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

*%* ***Judgment Reserved on: 16.04.2026***
***Judgment pronounced on: 23.04.2026***

\+ CRL.A. 209/2019

MOHD TALHA .....Appellant

Through: Mr. Mehmood Pracha, Mr. Sanawar, Mr. Kshitij Singh, Ms. Nujhat Naseem, Mr. Sikander and Mr. Chirag, Advocates.

versus

THE STATE NCT OF DELHI & ORS .....Respondents

Through: Mr. Utkarsh, APP for the State with SI Anil, PS Seemapuri.
Mr. Harsh Ahuja, Mr. Ajay Chouwdhary, Mr. Mukul Singh and Mr. H. Verma, Advocates for respondents no. 2 and 3 with respondents no. 2 and 3 in person.

**CORAM:**
**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

**JUDGMENT**

**CHANDRASEKHARAN SUDHA, J.**

1. This appeal under Section 372 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by PW2, the injured in Sessions Case No. 6988/2016 on the file of Additional Sessions Judge, Saket Courts, New Delhi, assailing the judgment dated 27.09.2017 as per which the first accused (A1) and second accused (A2) have been acquitted of the offence punishable under Sections 324 read with Section 34 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 31.12.2011 at about 01:30 PM, near H. No. 31/1, Ward No. 1, Mehrauli, New Delhi, A1 and A2, in furtherance of their common intention, voluntarily caused injury to PW2 with a knife, thereby committing an offence punishable under Section 324 read with Section 34 IPC.

3. On the basis of Ext. PW3/A FIS/FIR of PW2, given on 31.12.2011, Crime No. 02 of 2012, Mehrauli Police Station, that is, Ext. PW1/A FIR was registered by PW1, Head Constable (HC). PW6 conducted investigation into the crime and on completion of the

same, filed the charge-sheet/final report alleging commission of the offence punishable under the aforesaid Section.

4. When A1 and A2 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. *Vide* order dated 27.08.2012, the matter was committed under Section 323 Cr.PC to the Sessions Court concerned for trial along with the counter case/cross case, i.e., FIR No. 01/12. On appearance of the accused persons and after hearing both sides, the trial court as per order dated 11.11.2014, framed a Charge under Section 324 IPC read with 34 IPC, which was read over and explained to both A1 and A2, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 6 were examined and Ext. PW 1/A-B, Ext. PW 2/A, Ext. PW 3/A-G & 3/DA, Ext. PW 4/A, Ext. PW 6/A-B were marked.

6. After the close of the prosecution evidence, both A1 and A2 were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence led by the prosecution. They denied all those circumstances and maintained their innocence. It was submitted by both A1 and A2 that they have been falsely implicated in the present case and that counter case/cross case, i.e., FIR No. 01/2012 alleging offence punishable under Section 307 IPC has been registered against PW2 and his family members for having assaulted and injured them. The present FIR has been lodged as a counter blast to the said case.

7. No oral or documentary evidence was adduced by A1 and A2 in support of their case.

8. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 27.09.2017, acquitted both A1 and A2 under Section 235(1) Cr.P.C. of the offence punishable under Section 324 IPC read with 34 IPC. Aggrieved, PW2 has preferred this appeal.

9. The learned counsel for the appellant/PW2 submitted that there exist material lapses on the part of PW6, the Investigating Officer (IO), like deliberate failure to record statements of certain material witnesses such has PW2's aunt; non-inspection of the scene of crime, no efforts being made by the IO to recover the weapon of offence used to injure PW2. However, the defective investigation cannot be a ground to discard the otherwise reliable testimony of PW2, the injured witness. It was further submitted that the doctor who had actually prepared the MLC, namely, Dr. Suman Karmakar, was never examined by the prosecution. Instead, reliance was placed on PW4, the record keeper, and PW5, a substitute doctor, who lacked direct knowledge of the injuries and merely interpreted the MLC, thereby weakening the evidentiary value of the medical evidence. This was pointed as yet another aspect to show that the IO had not taken proper steps to prove the prosecution case. It was further submitted that although an earlier application seeking alteration of Charge from Section 324 IPC to Section 307 IPC was dismissed, the

appellate court is not precluded from convicting the accused under Section 307 IPC by invoking Section 222 CrPC, as the distinction between the two offences primarily lies in the element of intention or knowledge, which can be gathered from the facts and circumstances on record.

10. *Per Contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment calling for an interference by this Court. The learned APP also pointed out that PW2 deposed that the injury was caused by a knife, whereas the MLC (Ex. PW4/A) records a “lacerated wound”, which, as conceded, is ordinarily caused by a blunt object, thereby casting doubt on the alleged use of a sharp weapon. It was further submitted that there is complete lack of corroborative evidence, as PW6, the IO, failed to recover the weapon alleged to have been used in the crime. Section 311 Cr.P.C. to summon material witnesses was never resorted to. Also, it was contended that PW2 is not a trustworthy

witness inasmuch as he had made material improvements in his deposition before the Court, thereby affecting his credibility.

11. It was also submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was further contended that the present case is a fabricated story, instituted merely as a counter blast to the earlier FIR. It was also submitted that in the actual incident, the accused persons herein were the victims, having sustained head injuries which was grievous in nature.

12. Heard both sides and perused the materials on record.

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

14. I will first refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW3/A, the FIS/FIR of PW2 recorded on 31.12.2011 reads thus: - "*On 31.12.11, at around 1:30 PM in the afternoon, I was standing in front of my house. My uncle's sons (cousins) Sultan and Suhail were having a fight with Arafin (*A1*) and Hanif (*A2*) over some matter. Seeing the fight involving my cousins, I went to intervene to break it up. During this, Arafin (*A1*) attacked me with a knife, due to which I sustained an injury on my right hand. For treatment, I came to the Trauma Centre via a Private Auto-Rickshaw. Arafin (*A1*) and Hanif (*A2*) have caused me injury; legal action should be taken against them. …*"

15. PW2, when examined before the trial court, deposed that on 31.12.2011 around 01:20 PM-01:30 PM, while he was standing in front of his house, he saw A1 and A2 quarrelling with his cousins Sultan and Suhail. When he tried to intervene, A2 caught hold of him and A1 attacked him on the upper part of his body with a knife. He

tried to save himself by bending backward, however, the knife pierced through his right hand near the elbow and blood started oozing from the wound. People who had gathered at the spot apprehended A1 and A2 and started beating them while they were lying on the ground. Thereafter, his cousin Sultan made a call to the police from his mobile phone. He was taken to AIIMS Trauma Centre by his aunt Shahnaz in a TSR, where he was medically examined. The police came to the hospital and recorded his Ext. PW2/A statement. He was discharged from the hospital on the next day. He pointed out the place of occurrence to the police and site plan was prepared at his instance. He identified A1 and A2 in the court and stated that he could identify the knife if shown to him.

15.1. PW2, in his cross examination, deposed that when he saw A1, the latter was having a knife in his hand. A2 caught hold of him from his back and overpowered him. According to PW2, had he not bent backward, the knife would have hit his abdomen or chest area towards the left side. During the attack, Suhail and Sultan were

standing behind him. He does not know where Umer and Zubair were standing. Except A1, no other person was armed with any weapon. PW2 could not recollect whether any other person had suffered injuries. He was taken to the hospital within about five to seven minutes of sustaining the injury. By that time, the quarrel had not stopped and the public were beating A1 and A2. According to A2, he had informed the police that A1 and A2 had been beaten by the public, however, the same was not recorded in his statement. PW2 admitted that Yamin Ali and his father Mehrban Ali are brothers and that there were criminal cases against them. PW2 admitted that he had not told the doctor as to who had caused injury to him or the time at which he sustained the injury. PW2 admitted that he had told the doctor that he had received the injury some time ago. PW2 was unable to recollect whether he had reached the hospital at about 02.36 PM and denied the suggestion that he had told the doctor that he sustained injury at about 02.30 PM. He further deposed that he remained admitted in the hospital for a day and that

the IO had prepared the site plan, the next day between 10:00 AM to 11:00 AM. He was not able to recollect the exact time of his arrest in FIR no. 01/2012, but according to him, on 01.01.2012 he was handcuffed and taken to the scene of crime. He further deposed that during investigation he had told the police that A1 had attacked him on the upper part of his body and that the knife had pierced through his right hand, but the same was never recorded by the police. He also admitted that the said fact does not find mention in Ex. PW2/A statement. He denied the suggestion that the injury was self-inflicted or caused by a friendly hand to create a false case. He admitted that he, along with Suhail, Sultan and Zubair, are facing trial in FIR No. 01/2012 under Section 307 read with Section 34 IPC. He denied that he was deposing falsely or that he had attempted to murder A2 Hanif to take revenge for an incident that occurred in the year 2009.

16. PW4, Record Clerk, AIIMS Trauma Centre, New Delhi deposed that he had seen MLC No. 291156 dated 31.12.2011 prepared by Dr. Suman Karmakar, Senior Resident, during the

course of his duty and that he is familiar with the writing and signatures of Dr. Suman Karmakar. He further deposed that Dr. Suman Karmakar had left the services of the hospital and that the presence of the said doctor cannot be secured without undue delay and expense. According to PW4, Ex. PW4/A is the MLC of PW2 prepared by the aforesaid doctor.

17. PW5, Senior Resident, AIIMS, deposed that he has been deputed to depose on behalf of Dr. Suman Karmakar, who had left the services of the hospital and had prepared MLC No. 291156 of PW2 wherein the nature of injury is opined to be simple. PW5 in his cross examination deposed that there is a difference between a lacerated wound and an incised wound; that a lacerated wound could be caused by a blunt object whereas an incised wound could be caused by a sharp object; and that laceration means a lacerated wound. He further deposed that the injuries mentioned in the MLC could have been caused by a fall on a hard surface and could have been self-inflicted injuries also. PW5 also deposed that as per the

MLC, PW2 had been brought to the hospital by one Shehnaz and that no policeman had accompanied the injured.

18. PW6, Head Constable, when examined, deposed that on 31.12.2011, at about 01.30 PM, upon receipt of a PCR call regarding a quarrel at 31/1, Mehrauli, he along with PW3 reached the spot, where it was revealed that the injured had already been taken to Trauma Centre, AIIMS Hospital. Hence they proceeded to the said hospital and came to know that four to five persons from both sides had been injured. Thereafter, he collected Ext. PW4/A MLC of PW2, who was declared fit for statement. According to PW6, PW2 initially refused to give his statement on the ground that he would do so only after consulting his family members. Then after sometime he recorded Ext. PW2/A statement of PW2. When he returned to the scene of crime, PW2 also came there on being discharged from the hospital. PW2 pointed out the place of occurrence, pursuant to which Ext. PW6/A site plan was prepared at his instance. PW6 further deposed that the police officials in relation to the cross case were

also present at the spot. He searched for A1 and A2 but they could not be found. He later came to know that one accused had been seriously injured and was undergoing treatment in another hospital. On 13.01.2012, A1 and A2 came to the police station, whereupon they were arrested *vide* Ext. PW3/D and Ext. PW3/E memos and their personal search was conducted *vide* Ext. PW3/B and Ext. PW3/C memos. As the offences were bailable, they were released on bail. PW6 further deposed that he had recorded their disclosure statements *vide* Ex. PW3/G and Ex. PW3/F memos and that both accused had pointed out the place of occurrence, pursuant to which Ex. PW3/A pointing out memo was prepared. During the course of the examination-in-chief, the prosecutor is seen to have sought permission of the trial court to put a leading question. The same is seen allowed. On further examination, PW6 admitted that in his endorsement made in Ext. PW2/A, it has not been recorded that PW2 had initially refused to give his statement and denied the suggestion

that he deposed so to help A1 and A2 or to conceal any dereliction of duty.

18.1. PW6 in his cross examination, deposed that he first met the A1 and A2 in the hospital on the day of the incident at about 05:00 PM-06:00 PM, who were also injured, one of them was badly injured and the other had minor injuries. He had collected their MLCs, but had not placed them on record. He further deposed that on inquiry, PW2 informed him that he had been brought to the hospital by his aunt. However, he did not record her statement. He admitted that he made no effort to record her statement. PW6 further deposed that he recorded the statement of one accused at about 12:00 midnight as the other was unfit, and on the basis of that statement FIR No. 01/2012 was registered at P.S. Mehrauli, possibly under Section 324 IPC. He deposed that A1 and A2 were taken to the hospital by the PCR officials. He further deposed that A1 and A2 were not arrested as they were not found at the hospital or at home. PW6 admitted that A2 remained admitted till 13.01.2012 and

underwent head surgery. He further deposed that during interrogation, the accused persons disclosed that they had thrown the knife on the way while being taken to the hospital by the PCR officials. However, he did not record the statement of any PCR official to verify the same.

19. As per Section 324 IPC, whoever voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or by any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance is liable to be punished. In the case on hand, the ingredients to prove the commission of offence under Section 324 IPC is sought to be established through the testimony of PW2 and the medical evidence in the form of Ext. PW4/A MLC, which reflects the nature of injuries sustained.

20. To establish the prosecution case, there is only the testimony of PW2, the injured to which I have referred to in detail. According to PW2, A1 had attacked him with a knife which resulted in an

injury. The knife is alleged to have pierced through his right hand near the elbow causing a bleeding injury. PW6 in his cross examination deposed that during the course of interrogation of A1 and A2, disclosed that they had thrown away the knife while they were being taken in a PCR Van to the hospital. PW6 did not clarify as to which of the accused persons had said so. A1 and A2 could not have apparently given a statement in unison. Or was it a joint statement? There is no clarity on this aspect. PW6 further admitted that he had not questioned any of the official(s) who were in the van when A1 and A2 were being taken to the hospital to ascertain whether A1 and A2 had in fact thrown away the knife while they were being taken to the hospital. None of the officials, who are alleged to have been in the PCR along with A1 and A2 was examined to establish or substantiate this aspect. No attempt whatsoever is seen by PW6 to recover the knife that is alleged to have been used by A1 for the assault. Therefore, there is certainly a dereliction of duty on the part of PW6. However, recovery of

weapon used for the crime is not a *sine qua non* for coming to a conclusion regarding the guilt of the accused (**Rakesh v. State of U.P., (2021) 7 SCC 188)**. If there is other evidence that is credible, the same can certainly be looked into. Therefore, I will look into the question as to whether the remaining materials on record is sufficient to find A1 and A2 guilty of the offence for which they have been charged.

21. Apart from the testimony of PW2, the prosecution relies on the medical evidence to prove the injury caused to PW2. According to the prosecution, it is one Dr. Suman Karmakar, AIIMS Trauma Centre, New Delhi, who had examined PW2 on 31.12.2011. PW4, the Record Clerk, AIIMS, Trauma Centre, New Delhi, deposed that that the said doctor had left the services of the hospital and that the presence of the doctor cannot be secured without undue delay and expense. PW4 also identified the signature of the said doctor in Exhibit PW4/A MLC of PW2. PW4 was never cross examined by A1 and A2. PW5 another doctor of the aforesaid hospital also

deposed that Dr. Suman Karmakar had left the services of the hospital and that it was the latter who had prepared Exhibit PW4/A MLC of PW2. PW5 also identified the signature of Dr. Suman Karmakar in Exhibit PW4/A MLC. Referring to this evidence, it was submitted by the learned counsel for the appellants/A1 to A4 that the prosecution deliberately had not examined Dr. Suman Karmakar, the doctor, who had actually examined and treated PW2. This was done deliberately by the IO to help A1 and A2.

22. In this context, I refer to Section 32 of the Evidence Act which reads thus:-

> ***32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.***
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> *Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose atttendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:*
>
> *xxxxxxx*
>
> *(2)Or is made in course of business - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business,*

*or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.*

(Emphasis supplied)

22.1. In **Prithi Chand v. State of Himachal Pradesh, AIR 1989 SC 702**, it has been held that Section 32 of the Evidence Act provides that when a statement written or verbal, is made by a person in the discharge of professional duty whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence.

22.2. In **Rambalak Singh v. State of Bihar AIR 1964 Patna 62**, it has been held that if the doctor who had performed the autopsy was not available at the time of trial or he is abroad, the post-mortem certificate prepared by him would be admissible in evidence if the handwriting and signature of the autopsy surgeon on the post-mortem certificate are proved.

22.3. I also refer to the dictum in **Kochu and Ors. v. State of Kerala, 1978 KHC 321 : 1978 SCC OnLine Ker 79**. In the said case, an argument was advanced on behalf of the accused that the burden cast on the prosecution cannot be said to have been discharged by the mere examination of the medical officer who is familiar with the handwriting and signature of the doctor who issued the post mortem certificate; but the prosecution must prove the contents of the document and also elicit from the witness examined, his independent opinion as an expert on the conclusions reached by the doctor who held the autopsy. It was held that it was not always necessary and the law also does not insist that in all such cases the witness should give his independent opinion on the findings in the post mortem certificate or speak to each and every statement made therein. Of course, if an expert witness, who has been examined to prove the post mortem certificate issued by a doctor who was dead or was not available for examination in court under the circumstances stated

in S.32 (1) of the Evidence Act, also gives independent evidence as an expert on the conclusions arrived at in the post mortem certificate, it would constitute an additional piece of evidence of an expert. Under S.32, statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in cases falling under sub-s.1 to 8. A post mortem certificate is not substantive evidence. It is only the evidence given in court by the doctor who held the autopsy that constitutes substantive evidence. A post mortem certificate, being a document containing the previous statement of a doctor who examined the dead body, can be used only to corroborate his statement under S.157 or to contradict his statement under S.145 or to refresh his memory under S.159 of the Evidence Act. But, S.32 (2) is an exception to

this. If the doctor who held the autopsy is dead or is not available for examination under the circumstances mentioned in S.32 of the Evidence Act, the certificate issued by him is relevant and admissible under S.32(2) of the Evidence Act. The weight to be attached to such a report or its probative value depends upon the facts and circumstances of each case. The court can come to its independent conclusion on the cause of death, if there is independent evidence on record in support of it. Then the question is whether the statements made in the post mortem certificate, containing what was observed by the doctor during autopsy and the conclusion arrived at by him therein have been properly proved in accordance with law. S.67 of the Evidence Act speaks of the mode of proof of a document. Under S.67 if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. When in

cases the prosecution is not able to procure the attendance of the doctor who held autopsy without unreasonable delay or expense, the statement coming under S.32(2) of the Evidence Act has to be proved by one of the various modes prescribed in S.47 of the same Act.

23. Coming back to the facts of the case on hand, as noticed earlier, PW4 has clearly deposed that the presence of the doctor who had examined and treated PW2 cannot be secured without an amount of delay or expense. This aspect has never been cross examined on behalf of A1 and A2. Therefore, the prosecution has succeeded in establishing one of the circumstances contemplated under Section 32 of the Evidence Act, that is, the attendance of the doctor who examined PW2 could not be procured without an amount of delay or expense. Ext. PW4/A MLC was prepared by the doctor in discharge of his official duty. In such circumstance, his statement becomes relevant under Section 32(2) of the Evidence Act. Section 47 of the Evidence Act which deals with situations when opinions as to

handwriting are relevant, says that when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of a person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. Section 67 of the Evidence Act which deals with proof of signature and handwriting of person alleged to have signed or written document, says that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. PW4 and PW5 deposed that they are familiar with the handwriting and signature of Dr. Suman Karmakar and both of them identified the signature of the doctor in Exhibit PW4/A MLC. Therefore, in the absence of Dr. Suman Karmakar, the prosecution has proved Exhibit PW4/A MLC by resorting to the provisions of Section 32(2) read along with

Sections 47 and 67 of the Evidence Act, which is permissible and therefore, arguments to the contrary are liable to be rejected.

24. The history in Exhibit PW4/A MLC is recorded as – "*alleged history of assault.*" The injury is stated to be "*laceration (two on inner spect right elbow 1.4x3 CM, 2.5x1 CM*)". In the comments column, it is recorded thus:- "*Cut with knife*". Dr. Suman Karmakar has opined in the MLC that the the injury noted to be simple and the weapon used to be sharp. According to PW5, laceration means a lacerated wound and that such wound could be caused by a blunt object whereas an incised wound would be caused by a sharp object. No clarification was sought by the prosecutor on these aspects spoken to by PW5 in his cross examination. If PW2 is to be believed when A1 attacked him with a knife, the same pierced through his right hand near the elbow. If that be so, it could possibly have been a incised wound and not a lacerated wound as seen in Ext. PW4/A MLC. If that be so, the medical evidence does not support the version of PW2 that he had been stabbed with a knife by A1.

25. During the course of arguments, the learned counsel for the appellants wanted this Court to examine the scar on the right hand of PW2 who was present in the Court. It was submitted that PW2 pursuant to the attack by A1 and A2 required about 22 stitches on his hand. This Court declined the request of the learned counsel. 15 years have elapsed since the incident. Even if there is a scar in the right hand of PW2, it would not be possible for this Court to conclude that the same was the result of the injury caused to him on 31.12.2011. Such an exercise, if necessary, ought to have been done during the course of trial, at which time the opposite party would also have obtained an opportunity to challenge the same.

26. Further, according to PW2, his cousins, namely, Sultan, Suhail were very much present when the incident occurred. He also deposed that it was his aunt, who had taken him to the hospital for treatment pursuant to the incident. However, for reasons best known to the prosecution, none of the said persons have been examined on behalf of the prosecution. This aspect was also pointed out by the

learned counsel for the appellants/A1 and A2 to canvass the point that a shabby and shoddy investigation had been conducted by the police deliberately to help A1 and A2 escape the consequences of their crime. If PW2 was quite unhappy with the investigation conducted, he was not left without any remedies. He could have filed a complaint before the jurisdictional magistrate under Section 200 Cr.P.C. or a complaint before the jurisdictional magistrate seeking directions under Section 156(3) Cr.P.C. PW2 could have even approached the higher police authorities, if the IO in this case had deliberately botched up the investigation. PW2 could have also approached the Court for getting his grievances re-addressed. However, no such step is seen taken by PW2 in this direction. Hence, at this late stage, it cannot now be argued that the IO deliberately did not collect necessary evidence to substantiate the case. Here it needs to be noticed that when the trial court framed a charge for the offence under Section 324 read with Section 34 IPC, the same was challenged on the ground that the materials actually made out an

offence under Section 307 IPC. The challenge I am told was dismissed by this Court. Therefore, it is quite apparent that PW2 was well aware of what investigation had been conducted, the persons who were to be examined as witnesses etc. Therefore, if PW2 had any grievance(s) against the investigation done, he ought to have resorted to the remedies available to him under law. But for reasons best known to PW2, no such step is seen taken by him.

27. Yet another interesting argument advanced by the learned counsel for the appellants A1 and A2 is that despite the trial court framing a charge under Section 324 IPC, if evidence on record reveals an offence under Section 307 IPC, this court can certainly enter into a finding regarding the same. When asked by the Court as to which sub-Section of Section 222 Cr.P.C. can be invoked, the learned counsel referred to sub-Section (1) Cr.P.C.

28. Section 222 Cr.P.C. reads:-

*"222. When offence proved included in offence charged.—*

*(1) When a person is charged with an offence consisting of*

*several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.*

*(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.*

*(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.*

*(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied."*

(Emphasis supplied)

As is evident, Section 222(1) Cr.P.C deals with a case, "when a person is charged with an offence consisting of several particulars". The Section permits the Court to convict the accused "of the minor offence, though he was not charged with it". Sub-section (2) deals with a similar, but slightly different situation. As per sub-Section (2), when a person is charged with an offence and

facts are proved, it is reduced to a minor offence, he may be convicted of a minor offence, although he is not charged with it. What is meant by a "minor offence", for the purpose of Section 222 Cr.P.C. was being dealt with by the Apex Court in **S.M. Multtani v. State of Karnataka, 2001 (2) SCC 577**, in which it has been held that, although the said expression is not defined in Cr.P.C, it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the Section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence, *vis-a-vis* the other offence.

29. In the case on hand, A1 and A2 has been charged for having committed the offence punishable under Section 324 IPC which deals with voluntarily causing hurt by dangerous weapons or means. The ingredients to be proved under Section 324 are that the

prosecution must prove that the accused voluntarily caused hurt to a person with a weapon as described in the Section, which if used as a weapon of offence, is likely to cause death. In **Mathai v. State of Kerala (2005) 3 SCC 260** it has been held that the expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged, taking note of the heading of the section. What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalization can be made. In **Nanda Gopalan v. State of Kerala, (2015) 11 SCC 137**, after referring to Mathai (Supra) as well as the dictum in **Dasan v. State of Kerala, (2014) 12 SCC 66**, it has been held that, the expression "any instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section. Various factors like size, sharpness etc would throw

light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in a case, offences under Sections 323, 324, 325 or 326 would apply.

30. Section 307 IPC on the other hand deals with the offence of attempt to commit murder. The essential ingredients required to be proved in the case of an offence under 307 are:- (i) that the death of a human being was attempted; that such death was attempted to be caused by or in consequence of the act of the accused; and that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause, (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. **(State of Maharashtra v. Kashi Rao, 2003 (10) SCC 434)**.

30.1 A person commits an offence under Section 307, when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever does an act with such intention of knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307, simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of

that act whether immediately or after a lapse of time. **(Om Parkash v. State of Punjab, 1961 SCC OnLine SC 72)**.

30.2 Further, to justify a conviction under Section 307, it is not essential that the bodily injury capable of causing death should have been inflicted. Although the nature of such injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases be ascertained without reference at all to the actual injury. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under such circumstances mentioned in the Section. **(See Hari Mohan Mandal v. State of Jharkhand, 2004 (12) SCC 220)**.

31. Therefore, it is apparent that the ingredients contemplated under Sections 307 and 324 IPC are different and that Section 307 is not a minor offence as contemplated under Section 222(1) Cr.P.C. when compared to Section 324 IPC On the other hand, had A1 and

A2 been charged under Section 307 IPC and if the evidence made out only an offence of voluntarily causing hurt with a dangerous weapon as contemplated under Section 324 IPC, a conviction would certainly have been possible under Section 324 by resort to section 222(1) Cr.P.C. However, that is not situation in the case on hand. In these circumstances Section 222(1) Cr.P.C. cannot be invoked in this case.

32. Moreover, the evidence on record is not sufficient to find A1 and A2 guilty of the offence under Section 324 read with Section 34 IPC. Further, when an acquittal has been recorded by the trial court, the appellate court ought not to interfere unless the findings are perverse, manifestly erroneous, or based on a misappreciation of material evidence. If the view taken by the trial court is a plausible and reasonable view on the evidence, the same does not warrant interference merely because another view is possible. (See **Chandrappa & Ors vs. State of Karnataka, 2007 (4) SCC 415**). I do not find any grounds for interference into the impugned judgment.

33. Hence, the appeal *sans* merit, is dismissed.

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

**CHANDRASEKHARAN SUDHA**
**(JUDGE)**

**APRIL 23, 2026**
*p'ma/kd*