signature at point A. In cross-examination, PW5 admitted that he has no personal knowledge about the present case and that

Exhibit PW5/AMLC had not been prepared in his presence by Dr. Rahul. He stated that the injury mentioned in the MLC could be caused by a fall or on hitting against any hard surface. He deposed that the aforesaid injury could also be caused by self-infliction.

20. PW6, ASI, PCR East Zone, Delhi, deposed that on 07.03.2014, he received DD No.18A regarding a quarrel at H.No.50, Gali No.1, New Mustafabad, Delhi. Exhibit PW6/A is the attested copy of DD No.18A. Though the doctor had certified PW1 and PW2 to be fit for giving statement, their statements were not recorded. The witnesses told that after availing treatment, they would give their statements. Thereafter, he returned to the police station and the DD was kept pending. On the same day in the evening, both the injured came to the police station and then he recorded Exhibit PW1/A FIS of PW1, based on which the crime was registered.

20.1. PW6, in his cross-examination, deposed that he received DD No.18A at about 12:00 noon. He along with PW3

went to the scene at about 1:00 PM, where no eye witnesses were found. Thereafter, they reached the hospital by about 02:00 PM and came back to the police station at about 4:00 PM. PW6 further deposed that he recorded Exhibit PW1/AFIS of PW1 at about 6:00 PM and that he had not recorded the statement of PW2 separately.

21. PW7, the then ASI, deposed that on 07.03.2014, he was on duty. On that day, at about 8:05 PM, he had registered the FIR.

22. PW8 Dr. Parmeshwar Ram deposed that he is acquainted with the handwriting and signatures of Dr. Garima Gautam as he had seen her signing and writing in the course of the discharge of her official duties. Dr. Garima had since left the hospital and her present whereabouts were not known. He had seen MLC No.B-764/14 of PW2, dated 07/03/2014, prepared by Dr. Garima Gautam. On local examination, no fresh external injury was found. However, there was tenderness and swelling on right hand. After giving primary treatment, the patient was advised for X-ray and referred to Ortho. Exhibit PW8/AMLC is in the

handwriting of Dr. Garima Gautam and bears her signature at point A. PW8 identified the handwriting and signature of Dr. Garima Gautam. In cross-examination, PW8 deposed that the patient was not examined by Dr. Garima Gautam in his presence nor was Exhibit PW8/A MLC prepared in his presence.

23. PW9, Sub-inspector, the investigation officer, deposed regarding the various steps taken by him during the course of investigation. He deposed that both the accused were interrogated and their disclosure statements Exhibit PW1/E and Exhibit PW1/F were recorded, pursuant to which Exhibit PW1/G memo was prepared, though the weapon of the assault could not be recovered.

24. PW10 ASI Pawan Kumar, No.2885-D, Special Staff, Shahdara District, Delhi, deposed that as per the MLCs, the injury sustained by the witnesses was a “simple injury”. On completing the investigation, the charge sheet/final report dated 30.05.2015was submitted before the court.

25. On behalf of the defence, DW1 was examined. DW1 deposed that on 07.03.2014, at about 11:00–11:15 A.M., while he was on his way to offer Friday prayers at a masjid situated at Rajiv Vihar, Khajuri Khas, and when he reached near the house of the appellant/A2, Maria, niece of the accused/appellant, complained to him that PW1 had been teasing her. He deposed that 4 to 5 persons of the locality also reached there and warned PW1 not to tease Maria, failing which a complaint would be made against him. DW1 further deposed that thereafter he along with the accused/appellant went to the masjid for Friday prayers and that no quarrel had taken place at that time. He further deposed that after offering Friday prayers, he returned to his house by about 2:00 P.M.

25.1. DW1, in his cross-examination, denied the prosecution case that at about 11:15 A.M., the accused persons had restrained PW1 and caused injuries on his head with some object. He admitted that the appellant/A2 is his friend but denied the

suggestion that he was deposing falsely to save him due to their friendship.

26. The appellant/A2 has been convicted for the offences punishable under Sections 308 as well as 323 and 341 read with Section 34 IPC. Before dealing with the rival submissions advanced on behalf of the parties, I shall examine the applicability of each of the said provisions to the facts of the present case. The offence under Section 341 IPC postulates voluntary obstruction of a person so as to prevent him from proceeding in any direction in which he has a right to proceed. PW1 has consistently deposed that while he was proceeding towards the house of his maternal uncle, the appellant/A2 obstructed him in the *gali* and questioned him as to why he was entering the said house. PW2 has also supported the presence of the appellant/A2 at the spot at the relevant time. The presence of the appellant/A2 at the spot is not seriously disputed by the defence. The testimony of PW1 on this aspect remains consistent and unshaken in cross-examination. There is no material

on record to disbelieve the said version. The act of the appellant/A2 in stopping PW1 from proceeding further thus stands established. Consequently, this Court finds no infirmity in the finding of the trial court insofar as the offence under Section 341 IPC is concerned.

27. For invoking Section 308 IPC, it is not essential that the injury actually caused should be sufficient in the ordinary course of nature to cause death; what is required to be seen is whether the act, irrespective of its result, was committed with such intention or knowledge and under such circumstances that, if death had ensued, the accused would have been guilty of culpable homicide not amounting to murder. Further, factors such as the nature of weapon used, the part of the body targeted, the severity of the blow, the nature and size of the injury, the motive and the conduct of the accused are relevant in determining the existence of such intention or knowledge.

28. Section 323 IPC deals with voluntarily causing hurt. The fact that PW1 sustained injury is not in dispute. The MLC of PW1 (Exhibit PW5/A) records a lacerated wound over the left parietal region. PW1 and PW2 have both deposed that PW1 was assaulted and sustained injury on his head. Even the defence does not dispute the existence of injury and has confined its case to the plea that the injury was self-inflicted. It is true that PW5, the doctor, has deposed in cross-examination that such injury could also be caused by a fall or be self-inflicted. Suggestions made to the doctor and admissions thereon are not proof of a fact on which conclusions can be arrived at. As held by the Apex Court in **Ram Swaroop v. State of Rajasthan, (2008) 13 SCC 515**, a doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries which he has noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the doctor to such questions need not become the

last word on such possibilities. After all, he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. It is settled that oral evidence has to get primacy and medical evidence is essentially opinion evidence. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only, in a given case, the court has to draw adverse inference. The testimonies of PW1 and PW2 clearly attribute the injury to the assault by the appellant. The defence has not been able to probabilise the plea of self-inflicted injury by any convincing material. In view thereof, this Court finds that the prosecution has been able to establish that PW1 suffered bodily injury on account of the act of the appellant. Therefore, the conviction under Section 323 IPC is rightly held by the trial court.

29. The offence under Section 308 IPC requires the prosecution to establish that the act was done with such intention or knowledge and under such circumstances that, if death had been caused, the act would have amounted to culpable homicide not amounting to murder. In the present case, though the injury was sustained on the head of PW1, the injury seen caused was simple in nature. It is well settled that recovery of weapon used in commission of offence is not a *sine qua non* for convicting an accused. (See **Rakesh v. State of U.P., (2021) 7 SCC 188**). It does not also disentitle the Court from invoking Section 308 IPC, if the intention or knowledge otherwise stands established from the nature of the assault, the part of the body targeted, and the surrounding circumstances. However, in the present case, there is inconsistency in the prosecution evidence regarding the nature of weapon, with PW1 referring to it as an "iron rod" and PW2 describing it as a "*danda*". In the absence of recovery and in view of the lack of clarity regarding the weapon allegedly used, this

Court is left to assess intention solely on the basis of the injury and surrounding circumstances. The incident appears to have arisen out of a sudden quarrel in a residential locality. It has come on record through the statement under Section 313(1)(b) Cr.P.C. as well as through the testimony of DW1 that the occurrence was preceded by an alleged complaint that PW1 had teased the niece of the appellant. Even assuming that such an allegation was made, the same would, at best, indicate a possible motive for a neighbourhood altercation. It does not, in the facts and circumstances of the present case, establish the requisite intention or knowledge contemplated under Section 308 IPC. On the contrary, it lends support to the inference that the occurrence was the result of a sudden quarrel arising out of a personal dispute. In these circumstances, the essential ingredients of Section 308 IPC are not made out beyond reasonable doubt.

30. In the light of these circumstances, this Court holds that the conviction and sentencing of the appellant/A2 for the offence

punishable under Section 308 IPC is unsustainable and liable to be set aside. However, the conviction and sentence of the appellant/A2 for the offences punishable under Sections 323 and 341 IPC is based on reliable evidence and does not call for any interference.

31. In the result, the appeal is partly allowed. The appellant/A2 is acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 308 IPC. The conviction and sentence for the offences punishable under Sections 341 and 323 read with Section 34 IPC is confirmed.

32. Application(s), if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

FEBRUARY 13, 2026/RN